



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL

OFFICE OF THE
SECRETARY

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Secretary's Order No.: 2015-F-0032

RE: Approving Final Regulations to Amend 7 DE Admin. Code §§3710-12, as follows, to wit: 7 DE Admin. Code 3710: *Conch*; 7 DE Admin. Code 3711: *Conch Minimum Size Limits*; and replacing 7 DE Admin. Code 3712: *Commercial Conch Dredge Licenses* with a new Section 3712, to wit: *Commercial Conch Season*

Date of Issuance: September 8, 2015

Effective Date of the Amendment: October 11, 2015

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") pursuant to 7 *Del.C.* §§6006, 6010, the following findings of fact based on the record, reasons and conclusions are entered as an Order of the Secretary in the above-referenced regulatory proceeding.

Background, Procedural History and Findings of Fact

This Order relates to proposed regulation Amendments to 7 DE Admin. Code §§3710-12, as follows, to wit: 7 DE Admin. Code 3710: *Conch*; 7 DE Admin. Code 3711: *Conch Minimum Size Limits*; and replacing existing 7 DE Admin. Code 3712: *Commercial Conch Dredge Licenses* with a new Section 3712, to wit: *Commercial Conch Season* (hereinafter referred to as "*Conch Regulations*"). The Department's Division of Fish and Wildlife commenced the regulatory development process with Start Action Notice 2015-02 dated April 14, 2015. The Department published its initial

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proposed regulation Amendments in the May 1, 2015 *Delaware Register of Regulations*. The Department then held a public hearing on May 28, 2015. Consistent with 29 *Del.C.* §10118(a), the public hearing record remained open for public comment through June 12, 2015.

The purpose of this proposed regulatory promulgation is to adopt as final the aforementioned proposed Amendments to Delaware's existing *Conch Regulations* ("Amendments") in order to provide Delaware's licensed knobbed conch (*Busycon carica*) dredgers with access to this resource similar to that of their New Jersey counterparts.

The Department received a request from the commercial shellfishing sector to align Delaware's knobbed conch management measures with those measures presently in place in the State of New Jersey. New Jersey's conch dredge landings are an authorized by-catch of their blue crab dredge fishery. The New Jersey conch fishery is constrained by a five-inch minimum size limit with a five month season from November 15 through April 15, and a cap of 93 dredge licenses. Delaware's directed knobbed conch fishery is presently constrained by a six-inch minimum size limit (3.5 inch minimum whorl diameter) with no closed season and delayed entry to the fishery. The lower minimum size limit in New Jersey poses a potential economic disadvantage to Delaware conch harvesters fishing the shared waterbody of Delaware Bay.

The Department agrees that parity with New Jersey's management measures is desirable; however, complete alignment (i.e., season dates and license cap) with the New Jersey by-catch fishery does not serve the best interest of Delaware's directed conch dredge fishery. Therefore, the Department proposes to adopt a five-inch minimum size

limit (3-inch minimum whorl diameter) with a five-month open season from January 15 through June 15. The proposed minimum size limit will provide economic parity with New Jersey, and the implementation of a five month harvest season is expected to constrain harvest without unduly jeopardizing the sustainability of the resource. The number of active licenses in the Delaware conch dredge fishery (17 in 2014) does not warrant additional licensing restrictions at this time.

The aforementioned proposed Amendments were presented and thoroughly vetted by the Department at the public hearing on May 28, 2015. Members of the public attended said hearing, and asked clarifying questions with regard to this proposed regulatory promulgation, which were thoroughly addressed by Department staff at that time. It should also be noted that all proper notification and noticing requirements concerning this matter were met by the Department. 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 August 24, 2015 ("Report"). The Report documents the proper completion of the required regulatory amendment process, establishes the record, and recommends the adoption of the proposed Amendments as attached to the Report as Appendix "A".

Reasons and Conclusions

Based on the record developed by the Department's experts and established by the Hearing Officer's Report, I find that the proposed regulatory Amendments to 7 DE Admin. Code §§3710-12: *Conch Regulations* are well-supported. Therefore, the

recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed regulatory Amendments be promulgated as final.

I find that the Department's experts in the Division of Fish and Wildlife fully developed the record to support adoption of these regulatory Amendments. The adoption of these regulatory Amendments will allow Delaware to (1) provide Delaware's licensed knobbed conch (*Busycon carica*) dredgers with access to this resource similar to that of their New Jersey counterparts; (2) adopt a five-inch minimum size limit (3-inch minimum whorl diameter) with a five-month open season from January 15 through June 15; and (3) afford Delaware economic parity with New Jersey by the implementation of said five month harvest season, which is expected to constrain harvest without unduly jeopardizing the sustainability of the resource.

