



STATE OF DELAWARE
**DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL**

OFFICE OF THE
SECRETARY

89 KINGS HIGHWAY
DOVER, DELAWARE 19901

PHONE: (302) 739-9000
FAX: (302) 739-6242

Secretary's Order No.: 2013-F-0025

**RE: Approving Final Regulations to Amend
7 DE Admin. Code 3581: *Spiny Dogfish***

Date of Issuance: July 10, 2013

Effective Date of the Amendment: August 11, 2013

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 3581, *Spiny Dogfish*. The Department's Division of Fish and Wildlife commenced the regulatory development process with Start Action Notice 2013-03. The Department published its initial proposed regulation Amendments in the May 1, 2013 *Delaware Register of Regulations*, and held a public hearing on May 23, 2013.

The Department is proposing revisions to the current Delaware regulations concerning spiny dogfish (*Squalus acanthias*) to modify the daily commercial "take, land or possess" limit. The Department was requested to consider an increase in the "daily

Delaware's Good Nature depends on you!

take, land, or possess” limit from 3,000 pounds to 10,000 pounds at a recent Advisory Council on Tidal Finfish meeting. This request was subsequently endorsed by the Council

The Department has the statutory basis and legal authority to act with regard to the proposed amendments to 7 DE Admin. Code 3581, *Spiny Dogfish*, pursuant to 7 Del. C. §901 (c & d) and 7 Del.C. §903(e)(2)(a). Comment was received by the Department regarding this proposed promulgation, all of which was positive and in support of the Department’s actions in this matter. Proper notice of the hearing was provided as required by law.

The Department’s presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer’s Report dated July 3, 2013 (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. Throughout the regulatory development process regarding this promulgation, the Department received public comment, as noted in the Report, and the same were fully addressed by Department staff in a thorough and balanced manner; accurately reflecting the information as contained in the public hearing record which was developed in this matter.

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 be enabled to liberalize the current regulations concerning spiny dogfish by increasing the daily commercial "take, land or possess limit" from 3,000 pounds to 10,000 pounds, thus improving the economic feasibility of harvesting this low market value resource. The species commonly occurs in tremendously large school, and a higher daily possession limit would minimize discard loss and improve harvest efficiency in the gill net fishery. Further, it should be noted that this species has been implicated in the decline of several ecologically and economically important species, including weakfish and heron. It is for these reasons that the proposed increase in the "daily take, land, or possess" limit from 3,000 to 10,000 pounds is reasonable and sound. It should also be noted that the spiny dogfish quota is monitored using mandatory catch reports and a federal dealer reporting system, thus making it unlikely that Delaware would exceed its quota allocation.

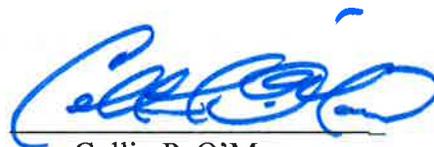
In conclusion, the following findings and conclusions are entered:

- 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 same, including at the public hearing held on May 23, 2013;
- 3.) The Department held a public hearing on May 23, 2013 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) liberalize the current regulations concerning spiny dogfish by increasing the daily commercial "take, land or possess limit" from 3,000 pounds to 10,000 pounds; (2) improve the economic feasibility of harvesting this low market value resource; 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.



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 Regulation Amendments to
7 DE Admin. Code 3581: *Spiny Dogfish***

DATE: July 3, 2013

I. BACKGROUND AND PROCEDURAL HISTORY:

A public hearing was held on Thursday, May 23, 2013, 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 3581, *Spiny Dogfish*. The Department is proposing revisions to the current Delaware regulations concerning spiny dogfish (*Squalus acanthias*) to modify the daily commercial “take, land or possess” limit. The Department was requested to consider an increase in the “daily take, land, or possess” limit from 3,000 pounds to 10,000 pounds at a recent Advisory Council on Tidal Finfish meeting. This request was subsequently endorsed by the Council.

The Northeast Fisheries Science Center’s most recent update on the status of spiny dogfish found that the population is not overfished, and overfishing is not occurring. Spawning stock biomass has exceeded target levels for the past five years. In response, the Atlantic States Marine Fisheries Commission (ASMFC) roughly doubled the annual quota for Delaware with the adoption of Addendum III to the Interstate Fishery Management Plan for Spiny Dogfish.

Addendum III allows states from New York through North Carolina to set possession limits as best meets their needs.

In 2011, 30,670 pounds (17%) of Delaware's 179,200 pound quota were harvested. Spiny Dogfish have a low market value and the current 3,000 pound daily limit makes it economically unfeasible for commercial harvesters to target the species. Further, spiny dogfish often occur in tremendous schools, and allowing a higher daily limit would minimize discard losses and improve harvest efficiency in the gill net fishery. In recent years, the high biomass of spiny dogfish has been implicated in the decline of several ecologically and economically important species, including weakfish and herrings. The spiny dogfish quota is monitored using mandatory catch reports and a federal dealer reporting system, making it unlikely that Delaware would exceed its quota allocation.

The Department has the statutory basis and legal authority to act with regard to the proposed amendments to 7 DE Admin. Code 3581, pursuant to 7 Del. C. §901 (c & d) and 7 Del.C. §903(e)(2)(a).

