

# COMMONWEALTH of VIRGINIA

*Marine Resources Commission  
2600 Washington Avenue  
Third Floor  
Newport News, Virginia 23607*

Molly Joseph Ward  
Secretary of Natural Resources

John M.R. Bull  
Commissioner

October 29, 2015

## MEMORANDUM

**TO:** The Honorable Emmett W. Hanger Jr., Chairman, Senate Committee  
on Agriculture, Conservation and Natural Resources  
The Honorable Jeffrey L. McWaters, Senator

**FROM:** John M.R. Bull, Commissioner *JMB*

**SUBJECT:** Report requested pursuant to SB #1101 (2015 General Assembly session)

I am pleased to provide this report of the Virginia Marine Resources Commission you requested. This report was prepared in response to the Senate Committee on Agriculture, Conservation and Natural Resources action on SB 1101 during the 2015 General Assembly and a request that VMRC provide a report on actions or recommendations concerning the marking of oyster planting ground leases. The request was received by the Commission in a letter dated March 10, 2015, from Susan Clarke Schaar, Clerk for the Senate.

This issue was presented to the Shellfish Management Task Force and the Shellfish Management Advisory Committee that assisted us in reviewing possible regulatory changes. Both the Task Force and the Advisory Committees include a cross-section of members directly involved in leasing oyster planting grounds, aquaculture operations, and the shellfish industry. After their review and in consideration of their comments, the amended regulations were posted for public interest review and all public comments were considered by the Commission before final approval by the Commission at their October 2015 meeting.

*An Agency of the Natural Resources Secretariat*

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Memorandum  
October 29, 2015  
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I sincerely hope you find this report of Commission consideration, review and actions on this matter helpful as we continue deliberations on how to best address concerns pertaining to the marking of oyster planting ground leases and active work areas within such leases where aquaculture activity takes place.

Please do not hesitate to contact us if we may be of further assistance.

JMRB:blh  
CO  
Enclosure

cc: The Honorable Molly Joseph Ward, Secretary of Natural Resources  
Marty Farber, Division of Legislative Services  
Scott Meacham, Division of Legislative Services  
Susan Clarke Schaar, Clerk for the Senate ✓

**REPORT ON THE MARKING OF SHELLFISH LEASES  
AS REQUESTED  
PURSUANT TO SENATE BILL # 1101**

Report to  
Senator Emmett W. Hanger Jr., Chairman  
Committee on Agriculture, Conservation and Natural Resources

October 2015

From the  
Virginia Marine Resources Commission

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  - a. Register Version of 4 VAC 20-335-10 et seq.
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**REPORT ON THE MARKING OF SHELLFISH LEASES  
AS REQUESTED  
PURSUANT TO SENATE BILL # 1101**

During the 2015 General Assembly, session bills were introduced concerning the both the marking of oyster ground leases (SB 1101) and notification requirements for new oyster ground applications (HB 2032). The notification bill was eventually tabled with an informal agreement that the agency would continue to address this issue. The oyster ground marking bill was passed by indefinitely with a letter requesting that the agency (through the agency's Shellfish Management Task Force) evaluate this issue in 2015 and that the agency produce a report and/or provide recommendations back to the General Assembly by November 1, 2015.

To address the request from the General Assembly the agency evaluated the following items:

- Review ways to change and/or improve the current requirements for the marking of shellfish leases.
- Review ways to change and/or improve the current requirements for marking shellfish aquaculture structures.
- Review ways to change and/or improve the marking of Public Grounds and/or shellfish condemnation lines.

During the last two years, the agency's Engineering/Surveying staff voluntarily held a number of "town hall" style meetings in various locations to better inform the general public about the leasing program and the routine concerns being raised recently about leasing, including the use of cages and float aquaculture devices and the marking of leases and such aquaculture structures upon leases.

