

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 3716 and 3771

PROPOSED

REGISTER NOTICE SAN# 2008-02

3716 Crab Pot Number Buoys and Vessel Panel Color Code and Number Requirements; and 3771 Oyster Harvesting Licensee Requirements

1. Title of the Regulations:
Shellfish Regulations

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

This proposed revision of Shellfish Regulation 3716 would allow only one color code to be used per vessel even if the allowable limit of up to three crab pot licensees fish their pots from the same vessel. This proposed change will facilitate enforcement of the pot limits and will simplify painting and retrieving of crab pot floats for those crabbers who routinely partner to fish from the same vessel. There is no proposed change to the numbering system for each crabber except that if two or three crabbers fish from the same vessel, then all numbers must be displayed on the 2' by 2' marker panel displayed on the vessel. One of the numbers from a crabber on that vessel must be displayed on a color-coded buoy attached to each crab pot fished from that vessel. This regulation is proposed to go into effect January 1, 2009 in order to give the crabbers an opportunity to re-paint their floats if necessary to comply with the new regulation.

The proposed revision to Shellfish Regulation 3771 would modify the required procedures for applying oyster harvesting tags. Each tag issued by the Department shall be cinched around the top of the oyster bag and locked such that the bag may not be opened nor oysters removed from the bag without breaking the tag or seal. Bags shall be tagged prior to the vessel leaving the shellfish harvest grounds and returning to port. This change will facilitate enforcement of tagging requirements and should discourage the illegal, yet common practice of re-using oyster tags after the bags are emptied. This regulation would go into effect immediately upon promulgation.

3. Possible Terms of the Agency Action:

Changes to regulation 3716 would not go into effect until January 1, 2009. Changes to regulation 3771 would take effect immediately upon promulgation. These regulation revisions would remain in effect indefinitely or until changed.

4. Statutory Basis or Legal Authority to Act:

§1902, §2306, §2105, and §2106 of 7 Delaware Code.

5. Other Regulations That May Be Affected by the Proposal:

N/A

6. Notice of Public Comment:

Individuals may address questions to the Fisheries Section, Division of Fish and Wildlife, (302)739-3441. A public hearing on these proposed regulations will be held in the Department of Natural Resources and Environmental Control Auditorium, at 89 Kings Highway, Dover, DE at 7:00 PM on March 31, 2008. Individuals may present their opinion and evidence either at the hearing or in writing to Lisa Vest, Hearing Officer, Department of Natural Resources and Environmental Control, 89 Kings Highway, Dover, DE 19901 or via e-mail to Lisa.Vest@state.de.us. The hearing record will remain open for written or e-mail comments until 4:30 PM April 2, 2008.

7. **Prepared By:**
Roy W. Miller, 302-739-9914, February 12, 2008.

3716 Crab Pot Number Buoys and Vessel Panel Color Code and Number Requirements (Formerly S-29)
(Penalty Section 7 Del.C. §1912)
Proposed revisions to 3716 would take effect January 1, 2009.

1.0 The color code assigned by the Department to a commercial crab pot licensee shall be displayed on each buoy or buoys attached to the line of each crab pot deployed in the water in the following order:

1.1 The first color in the color code sequence shall be on a buoy or buoys located the farthest from the crab pot (top).

1.2 The last color in the color code sequence shall be on the buoy or buoys located the closest to the crab pot (bottom).

1.3 Any second or third color in the color code sequence between the first and last colors shall be on a buoy or buoys in the same top to bottom order as in the color code sequence.

2.0 Each color coded buoy attached to a line of a commercial crab pot shall measure at least three (3) inches by three (3) inches by three (3) inches except that a separate buoy, located between the crab pot and color-coded buoy nearest the crab pot but no closer than five (5) feet to the color coded buoy nearest the crab pot may be of lesser dimensions.

3.0 Each color in a color code shall cover a contiguous area of at least 28 square inches on a buoy.

4.0 Each color coded buoy shall be visible on the water's surface when the tide is slack and the wind is less than ten (10) miles per hour.

