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Exempt Action: Final Regulation Agency Background Document

Agency name	DWR
Virginia Administrative Code (VAC) Chapter citation(s)	4VAC15-360
VAC Chapter title(s)	Fish: Aquatic Invertebrates, Amphibians, Reptiles, and Nongame Fish
Action title	May 2026 – Ch. 360
Final agency action date	8/20/2026
Date this document prepared	8/26/2026

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.

Section 10:

Final amendments will (i.) include madtoms and in the definition of “fish bait” to recognize the use of these species in recreational fishing; (ii.) limit the number of madtoms held in aggregate, because of the declining status of these species in Virginia; (iii.) restrict the use of any madtoms collected for bait to the waters in which the animals were captured to remove the intentional or accidental introduction of animals into new watersheds and reduce impacts to native fish populations; (iv.) remove White Sucker and Northern Hogsucker from species that may be taken in unlimited numbers; and (v.) update the Genus name for “minnows and chubs” for currency of information.

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.”

Section 10:

The introduction of a species outside of its natural range can pose a serious threat to native species in those environments because of competition for resources and possibility of hybridization. In aquatic systems, anglers commonly use fish as bait, which can allow a pathway to move fish between drainages. One group of species that is commonly used as fish bait is miniature catfish known as madtoms (*Noturus* spp.). In Virginia, the Orangefin Madtom (*N. gilberti*), a species native to the Roanoke Drainage, is now established in the upper James drainage, and the Margined Madtom (*N. insignis*), an Atlantic Slope and New River drainage species, is well established in the North Fork Holston River; both are likely the result of releases of bait fish. More recently, a single specimen of Margined Madtom was detected in the Clinch River in Russell County, considerably outside of its native range in the state. In the Clinch River, there are three native madtom species (Mountain, Yellowfin, and Stonecat), all of which are identified as Species of Greatest Conservation Need (SGCN) in the 2025 Virginia Wildlife Action Plan. Designation as an SGCN means that the species is in decline, requiring focused conservation efforts to prevent increased rarity or extirpation/extinction. Additionally, the Yellowfin Madtom is designated as a federally threatened species, and the Department has been actively involved in the recovery of this species with the goal of delisting. This change aligns with conservation measures necessary to protect native madtoms, with the goal of avoiding continued declines and to avoid possible future designation of nonlisted species as threatened or endangered.

Staff also recommend that this regulation be updated to madtoms as species considered “fish bait” in recognition of their use by anglers as bait and to limit the take of these species, some of which are declining in Virginia. Specifically, staff recommend limiting the take of madtoms to 20 individuals in aggregate to reflect their vulnerability to overcollection.

Staff recommended removing northern hogsucker and white sucker from the list of species allowed to be taken in unlimited numbers. Northern Hogsucker (*Hypentelium nigricans*) and White Sucker (*Catostomus commersonii*) are native species found throughout the western two-thirds of Virginia. Northern Hogsuckers inhabit small streams to large rivers, while White Suckers occupy small streams to medium rivers. Populations of these species are vulnerable to pollution, dams, and invasive species introductions. As omnivores, they consume mollusks, aquatic insects, worms, and plant material, playing a key role in transferring energy through aquatic and terrestrial ecosystems. Suckers serve as prey for many native predators, including bass, musky, walleye, otters, mink, osprey, eagles, and herons. White Suckers also contribute nutrients to small streams during spring spawning migrations. Their populations are vulnerable to pollution, dams, and invasive species. It is the opinion of staff that these species play different roles in our ecosystems than do the other species currently on the unlimited list that are either invasive or exhibit biological traits that make them resilient to harvest pressure. In contrast, unlimited harvest of Northern Hogsucker and White Sucker could negatively impact their ecological functions and long-term viability.

Finally, as a housekeeping item, staff recommended updating the taxonomic name for the group of fishes known as “minnows and chubs” to reflect current information and reduce regulatory uncertainty.

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) that the agency has “adopted final amendments” to the regulation; 3) the name of the agency taking the action; and 4) the title of the regulation. A suggested statement is, “On [insert date] the Board/Department of [insert name] adopted final amendments to the [title of regulation(s)].”

On August 20, 2026, the Board of Wildlife Resources adopted final amendments to Chapter 360.