



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL
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Office of the
Secretary

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Secretary's Order No.: 2019-F-0033

**RE: Approving Final Regulations to Amend 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 of Issuance: August 14, 2019

Effective Date of the Amendment: September 11, 2019

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 and 6010, and all other relevant statutory authority, 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 (“Amendments”) to 7 DE Admin. Code 3700: *Shellfish*. Specifically, the Department proposes to adopt new regulations for Jonah Crab within its existing *Shellfish* regulations (new 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 adopt provisions which will enable Delaware 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 in August 2015, 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 proposes to implement the following regulatory 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 ¾ 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*, the Department 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 the formal promulgation of these proposed Amendments, 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 were no members of the public in attendance at the public hearing. Pursuant to 29 *Del.C.* §10118(a), the hearing record remained open for receipt of additional written comment for 15 days following the public hearing. The hearing record formally closed for comment in this matter at close of business on June 7, 2019, with no comment having been received by the Department during any phase of this formal 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.

Hearing Officer Theresa Newman prepared her Report dated August 1, 2019 (“Report”), which expressly incorporated the Department’s proposed Amendments into the hearing record generated in this matter. 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 in the Division of Fish and Wildlife, and established by the Hearing Officer's Report, I find that the proposed regulatory Amendments to 7 DE Admin. Code 3700: *Shellfish*, are well-supported. I further find that the Department's Fish and Wildlife experts fully developed the record to support adoption of these Amendments. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed Amendments be promulgated as final.

The following reasons and conclusions are entered:

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. Ch.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, and has already complied with the federal Regulatory Flexibility Act, 5 U.S.C. §601, et seq.;
6. The Department’s Hearing Officer’s Report, including its established record and the recommended proposed Amendments as set forth in Appendix “A,” are hereby adopted to provide additional reasons and findings for this Order;
7. 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 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 the proposed Amendments as final regulatory 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.



Shawn M. Garvin
Secretary

