

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Sections 901(c & d), 903(e)(2)a and 903(e)(3)
(7 Del.C. §§901(c & d), 903(e)(2)a and 903(e)(3))
7 DE Admin. Code 3541

FINAL

Secretary's Order No.: 2015-F-0003

3541 Atlantic Sharks

Date of Issuance: February 18, 2015

Effective Date of the Amendment: March 11, 2015

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") pursuant to 7 Del.C. §§6006, 6010, the following findings of fact based on the record, reasons and conclusions are entered as an Order of the Secretary in the above-referenced regulatory proceeding.

Background, Procedural History and Findings of Fact

This Order relates to proposed regulation amendments to 7 DE Admin. Code 3541: *Atlantic Sharks*. The Department's Division of Fish and Wildlife commenced the regulatory development process with Start Action Notice 2014-07 dated October 24, 2014. The Department published its initial proposed regulation amendments in the January 1, 2015 Delaware *Register of Regulations*. The Department then held a public hearing on January 22, 2015. Consistent with 29 Del.C. §10118(a), the public hearing record remained open for public comment through February 6, 2015.

The purpose of this Order is to adopt as final the aforementioned proposed amendments to these regulations ("Amendments") consistent with Addenda II and III to the Atlantic States Marine Fisheries Commission's ("ASMFC") Interstate Fishery Management Plan ("IFMP") for Atlantic Coastal Sharks. The proposed Amendments will, through a variety of changes summarized below, maintain consistency between the federal 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan (as amended) and ASMFC management plans, preserve the historical distribution of smoothhound (*Mustelus canis* and *Mustelus norrisi*) landings, and protect hammerhead shark to maturity.

In accordance with Addendum II to ASMFC's IFMP, these proposed Amendments define a smoothhound (colloquially referred to as "smooth dogfish" or "sand sharks") complex. Although the smoothhound complex has not been assessed, NOAA Fisheries is developing a coastwide smoothhound quota. In anticipation of a coastwide quota, the ASMFC developed state allocations under Addendum II to preserve the historical distribution of smoothhound. Additionally, the proposed Amendments will also implement smoothhound shark finning limits consistent with the federal Shark Conservation Act of 2010 and 7 Del.C. §928A.

Consistent with Addendum III, the proposed Amendments adjust species groupings for management purposes. Most significantly, the proposed Amendments group scalloped (*Sphyrna lewini*), great (*S. mokarran*) and smooth (*S. zygaena*) hammerhead sharks into a single complex, as it is difficult to differentiate the species. A recent assessment of scalloped hammerhead sharks indicated that the species is overfished, and that overfishing is occurring. It was also determined that female scalloped hammerhead sharks reach maturity at 78 inches fork length (Hazin, et al. 2001, NOAA Fisheries FEIS for Amendment 5a, pp. 2-19). Therefore, NOAA Fisheries changed the recreational size limit for all hammerhead sharks to 78 inches, and the proposed Amendments adopt this restriction. The proposed Amendments also separate the blacknose shark (*Carcharhinus acronotus*) from the small coastal shark complex.

Lastly, these Amendments propose editorial and clerical changes to improve readability, and to enhance the public's understanding of the existing regulation, without changing the intent of the same.

The proposed Amendments to Delaware's existing *Atlantic Sharks* regulations were presented and thoroughly vetted by the Department at the public hearing on January 22, 2015. It should be noted that no members of the public attended said public hearing, nor was any comment received by the Department from the public at any time during the course of this proposed promulgation. It should also be noted that all proper notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated February 9, 2015 ("Report"). The Report documents the proper completion of the required regulatory amendment process, establishes the record, and recommends the adoption of the proposed amendments as attached to the Report as Appendix "A".

Reasons and Conclusions

Based on the record developed by the Department's experts and established by the Hearing Officer's Report, I find that the proposed regulatory amendments to 7 **DE Admin. Code** 3541: *Atlantic Sharks* are well-supported. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed regulatory amendments be promulgated as final.

I find that the Department's experts in the Division of Fish and Wildlife fully developed the record to support adoption of these regulatory amendments. The adoption of these regulatory amendments will allow Delaware to (1) maintain consistency between the federal 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan (as amended) and ASMFC management plans; (2) preserve the historical distribution of smoothhound (*Mustelus canis* and *Mustelis norrisi*) landings; (3) protect hammerhead sharks to maturity; (4) implement quota-based management for smoothhound (smooth dogfish); (5) implement shark finning limits consistent with the Shark Conservation Act of 2010 and 7 **Del.C.** §928A; (6) adjust the shark species groupings for management purposes; and (7) formally adopt a 78-inch minimum size limit for hammerhead sharks.

