

GENERAL PERMIT #4 FOR TEMPORARY PROTECTIVE ENCLOSURES FOR SHELLFISH**CHAPTER 4VAC20-1130-10 ET SEQ.****PREAMBLE**

This chapter establishes a general permit authorizing the use of temporary protective enclosures to grow shellfish on leased grounds. This chapter is promulgated pursuant to the authority contained in §§ 28.2-201 and 28.2-603.1 of the Code of Virginia. The effective date of this General Permit is December 1, 2007.

4VAC20-1130-10. Purpose.

The purpose of this chapter is to establish a general permit for the use of temporary protective enclosures for the propagation of oysters and clams, including a notification process and special conditions necessary for the protection of public safety, navigation, natural resources, and the environment.

4VAC20-1130-20. Definitions.

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

“Submerged aquatic vegetation” or “SAV” means any rooted, vascular submerged plants such as eelgrass (*Zostera marine*), widgeon grass (*Ruppia maritima*), or other species commonly found in the Chesapeake Bay and its tributaries.

“Temporary protective enclosure” means cage, rack, tray, or other similar device for holding and protecting oysters or clams.

4VAC20-1130-30. Notification Procedures.

A. All notifications for the use of temporary protective enclosures authorized by this general permit shall be made in writing to the Commissioner.

B. The notification shall contain the following information: the name, address and telephone number of the applicant, the location and plat file number depicted on an accurately scaled vicinity map, the approximate size of the area that will contain the temporary protective enclosures, the maximum number of structures to be placed on the leasehold at any given time, a detailed description of the temporary protective enclosures proposed to be deployed, the species to be cultured, a general description of the area within 500 feet of the lease boundary, including existing marine resources (SAV, shellfish beds, fixed fishing devices, traditional fishing and shellfish areas), locations of public and private piers and docks, water depths at mean low water, tidal range, the minimum vertical clearance, at mean low water, over the enclosures, the estimated date of placement of the structures, and any other information the Commissioner deems

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necessary to evaluate the proposal. Accurately scaled drawings shall be included with the notification, which depict the type of structures proposed to be deployed and the proposed deployment pattern. The notification shall also include a list of the names and addresses of all riparian property owners within 500 feet of the area containing the temporary protective enclosures and shall depict the location of their land on a tax map or other suitable map. Riparian Property Owner Acknowledgement Forms for such riparian property owners, may be included with the notification. Such forms shall be signed by the riparian property owner and shall indicate their comments on the notification. Should such forms not be provided in the notification, the Commissioner, or his designee, shall notify the adjacent property owners of the pending notification.

C. The Commissioner, or his designee, shall determine that the notification is complete and filed in accordance with the instructions contained therein.

D. The Commissioner will provide written notice to the leaseholder of his final action on the proposal.

E. In accordance with the provisions of §28.2-603.2 of the Code of Virginia, the Commissioner may approve the proposal, approve the proposal with conditions, or deny the proposal, of the leaseholder. The Commissioner may prescribe conditions for any proposal for the protection of public safety, navigation, natural resources, and the environment, that include, but are not limited to: the type of construction materials used for the temporary enclosures; the manner in which such structures are deployed; the distances the structures are placed from the shoreline, navigable channels, piers, wharfs, or other water dependent facility; and the minimum vertical clearance at mean low water over any temporary structure. When determining these conditions, the Commissioner shall also consider those factors set forth in Section 28.2-1205 A. of the Code of Virginia.

4VAC20-1130-40. General Conditions.

A. The general permit established by this chapter grants no authorizations to the permittee to encroach upon the property rights, including riparian rights, of others.

B. Authorized agents of the Commission shall have the right to enter upon the premises at reasonable times, for the purpose of inspecting the work being done pursuant to this permit.

C. This general permit shall not be transferred without written consent of the Commissioner.

D. The permittee shall, minimize the adverse effects of the project upon adjacent properties and wetlands and upon the natural resources of the Commonwealth.

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E. This permit may be revoked at any time by the Commissioner upon the failure of the permittee to comply with any of the terms and conditions hereof.

F. There is expressly excluded from the permit any portion of the waters within the boundaries of the Baylor Survey.

G. The issuance of this permit does not confer upon the Permittee any interest or title to the beds or waters of the Commonwealth.

H. All structures authorized by this permit which are not maintained in good repair shall be completely removed from State-owned bottom within five business days after written notification by the Commissioner.

I. This permit authorizes no claim to archaeological or historic artifacts which may be encountered during the the placement of temporary protective enclosures. If, however, archaeological remains are encountered, the Permittee agrees to notify the Commissioner, who will, in turn notify the Department of Historic Resources and Virginia Institute of Marine Science. The Permittee further agrees to cooperate with agencies of the Commonwealth in the recovery of archaeological remains if deemed necessary.

