

“PERTAINING TO RESTRICTIONS ON SHELLFISH”

CHAPTER 4 VAC 20-1230-10 ET SEQ.

PREAMBLE

This chapter establishes, for the public health, harvest restrictions for shellfish taken from Virginia waters. This chapter is promulgated pursuant to the authority contained in §§ 28.2-201 and 28.2-801 of the Code of Virginia. This chapter amends and re-adopts, as amended, previous Chapter 4 VAC 20-1230-10 et seq., which was adopted August 26, 2014 and made effective October 1, 2014. The effective date of this chapter is April 1, 2018.

4 VAC 20-1230-10. Purpose.

The purpose of this chapter is to establish harvest times and handling procedures for shellfish, excluding seed oysters and seed clams, harvested for commercial purposes or any other use.

4 VAC 20-1230-20. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

“*Clam*” means any shellfish of the species *Mercenaria mercenaria* and genera *Noetia* and *Anadara*.

“*Container*” means any bag, box, sack, tote, or other receptacle that contains shellfish to be held, in any type of conveyance, for transport from the harvest area to the landing site and from the landing site to the point of sale or other use.

“*Conveyance*” means any form of transport, such as a boat, truck or other vehicle, or trailer that is used to transport shellfish from the harvest area to the landing site or from the landing site to a licensed buyer or other use.

“*Direct marketing*” means any shellfish or shellstock that is landed and sold without shucking or postharvest processing.

“*Harvest*” means the act of removing any shellfish or shellstock from a designated harvest area and placing that shellfish or shellstock in a container or on or in a conveyance.

“*Harvest Time*” means the time from initial harvest to when temperature control of that harvest is required. Harvest time begins once the first harvested shellstock is no longer submerged and extends to the time that any harvested shellstock is placed in Virginia Department of Health, Division of Shellfish Sanitation-approved temperature controlled storage.

“*Layer*” means a single thickness or coating spread out and covering an entire surface.

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“*Mechanical refrigeration*” means storage in a container that is approved by the Virginia Department of Health, Division of Shellfish Sanitation and capable of cooling to and maintaining an ambient temperature of 45° F or less.

“*Oyster*” means any shellfish of the species *Crassostrea virginica*.

“*Restricted-use shellstock*” means shellstock or shellfish harvested from approved shellfish growing areas that shall not be sold for raw consumption or directly marketed for raw consumption.

“*Restricted-use shellstock tag*” means a Virginia Marine Resources Commission-issued green tag that shall only be used by a licensed buyer who has a current certificate of inspection as a shucker packer for shellstock or shellfish harvested from a single harvest area in any one day. Use of any such tag indicates that shellstock is intended for further processing prior to distribution to retail or food service.

“*Seed Clams*” means any shellfish of the species *Mercenaria mercenaria* that is less than 30 mm in shell length and more than six months from harvest for human consumption.

“*Seed Oyster*” means any oyster taken, by any person, from natural beds, rocks, or shoals that is more than 30 days from harvest for human consumption.

“*Shading*” means to shelter by intercepting the direct rays of the sun to protect the shellfish from heat using a tarp or cover.

“*Shellfish*” or “*shellstock*” means all species of bivalve molluscan shellfish.

“*Shucker packer*” means a person who shucks and packs shellfish under a certificate of inspection issued by the Virginia Department of Health, Division of Shellfish Sanitation.

“*VDH-approved temperature controlled storage*” means a container or conveyance that is equipped with mechanical refrigeration capable of maintaining 45°F or less or is continuously and completely covering shellfish with a layer of ice, according to procedures approved by the Virginia Department of Health, Division of Shellfish Sanitation.