In conclusion, the following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to the proposed Amendments to 7 DE Admin. Code §§3710-12, pursuant to 7 Delaware Code, Sections 1902(a)(1), 2804, and 2806;

2. The Department has jurisdiction under its statutory authority, pursuant to 7 *Del.C.* Ch. 60, to issue an Order adopting these proposed regulatory Amendments as final;

3. The Department provided adequate public notice of the proposed regulatory Amendments and all proceedings in a manner required by the law and regulations, provided the public with an adequate opportunity to comment on said Amendments, including at the time of the public hearing held on May 28, 2015, and held the record open through close of business on June 12, 2015, consistent with 29 *Del.C.*

§10118(a), in order to consider public comment on these proposed regulatory Amendments before making any final decision;

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

5. The adoption of these proposed regulatory Amendments will allow Delaware to (1) provide Delaware's licensed knobbed conch (*Busycon carica*) dredgers with access to this resource similar to that of their New Jersey counterparts; (2) adopt a five-inch minimum size limit (3-inch minimum whorl diameter) with a five-month open season from January 15 through June 15; and (3) afford Delaware economic parity with New Jersey by the implementation of said five month harvest season, which is expected to constrain harvest without unduly jeopardizing the sustainability of the resource;

6. The Department has reviewed these proposed regulatory Amendments in the light of the Regulatory Flexibility Act, consistent with 29 *Del.C.* Ch. 104, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;

7. The Department's proposed regulatory Amendments, as published in the May 1, 2015 *Delaware Register of Regulations*, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they are 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


8. The Department shall submit this Order approving as final the proposed Amendments to 7 DE Admin. Code §§3710-12: *Conch Regulations* 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.

A handwritten signature in black ink, appearing to read "David S. Small", written over a horizontal line.

David S. Small
Secretary

HEARING OFFICER'S REPORT

TO: The Honorable David S. Small
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 §§3710-12, as follows, to wit: 7 DE Admin. Code 3710: *Conch*; 7 DE Admin. Code 3711: *Conch Minimum Size Limits*; and replacing 7 DE Admin. Code 3712: *Commercial Conch Dredge Licenses* with a new Section 3712, to wit: *Commercial Conch Season***

DATE: August 24, 2015

I. BACKGROUND AND PROCEDURAL HISTORY:

A public hearing was held on Thursday, May 28, 2015, 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 §§3710-12, as follows, to wit: 7 DE Admin. Code 3710: *Conch*; 7 DE Admin. Code 3711: *Conch Minimum Size Limits*; and replacing existing 7 DE Admin. Code 3712: *Commercial Conch Dredge Licenses* with a new Section 3712, to wit: *Commercial Conch Season*. The purpose of this action is to provide Delaware’s licensed knobbed conch, *Busycon carica*, dredgers with access to this resource similar to that of their New Jersey counterparts.

The Department received a request from the commercial shellfishing sector to align Delaware’s knobbed conch management measures with those measures presently in place in the State of New Jersey. New Jersey’s conch dredge landings are an authorized by-catch of their blue crab dredge fishery. The New Jersey conch fishery is constrained by a five-inch minimum

size limit with a five month season from November 15 through April 15, and a cap of 93 dredge licenses. Delaware's directed knobbed conch fishery is presently constrained by a six-inch minimum size limit (3.5 inch minimum whorl diameter) with no closed season and delayed entry to the fishery. The lower minimum size limit in New Jersey poses a potential economic disadvantage to Delaware conch harvesters fishing the shared waterbody of Delaware Bay.

The Department agrees that parity with New Jersey's management measures is desirable; however, complete alignment (i.e., season dates and license cap) with the New Jersey by-catch fishery does not serve the best interest of Delaware's directed conch dredge fishery. Therefore, the Department proposes to adopt a five-inch minimum size limit (3-inch minimum whorl diameter) with a five-month open season from January 15 through June 15. The proposed minimum size limit will provide economic parity with New Jersey, and the implementation of a five month harvest season is expected to constrain harvest without unduly jeopardizing the sustainability of the resource. The number of active licenses in the Delaware conch dredge fishery (17 in 2014) does not warrant additional licensing restrictions at this time.

The Department has the statutory basis and legal authority to act with regard to the proposed amendments to 7 DE Admin. Code §§3710-12, pursuant to 7 Delaware Code, Sections 1902(a)(1), 2804, and 2806. Members of the public attended the May 28, 2015 hearing, and comment was received by the Department with regard to the aforementioned proposed amendments as referenced above. It should also be noted that all proper 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) fourteen documents introduced by responsible Department staff at the public hearing held on May 28, 2015, and marked by this Hearing Officer accordingly as Department Exhibits 1-14. 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.

