

# DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

## DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Sections 903(e)(1)(c); 903(f)  
(7 **Del.C.** §§903(e)(1)(c); §903(f))  
7 **DE Admin. Code** 3541

### FINAL

**Secretary's Order No.: 2010-F-0025**

**7 DE Admin. Code 3541 Atlantic Sharks**

**Date of Issuance: August 16, 2010**

**Effective Date of the Amendment: September 11, 2010**

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") the following findings, reasons and conclusions are entered as an Order of the Secretary in the above-referenced rulemaking proceeding.

### Background and Procedural History

This Order considers proposed regulations to amend 7 **DE Admin. Code** 3541, *Atlantic Sharks*. The Department's Division of Fish and Wildlife commenced the regulatory development process with Start Action Notice 2010-15. The Department published its initial proposed regulation Amendments in the May 1, 2010 *Delaware Register of Regulations*, and held a public hearing on June 21, 2010. The public hearing record remained open at that time for public comment through June 30, 2010. It should be noted that no members of the public were in attendance at the hearing held on June 21, 2010, nor was any public comment received by the Department at any time concerning this proposed promulgation.

The Department is proposing to amend Tidal Finfish Regulation 3541 concerning Atlantic Sharks in order to bring Delaware into compliance with the Atlantic States Marine Fisheries Commission's ("ASMFC") Interstate Fishery Management Plan ("IFMP") for Atlantic Coastal Sharks. The IFMP for Atlantic Coastal Sharks specifies which gears that fishermen are authorized to use in state waters on the Atlantic Coast. The gears that are authorized by ASMFC are hook and line, gill net, trawl net, short-line, pound net and weir. Presently, Delaware allows the use of hook and line, troll line, dip net, lift net, push net, cast net, spear or harpoon, haul seine, bag net, hoop net, fyke net, fish pot, and gill net for use in state waters to harvest food-fish, which includes sharks. To meet the requirements of the IFMP, Delaware must restrict the commercial gears that may be used for the harvesting of Atlantic coastal sharks to hook and line, and gill net. Recreational fishermen are restricted to the use of rod and reel and hand line. Fishermen with a federal shark permit who are fishing outside of state waters are not restricted to these gear types and may land sharks using any gear that is in accordance with the rules and regulations established by NOAA Fisheries.

Additionally, the IFMP for Atlantic Coastal Sharks specifies that a federal Commercial Shark Dealer Permit is required to buy and sell any shark caught in state waters. At the present time, the State of Delaware does not require seafood dealers to have this permit to buy and sell shark caught in state waters. Again, these modifications to the existing shark regulations would bring Delaware into full compliance with the IFMP for Atlantic Coastal Sharks.

The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated August 6, 2010 (Report). The Report recommends certain findings and the adoption of the proposed Amendments as attached to the Report as Appendix A.

### Findings and Discussion

I find that the proposed Amendments are well-supported by the record developed by the Department, and I adopt the Report to the extent it is consistent with this Order. The Department's experts developed the record and drafted the proposed Amendments.

I find that the Department's experts in the Division of Fish and Wildlife fully developed the record to support adoption of these Amendments. With the adoption of this Order, Delaware will (1) allow Delaware to remain in compliance with the ASMFC Plan for Coastal Sharks, as well as the latest addendum to the IFMP for Coastal Shark; and (2) prevent total closure of these fisheries in Delaware by order of the Secretary of Commerce due to lack of compliance with federal regulations concerning this species.

In conclusion, the following findings and conclusions are entered:

1.) The Department has jurisdiction under its statutory authority to issue an Order adopting these proposed Amendments as final;

2.) The Department provided adequate public notice of the proposed Amendments, and provided the public with an adequate opportunity to comment on the proposed Amendments, including at the public hearing held on June 21, 2010;

3.) The Department held a public hearing on June 21, 2010 in order to consider public comment before making any final decision;

4.) The Department's Hearing Officer's Report, including its recommended record and the recommended Amendments as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;

5.) The recommended Amendments should be adopted as final regulation Amendments because Delaware will be able to (1) remain in compliance with the aforementioned Fishery Management Plan for this species, as implemented by the ASMFC; (2) prevent total closure of these fisheries in Delaware by order of the Secretary of Commerce due to lack of compliance with federal regulations concerning this species; and, lastly, because (3) the amendments are well supported by documents in the record;

6.) The Department shall submit this Order approving the final regulation 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.

Collin P. O'Mara, Secretary

### 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.

**"Management Unit"** shall mean any of the non-sandbar large coastal species, small coastal 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.

**"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*

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*

**“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 (02/01/00)**

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

**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 fish for any shark while in state waters with any fishing equipment or by any method, except: (1) Hook and Line; (2) Gill Net.

**45.0** 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 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.

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

**56.0** 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.

**67.0** 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 shark per trip.

**7.1** It shall be unlawful for any shark 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)**

**78.0** 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 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.

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

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

**910.0** It shall be unlawful for the operator of any vessel without a commercial foodfishing license to have on board said vessel any 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)**

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

**4011.0** 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.

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

**4412.0** 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.

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

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

**4213.0** 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.

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

**4314.0** 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.

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

**4415.0** It shall be 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)**

**4516.0** 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.

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

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

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