5.0 Each color coded buoy shall have its color or colors recognizable at all times.

6.0 If more than one licensee elects to fish his or her crab pots from the same vessel, then all licensees who fish from that vessel, up to the maximum of three licensees per vessel, shall use the same color code on the pots fished from that vessel. Any licensee who subsequently elects to fish their pots on their own and not on a vessel with other licensees retains the right to use their originally assigned color code.

6.0 The color code assigned by the Department to a commercial crab pot licensee shall be displayed on the 2' x 2' panel on the licensee's vessel in a manner that when viewed from either side of the vessel, the sequence of colors shall be as follows relative to the vessel:

6.1 The first color in the color code sequence shall be on the panel in a vertical band closest to the stern of the vessel.

6.2 The last color in the color code shall be on the panel in a vertical band closest to the bow of the vessel.

6.3 Any second or third color in the color code sequence between the first and last colors shall be on the panel in vertical band(s) in the same stern to bow order as assigned in the color code sequence.

7.0 Each color coded panel shall be visible and the color(s) shall be recognizable at all times while tending crab pots.

8.0 Each color coded panel shall be displayed as vertical bands on the panel such that each color covers a contiguous area of equal size. The panel shall not display any color other than the colors in the assigned color code except for a color used to indicate the crab pot number.

10.0 If more than one licensee, up to the maximum of three licensees per vessel, elects to fish his or her crab pots from the same vessel, then that vessel shall display the same color code panel as on the pots fished from that vessel.

11.0 A number shall be assigned by the Department to each commercial crab pot license.

12.0 The commercial crab pot licensee's number shall be displayed on the color coded panel on the licensee's vessel with at least three (3) inch high contrasting colored Arabic numerals so that said number shall be visible from either side of the vessel. If more than one licensee elects to fish his or her crab pots from the same vessel then the color coded panel shall contain all of the numbers being fished from that vessel.

13.0 The commercial crab pot licensee's number shall be displayed on at least one color coded buoy attached to each crab pot displayed in the water in at least one (1) inch high Arabic numerals. The number shall be painted in a contrasting color, branded on or carved into the buoy. If more than one licensee elects to fish his or her crab pots from the same vessel, then one of the crab pot's license numbers assigned to that vessel shall be

displayed on at least once color coded buoy attached to each crab pot fished from that vessel, although no one licensee may fish more than 200 pots at any one time.

3771 Oyster Harvesting Licensee Requirements (Formerly S-73)

(Penalty Section 7 **Del.C.** §1912)

Proposed revisions to 3771 would take effect immediately upon ratification.

1.0 It shall be unlawful for any person licensed to harvest oysters from the State's natural oyster beds to possess another person's oyster harvesting tags while on board the vessel listed on said person's oyster harvesting license unless the other person is on board said vessel while harvesting oysters.

2.0 It shall be unlawful for any person licensed to harvest oysters from the State's natural oyster beds for direct sale to not attach an oyster harvesting tag in the locked position through the fabric of a bushel bag containing oysters. The tag shall be cinched around the top of the bag and locked such that the bag may not be opened nor oysters removed from the bag without breaking the tag or seal. Bags shall be tagged prior to the vessel leaving the shellfish harvest grounds and returning to any port.

3.0 It shall be unlawful for any person to possess a bushel bag that is empty or partially filled with oysters so long as an oyster harvesting tag is attached to said bag.

5 DE Reg. 2140 (5/1/02)

6 DE Reg. 1356 (4/1/03)

4.0 It shall be unlawful for any person to possess an oyster cage that is empty of oysters so long as an oyster harvesting tag is attached to said cage. A partially filled oyster cage must have the appropriate number of tags attached in the locked position to reflect the number of bushels of oysters in the cage.

6 DE Reg. 1356 (4/1/03)

11 DE Reg. 1209 (03/01/08) (Prop.)