

MEMORANDUM

TO: The Honorable Shawn M. Garvin
Cabinet Secretary, Dept. of Natural Resources and Environmental Control

FROM: Theresa Newman, Regulatory Specialist, Office of the Secretary, 
Dept. of Natural Resources and Environmental Control

RE: **Proposed Regulation Amendments to 7 DE Admin. Code 3700: *Shellfish*: Adoption of new Section 3723 (Jonah Crab), and Amendments to existing Sections 3755 (Lobsters [*Homarus americanus*]), 3756 (Lobsters – Pot Design), 3757 (Lobsters – Pot, Season and Limits for Commercial Lobster Pot License), and 3758 (Possession of V-Notched Lobsters Prohibited)**

DATE: July 8, 2019

I. Background:

A public hearing was held on Thursday, May 23, 2019, at 6:00 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 3700: *Shellfish*. The Department is currently proposing to adopt new regulations for Jonah Crab within its existing *Shellfish* regulations (Section 3723), and to amend existing Sections 3755 (Lobsters [*Homarus americanus*]), 3756 (Lobsters – Pot Design), 3757 (Lobsters – Pot, Season and Limits for Commercial Lobster Pot License), and 3758 (Possession of V-Notched Lobsters Prohibited).

This action is being taken by the Department to (1) maintain consistency with the Interstate Fishery Management Plan (“FMP”) as approved by the Atlantic States Marine Fisheries Commission (“ASMFC”) with regard to the adoption of new Jonah Crab regulations; (2) provide additional clarity to the regulated community with regard to the existing American Lobster regulations; and (3) reformat the existing American Lobster regulations by consolidating 7 DE Admin. Code §§3756-3758 under 7 DE Admin. Code 3755, as referenced above.

The ASMFC approved an Interstate FMP for Jonah Crab, under the authority of the Atlantic Coastal Fisheries Cooperative Management Act (1993). The goal of the FMP is to support and promote the development and implementation, on a continual basis, of a unified coastal management program for Jonah Crab, which in turn is designed to promote conservation, reduce the possibility of recruitment failure, and allow full utilization of the resource by the United States' Jonah Crab industry.

Consistent with the mandatory elements of the aforementioned FMP and its addenda, the Department's proposed promulgation would implement the following measures for Jonah Crab: (1) the establishment of incidental and directed landing permits based upon certain criteria; (2) the establishment of incidental bycatch limits; (3) the establishment of a minimum carapace width of 4 $\frac{3}{4}$ inches with no tolerance; (4) the establishment of conditions and limits on the retention of claws; (5) the establishment of a recreational possession limit of 50 Jonah Crabs per person per day; and (6) the prohibition of the retention of egg-bearing female Jonah Crab.

With regard to the management of American Lobster, the Department proposes to adopt provisions requiring the mandatory removal of lobster pots from February 1 through March 31, in accordance with Addendum XVII to Amendment 3 of the ASMFC's FMP for American Lobster. Additionally, the Department proposes to clarify that two escape vents are necessary on lobster pots where circular style vents are used, and require that egg-bearing female lobsters be V-notched and immediately released.

Finally, consistent with the *Delaware Administrative Code Drafting and Style Manual*, this action proposes to reformat the existing regulations pertaining to American Lobster by consolidating the following Sections under existing 7 DE Admin. Code 3755, Lobsters (*Homarus americanus*): 3756 Lobsters - Pot Design; 3757 Lobsters - Pot, Season and Limits for Commercial Lobster Pot License, and 3758 Possession Of V-notched Lobsters Prohibited. The proposed reformatting will also provide addition clarity to the existing regulations, and is not intended to change meaning.

The Department has the statutory basis and legal authority to act with regard to promulgation of the proposed revisions and amendments to 7 DE Admin. Code 3700: *Shellfish*, pursuant to 7 Del. C. §§1902(a), 1501, 1503, 2505 and 2507. The Department published its initial proposed regulation Amendments in the May 1, 2019 *Delaware Register of Regulations*. Thereafter, the public hearing regarding this matter was held on May 23, 2019. There was no public attendance at the public hearing. Pursuant to Delaware law, the record remained open for fifteen (15) additional days subsequent to the date of the public hearing for receipt of public comment. The hearing record formally closed with regard to public comment at close of business on June 7, 2019, with no comment having been received by the Department during any phase of this proposed regulatory promulgation.

