

# DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

## DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 903(e)(2)(a) (7 **Del.C.** §903(e)(2)(a))  
7 **DE Admin. Code** 3541; 3581

### FINAL

**Secretary's Order No.: 2009-F-0015**

### **3540 Sharks and 3581 Spiny Dogfish**

Date of Issuance: May 15, 2009

Effective Date of the Amendment: June 11, 2009

#### **I. Background:**

A public hearing was held on Thursday, April 23, 2009, at 6:30 p.m. at the Department of Natural Resources and Environmental Control ("DNREC", "Department") Division of Soil and Water Conservation's Lewes Field Facility, 901 Pilottown Road, Lewes, Delaware to receive comment on proposed amendments to the Delaware Tidal Finfish Regulations for both Atlantic Sharks and Spiny Dogfish. The purposes of the aforementioned proposed amendments are (1) to bring Delaware into compliance with the Atlantic States Marine Fisheries Commission ("ASMFC")'s Interstate Fishery Management Plan for Atlantic Coastal Sharks ("Coastal Sharks Plan"), and (2) to liberalize commercial requirements in concert with the most recent revisions to the ASMFC's Interstate Fishery Management Plan for Spiny Dogfish ("Spiny Dogfish Plan").

The Coastal Sharks Plan mirrors requirements for shark fishing in federal waters by requiring all coastal states from Virginia to New Jersey to prohibit recreational and commercial landings of ten (10) shark species – silky, tiger, blacktip, spinner, bull, lemon, nurse, scalloped hammerheads, great hammerhead, and smooth hammerhead – from May 15 through July 15. Under this Plan, Delaware and all other states must prohibit recreational and commercial landings of sandbar sharks year-round, except for those commercial fishermen who hold a valid sandbar shark research permit issued by the National Marine Fisheries Service ("NMFS").

It should be noted that, at the time that the Department first submitted this proposed regulatory amendment promulgation to the Delaware Register of Regulations, smooth dogfish (*Mustelus canus*) was one of the species included as part of the ASMFC Coastal Sharks Plan, and as such was assigned proposed daily harvest limits under the aforementioned federal plan. However, the inclusion of smooth dogfish in this plan was recently re-considered by the ASMFC at their monthly meeting held on May 6, 2009 (at the request of North Carolina). As a result, the ASMFC has proposed an addendum to formally delete this species from its Coastal Shark Plan. Final action on this addendum is expected as early as August 2009. Based upon the ASFMC's actions in August, the Department may then initiate new regulatory amendment promulgations with regard to the smooth dogfish at that time, so that Delaware's regulations with regard to this particular species (i.e., daily harvest limits, etc.) will mirror those ASFMC guidelines. Thus, while the Department is going forward with some of the proposed amendments to Delaware Tidal Finfish Regulation 3541 concerning Atlantic Sharks (i.e., to correct minor grammatical errors and add clarifying language to provide a better understanding of this regulation for Delaware anglers), most of the language specifically pertaining to daily harvest limits for smooth dogfish (*Mustelus canus*) is being formally withdrawn by the Department at this time, and will be re-addressed at a later date in a new regulatory promulgation, pending the future actions of the ASMFC as it pertains to this particular species.

The proposed amendments to the spiny dogfish regulation are based on the ASMFC's Addendum II to the Spiny Dogfish Plan. With regard to spiny dogfish, the ASMFC coast-wide commercial quota for this species has been liberalized to twelve (12) million pounds per year, to be allocated among a Northern Region, a Southern Region, and North Carolina. The Southern Region, which includes Delaware, is allocated twenty-six (26) percent of the annual quota. Once the quota in the Southern Region is projected to have been reached, the commercial

landing, harvest, and possession of spiny dogfish for commercial purposes will be prohibited for the remainder of the year.

The daily landing limit for any Delaware commercial foodfishing license holder will be three thousand (3,000) pounds of spiny dogfish, except for those taking spiny dogfish from federal waters or for any Delaware fisherman selling spiny dogfish to a federally-permitted dealer, in which case federal possession and landing limits apply, including federal closures on the possession and landing of spiny dogfish. Any Delaware commercial fisherman in possession of a federal permit must abide by the most restrictive spiny dogfish landing limits, whether they are federal or state. It should be noted that there are no recreational limits on spiny dogfish at this time, as the limits are only applicable to commercial fishermen.

The Department has the statutory basis and legal authority to act with regard to these promulgations, pursuant to 7 Del.C. §§903(e)(2)(a) and 903(f). No other Delaware regulations are affected by these proposals.

A few comments were received by the Department from members of the public regarding these proposed regulatory amendments, both at the time of the public hearing held on April 23, 2009, and during the post-hearing phase of this promulgation. Department personnel in the Division of Fish and Wildlife provided oral answers to all questions raised by the public in a thorough and timely manner. The Department provided proper notice of the hearing as required by law. Afterwards, Hearing Officer Lisa A. Vest prepared her Hearing Officer's Report dated May 12, 2009, which is attached and expressly incorporated into this Order regarding this matter, and submitted the same to the Secretary for review and consideration.

