

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 903(e)(2)(a) (7 **Del.C.** §903(e)(2)(a))
7 **DE Admin. Code** 3581

FINAL

Secretary's Order No. 2007-F-0014

A public hearing was held on Wednesday, February 21, 2007, at 6:30 p.m. at the DNREC Richardson & Robbins Building Auditorium to receive comment on proposed amendments to the existing Delaware Tidal Finfish Regulation 3580 concerning commercial fishing for spiny dogfish. The proposed action is to re-open the commercial fishery in Delaware for the spiny dogfish (*Squalus acanthias*) in accordance with the latest revision of the Atlantic States Marine Fisheries Commission's Interstate Fishery Management Plan for Spiny Dogfish, and in accordance with federal law, whichever is more restrictive. When federal seasons and catch limits are more restrictive than state limits or Atlantic States Marine Fisheries Commission limits, then federal limits shall apply under the proposed regulation.

For federal purposes, the fishery for spiny dogfish is split into two quota periods: May 1 through October 31, and November 1 through April 30, with an annual coastal quota of four (4) million pounds. The daily catch (possession limit) of spiny dogfish in federal waters is six hundred (600) pounds per day for participants in the spiny dogfish fishery. Under this proposal, when the federal quota is reached for any quota period, the federal fishery closes. It is proposed that the State of Delaware fishery will automatically close as well when the federal quota is reached, and the National Marine Fisheries Service declares the federal spiny dogfish fishery closed.

Numerous members of the public attended this hearing on February 21, 2007, 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 February 21, 2007, the Hearing Officer prepared her Report dated April 13, 2007, 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 April 13, 2007 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 Department has jurisdiction under its statutory authority to make a determination in this proceeding;
4. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations;
5. The Department held a public hearing in a manner required by the law and regulations;
6. The Department considered all timely and relevant public comments in making its determination;
7. Promulgation of these proposed amendments would reopen the spiny dogfish commercial fishery in accordance with existing federal requirements;
8. It has been determined that over-fishing of this stock is no longer taking place, and that there is significant biomass for harvest;
9. Other states have reopened their commercial fisheries for spiny dogfish recently;

10. With the promulgation of these proposed changes, no vessel may land in Delaware more than 600 pounds per day of spiny dogfish during either of the two federal quota periods (May 1 through October 31, and November 1 through April 30). Furthermore, if federal limits are more restrictive than Delaware limits, then federal limits apply in Delaware waters for closure periods on the daily take and landing of spiny dogfish per vessel;

11. When federal waters are closed to the taking of spiny dogfish, Delaware's fishery shall also be closed;

12. The Department has reviewed this proposed amendment in the light of the Regulatory Flexibility Act, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;

13. The Department's proposed regulation, as published in the February 1, 2007 *Delaware Register of Regulations*, is adequately supported, not arbitrary or capricious, and is consistent with the applicable laws and regulations. Consequently, it should be approved as a final regulation, which shall go into effect ten days after its publication in the next available issue of the *Delaware Register of Regulations*; and that

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

John A. Hughes, Secretary

3581 Spiny Dogfish; Closure of Fishery (Formerly Tidal Finfish Reg. 27)
(Penalty Section 7 Del.C. §936(b)(2))

1.0 It shall be unlawful for any commercial fisherman to harvest, land or possess any spiny dogfish, *Squalus acanthias*, in Delaware except in those sizes, seasons, and quantities permitted in accordance with the Atlantic States Marine Fisheries Commission Interstate Fishery Management Plan for Spiny Dogfish as amended, or federal law administered by the National Marine Fisheries Service, whichever is more restrictive. It shall be unlawful to commercial harvest, land or possess spiny dogfish during any time when adjoining federal waters are closed to the taking of spiny dogfish. It shall be unlawful for any person to possess the fins from any spiny dogfish prior to landing said spiny dogfish unless said fins are naturally attached to the body of said spiny dogfish. All spiny dogfish landed in Delaware for commercial purposes must be reported through the normal state reporting system.

4 DE Reg. 1859 (5/1/01)

10 DE Reg. 1724 (05/01/07) (Final)