4 VAC 20-1230-30. Public health and warm water harvest restrictions for shellfish.

- A. Beginning December 1, 2014, it shall be unlawful for any Commission employee or representative to issue any shellfish license, shellfish permit, or oyster resource user fee to any person, unless that person has successfully completed the Shellfish Harvest Safety Training Certification Course. Beginning January 1, 2015, it shall be unlawful for any person to harvest or attempt to harvest shellfish unless that person has successfully completed the Shellfish Harvest Safety Training Certification Course. The Shellfish

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Harvest Safety Training Certification shall be valid from the date of issuance through the next five calendar years.

- B. No provisions in this chapter shall apply to seed clams or seed oysters.
- C. It shall be unlawful for any person to have any cat, dog, or other animal on board a vessel during the harvest of shellfish.
- D. From May 1 through September 30, any vessel used for the harvest of shellfish, from either public or private grounds, shall provide shading over the area that serves as storage for the shellfish when the shellfish are on board that vessel. All shellfish in the vessel shall be offloaded every day. Shading shall not be required for vessels transporting clam seed or seed oysters for replanting.
- E. From May 1 through September 30, all shellfish shall be shaded during land-based deliveries.
- F. From June 1 through August 31, it shall be unlawful for any person to leave the dock or shore, prior to one hour before sunrise, to harvest or attempt to harvest shellfish from private grounds.

4 VAC 20-1230-31. Public health and warm water harvest restrictions for oysters.

- A. From May 1 through September 30, all land-based deliveries of oysters shall be made aboard trucks or other conveyances equipped with VDH-approved temperature controlled storage. Mechanically refrigerated containers for oysters shall be in operation during transport. Any operator of a truck who is delivering oysters, using a truck not owned by a licensed shellfish buyer, shall possess a truck refrigeration certificate issued by the Virginia Department of Health, Division of Shellfish Sanitation. Upon receiving any oysters, licensed shellfish buyers shall immediately place any oysters received from any individual under temperature control.
- B. From May 1 to September 30, it shall be unlawful for any individual to harvest oysters from open areas of public or private ground after any monthly curfew harvest time described in (i) subdivisions 1 through 5 of this subsection or (ii) subsections C and D of this section. All oysters shall be placed into trucks or other conveyances equipped with VDH-approved temperature controlled storage, no later than the following designated curfew harvest times, by month:
 - 1. May 1 through May 31, by 11:00 a.m.;
 - 2. June 1 through June 30, by 10:00 a.m.;
 - 3. July 1 through July 31, by 10:00 a.m.;

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4. August 1 through August 31, by 10:00 a.m.; and
 5. September 1 through September 30, by 12:00 noon.
- C. It shall be unlawful for any individual to harvest oysters from open areas of public or private ground, except as described in (i) subsection B or D of this section or (ii) subdivisions 1 through 3 of this subsection.
1. The individual has applied for and been granted a permit by the Virginia Marine Resources Commission to harvest oysters after the designated monthly curfew harvest times, as provided in subsection B of this section.
 2. A Virginia Marine Resources Commission-approved global positioning system tracking device shall be on board the harvest vessel or with the individual and must be in continuous operation from the time that vessel or individual leaves the dock or shore until the vessel or individual returns to the dock or shore, and the oysters harvested are offloaded from that vessel or onto the dock or shore and placed into trucks or other conveyances equipped with VDH-approved temperature controlled storage.
 3. The total time, from the time the vessel or individual leaves the dock or shore until the oysters are placed into trucks or other conveyances equipped with VDH-approved temperature controlled storage, shall not exceed the following amount of time, by month:
 - a. 5 hours during the months of May and September;
 - b. 3 hours during the month of June; and
 - c. 2 hours during the months of July and August.
- D. It shall be unlawful for any individual to harvest oysters from open areas of public or private ground, except as described in (i) subsection B or C of this section or (ii) subdivisions 1 through 3 of this subsection.
1. The individual has applied for and has been issued a Virginia Department of Health, Division of Shellfish Sanitation vessel approval certificate for mechanical refrigeration or icing in a storage container that is on board the vessel at all times during the harvest of oysters;
 2. The individual has applied for and has been issued a Marine Resources Commission Shellfish Harvester Icing Permit; and
 3. Oysters are placed in VDH-approved temperature controlled storage on board the vessel from the start of harvest and throughout the harvest period until the oysters are offloaded.