Based on the meetings noted above and following the directive from the General Assembly, staff formulated proposed amendments to two existing regulations pertaining to the marking of shellfish ground leases and the use of aquaculture structures upon such leases. These amendments were provided to the Shellfish Management Task Force to obtain industry input on such possible changes to those regulations. This task force had been previously created by the Commissioner in 2014 to review possible management changes at the agency related to shellfish issues and to evaluate current laws and regulations pertaining to the shellfish industry. The proposed regulatory changes were also provided to the Shellfish Management Advisory Committee for their comment. The Shellfish Management Advisory Committee is a long standing agency committee that reviews matters pertaining to shellfish issues. Both the Task force and the Advisory Committee consist of a number of industry and watermen representatives, and each include current Associate Commissioners. Staff recommended requiring that leased areas be marked with various color coding to delineate the lease boundaries, the active works areas within the leases and the type of lease involved. The Task Force was opposed to any mandatory color coded marking requirements and staff agreed to remove and/or make such color coded marking voluntary, except for grounds that border or are bisected by Virginia Department of Health, Shellfish Sanitation shellfish harvest condemnation lines. Other proposed changes to the current marking regulation included:

- that grounds only have be marked when being actively worked
- that such actively worked grounds be required to be posted with at least two small placards with the leaseholders initials
- clarification of the spacing between lease boundary markers
- the size and height of lease boundary markers
- A provision to allow for the use of smaller ball buoys (not previously allowed) to mark boundaries and/or active work areas where structures are being deployed.

For the regulation that allows for the use of aquaculture structures for shellfish production and protection, amendments were proposed to clarify the marking of such areas and to better define aquaculture structures themselves. To provide for additional safety related to both navigation and other uses of the waterway, an additional amendment was proposed to require areas where structures are place to be marked with a minimum of two placards stating "Aquaculture Structures". A penalty section was also added to this regulation for enforcement purposes. All of these suggestions were viewed favorably by the Task Force and received a few questions and comments from the Advisory Committee that led to clarification of the proposed amendments.

The amended regulations were subjected to a public interest review. The agency received a number of comments and suggestions concerning both the marking regulation and the aquaculture regulation and staff incorporated some of these suggestions into their final recommendations for each regulation. A public hearing before the Commission was held on October 27, 2015. The Commission voted to adopt the amended regulations with only minor editorial modifications. The effective date for the amended regulations will be January 1, 2016.

The marking of oyster ground leases and active work areas within leases where aquaculture structures are placed continues to present use conflict issues and aesthetic concerns in more heavily populated shoreline areas. However, Virginia has historically been a robust producer of shellfish and this industry provides considerable income to watermen and seafood processors in the Commonwealth. Virginia seafood is well respected nationwide and Virginia is the largest hard clam producer in the country and the largest producer of oysters for the entire east coast. Virginia is also the third largest producer of marine products in the country. For both individual watermen and industry to properly work their leases, to provide for successful law enforcement patrol of such leases to prevent theft, and to protect public health, the marking of leases and areas where active aquaculture activity is occurring seems inevitable into the foreseeable future.

The agency has attempted over the past year to address concerns related to the marking of shellfish leases, as well as the use of and marking of aquaculture structures on such leases. The recently amended regulations would appear to be an appropriate step in the continuing evolution of addressing this issue. As long as such leases are required to be marked, the banning of one particular type of marker (other than metal markers which have prohibited for many years) does not appear to be a valid solution.

COMMONWEALTH OF VIRGINIA

SUSAN CLARKE SCHAAR  
CLERK OF THE SENATE  
P.O. BOX 396  
RICHMOND, VIRGINIA 23218



SENATE

March 10, 2015

RECEIVED

MAR 12 2015

MARINE RESOURCES  
COMMISSION

John M.R. Bull  
Commissioner, Virginia Marine Resources Commission  
2600 Washington Avenue, 3rd Floor  
Newport News, Virginia 23607

Dear Commissioner Bull:

This is to inform you that, pursuant to Rule 20 (o) of the Rules of the Senate of Virginia, the Senate Committee on Agriculture, Conservation and Natural Resources has referred the subject matter contained in Senate Bill 1101 to the Virginia Marine Resources Commission for study. It is requested that the appropriate committee chair and bill patron receive a written report, with a copy to this office, by November 1, 2015.

With kind regards, I am

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Susan Clarke Schaar".

