

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Sections 901(c & d), 903(e)(2)a and 903(e)(3)
(7 Del.C. §§901(c & d), 903(e)(2)a and 903(e)(3))
7 DE Admin. Code 3541

PROPOSED

REGISTER NOTICE #2014-07

3541 Atlantic Sharks

1. TITLE OF THE REGULATION:

3541 Atlantic Sharks

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

The purpose of this action is to adopt provisions consistent with Addenda II and III to the Atlantic States Marine Fisheries Commission's (ASMFC) Interstate Fishery Management Plan for Atlantic Coastal Sharks. The proposed action will maintain consistency between the federal (2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan as amended) and ASMFC management plans, preserve the historical distribution of smoothhound (*Mustelus canis* and *Mustelis norrisi*) landings, and protect hammerhead shark to maturity.

This action defines a smoothhound (colloquially referred to as smooth dogfish or sand sharks) complex. Although the smoothhound complex has not been assessed, NOAA Fisheries is developing a coastwide smoothhound quota. In anticipation of a coastwide quota, the ASMFC developed state allocations under Addendum II to preserve the historical distribution of smoothhound. The proposed action will also implement shark finning limits consistent with the Shark Conservation Act of 2010 and 7 Del.C. §928A.

Consistent with Addendum III, the proposed action adjusts the shark species groupings for management purposes. Most significantly, the proposed action groups scalloped (*Sphyrna lewini*), great (*S. mokarran*) and smooth (*S. zygaena*) hammerhead sharks into a single complex, as it is difficult to differentiate the species. A recent assessment of scalloped hammerhead sharks indicated that the species is overfished and overfishing is occurring. It was also determined that female scalloped hammerhead sharks reach maturity at 78 inches fork length (Hazin et al. 2001, NOAA Fisheries FEIS for Amendment 5a, pp. 2-19). Therefore, NOAA Fisheries changed the recreational size limit for all hammerhead sharks to 78 inches. The proposed action also separates the blacknose shark (*Carcharhinus acronotus*) from the small coastal shark complex.

Finally, the action proposes changes to the regulation that improve readability, but do not change regulatory intent.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Delaware Code, Sections 901(c & d), 903(e)(2)a, and 903(e)(3)

5. LIST OF OTHER REGULATIONS THAT MAY BE IMPACTED OR AFFECTED BY THE PROPOSAL:

N/A

6. NOTICE OF PUBLIC COMMENT:

The hearing record on the proposed changes to 3541 Atlantic Sharks will be open January 1, 2015. Individuals may submit written comments regarding the proposed changes via e-mail to Lisa.Vest@state.de.us or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. A public hearing on the proposed amendment will be held on January 22, 2015 beginning at 6:00 PM in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901.

7. PREPARED BY:

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(Penalty Section 7 Del.C. §936(b)(2))

1.0 Definitions:

“Non-Sandbar Aggregated large coastal species” shall mean any of the following species of sharks or parts thereof:

Great hammerhead, *Sphyrna mokarran*
Scalloped hammerhead, *Sphyrna lewini*
Smooth hammerhead, *Sphyrna zygaena*
Nurse shark, *Ginglymostoma cirratum*
Blacktip shark, *Carcharhinus limbatus*
Bull shark, *Carcharhinus leucas*
Lemon shark, *Neqapriion brevirostris*
Silky shark, *Carcharhinus falciformis*
Spinner shark, *Carcharhinus brevipinna*
Tiger shark, *Galeocerdo cuvieri*

“Blacknose shark” means *Carcharhinus acronotus* or any parts thereof.

“Fillet” shall mean to remove slices of fish flesh, of irregular size and shape, from the carcass by cuts made parallel to the backbone.

“Hammerhead species” means any of the following species of sharks or parts thereof:

Great hammerhead, *Sphyrna mokarran*
Scalloped hammerhead, *Sphyrna lewini*
Smooth hammerhead, *Sphyrna zygaena*

“Land or landing” shall mean to put or cause to go on shore from a vessel.

“Management unit” shall mean any of the non-sandbar aggregated large coastal species, small coastal species, blacknose shark, hammerhead species, pelagic species and prohibited species of sharks or parts thereof defined in this regulation. Smooth dogfish (*Mustelus canus*), although they are a species of shark, are not presently part of the management unit as defined above, and are not subject to minimum size or daily harvest restrictions. They are subject to the provisions of Regulation 3541, Sections 3.0 and 4.0.

“NOAA Fisheries” means National Oceanic and Atmospheric Administration’s National Marine Fisheries Service.

