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Emergency Regulation Agency Background Document

Agency name	Virginia Marine Resources Commission
Virginia Administrative Code (VAC) Chapter citation(s)	4 VAC 20-950-10
VAC Chapter title(s)	Pertaining to Black Sea Bass
Action title	Opening a recreational black sea bass season in February 2023.
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 20-950-10 et seq., "Pertaining to Black Sea Bass", to open a recreational black sea bass season in February 2023.

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.

[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 and 28.2-210 for emergency regulations.

[Impetus] Since 2018, the National Marine Fisheries Service has opened federal waters for a recreational black sea bass fishery in February under the condition that any state participating must pay back their February landings during the regular May through December recreational season. In 2020, ASMFC and MAFMC said they support continuing the February recreational season option for states. In October 2022, the Finfish Management Advisory Committee (FMAC) passed a motion to pursue the February black sea bass season in 2023 in recognition of its popularity and importance to the for-hire industry. On December 13, 2022, ASMFC approved Virginia’s proposal for a February 2023 recreational season.

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.

§ 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 seasons are time sensitive to natural resources of the Commonwealth that have short windows for the industry and public to efficiently use the resource. This is an emergency regulation due to a missed deadline for the public notice. It is eligible for the emergency regulation based on §28.2-210 which states that the Commission may promulgate emergency regulations for protection of the seafood industry. The regulation will sunset thirty days from its effective date, which will be after the February season has already closed.

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.

4VAC20-950-45. Recreational possession limits and seasons.

Any person fishing recreationally to harvest or possess any black sea bass from February 1 through February 28, 2023, must obtain a Recreational Black Sea Bass Permit from VMRC to participate in the open February season passed by emergency.

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.

Since 2018, the National Marine Fisheries Service has opened federal waters for a recreational black sea bass fishery in February under the condition that any state participating must pay back their February landings during the regular May through December recreational season. States must request this special season and be approved by the ASMFC as well as have an approved payback plan. On December 13, 2022, ASMFC approved Virginia's proposal for a February 2023 recreational season.

Virginia participated in this special recreational season from 2018 through 2021 with the understanding that any additional landings occurring in February each year would result in a deduction of fishing days from the open season. Permit holders (the captain or operator of the vessel) were required to report to the commission the number of trips they took, the number of anglers on board, and the number of black sea bass they landed and released. Permit holders were also required to call the Marine Police Operations Stations before each trip so VMRC staff could arrange to sample a subset of trips for fish lengths and weights.

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 not create an open harvest season for black sea bass for February 2023.

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
45		Closed harvest season for February 2023	Open harvest season for February 2023 including permitting, reporting, and harvest requirements