Susan Clarke Schaar

SCS:mpt

cc: Sen. Emmett W. Hanger, Jr., Chair, Senate Committee on Agriculture, Conservation and Natural Resources  
Sen. Jeffrey L. McWaters, Patron of SB 1101  
Marty Farber, Division of Legislative Services  
Scott Meacham, Division of Legislative Services

2015 SESSION

INTRODUCED

15101062D

SENATE BILL NO. 1101

Offered January 14, 2015

Prefiled January 13, 2015

A BILL to amend and reenact § 28.2-607 of the Code of Virginia, relating to use of polyvinyl chloride pipes to mark oyster planting grounds.

Patron—McWaters

Referred to Committee on Agriculture, Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That § 28.2-607 of the Code of Virginia is amended and reenacted as follows:

§ 28.2-607. Survey and marking of ground; penalty.

A. If a protest is not filed in the Commission office within ~~sixty~~ 60 days after posting of the notice of application, the Commissioner shall select a surveyor to survey the grounds and make a plat in duplicate. The surveyor shall forward the plat of survey to the Commissioner. If no protest to the application or surveying of ground is made within ~~thirty~~ 30 days after the plat of survey is recorded in the Commissioner's office, the ground applied for shall be assigned provided that:

1. The application and assignment complies with all applicable provisions of law and, in the judgment of the Commissioner, the assignment is in the public interest.

2. All fees, costs, and the annual rent have been paid for the lease of the ground. The ground shall be marked at the expense of the applicant.

B. The grounds shall be marked in accordance with Commission regulations for marking oyster grounds. *Stakes or buoys made of metal or polyvinyl chloride (PVC) are prohibited.*

INTRODUCED

SB1101



**"AUTHORIZES SHELLFISH AQUACULTURE STRUCTURES"**

**CHAPTER 4 VAC 20-335-10 ET SEQ.**

**PREAMBLE**

The Commonwealth of Virginia has a long history of leasing State-owned submerged land for private shellfish culture and recognizes the potential economic and environmental benefits associated with increased shellfish production.

In recent years, some shellfish growers have begun using low-profile structures such as nets, trays and cages to provide additional protection for the shellfish placed on their leased ground.

This chapter authorizes shellfish aquaculture structures that may be placed on and immediately above privately leased shellfish grounds without an individual permit from the Habitat Management Division of the Marine Resources Commission.

This chapter is promulgated pursuant to the authority contained in §28.2-103 and §28.2-201 of the Code of Virginia. This chapter amends and re-adopts, as amended, Chapter 4 VAC 20-335-10 et seq. which was promulgated November 25, 1997 and made effective January 1, 1998. The effective date of this chapter, as amended, is January 1, 2016.

**4 VAC 20-335-10 PURPOSE.**

The purpose of this chapter is to specify the criteria for shellfish aquaculture structures that may be employed on privately leased shellfish planting ground.

**4 VAC 20-335-20 DEFINITIONS.**

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

"Aquaculture Structure" means devices such as cages, trays, nets, etc., used to contain and/or protect shellfish.

"Commission" means the Marine Resources Commission.

"Shellfish" means native molluscan species or molluscan species imported in accordance with §28.2-825 of the Code of Virginia.

**"AUTHORIZES SHELLFISH AQUACULTURE STRUCTURES"****CHAPTER 4 VAC 20-335-10 ET SEQ.****4 VAC 20-335-30 REQUIREMENTS AND CONDITIONS.**

A. The activity must be conducted on planting ground leased in accordance with Chapter 6 of Title 28.2 of the Code of Virginia.

B. Leased planting ground must be properly marked in accordance with §28.2-607 and subsequent regulations (4 VAC20-290-10 et seq.).

C. ~~In addition to the required marking of the boundary of the lease, the boundary of the area containing the structures~~ Aquaculture structures shall be identified delineated with markers meeting the description for such markers as identified in 4 VAC20-290-30 ~~while structures are located on the bottom. The leaseholder shall also place a minimum of two placards, attached to boundary and/or corner markers, stating "Aquaculture Structures", such placards shall be a minimum of 12" by 12", constructed of a durable material, facing outward from the aquaculture structures, each of which shall be at least four feet above the mean high water line. The Chief Engineer may approve an alternate plan for marking aquaculture structures. In such a case the Chief Engineer shall direct and/or approve the appropriate markers.~~

D. Any structures placed on the bottom must be non-toxic and shall not be known to leach any materials which would violate any water quality standards set by the Department of Environmental Quality.