It should be noted that all notification and noticing requirements concerning this matter were met by the Department. 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) seventeen (17) documents introduced by Department staff at the public hearing held on May 23, 2019, and marked by Hearing Officer Lisa A. Vest accordingly as Department Exhibits 1-17. The Department's person primarily responsible for the drafting and overall promulgation of these proposed Amendments, Stewart Michels, Environmental Program Manager II with the Division of Fish and Wildlife, developed the record with the relevant documents in the Department's files.

As stated previously, no comment was received by the Department at any time during the course of this regulatory promulgation. Accordingly, the Department's proposed Amendments are attached hereto as Appendix "A" for the Secretary's review.

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 3700: *Shellfish*, specifically, the adoption of new Section 3723 (Jonah Crab), and the amendments to existing Sections 3755 (Lobsters [*Homarus americanus*]), 3756 (Lobsters – Pot Design), 3757 (Lobsters – Pot, Season and Limits for Commercial Lobster Pot License), and 3758 (Possession of V-Notched Lobsters Prohibited), as set forth above. Accordingly, I recommend promulgation of the same, in the customary manner provided by law.

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

1. The Department has the statutory basis and legal authority to act with regard to this proposed regulatory promulgation, pursuant to 7 *Del. C.* §§1902(a), 1501, 1503, 2505, and 2507.
2. The Department has jurisdiction under its statutory authority, pursuant to 7 *Del.C.* Chapter 60, to issue an Order adopting these proposed Amendments as final;
3. The Department provided adequate public notice of the initial proposed Amendments and all proceedings in a manner required by the law and regulations, and provided the public with an adequate opportunity to comment on the same, including at the time of the public hearing held on May 23, 2019, and during the 15 days subsequent to the hearing (through June 7, 2019), before making any final decision;

4. Promulgation of the proposed Amendments to 7 DE Admin. Code 3700: *Shellfish*, will enable the Department to: (1) maintain consistency with the aforementioned Interstate FMP, as approved by the ASMFC, with regard to the adoption of new Jonah Crab regulations; (2) provide additional clarity to the regulated community with regard to the existing American Lobster regulations; and (3) reformat the existing American Lobster regulations by consolidating 7 DE Admin. Code §§3756-3758 under 7 DE Admin. Code 3755, as referenced above;

5. The Department has reviewed the proposed Amendments in the light of the Regulatory Flexibility Act, consistent with 29 *Del.C.* Ch. 104, and has selected Exemption “B5,” as this regulation is required by federal law (pursuant to Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA), 16 USC §§ 5101 - 5106 (specifically, 16 USC §5104 (b) (1)) and has already complied with the federal Regulatory Flexibility Act, 5 U.S.C., §601 et seq.;

6. The Department’s proposed regulatory Amendments, as initially published in the May 1, 2019 *Delaware Register of Regulations*, and as set forth in Appendix “A” hereto, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they should be approved as final regulatory Amendments, which shall go into effect ten days after their publication in the next available issue of the *Delaware Register of Regulations*; and

7. The Department shall submit the proposed Amendments as final regulatory amendments 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.


Theresa L. Newman
Public Hearing Officer

APPENDIX "A"

PROPOSED REGULATIONS

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7627), Outer Continental Shelf technical changes of 84 Fed. Reg. 13132 (April 4, 2019), and 40 CFR Part 55 (July 1, ~~2009~~2018 ed.).

06/11/2010XX/XX/2019

2.0 Requirements

The provisions of Part 40 CFR Part 55 (July 1, ~~2009~~2018 ed.) and the Outer Continental Shelf technical changes of 84 Fed. Reg. 13132 (April 4, 2019) are incorporated herein as 7 DE Admin. Code 1150. OCS sources shall comply with all requirements of 1100 Air Quality Management Section of Title 7 of the Delaware Administrative Code to the extent that they are incorporated by EPA into 40 CFR Part 55.14.

This rule incorporates the following provisions of 40 CFR Part 55:

Outer Continental Shelf Air Regulations

55.1	Statutory authority and scope.
55.2	Definitions.
55.3	Applicability.
55.4	Requirements to submit a notice of intent.
55.6	Permit requirements.
55.7	Exemptions.
55.8	Monitoring, reporting, inspections, and compliance.
55.9	Enforcement.
55.10	Fees.
55.13	Federal requirements that apply to OCS sources.
55.14	Requirements that apply to OCS sources located within 25 miles of states' seaward boundaries, by State.
55.15	Specific designation of corresponding onshore areas.
Appendix A to 40 CFR Part 55	Listing of State and Local Requirements Incorporated by Reference Into Part 55, by State

