

REGULATIONS

For information concerning the different types of regulations, see the Information Page.

Symbol Key

Roman type indicates existing text of regulations. Underscored language indicates proposed new text. Language that has been stricken indicates proposed text for deletion. Brackets are used in final regulations to indicate changes from the proposed regulation.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

BOARD OF GAME AND INLAND FISHERIES

Proposed Regulation

REGISTRAR'S NOTICE: The Board of Game and Inland Fisheries is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 A 3 of the Code of Virginia when promulgating regulations regarding the management of wildlife.

Title of Regulation: 4VAC15-20. **Definitions and Miscellaneous: In General (amending 4VAC15-20-130).**

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Public Hearing Information:

January 21, 2016 - 9 a.m. - Department of Game and Inland Fisheries, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228.

Public Comment Deadline: January 08, 2016.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 367-8341, or email phil.smith@dgif.virginia.gov.

Summary:

The proposed amendments (i) update the date reference to the federal list of endangered and threatened wildlife species; (ii) update the Virginia List of Endangered and Threatened Species to add the little brown bat and the tri-colored bat as endangered species and remove the state-threatened upland sandpiper and Dismal Swamp southeastern shrew to reflect their status in Virginia more accurately; and (iii) describe certain activities in which incidental take of the little brown bat and the tri-colored bat may occur that may be conducted without a permit from the department, provided that the activities are performed in certain manners.

4VAC15-20-130. Endangered and threatened species; adoption of federal list; additional species enumerated.

A. The board hereby adopts the Federal Endangered and Threatened Species List, Endangered Species Act of December 28, 1973 (16 USC §§ 1531-1543), as amended as of ~~May 20, 2014~~ October 2, 2015, and declares all species listed thereon to be endangered or threatened species in the Commonwealth. Pursuant to § 29.1-103.12 of the Code of Virginia, the director of the department is hereby delegated

authority to propose adoption of modifications and amendments to the Federal Endangered and Threatened Species List in accordance with the procedures of §§ 29.1-501 and 29.1-502 of the Code of Virginia.

B. In addition to the provisions of subsection A of this section, the following species are declared endangered or threatened in this Commonwealth, and are afforded the protection provided by Article 6 (§ 29.1-563 et seq.) of Chapter 5 of Title 29.1 of the Code of Virginia:

1. Fish:

Endangered:

Dace, Tennessee	Phoxinus tennesseensis
Darter, sharphead	Etheostoma acuticeps
Darter, variegate	Etheostoma variatum
Sunfish, blackbanded	Enneacanthus chaetodon

Threatened:

Darter, Carolina	Etheostoma collis
Darter, golden	Etheostoma denoncourti
Darter, greenfin	Etheostoma chlorobranchium
Darter, sickle	Percina williamsi
Darter, western sand	Ammocrypta clara
Madtom, orangefin	Noturus gilberti
Paddlefish	Polyodon spathula
Shiner, emerald	Notropis atherinoides
Shiner, steelcolor	Cyprinella whipplei
Shiner, whitemouth	Notropis alborus

2. Amphibians:

Endangered:

Salamander, eastern tiger	Ambystoma tigrinum
---------------------------	--------------------

Threatened:

Salamander, Mabee's	Ambystoma mabeei
Treefrog, barking	Hyla gratiosa

3. Reptiles:

Endangered:

Rattlesnake, canebrake (Coastal Plain population of timber rattlesnake)	Crotalus horridus
Turtle, bog	Glyptemys muhlenbergii
Turtle, eastern chicken	Deirochelys reticularia reticularia

Threatened:

Lizard, eastern glass	Ophisaurus ventralis
Turtle, wood	Glyptemys insculpta

4. Birds:

Endangered:

Plover, Wilson's	Charadrius wilsonia
Rail, black	Laterallus jamaicensis
Wren, Bewick's	Thryomanes bewickii bewickii

Threatened:

Falcon, peregrine	Falco peregrinus
Sandpiper, upland	Bartramia longicauda
Shrike, loggerhead	Lanius ludovicianus
Sparrow, Bachman's	Aimophila aestivalis
Sparrow, Henslow's	Ammodramus henslowii
Tern, gull-billed	Sterna nilotica

5. Mammals:

Endangered:

Bat, Rafinesque's eastern big-eared	Corynorhinus rafinesquii macrotis
<u>Bat, little brown</u>	<u>Myotis lucifugus</u>

<u>Bat, tri-colored</u>	<u>Perimyotis subflavus</u>
Hare, snowshoe	Lepus americanus
Shrew, American water	Sorex palustris
Vole, rock	Microtus chrotorrhinus

Threatened:

Shrew, Dismal Swamp southeastern	Sorex longirostris fisheri
---	---------------------------------------

6. Molluscs:

Endangered:

Ghostsnail, thankless	Holsingeria unthinksensis
Coil, rubble	Helicodiscus lirellus
Coil, shaggy	Helicodiscus diadema
Deertoe	Truncilla truncata
Elephantear	Elliptio crassidens
Elimia, spider	Elimia arachnoidea
Floater, brook	Alasmidonta varicosa
Heelsplitter, Tennessee	Lasmigona holstonia
Lilliput, purple	Toxolasma lividus
Mussel, slippershell	Alasmidonta viridis
Pigtoe, Ohio	Pleurobema cordatum
Pigtoe, pyramid	Pleurobema rubrum
Springsnail, Appalachian	Fontigens bottimeri
Springsnail (no common name)	Fontigens morrisoni
Supercoil, spirit	Paravitrea hera

Threatened:

Floater, green	Lasmigona subviridis
Papershell, fragile	Leptodea fragilis
Pigtoe, Atlantic	Fusconaiamasoni
Pimpleback	Quadrula pustulosa pustulosa

Regulations

Pistolgrip	Tritogonia verrucosa
Riversnail, spiny	Iofluvialis
Sandshell, black	Ligumia recta
Supercoil, brown	Paravitrea septadens

7. Arthropods:

Threatened:

Amphipod, Madison Cave	Stygobromus stegerorum
------------------------	------------------------

Pseudotremia, Ellett Valley	Pseudotremia cavernarum
Xystodesmid, Laurel Creek	Sigmoria whiteheadi

8. Crustaceans:

Endangered:

Crayfish, Big Sandy	Cambarus veteranus
---------------------	--------------------

C. It shall be unlawful to take, transport, process, sell, or offer for sale within the Commonwealth any threatened or endangered species of fish or wildlife except as authorized by law.

D. The incidental take of certain species may occur in certain circumstances and with the implementation of certain conservation practices as described in this subsection:

Species	Location	Allowable Circumstances	Required Conservation Measures	Expected Incidental Take
<u>Little brown bat</u> <u>Tri-colored bat</u>	<u>Statewide</u>	<u>Human health risk – need for removal of individual animals from human-habited structures.</u>	<u>Between May 15 and August 31, no exclusion of bats from maternity colonies, except for human health concerns.</u> <u>DGIF-permitted nuisance wildlife control operator with DGIF-recognized certification in techniques associated with removal of bats.</u> <u>Use of exclusion devices that allow individual animals to escape.</u> <u>Manual collection of individual animals incapable of sustaining themselves; transport to a willing and appropriately permitted wildlife rehabilitator.</u>	<u>Little to no direct lethal taking expected.</u>
		<u>Public safety or property damage risk – need for tree removal, application of prescribed fire, or other land management actions affecting known roosts; removal of animals from known roosts.</u>	<u>Hibernacula: no tree removal, use of prescribed fire, or other land management action within buffer area from September 1 through April 30, if possible. Otherwise, document the need (public safety, property damage risk) for tree removal during this period and verify that no known roost trees exist in the buffer area.</u> <u>Known roost trees: no tree removal, use of prescribed fire, or other land management action within buffer area from May 1 through August 31, if</u>	<u>Little to no direct lethal taking expected.</u>

			<p><u>possible. Otherwise, document public safety or property damage risk.</u></p> <p><u>DGIF-permitted nuisance wildlife control operator with DGIF-recognized certification in techniques associated with removal of bats.</u></p> <p><u>Use of exclusion devices that allow individual animals to escape.</u></p> <p><u>Manual collection of individual animals incapable of sustaining themselves; transport to a willing and appropriately permitted wildlife rehabilitator.</u></p>	
--	--	--	---	--

DOCUMENTS INCORPORATED BY REFERENCE
(4VAC15-20)

[List of Native and Naturalized Fauna of Virginia, March 2012, Virginia Department of Game and Inland Fisheries](#)

[Federal Endangered and Threatened Species List, amended as of October 2, 2015, U.S. Fish & Wildlife Service](#)

VA.R. Doc. No. R16-4615; Filed December 21, 2015, 10:29 a.m.

MARINE RESOURCES COMMISSION

Emergency Regulation

Title of Regulation: **4VAC20-720. Pertaining to Restrictions on Oyster Harvest (amending 4VAC20-720-40).**

Statutory Authority: §§ 28.2-201 and 28.2-210 of the Code of Virginia.

Effective Dates: January 1, 2016, through January 30, 2016.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, or email jennifer.farmer@mrc.virginia.gov.

Preamble:

The emergency amendment changes the dates of part of the open oyster harvest season for the James River Area and the Thomas Rock Area (James River) from March 1, 2016, through March 31, 2016, to January 1, 2016, through January 31, 2016.

4VAC20-720-40. Open oyster harvest season and areas.

A. It shall be unlawful for any person to harvest oysters from public and unassigned grounds outside of the seasons and areas set forth in this section.

B. It shall be unlawful to harvest clean cull oysters from the public oyster grounds and unassigned grounds except during

the lawful seasons and from the lawful areas as described in the following subdivisions of this subsection.

1. James River Seed Area, including the Deep Water Shoal State Replenishment Seed Area: October 1, 2015, through April 30, 2016.
2. Milford Haven: December 1, 2015, through February 29, 2016.
3. Rappahannock River Area 9: November 1, 2015, through December 31, 2015.
4. Little Wicomico River: October 1, 2015, through December 31, 2015.
5. Coan River: October 1, 2015, through December 31, 2015.
6. Yeocomico River: October 1, 2015, through December 31, 2015.
7. Nomini Creek: October 1, 2015, through December 31, 2015.
8. Mobjack Bay Area: January 1, 2016, through January 31, 2016.
9. Rappahannock River Rotation Area 5: October 1, 2015, through November 30, 2015.
10. Rappahannock River Rotation Area 3: November 1, 2015, through December 31, 2015.
11. Great Wicomico River Area: December 1, 2015, through January 31, 2016.
12. Upper Chesapeake Bay - Blackberry Hangs Area: December 1, 2015, through January 31, 2016.
13. James River Area and the Thomas Rock Area (James River): November 1 2015, through December 31, 2015, and ~~March~~ March ~~January~~ January 1, 2016, through ~~March~~ March ~~January~~ January 31, 2016.
14. Pocomoke and Tangier Sounds Rotation Area 1: December 1, 2015, through February 29, 2016.