E. Structures shall not extend higher than 12 inches above the bottom substrate.

F. No new structures shall be placed on existing stands of submerged aquatic vegetation.

G. No structures may cause more than a minimal adverse effect on navigation.

H. Shellfish must be harvested in accordance with all applicable laws and regulations.

"AUTHORIZES SHELLFISH AQUACULTURE STRUCTURES"

CHAPTER 4 VAC 20-335-10 ET SEQ.

I. The Commission may direct removal of any structures which fail to meet the requirements and conditions of this chapter.


**4 VAC 20-335-40. 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 within 12 months of a prior violation is a Class 1 misdemeanor.

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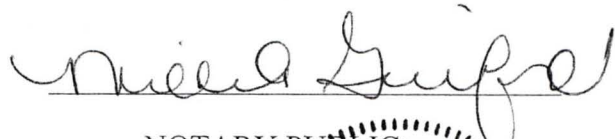
This is to certify that the foregoing is a true and accurate copy of the chapter passed by the Marine Resources Commission, pursuant to authority vested in the Commission by §§28.2-201 and 28.2-607 of the Code of Virginia, duly advertised according to statute, and recorded in the Commission's minute book, at meeting held in Newport News, Virginia on October 27, 2015.

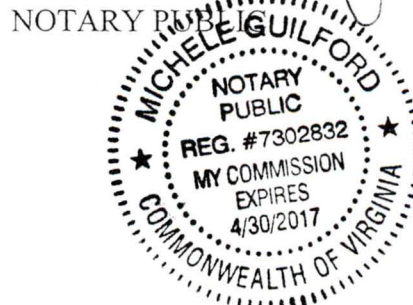
**COMMONWEALTH OF VIRGINIA  
MARINE RESOURCES COMMISSION**

BY: 

**JOHN M. R. BULL  
COMMISSIONER**

Subscribed and sworn to before me this 27<sup>th</sup> day of October, 2015.





**"AUTHORIZES SHELLFISH AQUACULTURE STRUCTURES"**

**CHAPTER 4 VAC 20-335-10 ET SEQ.**

**PREAMBLE**

The Commonwealth of Virginia has a long history of leasing State-owned submerged land for private shellfish culture and recognizes the potential economic and environmental benefits associated with increased shellfish production.

In recent years, some shellfish growers have begun using low-profile structures such as nets, trays and cages to provide additional protection for the shellfish placed on their leased ground.

This chapter authorizes shellfish aquaculture structures that may be placed on and immediately above privately leased shellfish grounds without an individual permit from the Habitat Management Division of the Marine Resources Commission.

This chapter is promulgated pursuant to the authority contained in §28.2-103 and §28.2-201 of the Code of Virginia. This chapter amends and re-adopts, as amended, Chapter 4 VAC 20-335-10 et seq. which was promulgated November 25, 1997 and made effective January 1, 1998. The effective date of this chapter, as amended, is January 1, 2016.

**4 VAC 20-335-10 PURPOSE.**

The purpose of this chapter is to specify the criteria for shellfish aquaculture structures that may be employed on privately leased shellfish planting ground.

**4 VAC 20-335-20 DEFINITIONS.**

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

"Aquaculture Structure" means devices such as cages, trays, nets, etc., used to contain and/or protect shellfish.

"Commission" means the Marine Resources Commission.

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**4 VAC 20-335-30 REQUIREMENTS AND CONDITIONS.**

A. The activity must be conducted on planting ground leased in accordance with Chapter 6 of Title 28.2 of the Code of Virginia.

"AUTHORIZES SHELLFISH AQUACULTURE STRUCTURES"

CHAPTER 4 VAC 20-335-10 ET SEQ.

B. Leased planting ground must be properly marked in accordance with §28.2-607 and subsequent regulations (4 VAC20-290-10 et seq.).

C. Aquaculture structures shall be delineated with markers meeting the description for such markers as identified in 4 VAC20-290-30. The leaseholder shall also place a minimum of two placards, attached to boundary and/or corner markers, stating "Aquaculture Structures", such placards shall be a minimum of 12" by 12", constructed of a durable material, facing outward from the aquaculture structures, each of which shall be at least four feet above the mean high water line. The Chief Engineer may approve an alternate plan for marking aquaculture structures. In such a case the Chief Engineer shall direct and/or approve the appropriate markers.

