

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Sections 901 (c & d) and 903(e)(2)a.1
(7 Del.C. §§901 (c & d) & 903(e)(2)a.1)
7 DE Admin. Code 3541

FINAL

Secretary's Order No.: 2021-F-0018

**RE: Approving Final Regulation, pursuant to 7 Del. C. §903(e)(2)a.1,
to Amend 7 DE Admin. Code 3541: *Atlantic Sharks***

Date of Issuance: July 21, 2021

Effective Date of the Amendment: 48 hours following publication of this Secretary's Order and regulation on the Department's website

3541 Atlantic Sharks

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC"), pursuant to 7 Del. C. §903(e)(2)a.1 and all other relevant statutory authority, the following findings of fact based on the reasons and conclusions are entered as an Order of the Secretary in the above-referenced regulatory amendment.

Notwithstanding 29 Del.C. Ch. 101 (which sets forth the standardized procedures whereby a state agency shall promulgate regulations), the Department also has the statutory authority under 7 Del. C. §903(e)(2)a.1 to promulgate certain regulations in order to adopt a specified management measure for finfish, subject to 7 Del.C. Ch. 9, *Finfishing in Tidal Waters*, by the issuance of a Secretary's Order. The Department is allowed to follow this abbreviated regulatory promulgation process only in instances where the management measures are specified by, and ensures compliance or maintains consistency with, a fisheries management plan or rule established by the Atlantic States Marine Fisheries Commission, the *Atlantic Coastal Fisheries Cooperative Management Act*, the Mid-Atlantic Fishery Management Council, or the National Marine Fisheries Service.

Whenever the Department promulgates a regulation pursuant to 7 Del. C. §903(e)(2)a.1, it shall also (1) publish on its website a public notice with a copy of the Secretary's Order and final regulation that implements the specific management measure; and (2) file the Secretary's Order and regulation that implements the specified management measure in the next available issue of the *Delaware Register of Regulations*. The final regulation becomes effective 48 hours after the Department has published the aforementioned public notice on its website, as mandated by 7 Del. C. §903(e)(2)a.2.

Background, Procedural History and Findings of Fact

This order amends 7 DE Admin. Code 3541: *Atlantic Sharks* to reduce fishing mortality on Shortfin Mako Shark by adopting mandatory management measures approved by the Atlantic States Marine Fisheries Commission's ("ASMFC") Coastal Sharks Management Board to remain compliant with the Interstate Fishery Management Plan for Atlantic Coastal Sharks. Specifically, this order adopts new minimum recreational fishing size limits for Shortfin Mako Shark and restricts the type of fishing hook that can be used when recreationally fishing for most Atlantic shark species. The 2017 International Commission for the Conservation of Atlantic Tunas ("ICCAT") stock assessment determined that North Atlantic Shortfin Mako Shark were overfished, and overfishing is occurring. In response and consistent with the ICCAT binding Recommendation 17-08 and the *Magnuson-Stevens Fishery Conservation and Management Act*, the National Marine Fisheries Service amended the 2006 Consolidated Atlantic Highly Migratory Species Fisheries Management Plan and adopted a final rule for Shortfin Mako Shark to reduce fishing mortality and establish a foundation for rebuilding the Shortfin Mako Shark population.

Among the specific management measures included in the final federal rule are a required 71-inch (fork length) recreational minimum size limit for male Shortfin Mako Shark and an 83-inch (fork length) recreational minimum size limit for female Shortfin Mako Shark. The final federal rule also requires the use of non-offset, corrodible circle hooks when fishing for most Atlantic sharks, except when fishing with flies or artificial lures. The ASMFC's Coastal Sharks Board, in accordance with Addendum V to the Interstate Fishery Management Plan for Atlantic Coastal Sharks adopted these specific, non-optional, management measures for state waters to provide consistency with federal measures as part of ongoing efforts to rebuild the North Atlantic Shortfin Mako Shark stock. The ASMFC Coastal Shark Board further limited hook use to non-stainless-steel circle hooks when fishing for most Atlantic shark species recreationally.

