

“PERTAINING TO THE LICENSING OF FIXED FISHING DEVICES”**CHAPTER 4 VAC 20-20-10 ET SEQ.****PREAMBLE**

This chapter establishes the procedures associated with licensing fixed fishing devices. This chapter also establishes the procedures used to determine priority rights of fixed fishing device licensees, establishes safety measures for those persons fishing near pound nets and staked gill nets, and establishes measures designed to reduce entanglements of certain protected marine resources and endangered species.

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, previous Chapter 4 VAC 20-20-10 et seq., which was promulgated by the Marine Resources Commission on April 27, 2010 and made effective July 16, 2010. The effective date of this chapter, as amended, is April 1, 2015.

4 VAC 20-20-10. Purpose.

The purposes of this chapter are to set forth the procedures pertaining to the licensing of fixed fishing devices and the priority rights of holders of fixed fishing device licenses, ensure the safety of persons fishing near pound nets and staked gill nets, and reduce entanglements with sea turtles and bottlenose dolphin.

4 VAC 20-20-20. Definitions.

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

“The Bottlenose Dolphin Pound Net Regulated Area” means all Virginia marine waters of the Atlantic Ocean within 3 nautical miles (5.56 km) of shoreline and all adjacent tidal waters bounded on the north by the Maryland / Virginia State Line from 38° 00.85' N. latitude, 75° 22.70' W. longitude seaward to 38° 02.03' N. latitude, 75° 09.80' W. longitude; on the south by the North Carolina / Virginia State Line from 36° 33.03' N. latitude, 75° 48.27' W. longitude landward to 36° 33.02' N. latitude, 75° 52.05' W. longitude; and all waters of the mainstem of the Chesapeake Bay, James River (Hampton Roads), York River and Mobjack Bay; seaward of the Hampton Roads Bridge-Tunnel (U.S. Route 60/ I-64) on the James River; seaward of the George P. Coleman Memorial Bridge (U.S. Route 17) on the York River; and south of a line beginning at (1) 37° 19.0' N. latitude, 76° 26.75' W. longitude a point on the Severn River fork, near Stump Point; thence easterly to a point (2) at 37° 19.0 N. latitude, 76° 13.0 W. longitude; thence southerly to a point (3) at 37° 13.0' N. latitude, 76° 13.0' W. longitude; then easterly to a point (4) at 37° 13.0' N. latitude, 76° 00.75' W. longitude near Elliotts Creek.

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“Fixed fishing device” means any fishing device used for the purpose of catching fish and requiring the use of more than two poles or stakes that have been pushed or pumped into the bottom.

“Fyke net” means a round stationary net distended by a series of hoops or frames, covered by web netting or wire mesh and having one or more internal funnel-shaped throats whose tapered ends are directed away from the mouth of the net. The net, leader, or runner is held in place by stakes or poles that have been pushed or pumped into the bottom and has one or two wings and a leader or runner to help guide the fish into the net.

“Hard lay lines” mean lines that are at least as stiff as 5/16 inch (0.8 cm) diameter line composed of polyester wrapped around a blend of polypropylene and polyethylene and 42 visible twists of strands per foot of line.

“Modified pound net leader” means a pound net leader that is affixed to or resting on the sea floor and made of a lower portion of mesh and an upper portion of only vertical lines such that (i) the mesh size is equal to or less than 8 inches stretched mesh; (ii) at any particular point along the leader, the height of the mesh, from sea floor to the top of the mesh, is no more than one-third the depth of the water at mean low water directly above that particular point; (iii) the mesh is held in place by a bottom chain that forms the lowermost part of the pound net leader; the vertical lines extend from the top of the mesh up to a top line, which is a line that forms the uppermost part of the pound net leader; (iv) the vertical lines are equal to or greater than 5/16 inch in diameter and strung vertically at a minimum of every two feet; and (v) the vertical lines are hard lay lines.

“Nearshore Pound Net or Nearshore Pound Net Leader” means a pound net which has every part of the leader (from the most offshore pole at the pound end of the leader to the most inshore pole of the leader) in less than 14 feet (4.3 m) of water at any tidal condition.

“Officer” means the marine police officer in charge of the district within which the fixed fishing device is located.

“Offshore pound net leader or offshore pound net” means a pound net with any part of the leader (from the most offshore pole at the pound end of the leader to the most inshore pole of the leader) in water greater than or equal to 14 feet (4.3 m) at any tidal condition.

“Pound net” means a fixed entrapment gear attached to posts or stakes with three continuous sections from offshore to inshore consisting of: (1) A pound made of mesh netting that entraps the fish; (2) At least one heart made of a mesh netting that is generally in the shape of a heart and aids in funneling fish into the pound; and (3) A leader, which is a long, straight element consisting of mesh or vertical lines that directs the fish offshore towards the pound.