## **II. Findings:**

The Department has provided a reasoned analysis and a sound basis in the record to support the issuance of the final regulations proposed in this matter. Moreover, the following findings and conclusions are entered at this time:

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 the proceeding and the public hearing in a manner required by the law and regulations;
4. The Department held a 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 these proposed amendments would bring Delaware into compliance with federal guidelines for the management of both Atlantic sharks and spiny dogfish, consistent with federal management plans and state jurisdiction;
7. Due to the ASMFC having proposed deleting the harvest and possession limits on the smooth dogfish species from their Atlantic Coastal Shark plan on May 6, 2009, all proposed promulgation language specifically pertaining to daily harvest limits for smooth dogfish (*Mustelus canus*) is being formally withdrawn by the Department at this time, and will be re-addressed at a later date in a new regulatory amendment promulgation as needed, pending the future actions of the ASMFC as it pertains to this particular species, so that Delaware's regulations with regard to this particular species will mirror those ASMFC guidelines;
8. Due to the ASMFC having proposed deleting the aforementioned gill net requirements from its Coastal Shark Plan at this time, all proposed language pertaining to the same is being formally withdrawn by the Department at this time, and will be re-addressed at a later date in a new regulatory amendment promulgation as needed, pending the future actions of the ASMFC as it pertains to this issue, so that Delaware's regulations with regard to this matter will mirror those ASMFC guidelines;
9. Promulgation of the remaining proposed amendments to Delaware Tidal Finfish Regulation 3541 concerning Atlantic Sharks will correct minor grammatical errors which currently exist, and will add clarifying language to provide a better understanding of this regulation for Delaware anglers;
10. The Department has reviewed both of 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;
11. The Department's aforementioned proposed amendments to Delaware's regulations concerning both Atlantic sharks and spiny dogfish, as published in the April 1, 2009 *Delaware Register of Regulations*

(and as revised as noted herein) and as set forth in Attachment "A" of the aforementioned Hearing Officer's Report, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, both 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*;

12. The Department shall submit the proposed regulations (again, as revised as noted herein) as final regulations to the Delaware Register of Regulations for publication in its next available issue, and shall provide written notice to the persons affected by the Order; and that
13. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary.

### III. Order:

Based on the record developed, as reviewed in the Hearing Officer's Report dated May 12, 2009 and expressly incorporated herein, it is hereby ordered that the proposed amendments, as revised, to Delaware Tidal Finfish Regulation 3541 for Atlantic Sharks and Regulation 3581 for Spiny Dogfish be promulgated in final form in the customary manner and established rule-making procedure required by law.

### IV. Reasons:

The promulgation of Delaware Tidal Finfish Regulations for both Atlantic sharks and spiny dogfish will bring Delaware into compliance with federal guidelines for the management of these species, since both come under both federal and state jurisdiction with regard to the harvest management of the same. It is incumbent upon Delaware to be in compliance with the Commission's plan, not only to avoid federal sanctions against Delaware and its fisheries, but to protect these species with these conservation measures to ensure that both Atlantic sharks and spiny dogfish will continue to be found in Delaware waters in the future.

In developing this regulation, the Department has balanced the absolute environmental need for the State of Delaware to promulgate regulations concerning this matter with the important interests and public concerns surrounding the same, in furtherance of the policy, purposes, and authority of 7 **Del.C.** §§903(e)(2)(a) and 903(f).

David S. Small, Acting Secretary

## 3540 Sharks

### 3541 Atlantic Sharks

(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.

~~**"Large mesh gill nets" shall mean any gill net with mesh of five inches or more stretched measure.**~~

**"Management Unit"** shall mean any of the non-sandbar large coastal species, small coastal species, pelagic species ~~[- smooth dogfish (*Mustelus canus*)]~~ 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]**

**“Non-Sandbar 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*

**“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, *Heptranchias perlo*

Sixgill shark, *Hexanchus griseus*

Longfin mako, *Isurus paucus*

Bigeye thresher, *Alopias superciliosus*

**"Sandbar shark"** shall mean *Carcharhinus plumbeus*

**"Shore fishing"** 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*

### **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, but the head, tail, and fins must remain naturally attached to the carcass, except that 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.

- 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 non-prohibited shark per trip from among those species in the management unit, 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~~[, and one smooth dogfish]~~ shark per trip 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)**

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

- 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~~ non-prohibited shark from among those species 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. **[Further, 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 non-sandbar large coastal sharks, small coastal sharks, or pelagic sharks in excess of current federal daily harvest limits administered by the National Marine Fisheries Service.]**
- 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~~ non-prohibited shark from among those species in the management unit 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.

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

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

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

- 10.0 It shall be unlawful for any ~~person~~ shore angler without a commercial foodfishing license to take and reduce to possession any ~~large coastal shark, any small coastal shark or any pelagic shark~~ 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.
- 11.0 It shall be unlawful for any ~~person~~ shore angler without a commercial foodfishing license to take and reduce to possession more than one ~~large coastal shark, small coastal shark or pelagic shark~~ 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 , and one additional smooth dogfish]~~ per day.

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

- 12.0 It shall be 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.
- 13.0 It shall be 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. 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.
- 14.0 It shall 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 unlawfil for recreational fishermen to take and possess silky sharks in federal waters at any time of the year.]
- 15.0 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. 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.
- ~~[16.0 It shall be unlawful for any commercial fisherman to possess or land sharks while using any single large mesh gill net that exceeds 2,735 yards in length in Delaware jurisdictional waters, and it shall be unlawful for any commercial fisherman to possess or land sharks from large mesh gill nets that have been untended for more than two hours at a time in Delaware jurisdictional waters.]~~

### 3580 Spiny Dogfish

#### 3581 Spiny Dogfish; ~~[Closure of Fishery]~~

(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, or federal law administered by the National Marine Fisheries Service, whichever is more restrictive. 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 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. 1515 (06/01/09)(Final)**