“Pelagic species” shall mean any of the following species of sharks or parts thereof:

Porbeagle shark, *Lamna nasus*
Shortfin mako, *Isurus oxyrinchus*
Blue shark, *Prionace glauca*
Oceanic whitetip shark, *Carcharhinus longimanus*
Thresher ~~Common~~ thresher shark, *Alopias vulpinus*

“Prohibited species” shall mean any of the following species of sharks or parts thereof:

Basking shark, *Cetorhinidae maximus*
White shark, *Carcharodon carcharias*
Bigeye sand tiger, *Odontaspis noronhai*
Sand tiger, *Odontaspis taurus*
Whale shark, *Rhincodon typus*
Bignose shark, *Carcharhinus altimus*
Caribbean reef shark, *Carcharhinus perezi*
Dusky shark, *Carcharhinus obscurus*
Galapagos shark, *Carcharhinus galapagensis*
Narrowtooth shark, *Carcharhinus brachyurus*
Night shark, *Carcharhinus signatus*
Atlantic angel shark, *Squatina dumerili*
Caribbean sharpnose shark, *Rhizoprionodon porosus*
Smalltail shark, *Carcharhinus porosus*
Bigeye sixgill shark, *Hexanchus vitulus*
Sevengill shark, *Heptranchias perlo*
Sixgill shark, *Hexanchus griseus*
Longfin mako, *Isurus paucus*

Bigeye thresher, *Alopias superciliosus*

"Sandbar shark" or "**research species**" shall mean Carcharhinus plumbeus or any parts thereof.

"Shore fishing" or "**shore angler**" shall mean any fishing that does not take place on board a vessel. ~~The terms "shore fishing" and "shore angler" are synonymous.~~

"Small coastal species" shall mean any of the following species of sharks or parts thereof:

Bonnethead, *Sphyrna tiburo*

Atlantic sharpnose shark, *Rhizoprionodon terraenovae*

Blacknose shark, *Carcharhinus acronotus*

Finetooth shark, *Carcharhinus isodon*

"Smoothhound" means any of the following species of sharks or parts thereof:

Smooth dogfish, *Mustelus canis*

Florida smoothhound, *Mustelus norrisi*

3 DE Reg. 1088 (02/01/00)

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

2.0 Prohibited Species

2.1 It ~~shall be~~ is unlawful for any person to land, purchase, trade, barter, or possess or attempt to land, purchase, trade, barter, or possess a prohibited species (1.9).

2.12 It ~~shall be~~ is unlawful for any hook and line fisherman to remove from the water sandbar shark, or any other species of shark when prohibited from harvest under §3541.

2.3 It is unlawful for any person to engage in a directed commercial fishery for a prohibited (1.9) or research species (1.10).

14 DE Reg. 193 (09/01/10)

14 DE Reg. 1385 (06/01/11)

3.0 Finning

3.01 It ~~shall be~~ Except as provided in 3.2, it is unlawful for any person to possess the fins from any shark in the management unit (1.6) prior to landing said shark unless said fins are naturally attached to the body of said shark.

3.2 A person issued a valid commercial food fish license may completely remove the fins from any smoothhound, provided the total weight of the fins does not exceed twelve (12) percent of the total dressed weight of smoothhound complex carcasses on board a vessel.

4.0 Fishing Methods

4.0 It ~~shall be~~ is unlawful for any person to fish for any shark while in state waters with any fishing equipment or by any method, except: (1) Hook and Line; (2) Gill Net.

14 DE Reg. 193 (09/01/10)

5.0 Filleting Prior to Landing

5.0 It ~~shall be~~ is unlawful for any person to fillet a shark in the management unit (1.6) prior to landing said shark. A shark may be eviscerated prior to landing said shark, but the head, tail, and fins must remain naturally attached to the carcass, ~~except that~~ as provided in 3.2 and commercial fishermen may eviscerate and remove the head of any shark reduced to possession, but the tail and fins must remain attached to the carcass.

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

14 DE Reg. 193 (09/01/10)

6.0 Shark Handling

6.0 It ~~shall be~~ is unlawful to release any shark in the management unit (1.6) or any sandbar shark in a manner that will not ensure said sharks maximum probability of survival. All species of shark when prohibited from harvest under §3541 must be immediately released.

14 DE Reg. 193 (09/01/10)

14 DE Reg. 1385 (06/01/11)

7.0 Recreational Possession Limits

7.01 It ~~shall be~~ is unlawful for the operator of any vessel without a commercial food fishing license to have on board said vessel more than one non-prohibited shark per trip from among those species in the management unit (1.6), regardless of the number of people on board the vessel. In addition each

recreational angler fishing from a vessel may harvest and possess one bonnethead, and one Atlantic sharpnose shark per trip.

7.2 It is unlawful for any shore angler without a commercial foodfishing license to take and reduce to possession more than one non-prohibited shark from among those species in the management unit (1.6) per day (a day being 24 hours). Recreational shore anglers may also harvest one additional bonnethead, and one additional Atlantic sharpnose shark per day.

8.0 Unlawful Sale

~~7.1~~ It shall be is unlawful for any shark from the management unit (1.6) caught in state waters to be bought and sold without a federal Commercial shark dealer permit.