The Department has the statutory basis and legal authority to act with regard to promulgation of the proposed amendments to 7 DE Admin. Code 3541: *Atlantic Sharks*, pursuant to 7 Del. C. §§901 (c & d) and 903(e)(2)a.1. The specific management measures are required by the ASMFC Addendum V to the Interstate Fishery Management Plan for Atlantic Coastal Sharks and are consistent with federal management measures in Amendment 11 to the 2006 Consolidated Atlantic Highly Migratory Species Fisheries Management Plan and the associated final federal rules (50 CFR 635).

ORDER

In accordance with 7 Del. C. §903(e)(2)a.1, it is hereby ordered, this 21st day of July, 2021 that the above referenced amendments to 7 DE Admin. Code 3541: *Atlantic Sharks*, a copy of which is hereby attached, are supported by the evidence contained herein and are hereby adopted. The above referenced amendment shall take effect 48 hours following publication of this Secretary's Order and regulation on the Department's website in accordance with 7 Del. C. §903(e)(2)a.2.

Shawn M. Garvin, Secretary

3541 Atlantic Sharks

(Penalty Section 7 Del.C. §936(b)(2))

1.0 Definitions:

“Aggregated large coastal species” means any of the following species of sharks or parts thereof:

- 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*

“Blacknose shark” means *Carcharhinus acronotus* or any parts thereof.

“Circle hook” means a fishing hook originally designed and manufactured so that the point is turned perpendicularly back to the shank to form a generally circular or oval shape.

“Corrodible” means not made of stainless steel or other material resistant to corrosion.

“Fillet” means to remove slices of fish flesh, of irregular size and shape, from the carcass by cuts made parallel to the backbone.

“Hammerhead species” means any of the following species of sharks or parts thereof:

- Great hammerhead, *Sphyrna mokarran*
- Scalloped hammerhead, *Sphyrna lewini*
- Smooth hammerhead, *Sphyrna zygaena*

“Land or landing” means to put or cause to go on shore from a vessel.

“Management unit” means any of the aggregated large coastal species, small coastal species, blacknose shark, hammerhead species, pelagic species and prohibited species of sharks or parts thereof defined in this regulation.

“NOAA Fisheries” means National Oceanic and Atmospheric Administration’s National Marine Fisheries Service.

“Non-offset” means the point and barb being in the same plane as the shank.

“Pelagic species” means 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*
- Common thresher shark, *Alopias vulpinus*

“Prohibited species” means 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" or "research species" means *Carcharhinus plumbeus* or any parts thereof.

"Shore fishing" or "shore angler" means any fishing that does not take place on board a vessel.

"Small coastal species" means any of the following species of sharks or parts thereof:

Bonnethead, *Sphyrna tiburo*
Atlantic sharpnose shark, *Rhizoprionodon terraenovae*
Finetooth shark, *Carcharhinus isodon*

"Smoothhound" means any of the following species of sharks or parts thereof:

Smooth dogfish, *Mustelus canis*
Florida smoothhound, *Mustelus norrisi*

3 DE Reg. 1088 (02/01/00)

12 DE Reg. 1517 (06/01/09)

18 DE Reg. 701 (03/01/15)

2.0 Prohibited Species

- 2.1 It is unlawful for any person to land, purchase, trade, barter, or possess or attempt to land, purchase, trade, barter, or possess a prohibited species.
- 2.2 It is 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.
- 2.3 It is unlawful for any person to engage in a directed commercial fishery for a prohibited or research species.

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

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

18 DE Reg. 701 (03/01/15)

3.0 Finning

- 3.1 Except as provided in 3.2, it is 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.
- 3.2 A person issued a valid commercial food fish license may completely remove the fins from any smoothhound, provided the total weight of the fins does not exceed twelve (12) percent of the total dressed weight of smoothhound complex carcasses on board a vessel.

18 DE Reg. 701 (03/01/15)

4.0 Fishing Methods

- 4.1 It is 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.
- 4.2 It is unlawful to use any hook other than a non-offset, corrodible circle hook when recreationally fishing for the sharks specified in this regulation, excluding smoothhound, except when fishing with artificial lures or flies.