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Sections 1902(a), 1501, 1503, 2505 and 2507
(7 Del.C. §§1902(a), 1501, 1503, 2505 & 2507)
7 DE Admin. Code 3700

REGISTER NOTICE SAN #2019-03

3700 Shellfish
3723 Jonah Crab (*Cancer borealis*)
3755 Lobsters

1. TITLE OF THE REGULATIONS:

7 DE Admin. Code 3700 Shellfish to include:

3723 Jonah Crab [new]; 3755 Lobsters; 3756 Lobsters - Pot Design; 3757 Lobsters - Pot, Season And Limits For Commercial Lobster Pot License; and, 3758 Possession Of V-notched Lobsters Prohibited

2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

The Atlantic States Marine Fisheries Commission (ASMFC) approved an Interstate Fishery Management Plan (FMP) for Jonah Crab under the authority of the Atlantic Coastal Fisheries Cooperative Management Act

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(ACFCMA 1993). The goal of the FMP is to support and promote the development and implementation, on a continual basis, of a unified coastal management program for Jonah Crab, which is designed to promote conservation, reduce the possibility of recruitment failure, and allow full utilization of the resource by the United States industry. Consistent with the mandatory elements of the FMP and its addenda this action proposes to:

- Establish incidental and directed landing permits based upon certain criteria;
- Establish Jonah Crab incidental bycatch limits;
- Establish a Jonah Crab minimum carapace width of 4 ¾ inches with no tolerance;
- Establish conditions and limits on the retention of Jonah Crab claws;
- Prohibit the retention of egg-bearing female Jonah Crab; and
- Establish a recreational possession limit of 50 Jonah Crabs per person per day.

This action also proposes to adopt provisions requiring the mandatory removal of lobster pots from February 1 through March 31 in accordance with Addendum XVII to Amendment 3 of the ASMFC's FMP for American Lobster. This action also clarifies that two escape vents are necessary on lobster pots where circular style vents are used and requires that egg-bearing female lobster be V-notched and immediately released.

Finally, consistent with regulation formatting guidelines, this action proposes to reformat the existing regulations pertaining to American Lobster by consolidating 3756 Lobsters - Pot Design; 3757 Lobsters - Pot, Season And Limits For Commercial Lobster Pot License, and 3758 Possession Of V-notched Lobsters Prohibited under existing regulation - 3755 Lobsters. The proposed reformatting is not intended to change meaning.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

There is no sunset date for this action.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Del.C. §§1902(a), 1501, 1503, 2505 and 2507

5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL:

Not applicable.

6. NOTICE OF PUBLIC COMMENT:

The hearing record on the proposed changes to 7 DE Admin. Code 3700 Shellfish to add a new 3723 Jonah Crab and amend 3755 Lobsters; 3756 Lobsters - Pot Design; 3757 Lobsters - Pot, Season And Limits For Commercial Lobster Pot License; and 3758 Possession Of V-notched Lobsters Prohibited opens May 1, 2019. Individuals may submit written comments regarding the proposed changes via e-mail to Lisa.Vest@Delaware.gov or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901. A public hearing on the proposed amendment will be held on Thursday, May 23, 2019 beginning at 6:00 PM in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901. Public comments will be received until close of business Friday, June 7, 2019.

7. PREPARED BY:

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***Please Note: The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del.C. Ch. 104, is available at:**

[http://regulations.delaware.gov/register/may2019/proposed/22 DE Reg 929RFA 05-01-19.pdf](http://regulations.delaware.gov/register/may2019/proposed/22%20DE%20Reg%20929RFA%2005-01-19.pdf)

3700 Shellfish

3723 Jonah Crab (*Cancer borealis*)

1.0 Jonah Crab Landing Permits

- 1.1 The Department may only issue a Directed Jonah Crab Landing Permit to those vessels and lobster permit holders that held a valid Delaware Commercial Lobster Pot License or federal lobster permit on

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- June 2, 2015 or that can demonstrate to the Department, through valid reported landing reports or sales receipts, that they landed Jonah Crab or Jonah Crab claws in Delaware before June 2, 2015.
- 1.2 Unless otherwise provided, it is unlawful to possess or land Jonah Crab or parts thereof without a valid commercial foodfish license or a license to harvest shellfish for commercial purposes and a valid Directed Jonah Crab Landing Permit or an Incidental Jonah Crab Landing Permit issued by the Department.
- 1.3 Jonah Crab Landing permits are not transferable and automatically expire on December 31 of each calendar year.

