

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Sections 1902(a)(1); 2804; 2806
(7 Del.C. §§1902(a)(1); 2804; 2806)
7 DE Admin. Code 3710, 3711 & 3712

FINAL

Secretary's Order No. 2015-F-0032

**3710 Conch
3711 Conch Minimum Size Limits**

**Date of Issuance: September 8, 2015
Effective Date of the Amendment: October 11, 2015**

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, 6010, 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 to 7 DE Admin. Code 3710-12, as follows, to wit: 7 DE Admin. Code 3710: *Conch*; 7 DE Admin. Code 3711: *Conch Minimum Size Limits*; and replacing existing 7 DE Admin. Code 3712: *Commercial Conch Dredge Licenses* with a new Section 3712, to wit: *Commercial Conch Season* (hereinafter referred to as "*Conch Regulations*"). The Department's Division of Fish and Wildlife commenced the regulatory development process with Start Action Notice 2015-02 dated April 14, 2015. The Department published its initial proposed regulation Amendments in the May 1, 2015 Delaware *Register of Regulations*. The Department then held a public hearing on May 28, 2015. Consistent with 29 Del.C. §10118(a), the public hearing record remained open for public comment through June 12, 2015.

The purpose of this proposed regulatory promulgation is to adopt as final the aforementioned proposed Amendments to Delaware's existing *Conch Regulations* ("Amendments") in order to provide Delaware's licensed knobbed conch (*Busycon carica*) dredgers with access to this resource similar to that of their New Jersey counterparts.

The Department received a request from the commercial shellfishing sector to align Delaware's knobbed conch management measures with those measures presently in place in the State of New Jersey. New Jersey's conch dredge landings are authorized by-catch of their blue crab dredge fishery. The New Jersey conch fishery is constrained by a five-inch minimum size limit with a five-month season from November 15 through April 15, and a cap of 93 dredge licenses. Delaware's directed knobbed conch fishery is presently constrained by a six-inch minimum size limit (3.5 inch minimum whorl diameter) with no closed season and delayed entry to the fishery. The lower minimum size limit in New Jersey poses a potential economic disadvantage to Delaware conch harvesters fishing the shared waterbody of Delaware Bay.

The Department agrees that parity with New Jersey's management measures is desirable; however, complete alignment (i.e., season dates and license cap) with the New Jersey by-catch fishery does not serve the best interest of Delaware's directed conch dredge fishery. Therefore, the Department proposes to adopt a five-inch minimum size limit (3-inch minimum whorl diameter) with a five-month open season from January 15 through June 15. The proposed minimum size limit will provide economic parity with New Jersey, and the implementation of a five-month harvest season is expected to constrain harvest without unduly jeopardizing the sustainability of the resource. The number of active licenses in the Delaware conch dredge fishery (17 in 2014) does not warrant additional licensing restrictions at this time.

The aforementioned proposed Amendments were presented and thoroughly vetted by the Department at the public hearing on May 28, 2015. Members of the public attended said hearing, and asked clarifying questions with regard to this proposed regulatory promulgation, which were thoroughly addressed by Department staff at that time. It should also be noted that all proper notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated August 24, 2015 ("Report"). 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 and established by the Hearing Officer's Report, I find that

the proposed regulatory Amendments to 7 **DE Admin. Code** 3710-12: *Conch Regulations* are well-supported. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed regulatory Amendments be promulgated as final.

I find that the Department's experts in the Division of Fish and Wildlife fully developed the record to support adoption of these regulatory Amendments. The adoption of these regulatory Amendments will allow Delaware to (1) provide Delaware's licensed knobbed conch (*Busycon carica*) dredgers with access to this resource similar to that of their New Jersey counterparts; (2) adopt a five-inch minimum size limit (3-inch minimum whorl diameter) with a five-month open season from January 15 through June 15; and (3) afford Delaware economic parity with New Jersey by the implementation of said five month harvest season, which is expected to constrain harvest without unduly jeopardizing the sustainability of the resource.

In conclusion, the following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to the proposed Amendments to 7 **DE Admin. Code** 3710-12, pursuant to 7 **Del.C.** §§1902(a)(1), 2804, and 2806;
2. The Department has jurisdiction under its statutory authority, pursuant to 7 **Del.C.** Ch. 60, to issue an Order adopting these proposed regulatory Amendments as final;
3. The Department provided adequate public notice of the proposed regulatory Amendments and all proceedings in manner required by the law and regulations, provided the public with an adequate opportunity to comment on said Amendments, including at the time of the public hearing held on May 28, 2015, and held the record open through close of business on June 12, 2015, consistent with 29 **Del.C.** §10118(a), in order to consider public comment on these proposed regulatory Amendments before making any final decision;
4. The Department's Hearing Officer's Report, including its established record and the recommended proposed regulatory Amendments as set forth in Appendix "A", are hereby adopted to provide additional reasons and findings for this Order;
5. The adoption of these proposed regulatory Amendments will allow Delaware to (1) provide Delaware's licensed knobbed conch (*Busycon carica*) dredgers with access to this resource similar to that of their New Jersey counterparts; (2) adopt a five-inch minimum size limit (3-inch minimum whorl diameter) with a five-month open season from January 15 through June 15; and (3) afford Delaware economic parity with New Jersey by the implementation of said five month harvest season, which is expected to constrain harvest without unduly jeopardizing the sustainability of the resource;
6. The Department has reviewed these proposed regulatory Amendments in the light of the Regulatory Flexibility Act, consistent with 29 **Del.C.** Ch. 104, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;
7. The Department's proposed regulatory Amendments, as published in the May 1, 2015 Delaware *Register of Regulations*, 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 as final the proposed Amendments to 7 **DE Admin. Code** 3710-12: *Conch Regulations* 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.

David S. Small, Secretary

3710 Conch

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 1/4 inches in 2007, 5 1/2 inches in 2008, 5 3/4 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 1/4 inches in 2008, 3 1/4 inches in 2009 and 3 1/2 inches in 2010 and shall remain 3 1/2 inches thereafter until changed by regulation~~ five (5) inches in length or less than three (3) inches in diameter at the whorl.
- 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)

3712 Commercial Conch ~~Dredge Licenses~~ Season

(Penalty Section 7 Del.C. § 1912)

- 1.0 Pursuant to §2803(c) of 7 Del.C., the Department shall not issue any new conch dredge licenses for a period of 5 years to begin January 1, 2006. Licenses may continue to be issued pursuant to §2803(d) of 7 Del.C. Notwithstanding 7 Del.C. §§2803(a) and 2805, it is unlawful to for a vessel equipped with a dredge to possess knobbed conch during the period June 16 through January 14.

- 10 DE Reg. 1034 (12/01/06)
- 19 DE Reg. 315 (10/01/15) (Final)