

"PERTAINING TO THE HARVESTING OF CLAMS"**CHAPTER 4 VAC 20-70-10 ET SEQ.****PREAMBLE**

This chapter establishes rules and procedures governing licensing, use of gear, and times for harvesting soft shell clams and hard shell clams from the public, leased, and unassigned grounds of the Commonwealth.

This chapter is promulgated pursuant to authority contained in §28.2-201 of the Code of Virginia. This chapter amends and re-adopts, as amended, Chapter 4 VAC 20-70-10 et. seq., which was adopted on January 23, 2007 and made effective on February 1, 2007. The effective date of this chapter, as amended, is July 1, 2015.

4 VAC 20-70-10. Purpose.

The purpose of this chapter is to provide for the long-term conservation and use of the soft shell clam and hard shell clam resources, and to provide for appropriate stewardship over the public, leased, and unassigned subaqueous grounds of the Commonwealth.

4 VAC 20-70-20. Definitions.

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

"Bull rake" means a device designed for use by hand for the purpose of harvesting clams, and which has the following characteristics: rake mouth width shall not exceed 30 inches, the teeth on the bar shall not be longer than 4 1/2 inches, the holding basket shall not hold greater than 3/4 of a bushel of clams and bottom material, and the handle shall not be longer than 30 feet. A bull rake may be equipped with skids to adjust the teeth for depth of penetration into the bottom.

"Commission" means the Marine Resources Commission.

"Conventional dredge" means the type of dredge that has become customarily used in Virginia to dredge oysters and crabs. It excludes any type of dredge where the dredging action functions or is aided by hydraulic action.

"Conventional hard clam rake" means a device designed for use by hand for the purpose of harvesting clams, and which has the following characteristics: rake mouth width shall not exceed 16 inches, the teeth on the bar shall not be longer than seven inches, the attached holding basket shall not hold greater than one-tenth of a bushel of clams and bottom material, and the handle shall not be longer than 10 feet.

"PERTAINING TO THE HARVESTING OF CLAMS"**CHAPTER 4 VAC 20-70-10 ET SEQ.**

"Cultured clams" means hard shell clams (*Mercenaria mercenaria*) that have been spawned in a hatchery, planted on leased ground, and covered with netting or other means protected from predators until harvest.

"Public ground" means the grounds defined by §§28.2-551 and 28.2-639 through 28.2-649 of the Code of Virginia, and any areas set aside as public ground by court order.

"Leased ground" means any grounds leased by the Marine Resources Commission pursuant to the provisions of Chapter 6 (§28.2-600 et seq.) of Title 28.2 of the Code of Virginia.

"Officer" means a law-enforcement officer of the Marine Resources Commission.

"Unassigned ground" means any ground outside the public ground as defined by this chapter and which has not been set aside, or assigned by lease, permit or easement by the Marine Resources Commission.

"Water rake" means a device for use by hand for the harvesting of cultured clams on leased grounds. The mouth of the water rake shall not exceed 36 inches in width, and the water rake shall be attached by a hose to a single pump engine of no greater than 7.5 horsepower and shall only be pulled by a single person, with no mechanical assistance.

4 VAC 20-70-30. License required for use of a hydraulic dredge on leased ground.

- A. It shall be unlawful to take or catch soft shell clams from any leased grounds in any of the tidal waters of the Commonwealth by the use of a hydraulic dredge without first obtaining (i) a soft shell clam dredge license for each boat used for such a purpose and (ii) a permit for each boat and operator thereof.
- B. Any lessee desiring to take or catch soft shell clams from leased ground by the use of a hydraulic dredge shall apply to the officer in charge of the district, in writing, specifying the location and identity of the specific lease or leases where he desires to dredge and request the privilege to dredge the specific lease or leases.
- C. Each application will be reviewed by the commission. The commission may conduct a public hearing on such application if, in its discretion, it is deemed necessary. If the commission deems it wise to permit dredging of soft shell clams within the area of such a lease, the commission engineers shall first approve the existing boundaries, survey and plat of each lease. Any surveying or marking of the lease which may be necessary shall be at the expense of the lessee, unless such survey shows that the leased ground was properly marked.

"PERTAINING TO THE HARVESTING OF CLAMS"**CHAPTER 4 VAC 20-70-10 ET SEQ.****4 VAC 20-70-40. Additional permits required for use of a hydraulic dredge on leased ground.**

- A. After the license is issued by the officer in charge of the district and before the licensee may begin to operate the hydraulic dredge, the lessee shall obtain from the officer in charge of the district a separate and individual permit which combines the identification of each lease, boat, and the operator thereof. An additional permit shall be obtained from the officer in charge of the district each time there is any change in operations which does not comply with all provisions in the original permit.
- B. The license and permit shall at all times be on board the boat available for inspection by any inspector of the commission.

4 VAC 20-70-50. Operation of a hydraulic dredge on leased ground.

- A. It shall be unlawful to operate a hydraulic dredge in the nighttime between the hours of sunset and sunrise or on Sunday for the catching of soft shell clams from leased ground.
- B. It shall be unlawful to operate a hydraulic dredge on any lease for less than three acres unless adjoining other leases where the combined leases total more than three acres.
- C. It shall be unlawful to operate a hydraulic dredge on any leased ground unless the boundaries of the lease are distinctly marked between corners to the satisfaction of the officer in charge of the district. All such marking shall be continually maintained during the dredging operations.

