

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

PROPOSED

REGISTER NOTICE

SAN# 2009-06

1. Title of the Regulations:

Tidal Finfish Regulation 3541 Atlantic Sharks.

Tidal Finfish Regulation 3581 Spiny Dogfish; Closure Of Fishery

2. Brief Synopsis of the Subject, Substance and Issues:

The Department of Natural Resources and Environmental Control will hold a public hearing regarding proposed modifications to Tidal Finfish Regulation 3541 concerning Atlantic sharks and a proposed amendment to Tidal Finfish Regulation 3581 concerning commercial fishing for spiny dogfish. The purpose of the proposed revisions are to bring Delaware into compliance with the Atlantic States Marine Fisheries Commission's Interstate Fishery Management Plan for Atlantic Coastal Sharks and to liberalize commercial requirements in concert with the most recent revision (Addendum II) to the Atlantic States Marine Fisheries Commission Interstate Fishery Management Plan for Spiny Dogfish.

The Interstate Plan for Coastal Sharks largely mirrors requirements for shark fishing in federal waters. Specifically, all states from Virginia through New Jersey, including Delaware, must prohibit recreational and commercial landings of the following shark species from May 15 through July 15: silky, tiger, blacktip, spinner, bull, lemon, nurse, scalloped hammerhead, great hammerhead, and smooth hammerhead. Furthermore, Delaware and all other states must prohibit recreational and commercial landings of sandbar sharks year-round, except for those commercial fishermen in possession of a valid sandbar shark research permit issued by the National Marine Fisheries Service (NMFS). Shore-bound anglers may harvest one shark not otherwise prohibited, including smooth dogfish sharks, per calendar day. Shore-bound anglers may also harvest one additional smooth dogfish shark per day. Recreational fishing vessels will be allowed to harvest and possess one shark not otherwise prohibited, including one smooth dogfish per trip, regardless of the number of people on board the vessel. In addition each recreational angler aboard a vessel may harvest and possess one bonnethead, one Atlantic sharpnose shark, and one smooth dogfish per person per trip. All sharks possessed by recreational fishermen must have the heads, tails, and fins attached naturally to the carcass prior to landing on shore. 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. Other measures, including provisions on gill net fishing for sharks, are proposed to bring Delaware into compliance with shark fishing regulations in federal waters.

The coast-wide commercial quota for spiny dogfish has been liberalized to 12 million pounds per year, to be allocated among a Northern Region, Southern Region, and North Carolina. The Southern Region, which includes Delaware, is allocated 26% of the annual quota. When the quota in the Southern Region is projected to be 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 holder shall be 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 will have to abide by the most restrictive spiny dogfish landing limits, whether they are federal or state.

3. Possible Terms of the Agency Action:

Delaware is required to comply with the ASMFC plan for coastal sharks and with the latest addendum to the Interstate Fishery Management Plan for Spiny Dogfish. Failure to do so may result in total closure of these fisheries in Delaware by order of the Secretary of Commerce.

4. Statutory Basis or Legal Authority to Act:

§903(e) (2) (a), 7 Del.C. and §903(f) of 7 Del.C.

5. Other Regulations that may be Affected by the Proposal:

None

6. NOTICE OF PUBLIC COMMENT:

A public hearing on this regulation will be held in the Division of Soil and Water building at the western end of Pilottown Road in Lewes, DE at 6:30 PM on April 23, 2009. Comments for the hearing record should be addressed to Lisa Vest, Hearing Officer, Office of the Secretary, Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, Dover, De 19901 or by e-mail to lisa.vest@state.de.us by 4:30 PM April 28, 2009.

7. PREPARED BY:

Roy W. Miller (302) 739-9914, February 13, 2009

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.

"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, *Neqaprion 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, 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.
- 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, one additional Atlantic sharpnose, 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.

- 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. 1283 (04/01/09) (Prop.)