

**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL
DIVISION OF FISH AND WILDLIFE**

Statutory Authority: 7 Delaware Code, Sections 903(e)(2) (7 Del.C. §§903(e)(2))

FINAL

ORDER No. 2005-F-0026

Summary of Evidence and Information

Pursuant to due notice Vol. 8, Issue 10 *Delaware Register of Regulations*, 1412-1416 (April 1, 2005), the Department of Natural Resources and Environmental Control proposes changes to Tidal Finfish Regulation 3504 Striped Bass Possession Size Limit; Exceptions; Tidal Finfish Regulation 3541 Atlantic Sharks; Tidal Finfish Regulation 3512 Winter Flounder Size Limit; and proposes new Tidal Finfish Regulation 3566 Minimum Age for a Commercial Finfish Licensee or a Recreational Gill Net Licensee and new Shellfish Regulation 3701 Minimum Age for a Commercial Shellfishing Licensee or Non-Commercial Clamming Permittee.

A public hearing was held on April 27, 2005 to take comments on the above proposed amendments and new regulations. The comment period remained open until 4:30 PM May 2, 2005 for written, faxed, or e-mailed comments.

Findings of Fact

- §903(e)(2)(a) of 7 Delaware Code authorizes the Department of Natural Resources and Environmental Control (DNREC) to promulgate regulations concerning species of finfish that spend part or all their life cycle within the tidal waters of the state provided that such regulations are consistent with an interstate fisheries management plan developed for the protection and conservation of said species of finfish. §903(f) and §1902(a)(4) gives the Department authority to issue permits and carry out procedures for permits, licenses and applications for fishing for finfish and shellfish.
- The Atlantic States Marine Fisheries Commission recently adopted Amendment 1 to the Interstate Fishery Management Plan for Winter Flounder that requires Delaware to change its winter flounder regulations in order to come into compliance with the amended plan.
- Regulations passed in February 2005 specific to striped bass possession size limits for commercial gill netters during the recently extended commercial seasons in February and May do not spell out specifically what minimum size limits are in effect during the extended season, and clarification is needed on this point. The minimum size in Delaware River and Bay during the March/April season has been 20 inches total length.
- Regulations governing the recreational harvest of sharks taken by shoreline or pier fishermen should be made consistent with existing federal and state regulations governing recreational harvest of sharks from boats. The existing state and federal regulation for recreational fishermen fishing from boats is one large coastal, small coastal or pelagic species of shark (excluding dogfish sharks) per vessel per day, minimum length 54 inches. Allowing shoreline fishermen to keep one shark 54 inches long per day of these same species would be consistent with the language concerning recreational harvest from boats.
- Although Delaware has not had a recreational winter flounder fishery in many years, historically populations of winter flounder were most prevalent in Delaware's Inland Bays from late winter into the early spring. A spring fishery in compliance with Amendment 1 to the Interstate Fishery Management Plan for winter flounder would allow some recreational harvest if the species is ever restored to its former abundance in the Delaware portion of its range.
- Although existing statutes specify that commercial fishing apprentices and anyone receiving a crab pot or crab dredge license through license transfer must be 16 years of age, the Delaware Code is silent on how old someone must be in order to qualify for other types of commercial fishing licenses and permits.
- The Advisory Council on Tidal Finfisheries at the March 6, 2005 meeting voted to support the proposed regulations concerning minimum ages as written.
- The Shellfish Advisory Council voted at their April 21, 2005 meeting to support the proposed regulation regarding minimum age for commercial license holders, except that they recommended that the minimum age for commercial clam tong/rake license holders be 14 years of age instead of 16. They made this recommendation so that 14- and 15-year old teenagers could rake clams on their own and make a few

dollars.

- The use of a hand-held clam rake by a person who is wading is a low technology means of harvesting shellfish that could safely be done by someone 14 years of age. Other forms of commercial shellfishing require the use of larger boats and higher technology involving pot winders, winches, and/or dredges. The only other exception is for commercial horseshoe crab collecting, but no additional licenses are available for this form of harvesting. Teenagers or even children may assist licensed commercial horseshoe crab collectors now.
- All of the hearing attendees spoke in favor of all of the proposed regulations as written. No one expressed a preference in regard to the two options listed for an open season for winter flounder.

Conclusions

- Setting a minimum size limit of 20 inches total length for striped bass taken from Delaware River and Delaware Bay during the extended drift gill net seasons of February 15-until the end of February and May 1-May 31 would be consistent with the present minimum size limit for March and April and should be permissible within the guidelines established by the Atlantic States Marine Fisheries Commission in Amendment 6 to the Interstate Fishery Management Plan for Striped Bass.
- For large coastal, small coastal, and pelagic shark species exclusive of dogfish sharks, the daily limit for recreational fishermen fishing from shore should be one per person per day and the minimum size should be 54 inches fork length.
- The recreational winter flounder minimum size limit should be raised from 10 inches to 12 inches and the daily harvest limit should be set at 10 per person per day. The open season for recreational harvest of winter flounder should be February 11 until midnight April 10.
- The minimum age for applicants for all commercial fishing and shellfishing licenses and fishing permits should be 16 with the exception of commercial clam tong/rake which should be 14.

