

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Sections 1902(a) and 2106(d)

(7 Del.C. §§1902(a) and 2106(d))

7 DE Admin. Code 3774

PROPOSED

REGISTER NOTICE: SAN #2016-1

3774 Oyster Minimum Size Limits

1. TITLE OF THE REGULATION:

7 DE Admin. Code 3774 Oyster Minimum Size Limit

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

Delaware's Advisory Council on Shellfisheries requested the Department consider action to allow Delaware's oyster harvesters to possess *de minimis* quantities of undersized (<2.75") oysters that are inherent to the harvesting process.

Oysters typically grow in complex and densely packed reefs on Delaware's natural oyster grounds. When harvested, the oysters are brought aboard dredge vessels in asymmetrical clumps comprised of shell, varying sized oysters and other organisms that are not easily separable. Market oysters (>2.75" minimum size limit) are singled and culled from the dredged material prior to landing, but some undersized (<2.75") oysters can inadvertently remain attached to the market oysters. Some shell breakage can also occur during the bagging and handling process, rendering a market oyster illegal. Furthermore, the incidental retention of spat or small oysters (<1") attached to market oysters is practically unavoidable, particularly in years of high juvenile recruitment.

The proposed action would allow up to five percent (by number) undersized oysters per landed bushel. Attached spat or attached oysters measuring less than one inch that cannot be removed from a market oyster without destroying either oyster could be retained and would not count toward the five percent allowance.

The proposed amendment is unlikely to increase costs or place additional burdens on the affected public. The proposed amendment provides a reasonable accommodation to harvesters and establishes objective and enforceable criteria. Similar allowances are in place for conch (whelk), blue crab, and hard clam. The proposed amendment is not expected to have detectable impacts to Delaware's oyster resource.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Del.C. §§1902(a) and 2106(d)

5. LIST OF OTHER REGULATIONS THAT MAY BE IMPACTED OR AFFECTED BY THE PROPOSAL:

None.

6. NOTICE OF PUBLIC COMMENT:

The hearing record on the proposed changes to 7 DE Admin. Code 3774 Oyster Minimum Size Limit will be open April 1, 2016. Individuals may submit written comments regarding the proposed changes via e-mail to Lisa.Vest@state.de.us or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. A public hearing on the proposed amendment will be held on April 21, 2016 beginning at 6:00 PM in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901.

7. PREPARED BY:

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3765 Oysters

(Break in Continuity of Sections)

3774 Oyster Minimum Size Limit

(Penalty Section 7 Del.C. §1912)

- 1.0 ~~It shall be~~ Except as provided in 1.1 and 1.2, it is unlawful for any person to possess any oyster harvested for direct sale from the State's natural oyster beds that measures less than 2.75 ($2\frac{3}{4}$) inches between the two most distant points on the edges of said oyster's shell.
- 1.1 Oysters measuring less than 2.75 ($2\frac{3}{4}$) inches shall not comprise, by number, more than 5.0% of any landed bushel bag or bushel sample(s) obtained from any landed multi-bushel cage.
- 1.2 Notwithstanding 1.1, a person may possess oysters harvested for direct sale from the State's natural oyster beds that measure at least 2.75 ($2\frac{3}{4}$) inches and have attached oysters or attached spat that measure less than one (1) inch between the two most distant points on the edges of said oyster's shell and that cannot be separated without destroying either oyster.

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

19 DE Reg. 904 (04/01/16) (Prop.)