J. The Permittee agrees to indemnify and save harmless the Commonwealth of Virginia from any liability arising from the establishment, operation or maintenance of said project.

K. The public shall not be excluded from any space not physically occupied by the authorized temporary protective enclosures.

L. This permit does not obviate the need to obtain other federal, state, or local authorizations required by law or regulation.

4VAC20-1130-50. Special Conditions.

A. The Permittee authorized by this chapter shall hold a current Oyster or Clam Aquaculture Product Owners Permit, issued by the Commission, shall be in compliance with the provisions of Regulation 4VAC20-610-10 et seq., "Pertaining to Mandatory Harvest Reporting", and shall have paid all fees, costs, and the annual rent for the oyster ground lease. Failure to pay all fees and rents as required by §§ 28.2-608 and 28.2-612 of the Code of Virginia and failure to report as required in 4VAC20-610-10 et seq. may result in termination of the lease and general permit.

B. Any temporary protective enclosure shall be constructed of non-toxic materials.

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C. No temporary protective enclosure shall be placed in or upon submerged aquatic vegetation beds, and consideration, by the Commissioner, for authorizing the placement of protective enclosures in currently un-vegetated areas that are documented as historically supporting SAV beds, shall include consultation with the Virginia Institute of Marine Science, in order to determine the potential for impacts on SAV, within the term of the prospective lease. If SAV colonizes within the boundaries of the area designated for the temporary protective enclosures, the authorization for those structures under this general permit shall remain in effect only for the remainder of the term of the lease. The general permit shall be renewed only upon a finding by the Commissioner that the placement of the temporary protective enclosures, within the lease, will not significantly interfere with the continued vitality of the SAV.

D. No individual temporary protective enclosure shall exceed 70 cubic feet, in volume.

E. Temporary protective enclosures may be placed individually on the bottom, placed in racks, or stacked one on top of another.

F. Temporary protective enclosures shall not be placed within any marked navigation channel, or in any area that would create a hazard.

G. Temporary protective enclosures shall not be placed in any area that would impede customary access to navigable waters, from any riparian property, public or commercial landing, or marina facility.

H. Temporary protective enclosures shall not be placed within 100 feet of any shoreline or pier without the agreement of the riparian property owner.

I. Temporary protective enclosures shall be placed in a manner that allows for their ease of access, maintenance, and removal and shall not exceed an average of 250 individual structures per acre within the permitted area or 250 arrays of structures, when those enclosures are stacked one on top of another.

J. In addition to the marking of the boundary of the lease, required by Regulation 4VAC20-335-10 et seq., the boundary of the area containing the structures shall be identified with markers meeting the description for markers identified in Regulation 4VAC20-290-30, while structures are located on the bottom. At intervals no smaller than 150 feet and along the perimeter of the area containing the temporary protective enclosures, the leaseholder shall place placards, constructed of a durable material, which shall be at least four feet above the mean high water line, and shall conform to the description established by the Commissioner.

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K. No temporary protective enclosure shall be marked by more than one buoy, which shall not exceed 15 inches in its longest dimension. The Commissioner may designate the color of the buoys used for marking temporary protective enclosures.

L. Nothing in this general permit shall authorize the placement of any temporary protective enclosure designed to float on the surface of the water.

M. Leaseholders shall, within five business days, remove any enclosure that is not actively in use for the planting and propagating of shellfish, and, upon expiration or termination of a lease, or of the leaseholder's Aquaculture Product Owner's Permit, the leaseholder shall promptly remove all enclosures placed on the leasehold.

N. Leaseholders shall maintain a list identifying those leases on which enclosures are placed during the terms of the lease and provide, upon request, a current copy of the list to authorized representatives of the Commission. Leaseholders shall also submit such list to be filed with any application for lease renewal made pursuant to §28.2-613 of the Code of Virginia.

O. The Commissioner, at his discretion, may order the immediate removal or relocation of any enclosure that interferes with navigation, creates a hazard, or otherwise fails to comply with the conditions of the general permit.

4VAC20-1130-60. General Permit Fees.

A. Upon approval of the notification to use temporary protective enclosures, the applicant shall pay to the Commission the following fee:

1. For up to 500 structures, \$125.00.
2. For over 500 but not more than 1000 structures, \$250.00.
3. For over 1000 but not more than 2500 structures, \$625.00.
4. For over 2500 structures, \$1000.00.

B. The fee established by this section shall be paid annually by the leaseholder, on or before the anniversary date of the issuance of the general permit.

4VAC20-1130-70. Penalty.

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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 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 November 27, 2007.

COMMONWEALTH OF VIRGINIA
MARINE RESOURCES COMMISSION

BY: Jack H. Travelstead
for Steven G. Bowman
Commissioner

Subscribed and sworn to before me this 30 day of November, 2007.

Brandy L. Battle
Notary Public