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“Pound net leader” means a long straight net that directs fish offshore towards the pound, an enclosure that captures the fish. Some pound net leaders are all mesh, while others have stringers and mesh. Stringers, also known as vertical lines, are spaced a regular distance apart and are not crossed by other lines to form mesh.

“Pound Net Regulated Area 1” means all waters of the mainstem of the Chesapeake Bay, James River (Hampton Roads), York River and Mobjack Bay west of the Chesapeake Bay Bridge-Tunnel (U.S. Route 17); seaward of the Hampton Roads Bridge-Tunnel (U.S. Route 60/ I-64) on the James River; seaward of the George P. Coleman Memorial Bridge (U.S. Route 17) on the York River; and south of a line beginning at (1) 37° 19.0' N. latitude, 76° 26.75' W. longitude a point on the Severn River fork, near Stump Point; thence easterly to a point (2) at 37° 19.0 N. latitude, 76° 13.0 W. longitude; thence southerly to a point (3) at 37° 13.0' N. latitude, 76° 13.0' W. longitude; then easterly to a point (4) at 37° 13.0' N. latitude, 76° 00.75' W. longitude near Elliotts Creek.

“Pound Net Regulated Area 2” means all waters of the mainstem of the Chesapeake Bay, James River (Hampton Roads), York River, Mobjack Bay, Piankatank River, Rappahannock River and the Great Wicomico River, outside of Pound Net Regulated Area 1, south of 37° 07' N. latitude from Kiptopeake to Smith Island, Northampton County; west of the COLREGS Line at the mouth of the Chesapeake Bay; seaward of the Hampton Roads Bridge-Tunnel (U.S. Route 60/ I-64); seaward of the George P. Coleman Memorial Bridge (U.S. Route 17); seaward of the John Andrew Twigg Bridge (VA. Route 3) on the Piankatank River; seaward of the Robert Opie Norris Bridge (VA. Route 3) on the Rappahannock River; seaward of the Jessie Dupont Memorial Bridge (VA. Route 200) on the Great Wicomico River; and south of the Maryland / Virginia State line.

“Staked gill net” means a fixed fishing device consisting of an upright fence of netting fastened to poles or stakes that have been pushed or pumped into the bottom.

4 VAC 20-20-30. Location, measurements, and modified pound net leader requirements.

- A. A fixed fishing device shall be perpendicular to the shoreline insofar as possible.
- B. In determining compliance with the requirements prescribing minimum distances between fixed fishing devices, measurement shall be made from the center line of each device.
- C. An applicant shall state the desired length of the fixed fishing device, which shall not exceed the maximum limit prescribed by law. Such length shall be stated on any license issued by the officer. A licensee may apply for a new license to include a greater length provided such additional length does not make the device exceed the maximum legal length or the legal requirement of a minimum distance between successive fishing structures in the same row. In the

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event a licensee fishes a length less than that stated on the license, the unfished length shall be subject to the provisions of 4 VAC 20-20-50 B.

D. Any offshore pound net, licensed and fished in Virginia tidal waters located within the Bottlenose Dolphin Pound Net Regulated Area, shall be equipped with a modified leader as defined in 4 VAC 20-20-20 year-round.

E. It shall be unlawful to set, fish, or fail to remove a modified pound net leader, unless the pound net licensee has completed modified pound net leader compliance training and possesses onboard the vessel a valid modified pound net leader compliance training certificate issued by NMFS.

F. It shall be unlawful to set, fish, or fail to remove pound net gear in the Bottlenose Pound Net Regulated Area or Pound Net Area II unless it has all three continuous sections, as defined in 4 VAC 20-20-20, except that one or more sections may be missing for a maximum period of 10 days for purposes of setting, removing, or repairing pound nets.

4 VAC 20-20-35. No-fishing zone.

A. The prohibited fishing zone around any pound net shall consist of that area bounded by two straight lines, 125 feet from the left and right sides of the centerline of the pound net, which extend parallel with the longest axis of the net from the channelward end of the head of the net to the shoreward end of the leader of the net.

B. It shall be unlawful for any person fishing from a boat or vessel to anchor, drift, troll, or otherwise fish within, or to cast into the prohibited fishing zone of any pound net which is marked according to the provisions of subsection C of this section. Further, it shall be unlawful for any person to take or harvest crabs from any part of a pound net which is marked according to the provisions of subsection C of this section unless such person has the written permission of the owner of the pound net.

C. If the owner of a pound net intends that the prohibited fishing zone be enforced around his pound net, that owner shall mark his net with flags placed at each end of the net, one at the channelward end of the head of the net and one at the shoreward end of the leader of the net. Each flag shall be of blaze-orange color, 12 inches high and 12 inches wide, and shall be supported by a mast of sufficient size to maintain the bottom of the flag at least four feet above the surface of the water.