4 VAC 20-70-60. Dredge prohibited.

It shall be unlawful for any person to take or catch soft shell clams from any unassigned ground in the tidal waters of the Commonwealth by the use of a dredge.

4 VAC 20-70-70. License required for use of a hydraulic dredge on public ground.

- A. It shall be unlawful for any person, other than an employee of the commission or the Virginia Institute of Marine Science while conducting tests or experiments, to take or catch soft shell clams from any public grounds in the tidal waters of the Commonwealth by the use of a dredge without first obtaining (i) a soft shell clam dredge license for each boat used for such purpose and (ii) a permit for each boat and operator thereof.

"PERTAINING TO THE HARVESTING OF CLAMS"**CHAPTER 4 VAC 20-70-10 ET SEQ.**

- B. Any person desiring to take or catch soft shell clams from the public grounds by the use of a hydraulic dredge shall apply to the officer in charge of the district, in writing, describing the area and requesting the privilege to dredge the specific area.
- C. Each application shall be reviewed by the commission. The commission shall conduct a public hearing to determine the suitability of the area for the production of oysters, and shall make such further investigations and studies as in its discretion it deems necessary. If the commission deems it wise to permit dredging of soft shell clams in such an area, the area must be surveyed and marked by the commission before a license and permit is issued.
- D. If the application is approved by the commission, no person shall have the exclusive use of the area for taking or catching soft shell clams by hydraulic dredge. The area shall be open to the general public for such a purpose provided each person obtains the necessary license and permit and complies with all other provisions of this chapter.

4 VAC 20-70-80. Additional permit required for use of a hydraulic dredge on public ground.

- A. After the license is issued by the officer in charge of the district, and before the licensee may begin to operate the hydraulic dredge, the licensee shall obtain from the officer in charge of the district a separate and individual permit which combines the identification of the approved area, boat and the operator thereof. An additional permit shall be obtained from the officer in charge of the district each time there is any change in operations which does not comply with the provisions in the original permit.
- B. The license and permit shall at all times be on board the boat available for inspection by any officer.

4 VAC 20-70-90. Operation of a hydraulic dredge on public ground.

It shall be unlawful to operate a hydraulic dredge in the nighttime between the hours of sunset and sunrise, or on Saturday or Sunday, for the catching of soft shell clams from public ground.

4 VAC 20-70-100. Crab dredge boat not to take clams.

- A. It shall be unlawful for any person in charge of any boat licensed to catch crabs with a dredge to have or allow on board any clams in excess of 250, except as provided in subsection B of this section.

"PERTAINING TO THE HARVESTING OF CLAMS"**CHAPTER 4 VAC 20-70-10 ET SEQ.**

- B. Any person in charge of any boat licensed to catch crabs with a dredge shall be allowed to have or allow on board any hard clams in excess of 250 on the seaside of Accomack and Northampton counties provided he has the license and permit required to take hard clams.

4 VAC 20-70-110. Hydraulic dredge.

As set forth in §28.2-520 of the Code of Virginia, it shall be unlawful to take or catch hard shell clams from in any of the tidal waters of the Commonwealth by the use of a hydraulic dredge. The Virginia Institute of Marine Science may use hydraulic dredges to take and catch hard shell clams on an experimental basis.

4 VAC 20-70-120. Conventional dredge.

- A. It shall be unlawful to take or catch hard shell clams from any public or unassigned grounds in the tidal waters of the Commonwealth by the use of a conventional dredge except as provided in subsection B of this section.
- B. It shall be lawful only between December 1 and April 1, to take or catch hard shell clams by the use of a conventional dredge from unassigned ground on the seaside of Accomack and Northampton counties where the water is more than four feet in depth at mean low water, provided each person complies with all the provisions of this chapter.
- C. It shall be unlawful to operate a conventional dredge as permitted in subsection B of this section between one hour before sunset and one hour after sunrise, or on Sunday.
- D. Any person who may desire to take or catch hard shell clams from leased ground by the use of a conventional dredge shall comply with all provisions of §§28.2-515, 28.2-516, and 28.2-517 of the Code of Virginia, except the provisions thereof relating to planting of seed oysters or shells and the use of said ground for cultivation of oysters.
- E. It shall be unlawful for any person to use or have overboard any dredge within the following defined areas: all public waters of Chincoteague Bay and Assateague Bay and Channel lying east of a line that begins at the Virginia/Maryland state line marker "D" at latitude 38°01'10.00" N and longitude 75°19'50.90" W, thence southerly to the boundary marker located at latitude 38°00'19.00" N and longitude 75°20'09.90" W, thence southwesterly to the next boundary marker located at latitude 37°59'52.76" N and longitude 75°20'42.52" W, thence southwesterly to the next boundary marker located at latitude 37°59'35.13" N and longitude 75°21' 40.28" W, thence southwesterly to channel marker R "14", thence southerly to channel marker R "12" located adjacent to corner 627

"PERTAINING TO THE HARVESTING OF CLAMS"**CHAPTER 4 VAC 20-70-10 ET SEQ.**

of the Public Clamming Ground, thence southeasterly to channel marker R "10," thence southeasterly to channel marker G "9," thence southerly to channel marker R "8," thence southerly to channel marker R "6," thence southerly to channel marker R "4," thence southerly to channel marker G "1," thence due east to the shoreline to a point located at latitude 37°56'19.95", and longitude 75°22'17.44".