ORDER

It is hereby ordered this ____ of May, 2005 that amendments to Tidal Finfish Regulations 3504, 3541, 3512 and new Tidal Finfish Regulation 3566 and new Shellfish Regulation 3701, copies of which are attached hereto, are adopted pursuant to Sections 903(e)(2)(a), 903(f), and 1902(a)(4) of 7 **Del.C.** and are supported by the Department's findings of evidence and testimony received. This Order shall become effective on June 10, 2005.

John A. Hughes, Secretary
Department of Natural Resources and Environmental Control

3504 Striped Bass Possession Size Limit; Exceptions. (Formerly Tidal Finfish Reg. 7) (Penalty Section 7 **Del.C.** §936(b)(2))

1.0 Notwithstanding, the provisions of 7 **Del.C.** §929(b)(1) ~~or unless otherwise authorized~~, it shall be unlawful for any recreational fisherman to take and reduce to possession any striped bass that measures less than twenty-eight (28) inches in total length.

2.0 Notwithstanding, the provisions of 7 **Del.C.** §929(b)(1) ~~or unless otherwise authorized~~, it shall be unlawful for any commercial food fisherman to take and reduce to possession any striped bass that measure less than twenty-eight (28) inches in total length from the tidal waters of this State except that commercial gill net fishermen may take striped bass measuring no less than twenty (20) inches in total length from the tidal waters of the Delaware River and Delaware Bay or their tributaries during the period from months of February 15 March and April through May 31 or from the tidal waters of the Nanticoke River or its tributaries during the period from February 15 through ~~in~~ the month of March.

3.0 ~~Unless otherwise authorized, it~~ shall be unlawful for any person to possess a striped bass that measures less than 28 inches, total length, unless said striped bass is in one or more of the following categories:

3.1 It has affixed, a valid strap tag issued by the Department to a commercial gill net fisherman and was legally taken and tagged by said commercial gill net fisherman from the tidal waters of the Delaware River and Delaware Bay or their tributaries during the period from months of February 15 March and April through May 31; or from the tidal waters of the Nanticoke River or its tributaries during the period from February 15 ~~in~~ through the month of March; or

3.2 It was legally landed in another state for commercial purposes and has affixed a valid tag issued by said state's marine fishery authority; or

3.3 It entered Delaware ~~is~~ packed or contained for shipment, either fresh or frozen, and accompanied by a bill-of-lading with a destination to a state other than Delaware; or

3.4 It was legally landed in another state for non commercial purposes by the person in possession of said striped bass and there is affixed to either the striped bass or the container in which the striped bass is contained a tag that depicts the name and address of the person landing said striped bass and the date, location, and state in which said striped bass was landed; or

3.5 It is the product of a legal aquaculture operation and the person in possession has a written bill of sale or receipt for said striped bass.

4.0 ~~Unless otherwise authorized, it~~ shall be unlawful for any commercial finfisherman to possess any striped bass for which the total length has been altered in any way prior to selling, trading or bartering said striped bass.

5.0 The words "land" and "landed" shall mean to put or cause to go on shore from a vessel.

6.0 It shall be unlawful for any person to land any striped bass that measures less than twenty-eight (28) inches in total length at any time, except those striped bass caught in a commercial gill net legally fished in the waters of Delaware River or Delaware Bay or their tributaries during the period from February 15 months of March and April through May 31 or from a commercial gill net legally fished in the tidal waters of the Nanticoke River or its tributaries ~~in~~ during the period from February 15 through the month of March.

7.0 It shall be unlawful for a commercial finfisherman authorized to fish during Delaware's commercial striped bass fishery to land any striped bass that measures less than twenty (20) inches in total length.

3512 Winter Flounder Size Limit; Possession Limit; Seasons

(Formerly Tidal Finfish Reg. 20)

(Penalty Section 7 Del.C. §936(b)(2))

1.0 It shall be unlawful for any person to possess any winter flounder, (*Pseudopleuronectes Pleuronectes americanus*), that measure less than twelve (12) ~~ten (10)~~ inches, total length.

2.0 It shall be unlawful for any recreational fisherman to have in possession more than ten (10) winter flounder per day (a day being 24 hours) at or between the place where said winter flounder were caught and said recreational fisherman's personal abode or temporary or transient place of lodging.