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

18 DE Reg. 701 (03/01/15)

5.0 Filleting Prior to Landing

It is 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 as provided in 3.2 and 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)

18 DE Reg. 701 (03/01/15)

6.0 Shark Handling

It is 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)

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

18 DE Reg. 701 (03/01/15)

7.0 Recreational Possession Limits

7.1 It is 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.

7.2 It is 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.

18 DE Reg. 701 (03/01/15)

8.0 Unlawful Sale

It is unlawful for any shark from the management unit caught in state waters to be bought and sold without a federal shark dealer permit.

1 DE Reg. 345 (10/01/97)

3 DE Reg. 1088 (02/01/00)

8 DE Reg. 1718 (06/01/05)

12 DE Reg. 1517 (06/01/09)

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

18 DE Reg. 701 (03/01/15)

9.0 Commercial Quotas and Limits

9.1 It is 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 the management unit after the closure date set by NOAA Fisheries for that fishery. Further, it is unlawful for any person who has been issued a valid commercial food fishing license while on board any vessel to possess any non-prohibited sharks from the management unit in excess of current federal daily harvest limits administered by NOAA Fisheries.

9.2 Delaware's annual smoothhound quota will be 0.339 percent of the coastwide quota in accordance with the Atlantic States Marine Fisheries Commission's Interstate Fishery Management Plan for Atlantic Coastal Sharks.

9.3 When the Department has determined that 95% of Delaware's annual smoothhound quota allocation has been landed, the Department shall establish, based on recent fishery performance and landings, a date and time to order the fishery closed.

9.4 It is unlawful for any person who has been issued a valid commercial food fishing license while on board any vessel to possess any smoothhound once the Department has ordered the fishery closed.

9.5 Any overage in the Delaware's annual commercial smoothhound quota will be subtracted from the following year's smoothhound quota allocation.

12 DE Reg. 1517 (06/01/09)

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

18 DE Reg. 701 (03/01/15)

10.0 Recreational Size Limits

- 10.1 It is unlawful to possess without a valid commercial foodfishing license 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), - except as provided in ~~10.2~~ and 10.2, 10.3, and 10.4.
- 10.2 It is unlawful to possess without a valid commercial food fishing license any hammerhead species that measures less than 78 inches, fork length (tip of snout to indentation between dorsal and ventral tail lobes).
- 10.3 It is unlawful to possess without a valid commercial foodfishing license any male shortfin mako that measures less than 71 inches fork length (tip of snout to indentation between dorsal and ventral tail lobes) or any female shortfin mako that measures less than 83 inches fork length.
- ~~10.3~~ 10.4 Smoothhound, bonnethead, Atlantic sharpnose, blacknose, and finetooth sharks are exempt from size limits.
- 3 DE Reg. 1088 (02/01/00)**
1 DE Reg. 850 (01/01/98)
1 DE Reg. 1005 (02/01/98)
12 DE Reg. 1517 (06/01/09)
14 DE Reg. 193 (09/01/10)
18 DE Reg. 701 (03/01/15)

11.0 Aggregated Large Coastal Sharks Closed Season

It is unlawful 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)
18 DE Reg. 701 (03/01/15)

12.0 Unlawful Possession of Sandbar Shark and Exception

It is unlawful to land or possess any sandbar sharks, except for a commercial fisherman in possession of a valid sandbar shark research permit issued by NOAA Fisheries. 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.

- 8 DE Reg. 1718 (06/01/05)**
12 DE Reg. 1517 (06/01/09)
14 DE Reg. 193 (09/01/10)
18 DE Reg. 701 (03/01/15)

13.0 Federally Prohibited Shark Reciprocity

It is unlawful to land or possess any species of shark in state waters that is illegal to catch or land or possess in federal waters.

- 12 DE Reg. 1517 (06/01/09)**
14 DE Reg. 193 (09/01/10)
18 DE Reg. 701 (03/01/15)

14.0 Collecting for Research or Display

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 and a valid federal sandbar shark research permit, if collecting sandbar sharks. 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)
18 DE Reg. 701 (03/01/15)
25 DE Reg. 290 (09/01/21) (Final)

