

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Sections 1902(a), 1501, 1503, 2505 and 2507
(7 Del.C. §§1902(a), 1501, 1503, 2505 & 2507)
7 DE Admin. Code 3700

PROPOSED

REGISTER NOTICE

SAN #2019-03

3700 Shellfish

3723 Jonah Crab (*Cancer borealis*)

3755 Lobsters

1. TITLE OF THE REGULATIONS:

7 DE Admin. Code 3700 Shellfish to include:

3723 Jonah Crab [new]; 3755 Lobsters; 3756 Lobsters - Pot Design; 3757 Lobsters - Pot, Season And Limits For Commercial Lobster Pot License; and, 3758 Possession Of V-notched Lobsters Prohibited

2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

The Atlantic States Marine Fisheries Commission (ASMFC) approved an Interstate Fishery Management Plan (FMP) for Jonah Crab under the authority of the Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA 1993). The goal of the FMP is to support and promote the development and implementation, on a continual basis, of a unified coastal management program for Jonah Crab, which is designed to promote conservation, reduce the possibility of recruitment failure, and allow full utilization of the resource by the United States industry. Consistent with the mandatory elements of the FMP and its addenda this action proposes to:

- Establish incidental and directed landing permits based upon certain criteria;
- Establish Jonah Crab incidental bycatch limits;
- Establish a Jonah Crab minimum carapace width of 4 ¾ inches with no tolerance;
- Establish conditions and limits on the retention of Jonah Crab claws;
- Prohibit the retention of egg-bearing female Jonah Crab; and
- Establish a recreational possession limit of 50 Jonah Crabs per person per day.

This action also proposes to adopt provisions requiring the mandatory removal of lobster pots from February 1 through March 31 in accordance with Addendum XVII to Amendment 3 of the ASMFC's FMP for American Lobster. This action also clarifies that two escape vents are necessary on lobster pots where circular style vents are used and requires that egg-bearing female lobster be V-notched and immediately released.

Finally, consistent with regulation formatting guidelines, this action proposes to reformat the existing regulations pertaining to American Lobster by consolidating 3756 Lobsters - Pot Design; 3757 Lobsters - Pot, Season And Limits For Commercial Lobster Pot License, and 3758 Possession Of V-notched Lobsters Prohibited under existing regulation - 3755 Lobsters. The proposed reformatting is not intended to change meaning.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

There is no sunset date for this action.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Del.C. §§1902(a), 1501, 1503, 2505 and 2507

5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL:

Not applicable.

6. NOTICE OF PUBLIC COMMENT:

The hearing record on the proposed changes to 7 DE Admin. Code 3700 Shellfish to add a new 3723 Jonah Crab and amend 3755 Lobsters; 3756 Lobsters - Pot Design; 3757 Lobsters - Pot, Season And Limits For Commercial Lobster Pot License; and 3758 Possession Of V-notched Lobsters Prohibited opens May 1, 2019. Individuals may submit written comments regarding the proposed changes via e-mail to Lisa.Vest@Delaware.gov or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901. A public hearing on the proposed amendment will be held on Thursday, May 23, 2019 beginning at 6:00 PM in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901. Public comments will be received until close of business Friday, June 7, 2019.

7. **PREPARED BY:**
Stewart Michels
Stewart.Michels@Delaware.gov
(302) 739-9914

3700 Shellfish
3723 Jonah Crab (*Cancer borealis*)

1.0 Jonah Crab Landing Permits

- 1.1 The Department may only issue a Directed Jonah Crab Landing Permit to those vessels and lobster permit holders that held a valid Delaware Commercial Lobster Pot License or federal lobster permit on June 2, 2015 or that can demonstrate to the Department, through valid reported landing reports or sales receipts, that they landed Jonah Crab or Jonah Crab claws in Delaware before June 2, 2015.
- 1.2 Unless otherwise provided, it is unlawful to possess or land Jonah Crab or parts thereof without a valid commercial foodfish license or a license to harvest shellfish for commercial purposes and a valid Directed Jonah Crab Landing Permit or an Incidental Jonah Crab Landing Permit issued by the Department.
- 1.3 Jonah Crab Landing permits are not transferable and automatically expire on December 31 of each calendar year.

2.0 Commercial Possession Limit

- 2.1 It is unlawful for a person issued a commercial foodfish license or a license to harvest shellfish for commercial purposes to possess more than 1,000 Jonah Crab per trip or more than 2,000 Jonah Crab claws per trip without a valid Directed Jonah Crab Landing Permit issued by the Department.
- 2.2 It is unlawful for a person issued an Incidental Jonah Crab Landing Permit and fishing non-lobster pot gear to possess a greater weight of Jonah Crab or Jonah Crab parts that exceed the weight of the target species for which the gear is set.
- 2.3 Persons issued a Directed Jonah Crab Landing Permit in accordance with subsection 1.1 may possess and land any quantity of Jonah Crabs or parts thereof.

3.0 Recreational Possession Limit

It is unlawful to possess more than 50 Jonah Crab per person per day, unless otherwise provided.

4.0 Minimum Size

- 4.1 It is unlawful to possess Jonah Crab measuring less than 4 ¾ inches at the widest part of its carapace.
- 4.2 It is unlawful to possess detached Jonah Crab claws measuring less than 2 ¾ inches along the longest axis of the propodus (the immovable component of the pinching claw) in a volume greater than five gallons.