3.0 ~~[Option 1 (Preferred)]~~. It shall be unlawful for any recreational fisherman to take and reduce to possession any winter flounder before 12:01 AM February 11 or after midnight April 10 in any given calendar year.

~~[Option 2 It shall be unlawful for any recreational fisherman to take and reduce to possession any winter flounder before 12:01 AM February 11 or after midnight April 30 in any given calendar year. Further, it shall be unlawful for any recreational fisherman to take and reduce to possession any winter flounder between 12:01 AM March 1 and 12:00 midnight March 20 in any given calendar year.~~

~~Other options for an open fishing season may be considered as long as they include a 20 day closure during the months of March and April and a 60 day open season as required for compliance with Amendment 1 to the Atlantic States Marine Fisheries Commission Winter Flounder Management Plan.]~~

3541 Atlantic Sharks

(Formerly Tidal Finfish Reg. 25)

(Penalty Section 7 Del.C. §936(b)(2))

1.0 Definitions:

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

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

“**Management Unit**” shall mean any of the large coastal species, small coastal species, pelagic species and prohibited species of sharks or parts thereof defined in this regulation.

“**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*
White shark, *Carcharodon carcharias*
Nurse shark, *Ginglymostoma cirratum*
Blacktip shark, *Carcharhinus limbatus*
Bull shark, *Carcharhinus leucas*
Lemon shark, *Neqapron brevirostris*
Sandbar shark, *Carcharhinus plumbeus*
Silky shark, *Carcharhinus falciformis*
Spinner shark, *Carcharhinus brevipinna*
Tiger shark, *Galeocerdo cuvieri*

“**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*

“**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 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, *Heptanchias perlo*
Sixgill shark, *Hexanchus griseus*
Longfin mako, *Isurus paucus*
Bigeye thresher, *Alopias superciliosus*

3 DE Reg 1088 (2/1/00)

2.0 It shall be unlawful for any person to land, purchase, trade, barter, or possess or attempt to land, purchase, trade, barter, or possess a prohibited species.

3.0 It shall be unlawful for any person to possess the fins from any shark in the management unit prior to landing said shark unless said fins are naturally attached to the body of said shark.

4.0 It shall be unlawful for any person to fillet a shark in the management unit prior to landing said shark. A shark may be eviscerated and the head removed prior to landing said shark.

5.0 It shall be unlawful to release any shark in the management unit in a manner that will not ensure said sharks maximum probability of survival.

6.0 It shall be unlawful for the operator of any vessel without a commercial food fishing license to have on board said vessel more than one shark in the management unit except that two Atlantic sharpnose sharks also may be on board in addition to the one shark in the management unit.

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

3 DE Reg 1088 (2/1/00)

7.0 It shall be unlawful for any person who has been issued a valid commercial food fishing license while on board any vessel to possess any large coastal shark, any small coastal shark or any pelagic shark in the management unit 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.

8.0 It shall be unlawful for any person to engage in a directed commercial fishery for a prohibited species.

9.0 It shall be unlawful for the operator of any vessel without a commercial foodfishing license to have on board said vessel any large coastal shark, any pelagic shark or any small coastal shark that measures less than 54 inches, fork length (tip of snout to indentation between dorsal and ventral tail lobes).

10.0 It shall be unlawful for any person without a commercial foodfishing license to take and reduce to possession any large coastal shark, any small coastal shark or any pelagic shark less than 54 inches.

11.0 It shall be unlawful for any person without a commercial foodfishing license to take and reduce to possession more than one large coastal shark, small coastal shark or pelagic shark per day (a day being 24 hours).

3566 Minimum Age for a Commercial Finfish Licensee or a Recreational Gill Net Licensee (Penalty Section 7 Del.C. §936(b)(2))

1.0 An individual must be at least 16 years of age to qualify for a commercial foodfish license as defined in 7 Delaware Code §914 or to qualify for a food fishing equipment permit as defined in 7 Delaware Code §915, including recreational gill net permits and recreational drift gill net permits.

3701General

1.0 An individual must be at least 16 years of age in order to qualify for any of the following licenses or permits:

~~1.1~~ **Commercial clam tong/rake license**

~~1.2~~ 1] Commercial clam dredge license

~~1.3~~ 2] Noncommercial clamming permit

~~1.4~~ 3] Commercial conch pot license

~~1.5~~ 4] Commercial conch dredge license

~~1.6~~ 5] Commercial crab pot license

~~1.7~~ 6] Commercial crab dredge license

~~1.8~~ 7] Commercial horseshoe crab collecting permit

~~1.9~~ 8] Horseshoe crab dredge permit

~~1.10~~ 9] Commercial lobster pot license

~~1.11~~ 10] Oyster harvesting license

[2.0 An individual must be at least 14 years of age in order to qualify for a commercial clam tong/rake license.]
8 DE Reg. 1718 (6/01/05)