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Emergency Regulation Agency Background Document

Agency name	Virginia Marine Resources Commission
Virginia Administrative Code (VAC) Chapter citation(s)	4 VAC 20-720-10
VAC Chapter title(s)	Pertaining to Restrictions on Oyster Harvest
Action title	Oyster Harvest Areas Season Extension
Date this document prepared	January 24, 2023

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), 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, 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 the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).

The Virginia Marine Resources Commission (VMRC) is amending Chapter 4 VAC 20-720-10 et seq., "Pertaining to Restrictions on Oyster Harvest", to extend the oyster harvest area seasons in both the James River Areas 1, 2, and 3, and Rappahannock River Area 2 for the immediate preservation and protection of the seafood industry under Title 28.2-210 of the Code of Virginia.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

There are no acronyms used in this form.

Mandate and Impetus (Necessity for Emergency)

Explain why this rulemaking is an emergency situation in accordance with § 2.2-4011 A and B of the Code of Virginia. In doing so, either:

- a) Indicate whether the Governor’s Office has already approved the use of emergency regulatory authority for this regulatory change.*
- b) Provide specific citations to Virginia statutory law, the appropriation act, federal law, or federal regulation that require that a regulation be effective in 280 days or less from its enactment.*

As required by § 2.2-4011, also describe the nature of the emergency and of the necessity for this regulatory change. In addition, delineate any potential issues that may need to be addressed as part of this regulatory change.

The Virginia Marine Resources Commission (VMRC) is amending Chapter 4 VAC 20-720-10 et seq., “Pertaining to Restrictions on Oyster Harvest”, to extend the oyster harvest area seasons in both the James River Areas 1, 2, and 3, and Rappahannock River Area 2 for the immediate preservation and protection of the seafood industry under Title 28.2-210 of the Code of Virginia.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency’s overall regulatory authority.

VMRC has authority to extend the oyster season or open and close any area at any time to public harvest, outside of the season established by 28.2-506, if the intent is to “to protect or promote the growth of oysters” as is required by 28.2-507.

§ 28.2-210, If, in an emergency, the adoption of a regulation is necessary for the immediate preservation of the public peace, health, safety, and welfare, or the protection of the seafood industry, natural resources or marine organisms, the Commission may promulgate the necessary regulation. The regulation shall be published and filed as prescribed in § 28.2-209. No regulation adopted as an emergency regulation shall remain in effect longer than thirty days unless a public hearing is held as required in § 28.2-211 after being advertised as prescribed in § 28.2-209.

Purpose

Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.

Harvest areas and seasons are time sensitive to natural resources of the Commonwealth that have short windows for the industry and public to efficiently use the resource. Both seasonal areas that are purposed

to be amended by emergency would close either at the end of January or the beginning of February which would prevent public notice. Due to seasonal closures of these areas at the end of January and mid-February it does not allow for timely notice to the public for a public hearing. The Virginia Marine Resources Commission (VMRC) is amending Chapter 4 VAC 20-720-10 et seq., "Pertaining to Restrictions on Oyster Harvest", to extend the oyster harvest area seasons in both the James River Areas 1, 2, and 3, and Rappahannock River Area 2 for the immediate preservation and protection of the seafood industry under Title 28.2-210 of the Code of Virginia.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

4 VAC 20-720-40. Open oyster harvest season and areas.

14. Rappahannock River Rotation Area 2: December 1, 2022 through ~~January 31~~ February 24, 2023 (hand scrape only).

19. James River Areas 1, 2, and 3: October 17, 2022, through February 14 24, 2023 (hand scrape only).

Issues

Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

Prior to October 1st of each year, VMRC meets to establish, by regulation, Chapter 4 VAC 20-720-10 et seq., "Pertaining to Restrictions on Oyster Harvest", the areas of public oyster harvest, public oyster harvest seasons and oyster resource conservation measures if they wish these to be different from those which are established by 28.2-506 of The Code of Virginia. VMRC has no requirement to change the oyster season established by code, but may do so, per section 28.2-507 of the Code of Virginia, "in order to protect or promote the growth of oysters". Any changes to the season established in code should take into account this requirement.

Alternatives to Regulation

Describe all viable alternatives to the proposed regulatory action that have been considered to meet the essential purpose of the action. Also describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

Status Quo which would close the harvest areas as described in regulation.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the emergency regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
40		Seasonal area closures beginning January 31	Extend oyster area seasons until February 24