D. Any structures placed on the bottom must be non-toxic and shall not be known to leach any materials which would violate any water quality standards set by the Department of Environmental Quality.

E. Structures shall not extend higher than 12 inches above the bottom substrate.

F. No new structures shall be placed on existing stands of submerged aquatic vegetation.

G. No structures may cause more than a minimal adverse effect on navigation.

H. Shellfish must be harvested in accordance with all applicable laws and regulations.

I. The Commission may direct removal of any structures which fail to meet the requirements and conditions of this chapter.

**4 VAC 20-335-40. 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 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 Marine Resources Commission, pursuant to authority vested in the Commission by §§28.2-201 and 28.2-607 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 October 27, 2015.

"AUTHORIZES SHELLFISH AQUACULTURE STRUCTURES"

CHAPTER 4 VAC 20-335-10 ET SEQ.

COMMONWEALTH OF VIRGINIA  
MARINE RESOURCES COMMISSION

BY: *John M. R. Bull*

JOHN M. R. BULL  
COMMISSIONER

Subscribed and sworn to before me this 27<sup>th</sup> day of October, 2015.

*Michele Guilford*

NOTARY PUBLIC



**"PERTAINING TO MARKING OF LEASED OYSTER PLANTING GROUND"****CHAPTER 4 VAC 20-290-10 ET SEQ.****PREAMBLE**

This chapter establishes the required manner and method for marking leased oyster planting ground. §28.2-607 of the Code of Virginia requires that a lessee of oyster planting ground mark such ground in accordance with chapters established by the Marine Resources Commission. While all leased oyster planting grounds are not required to be marked at all times, it is the intent of this chapter to ensure that when the ground is ~~marked~~, actively used for shellfish propagation and/or harvest, the lease corners and the boundary lines, or active work areas, are properly and accurately delineated and safe navigation is maintained.

This chapter is promulgated pursuant to authority contained in §§28.2-201 and 28.2-607 of the Code of Virginia. This chapter amends and re-adopts ~~previous Chapter 450-01-0038~~ 4 VAC 20-290-10 et seq., which was adopted on ~~June 24, 1986~~ July 25, 1995 and was effective ~~July 1, 1986~~ August 3, 1995. The effective date of this chapter is ~~August 3, 1995~~ January 1, 2016.

**4 VAC 20-290-10. PURPOSE.**

The purpose of this chapter is to describe the proper manner and method of marking leased oyster planting ground during such times when the ground is required to be marked or for such other instances when a lessee may desire to mark the ground.

**4 VAC 20-290-15. DEFINITIONS.**

“Active Work Areas” means those areas inside a lease where active planting, and/or active harvesting is being conducted, or in areas where aquaculture structures are placed within a lease.

**"PERTAINING TO MARKING OF LEASED OYSTER PLANTING GROUND"****CHAPTER 4 VAC 20-290-10 ET SEQ.**

"Aquaculture structures" means devices such as cages, trays, nets, etc., used to contain and/or protect shellfish.

"Lease boundary lines" means the projected lines between lease corners.

"Lease corners" means boundary lease corners as depicted on the plat of record for the lease.

**4 VAC 20-290-20. GENERAL.**

~~Leased oyster planting ground shall can be marked by the lessee if the oyster planting ground is being worked at any time and shall be marked if the oyster planting ground is being actively planted or harvested and/or when aquaculture structures are present on the lease. No harvesting or planting of leased oyster planting ground shall occur unless the lessee first has properly designated and marked the lease in accordance with the provisions of this chapter. No active planting upon or harvesting from the lease shall be authorized unless the lease has first been properly marked and the lease corners identified in accordance with the marking provisions of this chapter. If aquaculture structures are deployed on leased oyster planting ground, the lessee must properly mark and identify the lease boundary, or the active work areas where aquaculture structures are placed, in accordance with the marking provisions of this chapter.~~