1 DE Reg. 345 (10/1/97)

3 DE Reg. 1088 (2/1/00)

8 DE Reg. 1718 (6/1/05)

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

14 DE Reg. 193 (09/01/10)

~~9.0~~ It shall be unlawful for any person to engage in a directed commercial fishery for a prohibited species. Commercial Quotas and Limits

~~8.09.1~~ It shall be is unlawful for any person who has been issued a valid commercial food fishing license while on board any vessel to possess any non-prohibited shark from among those species in the management unit (1.6) during the remainder of any period after the effective date a commercial quota for that group of sharks has been reached in said period or is projected to be reached in said period by the National Marine Fisheries Service, National Oceanic and Atmospheric Administration and the U.S. Department of Commerce after the closure date set by NOAA Fisheries for that fishery. Further, it shall be is unlawful for any person who has been issued a valid commercial food fishing license while on board any vessel to possess any non-sandbar large coastal sharks, small coastal sharks, or pelagic non-prohibited sharks from the management unit in excess excess of current federal daily harvest limits administered by the National Marine Fisheries Service NOAA Fisheries.

9.2 Delaware's annual smoothhound quota will be 0.339 percent of the coastwide quota in accordance with the Atlantic States Marine Fisheries Commission's Interstate Fishery Management Plan for Atlantic Coastal Sharks.

9.3 When the Department has determined that 95% of Delaware's annual smoothhound quota allocation has been landed, the Department shall establish, based on recent fishery performance and landings, a date and time to order the fishery closed.

9.4 It is unlawful for any person who has been issued a valid commercial food fishing license while on board any vessel to possess any smoothhound once the Department has ordered the fishery closed.

9.5 Any overage in the Delaware's annual commercial smoothhound quota will be subtracted from the following year's smoothhound quota allocation.

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

14 DE Reg. 193 (09/01/10)

10.0 Recreational Size Limits

10.01 It shall be is unlawful for the operator of any vessel to possess without a valid commercial foodfishing license to have on board said vessel any non-prohibited shark from among those species in the management unit (1.6) that measures less than 54 inches, fork length (tip of snout to indentation between dorsal and ventral tail lobes), with the exception of Atlantic sharpnose, blacknose, finetooth, bonnethead, and smooth dogfish sharks, for which no minimum size limit applies except as provided in 10.2 and 10.3.

10.2 It is unlawful to possess without a valid commercial food fishing license any hammerhead species (1.4) that measures less than 78 inches, fork length (tip of snout to indentation between dorsal and ventral tail lobes).

10.3 Smoothhound, bonnethead, Atlantic sharpnose, blacknose, and finetooth sharks are exempt from size limits.

3 DE Reg. 1088 (2/1/00)

1 DE Reg. 850 (1/1/98)

1 DE Reg. 1005 (2/1/98)

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

14 DE Reg. 193 (09/01/10)

11.0 ~~It shall be unlawful for any shore angler without a commercial foodfishing license to take and reduce to possession any non-prohibited shark from among those species in the management unit less than 54 inches, with the exception of Atlantic sharpnose, blacknose, finetooth, bonnethead, and smooth dogfish sharks, for which no size limit applies.~~ Aggregated Large Coastal Sharks Closed Season

13.0 ~~It shall be~~ is unlawful for any recreational or commercial fisherman to possess silky, tiger, blacktip, spinner, bull, lemon, nurse, scalloped hammerhead, great hammerhead, and smooth hammerhead sharks from May 15 through July 15, regardless of where the shark was caught. Fishermen who catch any of these species in federal waters may not transport them through Delaware state waters during the aforementioned closed season.

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

14 DE Reg. 193 (09/01/10)

12.0 ~~It shall be unlawful for any shore angler without a commercial foodfishing license to take and reduce to possession more than one non-prohibited shark from among those species in the management unit per day (a day being 24 hours). Recreational shore anglers may also harvest one additional bonnethead, and one additional Atlantic sharpnose shark per day.~~

12.0 Unlawful Possession of Sandbar Shark and Exception

14.0 ~~It shall be~~ is unlawful for any recreational or commercial fisherman to land or possess any sandbar sharks, except for a commercial fisherman in possession of a valid sandbar shark research permit issued by the ~~National Marine Fisheries Service~~ NOAA Fisheries. There must be a qualified observer aboard any vessel that lands and possesses sandbar sharks fishing under the auspices of a valid federal research permit.

8 DE Reg. 1718 (6/1/05)

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

14 DE Reg. 193 (09/01/10)

13.0 Federally Prohibited Shark Reciprocity

15.0 ~~It shall~~ is unlawful for any Delaware recreational or commercial fisherman to land or possess any species of shark in state waters that is illegal to catch or land or possess in federal waters. ~~Presently it is unlawful for recreational fishermen to take and possess silky sharks in federal waters at any time of the year.~~

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

14 DE Reg. 193 (09/01/10)

14.0 Collecting for Research or Display

16.0 The Department may grant anyone permission to take and possess sharks that would otherwise be illegal to take and possess when used for display and/or research purposes. Applicants will need a current State of Delaware scientific collecting permit and a valid federal sandbar shark research permit, if collecting sandbar sharks. Applicants must annually report the number, weight, species, location caught, and gear used for each shark collected for research or display purposes, and the annual disposition of said sharks throughout the life of each shark so taken. The Division reserves the right to place limits on or deny any request to take prohibited species of sharks under the auspices of a scientific collecting permit.

8 DE Reg. 1718 (06/01/05)

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

14 DE Reg. 193 (09/01/10)

18 DE Reg. 525 (01/01/15) (Prop.)