

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 903(e)(3) (7 Del.C. §903(e)(3))

7 DE Admin. Code 3541

FINAL

Secretary's Order No.: 2011-F-0029\

Date of Issuance: May 17, 2011

Effective Date of the Amendment: June 11, 2011

3541 Atlantic Sharks

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 2011-03. The Department published its initial proposed regulation Amendments in the March 1, 2011 *Delaware Register of Regulations*, and held a public hearing on March 25, 2011. Public comment was received by the Department during all phases of this promulgation (pre-hearing, post-hearing and at that time of the public hearing), and the Department responded fully and thoroughly to all questions from the public regarding this proposed promulgation.

In the summer of 2010, the Department became aware of increased fishing activities directed at catching large coastal sharks off of Delaware's beaches classified by the Atlantic States Marine Fisheries Commission ("ASMFC") as Prohibited Species, including sand tigers (*Odontaspis taurus*), which are also listed as a Species of Concern by the National Oceanic and Atmospheric Administration/National Marine Fisheries Service. Studies have shown sand tigers suffer significant injury and occasionally die as a result of being caught by hook and line fishermen, even when circle-hooks are used. While it is sometimes difficult to ascertain fishing intent or what species are actually being sought, these large sharks are being targeted using large baits and large hooks from Delaware's beaches where sand tigers are known to occur. After being hooked and landed, the sharks are dragged up on the beach and handled inappropriately, and for an extended period, before being hauled back into the surf. Some sand tiger mortalities have been reported, and thus State and Federal agencies responsible for the protection and conservation of this species are concerned.

The Department is proposing to amend Tidal Finfish Regulation 3541 concerning Atlantic Sharks in order to minimize potential injury to these protected and prohibited species by making it unlawful to remove them from the water, and to require their immediate release. The adoption and enforcement of this regulation would reduce some of the handling-related trauma and may discourage targeting these Prohibited Species.

The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated May 9, 2011 (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) minimize potential injury to these protected and prohibited species by making it unlawful to remove them from the water and require their immediate release; and (2) would reduce some of the handling-related trauma, and may discourage targeting 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 March 25, 2011;

- 3.) The Department held a public hearing on March 25, 2011 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) minimize potential injury to these protected and prohibited species by making it unlawful to remove them from the water and require their immediate release; and (2) would reduce some of the handling-related trauma, and may discourage targeting 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.

2.1 It shall be unlawful for any hook and line fisherman to remove from the water sandbar shark, or any other species of shark when prohibited from harvest under §3541.

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.

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

5.0 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)

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

6.0 It shall be unlawful to release any shark in the management unit or any sandbar shark in a manner that will not ensure said sharks maximum probability of survival. All species of shark when prohibited from harvest under §3541 must be immediately released.

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

7.0 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)

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

8.0 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)

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

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

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

10.0 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)

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

11.0 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)

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

12.0 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)

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

13.0 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)

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

14.0 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)

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

15.0 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. Presently it is unlawfil 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)

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

16.0 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)

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

14 DE Reg. 1385 (06/01/11) (Final)