D. It shall be unlawful for any person to tamper with any flag marking the prohibited fishing zone of any pound net.

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E. It shall be unlawful for any person to tie, fasten or secure any boat or vessel to any pole, stake, netting or any other part of a pound net or staked gill net, except during the normal lawful fishing of such nets by the licensee, his crew or agent.

4 VAC 20-20-40. Priority rights; general.

Except as may be otherwise provided herein, chronological order of receipt of applications shall be used to establish priority rights of any applicant to any fixed fishing device location. In those instances of simultaneous receipt, priority shall be determined by lottery.

4 VAC 20-20-50. Priority rights; renewal by current licensee.

A. Applications for renewal of license for existing fixed fishing devices may be accepted by the officer beginning at 9 a.m. on December 1 of the current license year through noon on January 10 of the next license year providing the applicant has met all requirements of law and this chapter. Any location not relicensed during the above period of time shall be considered vacant and available to any qualified applicant after noon on January 10.

B. Except as provided in subsections C and D of this section, a currently licensed fixed fishing device must have been fished during the current license year in order for the licensee to maintain his priority right to such location. It shall be mandatory for the licensee to notify the officer, on forms provided by the commission, when the fixed fishing device is ready to be fished in the location applied for, by a complete system of nets and poles, except as provided in subsection D of this section, for the purpose of visual inspection by the officer. Either the failure of the licensee to notify the officer when the fixed fishing device is ready to be fished or the failure by the licensee actually to fish the licensed device, by use of a complete system of nets and poles, except as provided in subsection D of this section, shall terminate his right or privilege to renew the license during the period set forth in subsection A of this section of this chapter, and he shall not become a qualified applicant for such location until 9 a.m. on February 1. Any application received from an unqualified applicant under this subsection shall be considered as received at 9 a.m. on February 1; however, in the event of the death of a current license holder, the priority right to renew the currently held locations of the deceased licensee shall not expire by reason of failure to fish said locations during the year for which they were licensed, but one additional year shall be and is hereby granted to the personal representative or lawful beneficiary of the deceased licensee to license the location in the name of the estate of the deceased licensee for purposes of fishing said location or making valid assignment thereof.

C. During the effective period of 4 VAC 20-530, which establishes a moratorium on the taking and possession of American shad in the Chesapeake Bay and its tributaries, any person licensed during 1993 to set a staked gill net who chooses not to set that net during the period of the moratorium may maintain his priority right to the stake net's 1993 location by completing an

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application for a fixed fishing device and submitting it to the officer. No license fee shall be charged for the application.

D. In order to maintain priority rights and renew a license to a specific pound net location, a pound net licensee shall be required to set and fish that pound net at least once during two consecutive calendar years starting with calendar year 2009.

4 VAC 20-20-60. Priority rights; licensed location, request by other than current licensee.

Applications for license for currently licensed fixed fishing device locations by persons other than the current licensee shall not be accepted by the officer during the year any current license is valid.

4 VAC 20-20-70. Priority rights; vacant location.

Application from any qualified applicant for any fixed fishing device at a vacant and unlicensed location may be accepted by the officer at any time during the year for which the license is intended, and only for the year during which the license is intended, except that any application received prior to noon on January 10 for any location believed to be vacant and unlicensed pursuant to 4 VAC 20-20-50 B shall be considered as received at noon on January 10, and in chronological order of receipt.

4 VAC 20-20-80. Transfer and vested rights.

A. A current fixed fishing device license, and the rights to renew same, may be transferred by the present licensee provided all parties comply with the existing statutes and regulations. Any transferee takes the license subject to all of the duties of the transferor.

B. Any rights a licensee may have, upon his death, shall be vested in his personal representative or lawful beneficiary.

4 VAC 20-20-90. Penalty.

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 with 12 months of a prior violation is a Class 1 misdemeanor.

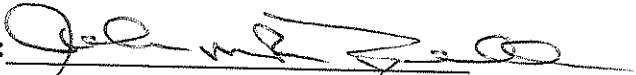
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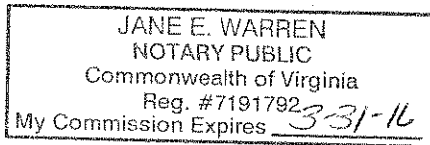
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This is to certify that the foregoing is a true and accurate copy of the chapter passed by the Marine Resources Commission, pursuant to authority vested in the Commission by §28.2-201 of the Code of Virginia, duly advertised according to statute, and recorded in the Commission's minute book, at meeting held in Newport News, Virginia on March 24, 2015.

COMMONWEALTH OF VIRGINIA
MARINE RESOURCES COMMISSION

BY: 
John M. R. Bull
Commissioner

Subscribed and sworn to before me this 27 day of March 2015.




Notary Public