**4 VAC 20-290-30. METHOD AND MANNER OF MARKING.**



**"PERTAINING TO MARKING OF LEASED OYSTER PLANTING GROUND"****CHAPTER 4 VAC 20-290-10 ET SEQ.**

- A. Marking Requirements. When leased oyster planting ground is marked, ~~it shall be marked with stakes or buoys so as to delineate accurately the boundary lines of the lease and prevent the corners and boundary lines or the active works areas within the lease shall be marked with markers or buoys and shall be marked in a manner that does not create any unnecessary restriction to navigation.~~
1. Corner markers. ~~The corner of leased oyster planting ground shall be marked and multiple markers may be used in these corners.~~ Corners that are marked shall have a maximum of three markers per corner.
  2. Boundary line markers. ~~Under normal circumstances~~ Individual line markers shall be set at intervals no more than 600 feet apart, and may be placed at intervals no smaller less than 150 feet apart.
  3. Active work area markers. Areas where aquaculture structures are being used shall be marked in conformance with Section B of this regulation and as required in 4 VAC 20-335-10 et seq.
  4. Marking of the corners, boundary lines, or active work areas within the lease shall

**"PERTAINING TO MARKING OF LEASED OYSTER PLANTING GROUND"****CHAPTER 4 VAC 20-290-10 ET SEQ.**

constitute valid marking for enforcement purposes.

B. Description of Markers.

1. ~~Stakes shall be no larger than two inches in diameter at the mean low water line and shall extend at least four feet above the mean high water line. The stake shall be of such material not so rigid as to harm a boat if accidentally struck. Bamboo, white oak, cedar, or gum saplings are commonly used, but not required. If polyvinyl chloride (PVC) pipe is used, and driven into the bottom, the diameter of the PVC pipe shall be two inches or less. When stakes are used for lease corner markers, lease boundary line markers, and/or active work area markers within a lease they shall have a diameter of no greater than two inches if solid and an inside diameter no greater than two inches if hollow, at and above the mean low water line, and shall extend at least four feet above the mean high water line, but no more than six feet above mean high water. The marker shall be made of such materials not so rigid as to harm a boat if accidently struck, such as PVC pipe, bamboo, white oak, cedar, or gum saplings. Metal pipe markers are prohibited.~~
2. ~~Buoys shall be constructed of wood, PVC, or other suitable material, shall be no larger that six inches in diameter, and shall be anchored with sufficient weight to prevent their moving during adverse weather conditions. Buoys shall be~~

**"PERTAINING TO MARKING OF LEASED OYSTER PLANTING GROUND"****CHAPTER 4 VAC 20-290-10 ET SEQ.**

constructed and anchored so as to extend at least four feet above the water line at all times. When can buoys are used they shall be constructed of suitable material, shall be no larger than six inches in diameter, and shall be anchored to the bottom and/or anchored with sufficient weight to prevent their moving during adverse weather conditions. Can buoys shall be constructed and anchored so as to extend at least four feet above, but not more than six feet above the water line at all times. When ball buoys are used they shall be constructed of suitable material, shall be no smaller than forty-five inches in circumference and shall be anchored to the bottom and/or anchored with sufficient weight to prevent their moving in adverse weather conditions.

3. Leased oyster grounds on which active shellfish propagation is occurring shall have a minimum of two placards, constructed of durable material, along at least two sides of the lease or active work area, and each placard shall be at least four feet above the mean high water line, depicting the initials of the leaseholder and shall conform to the dimensions established by the Commissioner. No person shall dredge or scrape his oyster planting ground unless he is in conformance with 28.2-517 of the Code of Virginia to include the marking requirements contained therein. Oyster ground lease corner markers, boundary line markers, and active work area markers may be marked with two-inch white reflective tape, white

**"PERTAINING TO MARKING OF LEASED OYSTER PLANTING GROUND"****CHAPTER 4 VAC 20-290-10 ET SEQ.**

reflective paint, or white fluorescent paint. If the lease is bisected or borders along a Virginia Department of Health, Division of Shellfish Sanitation shellfish area condemnation line, such line markers shall be marked with two-inch yellow reflective tape, yellow reflective paint, or yellow fluorescent paint.

**4 VAC 20-290-40. MAINTENANCE.**

When oyster planting ground is marked, suitable stakes or markers shall be kept by the lessee in their proper places at all times so as to conform accurately to the original boundary survey, any condemnation line within the lease, and/or to accurately mark the active work areas within the lease. Should such stakes or markers be removed, knocked down, or be carried away, the lessee shall promptly have them replaced ~~them~~ in their proper location and in conformance with the method and manner of marking contained within this regulation.