As noted above, the purpose of this proposed regulatory promulgation is to provide Delaware's licensed knobbed conch, *Busycon carica*, dredgers with access to this resource similar to that of their New Jersey counterparts. The Department agrees that parity with New Jersey's management measures is desirable; however, complete alignment (i.e., season dates and license cap) with the New Jersey by-catch fishery does not serve the best interest of Delaware's directed conch dredge fishery. Therefore, the Department proposes to adopt a five-inch minimum size limit (3-inch minimum whorl diameter) with a five-month open season from January 15 through June 15. The proposed minimum size limit will provide economic parity with New Jersey and the implementation of a five month harvest season is expected to constrain harvest without unduly jeopardizing the sustainability of the resource. As noted previously, the number of active licenses in the Delaware conch dredge fishery (17 in 2014) does not warrant additional licensing restrictions at this time.

The aforementioned proposed Amendments were presented and thoroughly vetted by the Department at the public hearing on May 28, 2015. As noted previously, members of the public attended said public hearing and asked clarifying questions with regard to this proposed regulatory promulgation, which were thoroughly addressed by Department staff at that time. Pursuant to Delaware law, the record remained open for fifteen (15) additional days subsequent to the date of the public hearing, for the purpose of receiving additional public comment, however, none was received by the Department during the post-hearing phase of this regulatory promulgation. Again, all proper notification and noticing requirements concerning this proposed promulgation were met by the Department in this matter.

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 §§3710-12: *Conch Regulations*, as noted above. Accordingly, I recommend promulgation of these proposed regulatory amendments 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 the proposed amendments to 7 DE Admin. Code §§3710-12, pursuant to 7 Delaware Code, Sections 1902(a)(1), 2804, and 2806;
2. The Department has jurisdiction under its statutory authority, pursuant to 7 *Del.C.* Ch. 60, to issue an Order adopting these proposed regulatory amendments as final;

3. The Department provided adequate public notice of the proposed regulatory amendments and all proceedings in a manner required by the law and regulations, provided the public with an adequate opportunity to comment on the proposed regulatory amendments, including at the time of the public hearing held on May 28, 2015, and held the record open through close of business on June 12, 2015, consistent with 29 *Del.C.* §10118(a), in order to consider public comment on these proposed regulatory amendments before making any final decision;

4. Promulgation of the proposed regulatory amendments to 7 DE Admin. Code §§3710-12: *Conch Regulations*, will allow Delaware to (1) provide Delaware's licensed knobbed conch, *Busycon carica*, dredgers with access to this resource similar to that of their New Jersey counterparts; (2) adopt a five-inch minimum size limit (3-inch minimum whorl diameter) with a five-month open season from January 15 through June 15; and (3) afford Delaware economic parity with New Jersey by the implementation of said five month harvest season, which is expected to constrain harvest without unduly jeopardizing the sustainability of the resource;

5. The Department has reviewed these proposed regulatory amendments in the light of the Regulatory Flexibility Act, consistent with 29 *Del.C.* Ch. 104, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;

6. The Department's proposed regulatory amendments, as published in the May 1, 2015 *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 regulatory amendments as final regulatory amendments to 7 DE Admin. Code §§3710-12: *Conch Regulations* 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.



LISA A. VEST
Public Hearing Officer

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Attachments/Appendix:
Appendix A: Proposed Reg. Amendments

APPENDIX “A”

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL
DIVISION OF FISH AND WILDLIFE
3000 Division of Fish and Wildlife
3700 Shellfish
3710 Conch

3711 Conch Minimum Size Limits

(Penalty Section 7 Del.C. §1912)

- 1.0 It shall be unlawful for any person to possess any channeled conch, *Busycotypus canaliculatum*, that measures less than six (6) inches in length or 3 1/8 inches in diameter at the whorl.
- 2.0 Notwithstanding the provisions of paragraph 1.0, a person may possess no more than five (5) channeled conchs per 60 pounds that are less than six (6) inches in length or 3 1/8 inches in diameter at the whorl.
- 3.0 It shall be unlawful for any person to possess any knobbed conch, *Busycon carica*, that measures less than five (5) inches in length or less than three (3) inches in diameter at the whorl.
- 4.0 Notwithstanding the provisions of paragraph 3.0, a person may possess no more than five (5) knobbed conchs per 60 pounds that are less than the allowable minimum length limit or the minimum diameter at the whorl.

1 DE Reg. 250 (9/1/97)

1 DE Reg. 835 (1/1/98)

10 DE Reg. 1034 (12/01/06)

13 DE Reg. 675 (11/01/09)

3712 Commercial Conch Season

(Penalty Section 7 Del.C. § 1912)

- 1.0 Notwithstanding 7 Del. C. §§2803(a) and 2805, it is unlawful [to] for a vessel equipped with a dredge to possess knobbed conch during the period June 16 through January 14.

10 DE Reg. 1034 (12/01/06)