2.0 Commercial Possession Limit

- 2.1 It is unlawful for a person issued a commercial foodfish license or a license to harvest shellfish for commercial purposes to possess more than 1,000 Jonah Crab per trip or more than 2,000 Jonah Crab claws per trip without a valid Directed Jonah Crab Landing Permit issued by the Department.
- 2.2 It is unlawful for a person issued an Incidental Jonah Crab Landing Permit and fishing non-lobster pot gear to possess a greater weight of Jonah Crab or Jonah Crab parts that exceed the weight of the target species for which the gear is set.
- 2.3 Persons issued a Directed Jonah Crab Landing Permit in accordance with subsection 1.1 may possess and land any quantity of Jonah Crabs or parts thereof.

3.0 Recreational Possession Limit

It is unlawful to possess more than 50 Jonah Crab per person per day, unless otherwise provided.

4.0 Minimum Size

- 4.1 It is unlawful to possess Jonah Crab measuring less than 4 ¼ inches at the widest part of its carapace.
- 4.2 It is unlawful to possess detached Jonah Crab claws measuring less than 2 ¾ inches along the longest axis of the propodus (the immovable component of the pinching claw) in a volume greater than five gallons.

5.0 Dismemberment

- 5.1 Except as provided in subsections 5.1.1 and 5.1.2, it is unlawful to possess Jonah Crab claws that are not naturally attached to the body (cephalothorax).
- 5.1.1 A person with a valid Directed Jonah Crab Landing Permit or Incidental Jonah Crab Landing Permit issued by the Department may possess detached Jonah Crab claws in accordance with Section 2.0 and subsection 4.2 of this regulation.
- 5.1.2 A person with a valid and corresponding receipt or bill of lading may possess detached Jonah Crab claws, provided said claws were lawfully harvested.

6.0 Egg-bearing Jonah Crab

It is unlawful to possess a Jonah Crab bearing eggs visible thereon or any Jonah Crab from which the eggs have been removed.

3755 Lobsters (*Homarus americanus*)

37561.0 Lobsters— Lobster Pot Design

(Penalty Section 7 Del.C. §1912)

- ~~4-01.1~~ It shall be is unlawful for any person to set, tend or conduct shellfishing for lobsters with any pot or trap in the waters under the jurisdiction of the State unless said pot or trap has an escape vent, slot or port of not less than two (2) inches by 5 ¾ inches located in the parlor section of each pot or trap, or if a circular escape vent is used in the parlor section of any lobster pot or trap, it shall be is unlawful to use any less than two (2) circular vent vents that is are less than 2 5/8 inches inside diameter.

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~~2.01.2~~ It shall be is unlawful for any person to set, tend or conduct shellfishing for lobsters with any pot or trap, not constructed entirely of wood, excluding heading or parlor twine and the escape vent, that does not contain a ghost panel covering an opening that measures at least 3 ¾ inches by 3 ¾ inches. A ghost panel means a panel, or other mechanism, designed to allow the escapement of lobsters after a period of time if the pot or trap has been abandoned or lost. The panel must be constructed of, or fastened to the pot or trap with, one of the following untreated materials: wood lath, cotton, hemp, sisal or jute twine not greater than 3/16 inch in diameter, or non-stainless, uncoated ferrous metal not greater than 3/32 inch in diameter. The door of the pot or trap may serve as the ghost panel, if fastened with a material specified in this subsection. The ghost panel must be located in the outer parlor(s) of the pot or trap and not the bottom of the pot or trap.

~~3.01.3~~ It shall be is unlawful for any recreational or commercial lobster pot fisherman to set, tend or conduct shellfishing for lobsters with a lobster pot or trap with a volume larger than 22,950 cubic inches.

~~37572.0 Lobsters—Pot, Lobster Pot Season And Limits For Commercial Lobster Pot License~~

Penalty Section 7 Del.C. §1912)

~~2.1~~ Except as provided in subsections 2.1.1 and 2.1.2, it is unlawful to set or tend lobster pots or to take and reduce to possession or attempt to take and reduce to possession lobsters during the period February 1 through March 31.

~~2.1.1~~ A person with a valid Commercial Lobster Pot License may remove lobster gear from the water during the period February 1 through February 14; however, no lobsters may be reduced to possession.

~~2.1.2~~ A person with a valid Commercial Lobster Pot License may set lobster gear during the period March 25 through March 31; however, the gear cannot be tended and no lobsters may be reduced to possession.

