

Secretary's Order No.: 2010-F-0025

**RE: Approving Final Regulations to Amend 7 DE Admin. Code 3541,
*Atlantic Sharks***

Date of Issuance: August 16, 2010

Effective Date of the Amendment: September 11, 2010

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") the following findings, reasons and conclusions are entered as an Order of the Secretary in the above-referenced rulemaking proceeding.

Background and Procedural History

This Order considers proposed regulations to amend 7 DE Admin. Code 3541, *Atlantic Sharks*. The Department's Division of Fish and Wildlife commenced the regulatory development process with Start Action Notice 2010-15. The Department published its initial proposed regulation Amendments in the May 1, 2010 *Delaware Register of Regulations*, and held a public hearing on June 21, 2010. The public hearing record remained open at that time for public comment through June 30, 2010. It should be noted that no members of the public were in attendance at the hearing held on June 21, 2010, nor was any public comment received by the Department at any time concerning this proposed promulgation.

The Department is proposing to amend Tidal Finfish Regulation 3541 concerning Atlantic Sharks in order to bring Delaware into compliance with the Atlantic States Marine Fisheries Commission's ("ASMFC") Interstate Fishery Management Plan ("IFMP") for Atlantic Coastal Sharks. The IFMP for Atlantic Coastal Sharks specifies

which gears that fishermen are authorized to use in state waters on the Atlantic Coast. The gears that are authorized by ASMFC are hook and line, gill net, trawl net, short-line, pound net and weir. Presently, Delaware allows the use of hook and line, troll line, dip net, lift net, push net, cast net, spear or harpoon, haul seine, bag net, hoop net, fyke net, fish pot, and gill net for use in state waters to harvest food-fish, which includes sharks. To meet the requirements of the IFMP, Delaware must restrict the commercial gears that may be used for the harvesting of Atlantic coastal sharks to hook and line, and gill net. Recreational fishermen are restricted to the use of rod and reel and hand line. Fishermen with a federal shark permit who are fishing outside of state waters are not restricted to these gear types and may land sharks using any gear that is in accordance with the rules and regulations established by NOAA Fisheries.

Additionally, the IFMP for Atlantic Coastal Sharks specifies that a federal Commercial Shark Dealer Permit is required to buy and sell any shark caught in state waters. At the present time, the State of Delaware does not require seafood dealers to have this permit to buy and sell shark caught in state waters. Again, these modifications to the existing shark regulations would bring Delaware into full compliance with the IFMP for Atlantic Coastal Sharks.

The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated August 6, 2010 (Report). The Report recommends certain findings and the adoption of the proposed Amendments as attached to the Report as Appendix A.

Findings and Discussion

I find that the proposed Amendments are well-supported by the record developed by the Department, and I adopt the Report to the extent it is consistent with this Order. The Department's experts developed the record and drafted the proposed Amendments.

I find that the Department's experts in the Division of Fish and Wildlife fully developed the record to support adoption of these Amendments. With the adoption of this Order, Delaware will (1) allow Delaware to remain in compliance with the ASMFC Plan for Coastal Sharks, as well as the latest addendum to the IFMP for Coastal Shark; and (2) prevent total closure of these fisheries in Delaware by order of the Secretary of Commerce due to lack of compliance with federal regulations concerning this species.

In conclusion, the following findings and conclusions are entered:

1.) The Department has jurisdiction under its statutory authority to issue an Order adopting these proposed Amendments as final;

2.) The Department provided adequate public notice of the proposed Amendments, and provided the public with an adequate opportunity to comment on the proposed Amendments, including at the public hearing held on June 21, 2010;

3.) The Department held a public hearing on June 21, 2010 in order to consider public comment before making any final decision;

4.) The Department's Hearing Officer's Report, including its recommended record and the recommended Amendments as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;

5.) The recommended Amendments should be adopted as final regulation Amendments because Delaware will be able to (1) remain in compliance with the

aforementioned Fishery Management Plan for this species, as implemented by the ASMFC; (2) prevent total closure of these fisheries in Delaware by order of the Secretary of Commerce due to lack of compliance with federal regulations concerning this species; and, lastly, because (3) the amendments are well supported by documents in the record;

6.) The Department shall submit this Order approving the final regulation to the *Delaware Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

/s/ Collin P. O'Mara
Collin P. O'Mara
Secretary

HEARING OFFICER'S REPORT

TO: The Honorable Collin P. O'Mara
Cabinet Secretary, Department of Natural Resources and Environmental Control

FROM: Lisa A. Vest
Public Hearing Officer, Office of the Secretary
Department of Natural Resources and Environmental Control

RE: **Proposed Regulations Amendments to 7 DE Admin. Code 3541, *Atlantic Sharks***

DATE: August 6, 2010

I. BACKGROUND AND PROCEDURAL HISTORY:

A public hearing was held on Monday, June 21, 2010, at 6:30 p.m. at the Department of Natural Resources and Environmental Control ("DNREC", "Department"), 89 Kings Highway, Dover, Delaware to receive comment on proposed amendments ("amendments") to 7 DE Admin. Code 3541, *Atlantic Sharks*. The Department is proposing revisions to Delaware Tidal Finfish Regulation No. 3541 in order to bring Delaware into compliance with the Atlantic States Marine Fisheries Commission's ("ASMFC") Interstate Fishery Management Plan ("IFMP") for Atlantic Coastal Sharks.