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- E. From May 1 through September 30, it shall be unlawful for any individual to harvest oysters from open areas of public or private ground, as restricted-use shellstock, except as described in subdivisions 1 through 3 of this subsection.
1. The individual has been issued green restricted-use shellstock tags by a Virginia Department of Health, Division of Shellfish Sanitation-certified shucker packer and has tagged all oysters with restricted-use shellstock tags;
 2. The individual does not possess on board the vessel any oysters designated for direct marketing or raw consumption; and
 3. All oysters are harvested no later than 12:00 noon and are placed into trucks or other conveyances equipped with VDH-approved temperature controlled storage, no later than noon that same day.
- F. From May 1 through September 30, it shall be unlawful for any individual to harvest any amount of natural (wild) seed oysters that include oysters greater than 2-1/2 inches, without first obtaining a valid Bulk Seed Permit from the Virginia Marine Resources Commission. Any individual who harvests any natural (wild) seed oysters that include oysters greater than 2-1/2 inches and is not in possession of a valid Bulk Seed Permit issued by the Virginia Marine Resources Commission shall be in violation of this chapter.
- G. It shall be unlawful for any individual to handle oysters, as part of a cage aquaculture operation for husbandry purposes, after the designated harvesting times described in subsection B of this section without first obtaining a valid Cage Oyster Aquaculture Husbandry Permit from the Virginia Marine Resources Commission. Any individual who handles oysters in cage oyster aquaculture operations after the designated harvesting times described in subsection B of this section and does not possess a valid Cage Oyster Aquaculture Husbandry Permit issued by the Virginia Marine Resources Commission shall be in violation of this chapter.

4 VAC 20-1230-32. Public health and warm water harvest restrictions for clams.

From May 1 through September 30, all land-based deliveries of clams requiring more than 60 minutes after offloading is complete shall be made aboard trucks or other conveyances equipped with VDH-approved temperature controlled storage. Mechanically refrigerated containers for clams shall be in operation during transport. Any operator of a truck who is delivering clams using a truck not owned by a licensed shellfish buyer shall possess a truck refrigeration certificate issued by the Virginia Department of Health, Division of Shellfish Sanitation. Upon receiving any clams, licensed shellfish buyers shall immediately place any clams received from the individual under temperature control.

4 VAC 20-1230-35. [Repealed]

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4 VAC 20-1230-40. Penalty.

- A. In addition to the penalty prescribed by law, any person violating any provision of this chapter shall destroy, in the presence of a marine police officer, all shellfish in his possession, or, at the direction of the marine police officer, shall place the shellfish overboard on the nearest oyster sanctuary or closed shellfish area and shall cease harvesting on that day. All harvesting apparatus may be subject to seizure, and, pursuant to § 28.2-232 of the Code of Virginia, all licenses and permits may be subject to revocation following a hearing before the Marine Resources Commission.
- B. As set forth in § 28.2-903 of the Code of Virginia, any person violating any provision of this chapter shall be guilty of a Class 3 misdemeanor, and a second or subsequent violation of any provision of this chapter committed by the same person within 12 months of a prior violation is a Class 1 misdemeanor.

This is to certify that the foregoing is a true and accurate copy of the chapter passed by the Virginia Marine Resources Commission, pursuant to authority vested in the Commission by §§ 28.2-201 and 28.2-801 of the Code of Virginia, duly advertised according to statute, and recorded in the Commission’s minute book, at its meeting held in Newport News, Virginia on March 27, 2018.

COMMONWEALTH OF VIRGINIA
MARINE RESOURCES COMMISSION

By: *Steven G. Bowman*
Steven G. Bowman
Commissioner

Subscribed and sworn to before me this 29 day of March 2018.

Jennifer G. Farmer
Notary Public