Comment was received by the Department regarding this proposed promulgation, and the same will be discussed in detail below. 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) eleven documents introduced at the public hearing held on May 23, 2013, and marked by this Hearing Officer accordingly as Department Exhibits 1-11. The Department's person primarily responsible for the drafting and overall promulgation of these proposed amendments, Stewart Michels, 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 hearing held on May 23, 2013, Mr. Michels proceeded to offer a brief summary as to the Department's proposed actions in this matter, to provide a greater understanding of the same by those members of the public in attendance that evening. Spiny Dogfish are jointly managed by the Mid-Atlantic Fisheries Management Council and the Atlantic States Marine Fisheries Commission (ASMFC). As a result of Addendum III to the ASMFC's Interstate Fishery Management Plan (IFMP) for Spiny Dogfish, the states from New York through North Carolina may set possession limits as best meet their needs. Based upon a review of the status of the spiny dogfish resource presented by Divisional staff, and following a request from the commercial fishing sector, the Advisory Council on Tidal Finfisheries passed a motion at its December 4, 2012 meeting supporting an increase in the daily limit for spiny dogfish, from 3,000 pounds to 10,000 pounds.

Spiny dogfish are not overfished, and overfishing is not occurring. Spawning stock biomass has exceeded target levels for the past five years. The population is managed through a quota-based system and monitored through mandatory catch reports and a federal dealer reporting system. Delaware's annual quota allocation exceeds 350,000 pounds through the year 2015, and represents less than 1 percent of the coastwide allocation. To put that in perspective, Mr. Michels noted that Delaware's 2011 commercial landings were 30,670 pounds.

The spiny dogfish fishery is a low-market value fishery. Given the low value, the current 3,000 pound daily possession limit makes it economically unfeasible to target this species, which often occurs offshore. The species commonly occurs in tremendously large school, and a higher daily possession limit would minimize discard loss and improve harvest efficiency in the gill net fishery. Further, it should be noted that this species has been implicated in the decline of several ecologically and economically important species, including weakfish and heron. It is for these

reasons, notes Mr. Michels, that the proposed increase in the “daily take, land, or possess” limit from 3,000 to 10,000 pounds is reasonable and sound.

At the conclusion of Mr. Michels’ presentation on behalf of the Department, this Hearing Officer then opened the floor to any members of the public in attendance for comment. Only two members of the public offered comment at the public hearing of May 23, 2013, Leonard Voss and John Satterfield, and both supported the Department’s proposed action. No additional comment was received by the Department in this matter.

For the Secretary’s review, and in order for the Secretary to gain a thorough understanding of this proposed promulgation, copies of the above-referenced proposed amendments are attached hereto as Appendix “A”, and the same are expressly incorporated into this Hearing Officer’s Report. It should be noted that the Department adhered to all appropriate Delaware statutes and the regulatory development process in this matter, and that the Department has met the required public notice obligations regarding these proposed amendments. It should also be noted that the Department has reviewed this proposed promulgation in the light of the Regulatory Flexibility Act, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally.

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 3581, 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 3581, will enable the Department to liberalize the current regulations concerning spiny dogfish by increasing the daily commercial “take, land or possess limit” from 3,000 pounds to 10,000 pounds, thus improving the economic feasibility of harvesting this low market value resource;
7. The Department has reviewed these proposed regulatory amendments in the light of the Regulatory Flexibility Act, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;
8. The Department’s aforementioned proposed regulatory amendments concerning *Delaware Regulations Governing Wildlife*, as published in the May 1, 2013 *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

9. The Department shall submit the proposed *revised* regulation amendments as final amendments to the *Delaware Register of Regulations* for publication in its next available issue, and shall provide such other notice as the law and regulations require, and as the Department determines is appropriate.



LISA A. VEST
Public Hearing Officer

APPENDIX "A"

Title 7 Natural Resources and Environmental Control

3500 Tidal Finfish

3000 Division of Fish and Wildlife

3500 Tidal Finfish

Spiny Dogfish

3581 Spiny Dogfish

(Penalty Section 7 Del.C. §936(b)(2))

1.0 It shall be unlawful for any commercial fisherman to harvest, land or possess any spiny dogfish, *Squalus acanthias*, in Delaware except in those sizes, seasons, and quantities permitted in accordance with the most recent version of the Atlantic States Marine Fisheries Commission Interstate Fishery Management Plan for Spiny Dogfish as amended. It shall be unlawful for any commercial fisherman to harvest, land or possess any spiny dogfish after the Atlantic States Marine Fisheries Commission approved allocation for the region which includes Delaware has been reached during any given year. It shall be unlawful to commercially harvest, land or possess spiny dogfish taken from federal waters during any time when adjoining federal waters are closed to the taking of spiny dogfish. It shall be unlawful for any commercial fisherman to take, land or possess more than ~~3,000~~ 10,000 pounds of spiny dogfish per day from Delaware waters, with a day being defined as 24 hours. Further, it shall be unlawful for any Delaware commercial fisherman to be in possession of spiny dogfish taken from federal waters in excess of the federal daily landing limit. It shall be unlawful for any person to possess the fins from any spiny dogfish prior to landing said spiny dogfish unless said fins are naturally attached to the body of said spiny dogfish. All spiny dogfish landed in Delaware for commercial purposes must be reported through the normal state reporting system.

4 DE Reg 1859 (5/1/01)

10 DE Reg. 1724 (05/01/07)

12 DE Reg. 1517 (06/01/09)