In conclusion, the following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to the proposed amendments to 7 **DE Admin. Code** 3541, pursuant to 7 **Delaware Code**, Sections 901 (c) & (d), 903(e)(2)a, and 903(e)(3);
2. The Department has jurisdiction under its statutory authority, pursuant to 7 **Del.C.** Ch. 60, to issue an Order adopting these proposed regulatory amendments as final;
3. The Department provided adequate public notice of the proposed regulatory amendments and all proceedings in a manner required by the law and regulations, provided the public with an adequate opportunity to comment on the proposed regulatory amendments, including at the time of the public hearing held on January 22, 2015, and held the record open through close of business on February 6, 2015, consistent with 29 **Del.C.** §10118(a), in order to consider public comment on these proposed regulatory amendments before making any final decision;
4. The Department's Hearing Officer's Report, including its established record and the recommended proposed regulatory amendments as set forth in Appendix "A", are hereby adopted to provide additional reasons and findings for this Order;
5. The adoption of these proposed regulatory amendments will allow Delaware to (1) maintain consistency between the federal 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan (as amended) and ASMFC management plans; (2) preserve the historical distribution of smoothhound (*Mustelus canis* and *Mustelis norrisi*) landings; (3) protect hammerhead sharks to maturity; (4) implement quota-based management for smoothhound (smooth dogfish); (5) implement shark finning limits consistent with the Shark Conservation Act of 2010 and 7 **Del.C.** §928A; (6) adjust the shark species groupings for management purposes; and (7) formally adopt a 78-inch minimum size limit for hammerhead sharks;
6. The Department has reviewed these proposed regulatory amendments in the light of the Regulatory Flexibility Act, consistent with 29 **Del.C.** Ch. 104, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;
7. The Department's proposed regulatory amendments, as published in the January 1, 2015 Delaware *Register of Regulations*, and as set forth in Appendix "A" hereto, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they are approved as final regulatory amendments, which shall go into effect ten days after their publication in the next available issue of the Delaware *Register of Regulations*; and
8. The Department shall submit this Order approving as final the proposed amendments to 7 **DE Admin. Code** 3541: *Atlantic Sharks* to the Delaware *Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

David S. Small, Secretary

3541 Atlantic Sharks

(Penalty Section 7 **Del.C.** §936(b)(2))

1.0 Definitions:

"Non-Sandbar Aggregated large coastal species" shall mean any of the following species of sharks or parts thereof:

Great hammerhead, *Sphyrna mokarran*
Scalloped hammerhead, *Sphyrna lewini*
Smooth hammerhead, *Sphyrna zygaena*
Nurse shark, *Ginglymostoma cirratum*
Blacktip shark, *Carcharhinus limbatus*
Bull shark, *Carcharhinus leucas*
Lemon shark, *Neqapron brevirostris*

Silky shark, *Carcharhinus falciformis*
Spinner shark, *Carcharhinus brevipinna*
Tiger shark, *Galeocerdo cuvieri*

"Blacknose shark" means *Carcharhinus acronotus* or any parts thereof.

"Fillet" shall mean 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" shall mean to put or cause to go on shore from a vessel.

"Management unit" shall mean any of the ~~non-sandbar~~ 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. ~~Smooth dogfish (*Mustelus canis*), although they are a species of shark, are not presently part of the management unit as defined above, and are not subject to minimum size or daily harvest restrictions. They are subject to the provisions of Regulation 3541, Sections 3.0 and 4.0.~~

"NOAA Fisheries" means National Oceanic and Atmospheric Administration's National Marine Fisheries Service.

"Pelagic species" shall mean 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*
~~Thresher~~ Common thresher shark, *Alopias vulpinus*

"Prohibited species" shall mean 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, *Hepttranchias perlo*
Sixgill shark, *Hexanchus griseus*
Longfin mako, *Isurus paucus*
Bigeye thresher, *Alopias superciliosus*

"Sandbar shark" or **"research species"** shall mean *Carcharhinus plumbeus* or any parts thereof.

"Shore fishing" or **"shore angler"** shall mean any fishing that does not take place on board a vessel. ~~The terms "shore fishing" and "shore angler" are synonymous.~~

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

Bonnethead, *Sphyrna tiburo*
Atlantic sharpnose shark, *Rhizoprionodon terraenovae*
~~Blacknose shark, *Carcharhinus acronotus*~~
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)

2.0 Prohibited Species

- 2.1 It ~~shall be~~ is unlawful for any person to land, purchase, trade, barter, or possess or attempt to land, purchase, trade, barter, or possess a prohibited species ~~[(4.9)]~~.
- 2.12 It ~~shall be~~ 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 ~~[(4.9)]~~ or research species ~~[(4.10)]~~.