~~4.02.2~~ It shall be ~~lawful~~ is unlawful for any person who has a valid Commercial Lobster Pot License to harvest lobsters in the waters under the jurisdiction of the State ~~at any time as permitted by law on any date except~~ Sunday.

~~2.02.3~~ It shall be is unlawful for any person who has a valid Commercial Lobster Pot License to set, tend or use in any manner in excess of fifty (50) lobster pots for the taking of lobsters in the waters under the jurisdiction of the State.

~~3.02.4~~ It shall be is unlawful for any person, licensed to catch or land lobsters for commercial purposes in this State, who uses gear or methods other than pots or traps outside the jurisdiction of this State, to land more than 100 lobsters per day for each day at sea during the same trip, up to a maximum of 500 lobsters per trip for trips 5 days or ~~longer~~ longer.

~~37583.0 Possession Of V-notched Lobsters Prohibited~~

(Penalty Section 7 Del.C. §1912)

~~4.03.1~~ It shall be is unlawful for any person to possess a V-notched female lobster. V-notched female lobster means any female lobster bearing a V-notch, a straight-sided triangular cut with or without setal hairs at least 1/8 inch in depth and tapering to a sharp point, in the flipper (uropod) next to the right of center flipper (telson) as viewed from the rear of the female lobster with the underside (ventral side) facing down. ~~V-notched female lobster also means any female lobster which is mutilated in a manner which could hide, obscure or obliterate such a mark. The right flipper will be examined when the underside of the lobster is down and its tail is toward the person making the determination.~~

~~3.2~~ Any person that catches an egg-bearing female lobster shall notch it as outlined in subsections 3.2.1 through 3.2.5.

~~3.2.1~~ The notch shall be made on the flipper (uropod) immediately to the right of the central flipper (telson) as viewed from the rear of the lobster with the underside (ventral side) facing down.

~~3.2.2~~ The notch shall be made by means of a sharp bladed instrument.

~~3.2.3~~ The notch shall be made at least ¼ inch in width along the outer margin of the flipper.

~~3.2.4~~ The notch shall taper to a sharp point at least ½ inch deep.

3.2.5 The lobster shall be immediately returned to the water upon completion of the notch.

3.3 It is unlawful to possess a female lobster that is mutilated in a manner that could hide, obscure or obliterate a V-notch.

DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES

DIVISION OF FAMILY SERVICES OFFICE OF CHILD CARE LICENSING

Statutory Authority: 29 Delaware Code, Section 9003(7) and 31 Delaware Code, Sections 341-345 (29 Del.C. §9003(7); 31 Del.C. §§341-345)
9 DE Admin. Code 201

PUBLIC NOTICE

201 Child Placing Agencies

SUMMARY

The Office of Child Care Licensing (OCCL) proposes to amend the DELACARE: Regulations for Child Placing Agencies in accordance with 31 Del.C. §343. This proposal was changed to include an updated anti-discrimination policy, the licensing enforcement process, applications, and the Federal Family Foster Home Licensing Standards as required by Title IV-E which includes the following:

- A foster parent must be able to communicate with the child and the agency, health care providers, and other service providers;
- At least one applicant must have functional literacy;
- All household members must disclose substance abuse issues;
- All household members must provide information on their physical and mental health history, including any history of drug or alcohol abuse or treatment;
- All children who are household members must be up to date on immunizations consistent with the recommendations of the American Academy of Pediatrics, the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention, and the American Academy of Family Physicians, unless the immunization is contrary to the child's health as documented by a licensed health care professional;
- The kitchen is required to have an operable sink and oven;
- A working phone or access to a working phone must be in close walking proximity;
- The home must have adequate lighting;
- Hot tubs and spas must have safety covers that are locked when not in use;
- Swimming pools must have their methods of access through barriers equipped with a safety device, such as a bolt lock;
- Swimming pools must be equipped with a life-saving device, such as a ring buoy;
- If the swimming pool cannot be emptied after each use, the pool must have a working pump and filtering system;
- A foster parent must prevent the child's access to alcoholic beverages;
- Foster Home Capacity: The total number of children in foster care in a family foster home must not exceed six unless a. to allow a parenting youth in foster care to remain with the child of the parenting youth. b. To allow siblings to remain together. c. To allow a child with an established meaningful relationship with the family to remain with the family. d. To allow a family with special training or skills to provide care to a child who has a severe disability;
- A home must have at least one smoke detector on each level of occupancy of the home and at least one near all sleeping areas;