The Department has the statutory basis and legal authority to act with regard to the proposed amendments to 7 DE Admin. Code 3541, pursuant to 7 Del. C. §§901(e)3 and 903(f).

It should be noted that no members of the public were in attendance at the hearing held on June 21, 2010, nor was any public comment received by the Department at any

time concerning this proposed promulgation. Proper notice of the hearing was provided as required by law.

II. SUMMARY OF THE PUBLIC HEARING RECORD:

The public hearing record consists of the following documents: (1) a verbatim transcript; and (2) six documents introduced at the public hearing held on June 21, 2010, and marked by this Hearing Officer accordingly as Department Exhibits 1, 2, 3, 4(a), 4(b), and 4(c). The Department's person primarily responsible for the drafting and overall promulgation of these proposed amendments, Craig Shirey, developed the record with the relevant documents in the Department's files. Following the submission of the Department's exhibits into the record at the aforementioned public hearing, DNREC Environmental Scientist Scott Newlin proceeded to offer a brief summary as to the Department's proposed actions in this matter.

Mr. Newlin began his presentation by explaining that, as noted above, the Department is proposing to amend Tidal Finfish Regulation 3541 concerning Atlantic Sharks in order to bring Delaware into compliance with the Atlantic States Marine Fisheries Commission's ("ASMFC") Interstate Fishery Management Plan ("IFMP") for Atlantic Coastal Sharks. The IFMP for Atlantic Coastal Sharks specifies which gears that fishermen are authorized to use in state waters on the Atlantic Coast. The gears that are authorized by ASMFC are hook and line, gill net, trawl net, short-line, pound net and weir. Presently, Delaware allows the use of hook and line, troll line, dip net, lift net, push

net, cast net, spear or harpoon, haul seine, bag net, hoop net, fyke net, fish pot, and gill net for use in state waters to harvest food-fish, which includes sharks.

To meet the requirements of the IFMP, Delaware must restrict the commercial gears that may be used for the harvesting of Atlantic coastal sharks to hook and line, and gill net. Recreational fishermen are restricted to the use of rod and reel and hand line. Fishermen with a federal shark permit who are fishing outside of state waters are not restricted to these gear types and may land sharks using any gear that is in accordance with the rules and regulations established by NOAA Fisheries.

Mr. Newlin further explained that the IFMP for Atlantic Coastal Sharks also specifies that a federal Commercial Shark Dealer Permit is required to buy and sell any shark caught in state waters. At the present time, the State of Delaware does not require seafood dealers to have this permit to buy and sell shark caught in state waters. Again, this modification to Delaware's existing shark regulations is necessary in order to bring Delaware into full compliance with the IFMP for Atlantic Coastal Sharks.

Presently, no commercial fishermen in Delaware fish for sharks with the gear types that would be restricted by this proposed regulatory change. There are, however, some commercial food-fish license holders and seafood dealers who harvest, buy, or sell sharks that would be affected by the permitting requirements listed above.

As noted previously, there were no members of the public in attendance at the hearing held by the Department on June 21, 2010, nor was any public comment received by the Department at any time concerning this proposed promulgation. It should also be noted that all proper notification and noticing requirements concerning this proposed promulgation were met by the Department.

III. RECOMMENDED FINDINGS AND CONCLUSIONS:

Based on the record developed, I find and conclude that the Department has provided appropriate reasoning regarding the need for the proposed amendments to 7 DE Admin. Code 3541, *Atlantic Sharks*, as noted above. Accordingly, I recommend promulgation of these proposed amendments in the customary manner provided by law.

Further, I recommend the Secretary adopt the following findings and conclusions:

1. Proper notice of the hearing was provided as required by law.
2. The Department has jurisdiction under its statutory authority to make a determination in this proceeding;
3. The Department provided adequate public notice of all proceedings in a manner required by the law and regulations;
4. The Department held its public hearing in a manner required by the law and regulations;
5. The Department considered all timely and relevant public comments in making its determination;
6. Promulgation of the proposed regulatory amendments to 7 DE Admin. Code 3541, *Atlantic Sharks*, will (1) allow Delaware to remain in compliance with the ASMFC Plan for Coastal Sharks, as well as the latest addendum to the IFMP for Coastal Shark; and (2) prevent total closure of these fisheries in Delaware by order of the Secretary of Commerce due to lack of compliance with federal regulations concerning this species;

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