**4 VAC 20-290-45. REMOVAL OF MARKERS.**

It shall be unlawful for any person to intentionally or knowingly injure, remove, or displace any boundary oyster stake, range monument, signal beacon, post or buoy, or any part thereof, erected to designate, locate, survey, or map any shellfish grounds other than the leaseholder, their agent and/or employee, and/or Commission staff.

**4 VAC 20-290-50. EXCEPTION.**

~~The Marine Resources Commission may require its chief engineer to describe a plan for the~~

"PERTAINING TO MARKING OF LEASED OYSTER PLANTING GROUND"

CHAPTER 4 VAC 20-290-10 ET SEQ.

~~proper marking~~ The Chief Engineer may approve an alternative plan for the proper marking of any ~~designated~~ oyster planting ground boundary, or active work area, upon request by the lessee when ~~it~~ he finds exceptional circumstances exist. In such a case the ~~chief engineer~~ Chief Engineer shall direct the leaseholder where to place the appropriate markers.

4 VAC 20-290-60. 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 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 Marine Resources Commission, pursuant to authority vested in the Commission by §§28.2-201 and 28.2-607 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 October 27, 2015.

COMMONWEALTH OF VIRGINIA  
MARINE RESOURCES COMMISSION

BY: John M. R. Bull  
JOHN M. R. BULL  
COMMISSIONER

Subscribed and sworn to before me this 27<sup>th</sup> day of October, 2015.

Michelle Guilford  
NOTARY PUBLIC  
MICHELLE GUILFORD  
NOTARY PUBLIC  
REG. #7302832  
MY COMMISSION EXPIRES 4/30/2017  
COMMONWEALTH OF VIRGINIA

**"PERTAINING TO MARKING OF LEASED OYSTER PLANTING GROUND"**

**CHAPTER 4 VAC 20-290-10 ET SEQ.**

**PREAMBLE**

This chapter establishes the required manner and method for marking leased oyster planting ground. §28.2-607 of the Code of Virginia requires that a lessee of oyster planting ground mark such ground in accordance with chapters established by the Marine Resources Commission. While all leased oyster planting grounds are not required to be marked at all times, it is the intent of this chapter to ensure that when the ground is actively used for shellfish propagation and/or harvest, the lease corners and the boundary lines, or active work areas, are properly and accurately delineated and safe navigation is maintained.

This chapter is promulgated pursuant to authority contained in §§28.2-201 and 28.2-607 of the Code of Virginia. This chapter amends and re-adopts Chapter 4 VAC 20-290-10 et seq., which was adopted on July 25, 1995 and was effective August 3, 1995. The effective date of this chapter is January 1, 2016.

**4 VAC 20-290-10. PURPOSE.**

The purpose of this chapter is to describe the proper manner and method of marking leased oyster planting ground during such times when the ground is required to be marked or for such other instances when a lessee may desire to mark the ground.

**4 VAC 20-290-15. DEFINITIONS.**

“Active Work Areas” means those areas inside a lease where active planting, and/or active harvesting is being conducted, or in areas where aquaculture structures are placed within a lease.

“Aquaculture structures” means devices such as cages, trays, nets, etc., used to contain and/or protect shellfish.

“Lease boundary lines” means the projected lines between lease corners.

“Lease corners” means boundary lease corners as depicted on the plat of record for the lease.

**4 VAC 20-290-20. GENERAL.**

Leased oyster planting ground can be marked at any time and shall be marked if the oyster planting ground is being actively planted or harvested and/or when aquaculture structures are present on the lease. No active planting upon or harvesting from the lease shall be authorized

**"PERTAINING TO MARKING OF LEASED OYSTER PLANTING GROUND"****CHAPTER 4 VAC 20-290-10 ET SEQ.**

unless the lease has first been properly marked and the lease corners identified in accordance with the marking provisions of this chapter. If aquaculture structures are deployed on leased oyster planting ground, the lessee must properly mark and identify the lease boundary, or the active work areas where aquaculture structures are placed, in accordance with the marking provisions of this chapter.

