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Exempt Action: Final Regulation Agency Background Document

Agency name	Virginia Marine Resources Commission
Virginia Administrative Code (VAC) Chapter citation(s)	4 VAC 20-1270-10
VAC Chapter title(s)	Pertaining to Menhaden
Action title	Modify purse seine area and time restrictions.
Final agency action date	December 6, 2022
Date this document prepared	November 9, 2022

This information is required for executive branch review pursuant to Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19. In addition, this information is required by the Virginia Registrar of Regulations pursuant to the Virginia Register Act (§ 2.2-4100 et seq. of the Code of Virginia). Regulations must conform to the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

The Virginia Marine Resources Commission (VMRC) is amending Chapter 4 VAC 20-1270-10 et seq., "Pertaining to Menhaden", to prohibit all purse seine fishing activities: 1) within 1 nm of shorelines in the Chesapeake Bay and the City of Virginia Beach; 2) one half nautical mile on either side of the Chesapeake Bay Bridge Tunnel; and 3) the Thursday prior to and through Memorial Day, July 1-7, and the Thursday prior to and through Labor Day. The purpose of this amendment is to reduce fish spills and potential impacts to shorelines and waterways associated with net tears in the menhaden purse seine fisheries and reduce user conflict.

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, internal staff review, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in the ORM procedures, "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

[Mandate] VMRC is authorized by § 28.2-201 of the Code of Virginia to promulgate regulations and guidelines necessary to carry out the provisions of Title 28.2, including marine fisheries regulations.

[Impetus] In July 2022, three separate fish spills associated with the menhaden purse seine fleet resulted in dead fish washing ashore on Silver Beach and Kiptopeke State Park on Eastern Shore. Dead fish and clean-up efforts impacted the public's ability to use the beaches and waterways for recreational activities. Purse seine nets tear (and spill fish) when they drift into shallower waters during haul in and snag on bottom obstructions. Prohibiting purse seine activities within one nautical mile of shore will keep the fleet in deeper waters potentially reducing spills. Prohibiting purse seine fishing in the Bay during the summer holidays will further eliminate the possibility of dead fish washing up on local beaches during the peak tourist season. The menhaden purse seine fleet can still fish east of the Chesapeake Bay Bridge Tunnel during the proposed holiday closures.

Statement of Final Agency Action

Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

This is to certify that the foregoing is a true and accurate copy of the chapter (4VAC20-1270-10 et seq., "Pertaining to Menhaden") 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 Hampton, Virginia, on December 6, 2022.