

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Sections 1902(a)(5) and 2804
(7 **Del.C.** §§1902(a)(5) and 2804)
7 **DE Admin. Code** 3711

FINAL

Secretary's Order No.: **2009-F-0039**

Approving Final Delaware Regulation Amendments for 2009: 7 DE Admin. Code 3711: Knobbed Whelks (Conch)

Date of Issuance: October 15, 2009
Effective Date of the Amendment: November 11, 2009

I. Background:

A public hearing was held on Wednesday, September 30, 2009, 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 to the Delaware Tidal Finfish Regulations for Knobbed Whelks (Conch).

The Department's proposed regulatory amendments to existing Delaware Shellfish Regulation 3711 for Knobbed Whelks (Conchs) were an issue at the public hearing held on September 30, 2009. The purpose of these proposed amendments is to establish a tolerance for undersize knobbed whelks (also known as knobbed conchs) in the dredge and pot commercial fisheries similar to the existing tolerance established in Regulation 3711, Section 2.0, for the channeled or smooth whelks (conchs). The proposed amendments to this regulation would allow the retention of up to five (5) undersized knobbed whelks per 60 pound bag, or basket, of whelks per day. The allowance of a few undersized knobbed whelks during the course of normal harvesting operations will be a convenience for harvesters who have to pay crews of widely varying experience to cull undersize conchs from the harvest. Additionally, such a tolerance is in recognition of the fact that, occasionally, conch shells are partially broken off either during or prior to harvesting. This proposed regulatory amendment will ease the burden of Department enforcement staff that must check the harvest for compliance with applicable minimum size limits.

The Department has the statutory basis and legal authority to act with regard to the proposed regulatory amendments concerning Shellfish Regulation 3711, pursuant to 7 **Del.C.** §1902(a)(5) and §2804. No other Delaware regulations are affected by these proposals.

Only one comment was received by the Department from the public regarding the proposed amendments to Shellfish Regulation 3711 (Knobbed Whelks), which was in support of this proposed promulgation.

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 October 9, 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 the proposed amendments to Delaware Shellfish Regulation 3711 will establish a

tolerance for undersized knobbed whelks (conchs) in the dredge and pot commercial fisheries similar to the existing tolerance established in Regulation 3711, Section 2.0, for the channeled or smooth whelks (conchs), namely, to allow the retention of up to five (5) undersized knobbed whelks per 60 pound bag or basket of whelks per day;

7. 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;

8. The Department's aforementioned proposed amendments to Delaware's regulations concerning knobbed whelks (conchs), as published in the September 1, 2009 *Delaware Register of Regulations* 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, 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*;

9. The Department shall submit the proposed regulations 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

10. 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 October 9, 2009 and expressly incorporated herein, it is hereby ordered that the proposed amendments to Delaware Shellfish Regulation 3711: Knobbed Whelk (Conch), be promulgated in final form in the customary manner and established rule-making procedure required by law.

IV. Reasons:

The promulgation of the amendments to Delaware Shellfish Regulation 3711: Knobbed Whelks (Conchs) will establish a tolerance for undersized knobbed whelks, thereby lessening the burden on Department enforcement staff that must regularly check the harvest for compliance with applicable minimum size limits.

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).(3), §1902(a)(5), and §2804.

Collin P. O'Mara
Secretary

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 ¼ inches in 2007, 5 ½ inches in 2008, 5 ¾ inches in 2009, and six (6) inches in length in 2010. Beginning in 2010, the minimum length shall remain 6 inches thereafter until changed by regulation. The minimum diameter at the whorl shall be no less than 3 inches in 2007, 3 ¼ inches in 2008, 3 ½ inches in 2009 and 3 ½ inches in 2010 and shall remain 3 ½ inches thereafter until changed by regulation.

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) (Final)