**4 VAC 20-290-30. METHOD AND MANNER OF MARKING.**

- A. Marking Requirements. When leased oyster planting ground is marked, the corners and boundary lines or the active works areas within the lease shall be marked with markers or buoys and shall be marked in a manner that does not create any unnecessary restriction to navigation.
1. Corner markers. Corners that are marked shall have a maximum of three markers per corner.
  2. Boundary line markers. Individual line markers shall be set at intervals no more than 600 feet apart, and may be placed at intervals no less than 150 feet apart.
  3. Active work area markers. Areas where aquaculture structures are being used shall be marked in conformance with Section B of this regulation and as required in 4 VAC 20-335-10 et seq.
  4. Marking of the corners, boundary lines, or active work areas within the lease shall constitute valid marking for enforcement purposes.
- B. Description of Markers.
1. When stakes are used for lease corner markers, lease boundary line markers, and/or active work area markers within a lease they shall have a diameter of no greater than two inches if solid and an inside diameter no greater than two inches if hollow, at and above the mean low water line, and shall extend at least four feet above the mean high water line, but no more than six feet above mean high water. The marker shall be made of such materials not so rigid as to harm a boat if accidentally struck, such as PVC pipe, bamboo, white oak, cedar, or gum saplings. Metal pipe markers are prohibited.
  2. When can buoys are used they shall be constructed of suitable material, shall be no larger than six inches in diameter, and shall be anchored to the bottom and/or anchored with sufficient weight to prevent their moving during adverse weather

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conditions. Can buoys shall be constructed and anchored so as to extend at least four feet above, but not more than six feet above the water line at all times. When ball buoys are used they shall be constructed of suitable material, shall be no smaller than forty-five inches in circumference and shall be anchored to the bottom and/or anchored with sufficient weight to prevent their moving in adverse weather conditions.

3. Leased oyster grounds on which active shellfish propagation is occurring shall have a minimum of two placards, constructed of durable material, along at least two sides of the lease or active work area, and each placard shall be at least four feet above the mean high water line, depicting the initials of the leaseholder and shall conform to the dimensions established by the Commissioner. No person shall dredge or scrape his oyster planting ground unless he is in conformance with 28.2-517 of the Code of Virginia to include the marking requirements contained therein. Oyster ground lease corner markers, boundary line markers, and active work area markers may be marked with two-inch white reflective tape, white reflective paint, or white fluorescent paint. If the lease is bisected or borders along a Virginia Department of Health, Division of Shellfish Sanitation shellfish area condemnation line, such line markers shall be marked with two-inch yellow reflective tape, yellow reflective paint, or yellow fluorescent paint.

**4 VAC 20-290-40. MAINTENANCE.**

When oyster planting ground is marked, suitable stakes or markers shall be kept by the lessee in their proper places at all times so as to conform accurately to the original boundary survey, any condemnation line within the lease, and/or to accurately mark the active work areas within the lease. Should such stakes or markers be removed, knocked down, or be carried away, the lessee shall promptly have them replaced in their proper location and in conformance with the method and manner of marking contained within this regulation.

**4 VAC 20-290-45. REMOVAL OF MARKERS.**

It shall be unlawful for any person to intentionally or knowingly injure, remove, or displace any boundary oyster stake, range monument, signal beacon, post or buoy, or any part thereof, erected to designate, locate, survey, or map any shellfish grounds other than the leaseholder, their agent and/or employee, and/or Commission staff.

**4 VAC 20-290-50. EXCEPTION.**



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The Chief Engineer may approve an alternative plan for the proper marking of any oyster planting ground boundary, or active work area, upon request by the lessee when he finds exceptional circumstances exist. In such a case the Chief Engineer shall direct the leaseholder where to place the appropriate markers.

4 VAC 20-290-60. 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 within 12 months of a prior violation is a Class 1 misdemeanor.

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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 and 28.2-607 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 October 27, 2015.

COMMONWEALTH OF VIRGINIA  
MARINE RESOURCES COMMISSION

BY: *John M. R. Bull*  
JOHN M. R. BULL  
COMMISSIONER

Subscribed and sworn to before me this 27<sup>th</sup> day of October, 2015.

*Michele Guilford*  
NOTARY PUBLIC