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

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

3.0 Finning

- 3.01 It ~~shall be~~ Except as provided in 3.2, it is unlawful for any person to possess the fins from any shark in the management unit ~~[(4.6)]~~ 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.

4.0 Fishing Methods

- 4.0 It ~~shall be~~ 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.

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

5.0 Filleting Prior to Landing

- 5.0 It ~~shall be~~ is unlawful for any person to fillet a shark in the management unit ~~[(4.6)]~~ 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 ~~that~~ 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)

6.0 Shark Handling

- 6.0 It ~~shall be~~ is unlawful to release any shark in the management unit ~~[(4.6)]~~ 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)

7.0 Recreational Possession Limits

- 7.01 It ~~shall be~~ 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 ~~[(4.6)]~~, 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 ~~[(4.6)]~~ per day (a day being 24 hours). Recreational shore anglers may also harvest one additional bonnethead, and one additional Atlantic sharpnose shark per day.

8.0 Unlawful Sale

- 7.4 It ~~shall be~~ is unlawful for any shark from the management unit ~~[(4.6)]~~ caught in state waters to be bought and sold without a federal ~~Commercial~~ shark dealer permit.

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

3 DE Reg. 1088 (2/1/00)
8 DE Reg. 1718 (6/1/05)
12 DE Reg. 1517 (06/01/09)
14 DE Reg. 193 (09/01/10)

9.0 ~~It shall be unlawful for any person to engage in a directed commercial fishery for a prohibited species.~~
Commercial Quotas and Limits

8.09.1 ~~It shall be 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 among those species in the management unit [(4.6)] during the remainder of any period after the effective date a commercial quota for that group of sharks has been reached in said period or is projected to be reached in said period by the National Marine Fisheries Service, National Oceanic and Atmospheric Administration and the U.S. Department of Commerce after the closure date set by NOAA Fisheries for that fishery. Further, it shall be is unlawful for any person who has been issued a valid commercial food fishing license while on board any vessel to possess any non-sandbar large coastal sharks, small coastal sharks, or pelagic non-prohibited sharks from the management unit in excess excess of current federal daily harvest limits administered by the National Marine Fisheries Service 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)

10.0 Recreational Size Limits

10.01 ~~It shall be is unlawful for the operator of any vessel to possess without a valid commercial foodfishing license to have on board said vessel any non-prohibited shark from among those species in the management unit [(4.6)] that measures less than 54 inches, fork length (tip of snout to indentation between dorsal and ventral tail lobes), with the exception of Atlantic sharpnose, blacknose, finetooth, bonnethead, and smooth dogfish sharks, for which no minimum size limit applies except as provided in 10.2 and 10.3.~~

10.2 It is unlawful to possess without a valid commercial food fishing license any hammerhead species [(4.4)] that measures less than 78 inches, fork length (tip of snout to indentation between dorsal and ventral tail lobes).

10.3 Smoothhound, bonnethead, Atlantic sharpnose, blacknose, and finetooth sharks are exempt from size limits.

3 DE Reg. 1088 (2/1/00)
1 DE Reg. 850 (1/1/98)
1 DE Reg. 1005 (2/1/98)
12 DE Reg. 1517 (06/01/09)
14 DE Reg. 193 (09/01/10)

11.0 ~~It shall be unlawful for any shore angler without a commercial foodfishing license to take and reduce to possession any non-prohibited shark from among those species in the management unit less than 54 inches, with the exception of Atlantic sharpnose, blacknose, finetooth, bonnethead, and smooth dogfish sharks, for which no size limit applies. Aggregated Large Coastal Sharks Closed Season~~

13.0 ~~It shall be is unlawful for any recreational or commercial fisherman 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)

~~12.0 It shall be 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.~~

12.0 Unlawful Possession of Sandbar Shark and Exception

~~14.0 It shall be~~ is unlawful for any recreational or commercial fisherman to land or possess any sandbar sharks, except for a commercial fisherman in possession of a valid sandbar shark research permit issued by ~~the National Marine Fisheries Service~~ 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 (6/1/05)

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

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

13.0 Federally Prohibited Shark Reciprocity

~~15.0 It shall be~~ is unlawful for any Delaware recreational or commercial fisherman to land or possess any species of shark in state waters that is illegal to catch or land or possess in federal waters. ~~Presently it is unlawful for recreational fishermen to take and possess silky sharks in federal waters at any time of the year.~~

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

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

14.0 Collecting for Research or Display

~~16.0~~ 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) (Final)