All public waters lying west of a line that begins at Cockle Point at latitude 37°59' 09.54" N and longitude 75°24'25.82" W, thence northeasterly to the next boundary marker located at latitude 37°59'34.09" N and longitude 75°24' 03.27" W, thence northeasterly to the next boundary marker located at latitude 38°00' 02.69" N and longitude 75°23'36.38" W, thence northeasterly to channel marker FI G "3."

- F. All leased ground within the defined boundaries of subsection E of this section and meeting the provisions of subsection D of this section shall be exempt from the prohibition on dredging.

4 VAC 20-70-130. Rakes.

It shall be unlawful to take hard shell clams from any public or unassigned grounds in the tidal waters of Virginia by means of a rake other than by a conventional clam rake provided, however, that a bull rake may be used to take hard shell clams from the public or unassigned grounds on the seaside of Accomack and Northampton Counties from October 1 through April 30 inclusive. Further, a conventional clam rake or a bull rake may only be used by hand; any other means of use, including any method of attachment to a boat while the gear is harvesting, shall be unlawful.

4 VAC 20-70-135. Water rakes.

- A. It shall be unlawful for any person to purchase a Water Rake Permit, unless that person is a valid Clam Aquaculture Product Owner Permittee.
- B. It shall be unlawful for any person to harvest or attempt to harvest cultured clams by water rake, from leased ground, without a Water Rake Permit.
- C. It shall be unlawful for any person to pull a water rake by any means, other than by hand, and it shall be unlawful for that person to use any mechanical assistance while harvesting or attempting to harvest cultured clams.
- D. It shall be unlawful for any person to harvest or attempt to harvest cultured clams by water rake prior to sunrise or after sunset. It shall be unlawful for any person to leave the dock prior to one-hour before sunrise, or return to the dock after sunset, on a boat with a water rake on that boat.

"PERTAINING TO THE HARVESTING OF CLAMS"

CHAPTER 4 VAC 20-70-10 ET SEQ.

4 VAC 20-70-140. License required.

The license shall at all times be on board the boat available for inspection by any officer.

4 VAC 20-70-150. Penalty.

- A. Except as provided in subsections B and C of this section, as set forth below 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.
- B. As set forth in §28.2-520 of the Code of Virginia, and reiterated in 4 VAC 20-70-110, any person using a hydraulic dredge to take hard shell clams from any tidal waters of the Commonwealth shall be guilty of a Class 1 misdemeanor.
- C. As set forth in §28.2-531 of the Code of Virginia, and reiterated in part in 4VAC20-70-50 A, 4VAC20-70-90, and 4VAC20-70-120 C, any person taking clams from public, unassigned, or leased ground during the hours from sunset to sunrise or on Sunday, and not otherwise excepted by §28.2-531 of the Code of Virginia, shall be guilty of a Class 3 misdemeanor; provided, however, that any person violating the additional provisions of (i) no use of a hydraulic dredge on Saturday for the catching of soft shell clams from public or unassigned ground imposed by 4VAC20-70-90 and (ii) no use of a conventional dredge between the hours of one hour before sunset and one hour after sunrise for the catching of hard shell clams from unassigned grounds imposed by 4VAC20-70-120 shall be subject to the penalty set forth in §28.2-903 of the Code of Virginia.

4 VAC 20-70-160. Suspension and revocation of license.

If any person is found operating a dredge in violation of any of the provisions of this chapter, including operating outside of an approved lease or operating outside of an approved marked area, any officer may immediately suspend the permit, and the boat operator shall surrender the permit to the officer upon request. Any such suspension shall continue in full force and effect until reviewed by the commission in accordance with §28.2-521 of the Code of Virginia. Such review shall be held not later than 40 days after such suspension. After such review, the commission shall determine whether or not to revoke the permit as provided by §28.2-521 of the Code of Virginia or reinstate the permit.


* * * * *

"PERTAINING TO THE HARVESTING OF CLAMS"

CHAPTER 4 VAC 20-70-10 ET SEQ.

This is to certify that the foregoing is a true and accurate copy of the chapter passed by the Marine Resources Commission, pursuant to authority vested in the Commission by §28.2-201 of the Code of Virginia, duly advertised according to statute, and recorded in the Commission's minute book, at meeting held in Newport News, Virginia on June 23, 2015.

COMMONWEALTH OF VIRGINIA
MARINE RESOURCES COMMISSION

BY: 
John M. R. Bull
Commissioner

Subscribed and sworn to before me this 23rd day of June 2015.


NOTARY PUBLIC

