

# 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** 3581

### FINAL

#### 3581 Spiny Dogfish

Secretary's Order No.: 2013-F-0025

Date of Issuance: July 10, 2013

Effective Date of the Amendment: August 11, 2013

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** 3581, Spiny Dogfish. The Department's Division of Fish and Wildlife commenced the regulatory development process with Start Action Notice 2013-03. The Department published its initial proposed regulation Amendments in the May 1, 2013 *Delaware Register of Regulations*, and held a public hearing on May 23, 2013.

The Department is proposing revisions to the current Delaware regulations concerning spiny dogfish (*Squalus acanthias*) to modify the daily commercial "take, land or possess" limit. The Department was requested to consider an increase in the "daily take, land, or possess" limit from 3,000 pounds to 10,000 pounds at a recent Advisory Council on Tidal Finfish meeting. This request was subsequently endorsed by the Council.

The Department has the statutory basis and legal authority to act with regard to the proposed amendments to 7 **DE Admin. Code** 3581, Spiny Dogfish, pursuant to 7 **Del.C.** §901 (c & d) and 7 **Del.C.** §903(e)(2)(a). Comment was received by the Department regarding this proposed promulgation, all of which was positive and in support of the Department's actions in this matter. 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 July 3, 2013 (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. Throughout the regulatory development process regarding this promulgation, the Department received public comment, as noted in the Report, and the same were fully addressed by Department staff in a thorough and balanced manner, accurately reflecting the information as contained in the public hearing record which was developed in this matter.

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 be enabled to liberalize the current regulations concerning spiny dogfish by increasing the daily commercial "take, land or possess limit" from 3,000 pounds to 10,000 pounds, thus improving the economic feasibility of harvesting this low market value resource. The species commonly occurs in tremendously large school, and a higher daily possession limit would minimize discard loss and improve harvest efficiency in the gill net fishery. Further, it should be noted that this species has been implicated in the decline of several ecologically and economically important species, including weakfish and heron. It is for these reasons that the proposed increase in the "daily take, land, or possess" limit from 3,000 to 10,000 pounds is reasonable and sound. It should also be noted that the spiny dogfish quota is monitored using mandatory catch reports and a federal dealer reporting system, thus making it unlikely that Delaware would exceed its quota allocation.

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 same, including at the public hearing held on May 23, 2013;
- 3.) The Department held a public hearing on May 23, 2013 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) liberalize the current regulations concerning spiny dogfish by increasing the daily commercial "take, land or possess limit" from 3,000 pounds to 10,000 pounds; (2) improve the economic feasibility of harvesting this low market value resource; 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

### **3581 Spiny Dogfish**

(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. 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~~ 10,000 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. 1517 (06/01/09)**

**17 DE Reg. 236 (08/01/13) (Final)**