

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Sections 2701(d) (7 **Del.C.** §2701(d))
7 **DE Admin. Code** 3711, 3712 and 3756

FINAL

Secretary's Order No. 2006-F-0055

Amendments to Delaware Shellfish Regulations for Conch (Whelks) and Lobsters

Date of Issuance: November 15, 2006
Effective Date: December 11, 2006

A public hearing was held on Tuesday, October 17, 2006, at 7:30 p.m. at the DNREC Richardson and Robbins Building Auditorium to receive comment on proposed amendments to the existing Delaware Shellfish Regulations for Conch (Whelks) and Lobsters. The proposed changes are being made as resource conservation measures for Delaware fisheries, and include the following: Raising the minimum size for knobbed conchs (knobbed whelks) from five inches to six inches in one-quarter increments over a four-year period; allowing no new conch dredge licenses issued for a five-year period in excess of those issued in 2003-2005; and increasing the escape vent size in the parlor of lobster pots to coincide with new regulations in effect in Federal waters offshore of Delaware.

Whelks, also known as conchs, comprise Delaware's largest commercial fishery in terms of weight landed. Landings are dominated by knobbed whelks taken in the directed dredge fishery. Landings from Delaware's dredge fishery during the period of 2001 to 2004 were equivalent to total landings from the remaining Atlantic Coast states. Landings reported for 2005 have declined by 50% relative to the 2004 landings. Fishery samples indicate that knobbed whelk landings are dominated by females at reproductive age. The female knobbed whelks enter the fishery at approximately 9.5 years of age and attain reproductive maturity at ten years of age.

Fishing mortality is currently in excess of the management benchmarks, indicating that the knobbed whelk stock is being overfished. To prevent fishery collapse, the Division of Fish and Wildlife recommends that the number of whelk dredge licenses not be increased from the current 31. Increasing the minimum size of knobbed whelks is also recommended to protect a greater proportion of the spawning stock.

Numerous members of the public attended this hearing on October 17, 2006, voicing their concerns with regard to the Department's proposed changes to these regulations. Comments were received from the public, both at the actual hearing and during the post-hearing phase as well. Proper notice of the hearing was provided as required by law.

Subsequent to the public hearing of October 17, 2006, the Hearing Officer prepared her Report dated November 14, 2006, and that Report, including its attachments, is expressly incorporated herein to this Order.

Based on the record, including the public hearing record reviewed in the November 14, 2006 Hearing Officer's Report, the proposed regulation is adequately supported and is not arbitrary or capricious. The Report reviews and summarizes the record developed throughout this regulatory process, and recommends approval of the proposed regulation as a final regulation without modification. I agree with the Report and adopt it, along with its attachments, as part of this Order along with its reasons.

The proposed regulation is based upon sound scientific evidence, is consistent with State and Federal law, and is a reasoned regulation that will result in furthering the purposes of 7 **Del.C.** Ch. 60. In conclusion, the following findings and conclusions are entered:

1. The Department, acting through this Order of the Secretary, adopts the proposed regulation as a final regulation, as set forth in the Attachment "A" to the Hearing Officer's Report;
2. The regulation amendments that are approved by this Order were developed consistent with the applicable law and regulatory standards and are adequately supported by technical analysis;
3. The issuance of the proposed regulation as a final regulation will result in increased conservation of spawning stock biomass for a resource that is showing signs of over-exploitation;

4. More conchs will have reached maturity prior to being subject to harvest with the increase in the minimum size limit. This will likely depress landings until the conchs previously subject to harvest have grown from five inches to the newly proposed legal size of six inches. The Department estimates that it will take 3-4 years for a 5 inch conch to reach 6 inches;

5. The capping of the number of conch dredge licenses that the Department may issue to the number issued during the period of 2003-2005 will be maintained for a five-year period, thus preventing a potential doubling of fishing effort that could occur (based on the number of license applicants) if the number of available licenses were not capped. This will also help to limit increases in mortality caused by fishing which the Department has determined is already excessive for the long-term health of this resource. Those license applicants who have been on the five-year waiting list will be unable to obtain a conch dredge license for a minimum of five additional years under this proposed regulation;

6. With the promulgation of these proposed changes, the rectangular escape vent in the parlor of lobster pots will be increased from the present $1 \frac{15}{16}$ th inches by $5 \frac{3}{4}$ inches to 2 inches by $5 \frac{3}{4}$ inches. If a circular vent is used, it is proposed that the minimum inside diameter be $2 \frac{5}{8}$ th inches. These vent dimensions would be consistent with federal requirements for lobster pots set in federal waters in Delaware. The overwhelming majority of Delaware's lobster landings are from federal waters and the proposed increase in vent size is considered to be the appropriate escape vent dimensions with the minimum lobster size limits ($3 \frac{3}{8}$ th inch carapace length) now in effect in Delaware and in federal waters offshore of Delaware;

7. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations, held a public hearing in a manner required by the law and regulations, and considered all timely and relevant public comments in making its determination;

8. The Department's proposed regulation, as published in the September 1, 2006 *Delaware Register of Regulations* and already expressly incorporated herein, is adequately supported, not arbitrary or capricious, and is consistent with the applicable laws and regulations, and should be approved as a final regulation, to go into effect ten days after its publication in the next available issue of the *Delaware Register of Regulations*; and that

9. The Department shall submit the proposed regulation as a final regulation to the Delaware Register of Regulation for publication in its next available issue, and shall provide written notice to the persons affected by the Order.

John A. Hughes
Secretary

3700 Shellfish Regulations (3711, 3712 and 3756)

3711 Conch Minimum Size Limits (Formerly S-48) (Penalty Section 7 Del.C. §1912)

1.0 It shall be unlawful for any person to possess any channeled conch, *Busycotypus canaliculatus*, that measures less than six (6) inches in length or $3 \frac{1}{8}$ inches in diameter at the whorl.

2.0 Notwithstanding the provisions of paragraph 1.0, a person may possess no more than five (5) channeled conchs per 60 pounds that are less than six (6) inches in length or $3 \frac{1}{8}$ inches in diameter at the whorl.

3.0 It shall be unlawful for any person to possess any knobbed conch, *Busycon carica*, that measures less than ~~five (5) inches in length or $2 \frac{3}{4}$ inches in diameter at the whorl.~~ $5 \frac{1}{4}$ inches in 2007, $5 \frac{1}{2}$ inches in 2008, $5 \frac{3}{4}$ inches in 2009, and six (6) inches in length in 2010. Beginning in 2010, the minimum length shall remain 6 inches thereafter until changed by regulation. The minimum diameter at the whorl shall be no less than 3 inches in 2007, $3 \frac{1}{4}$ inches in 2008, $3 \frac{1}{4}$ inches in 2009 and $3 \frac{1}{2}$ inches in 2010 and shall remain $3 \frac{1}{2}$ inches thereafter until changed by regulation.

3712 Commercial Conch Dredge Licenses (Penalty Section 7 Del.C. § 1912)

1.0 Pursuant to §2803(c) of 7 Del.C., the Department shall not issue any new conch dredge licenses

for a period of 5 years to begin January 1, 2006. Licenses may continue to be issued pursuant to §2803(d) of 7 Del.C.

3756 Lobsters - Pot Design (Formerly S-23)
(Penalty Section 7 Del.C. §1912)

1.0 It shall be 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 ~~4-15/16~~ 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 unlawful to use any circular vent that is less than 2 5/8 inches inside diameter.

2.0 It shall be 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.

3.0 It shall be 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.

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