5.0 Dismemberment

- 5.1 Except as provided in subsections 5.1.1 and 5.1.2, it is unlawful to possess Jonah Crab claws that are not naturally attached to the body (cephalothorax).
 - 5.1.1 A person with a valid Directed Jonah Crab Landing Permit or Incidental Jonah Crab Landing Permit issued by the Department may possess detached Jonah Crab claws in accordance with Section 2.0 and subsection 4.2 of this regulation.
 - 5.1.2 A person with a valid and corresponding receipt or bill of lading may possess detached Jonah Crab claws, provided said claws were lawfully harvested.

6.0 Egg-bearing Jonah Crab

It is unlawful to possess a Jonah Crab bearing eggs visible thereon or any Jonah Crab from which the eggs have been removed.

3755 Lobsters (*Homarus americanus*)

37561.0 Lobsters-- Lobster Pot Design
(Penalty Section 7 Del.C. §1912)

4.01.1 It ~~shall be~~ is unlawful for any person to set, tend or conduct shellfishing for lobsters with any pot or trap in the waters under the jurisdiction of the State unless said pot or trap has an escape vent, slot or port of not less than two (2) inches by 5 ¾ inches located in the parlor section of each pot or trap, or if a circular escape vent is used in the parlor section of any lobster pot or trap, it ~~shall be~~ is unlawful to use ~~any less than two (2) circular vent vents~~ that ~~is are~~ are less than 2 5/8 inches inside diameter.

2.01.2 It ~~shall be~~ is unlawful for any person to set, tend or conduct shellfishing for lobsters with any pot or trap, not constructed entirely of wood, excluding heading or parlor twine and the escape vent, that does not contain a ghost panel covering an opening that measures at least 3 ¾ inches by 3 ¾ inches. A ghost panel means a panel, or other mechanism, designed to allow the escapement of lobsters after a period of time if the pot or trap has been abandoned or lost. The panel must be constructed of, or fastened to the pot or trap with, one of the following untreated materials: wood lath, cotton, hemp, sisal or jute twine not greater than 3/16 inch in diameter, or non-stainless, uncoated ferrous metal not greater than 3/32 inch in diameter. The door of the pot or trap may serve as the ghost panel, if fastened with a material specified in this subsection. The ghost panel must be located in the outer parlor(s) of the pot or trap and not the bottom of the pot or trap.

3.01.3 It ~~shall be~~ is unlawful for any recreational or commercial lobster pot fisherman to set, tend or conduct shellfishing for lobsters with a lobster pot or trap with a volume larger than 22,950 cubic inches.

2 DE Reg 1898 (04/01/99)

10 DE Reg. 1034 (12/01/06)

37572.0 Lobsters – Pot, Lobster Pot Season And Limits For Commercial Lobster Pot License

Penalty Section 7 Del.C. §1912)

2.1 Except as provided in subsections 2.1.1 and 2.1.2, it is unlawful to set or tend lobster pots or to take and reduce to possession or attempt to take and reduce to possession lobsters during the period February 1 through March 31.

2.1.1 A person with a valid Commercial Lobster Pot License may remove lobster gear from the water during the period February 1 through February 14; however, no lobsters may be reduced to possession.

2.1.2 A person with a valid Commercial Lobster Pot License may set lobster gear during the period March 25 through March 31; however, the gear cannot be tended and no lobsters may be reduced to possession.

4.02.2 It ~~shall be lawful~~ is unlawful for any person who has a valid Commercial Lobster Pot License to harvest lobsters in the waters under the jurisdiction of the State ~~at any time as permitted by law~~ on any ~~date~~ except Sunday.

2.02.3 It ~~shall be~~ is unlawful for any person who has a valid Commercial Lobster Pot License to set, tend or use in any manner in excess of fifty (50) lobster pots for the taking of lobsters in the waters under the jurisdiction of the State.

3.02.4 It ~~shall be~~ is unlawful for any person, licensed to catch or land lobsters for commercial purposes in this State, who uses gear or methods other than pots or traps outside the jurisdiction of this State, to land more than 100 lobsters per day for each day at sea during the same trip, up to a maximum of 500 lobsters per trip for trips 5 days or ~~longer~~ longer.

2 DE Reg. 1898 (04/01/99)

37583.0 Possession Of V-notched Lobsters Prohibited

(Penalty Section 7 Del.C. §1912)

4.03.1 It ~~shall be~~ is unlawful for any person to possess a V-notched female lobster. V-notched female lobster means any female lobster bearing a V-notch, a straight-sided triangular cut with or without setal hairs at least 1/8 inch in depth and tapering to a sharp point, in the flipper (uropod) next to the right of center flipper (telson) as viewed from the rear of the female lobster with the underside (ventral side) facing down. ~~V-notched female lobster also means any female lobster which is mutilated in a manner which could hide, obscure or obliterate such a mark. The right flipper will be examined when the underside of the lobster is down and its tail is toward the person making the determination.~~

3.2 Any person that catches an egg-bearing female lobster shall notch it as outlined in subsections 3.2.1 through 3.2.5.

3.2.1 The notch shall be made on the flipper (uropod) immediately to the right of the central flipper (telson) as viewed from the rear of the lobster with the underside (ventral side) facing down.

3.2.2 The notch shall be made by means of a sharp bladed instrument.

3.2.3 The notch shall be made at least ¼ inch in width along the outer margin of the flipper.

3.2.4 The notch shall taper to a sharp point at least ½ inch deep.

3.2.5 The lobster shall be immediately returned to the water upon completion of the notch.

3.3 It is unlawful to possess a female lobster that is mutilated in a manner that could hide, obscure or obliterate a V-notch.

2 DE Reg. 1898 (04/01/99)

11 DE Reg. 1662 (06/01/08)

22 DE Reg. 929 (05/01/19) (Prop.)