

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulation
Department of Natural Resources**
(DLS Control No. 15-409)

Overview and Legal and Fiscal Impact

The regulation implements changes to the commercial spiny dogfish fishery approved at the Spiny Dogfish Industry Workgroup meeting on May 27, 2015. The regulation also makes clarifying and corrective changes.

The regulation presents no legal issues of concern.

There is no material fiscal impact on State or local agencies.

Regulation of COMAR Affected

Department of Natural Resources:

Fisheries Service: Fish: COMAR 08.02.05.24

Legal Analysis

Background

Maryland participates with 14 other states in the Atlantic States Marine Fisheries Commission (ASMFC), which coordinates the conservation and management of the near-shore migratory fishery resources of the Atlantic coastal states. ASMFC prepares, adopts, and modifies coastal fishery management plans for 25 species and species groups, including spiny dogfish. States are responsible for implementing and enforcing, consistent with state management regimes, the measures contained in ASMFC coastal fishery management plans. If ASMFC determines that a particular state is not in compliance with the strategies of an adopted plan, ASMFC may petition the National Oceanic and Atmospheric Administration to impose a fishing moratorium until compliance is achieved.

In response to concerns about declining spiny dogfish populations, ASMFC has tightened restrictions on the Atlantic commercial spiny dogfish fishery in recent years. Since 2012, the Department of Natural Resources has been working with the Spiny Dogfish Industry Workgroup, an advisory body representing different aspects of the spiny dogfish fishery, to change how the fishery is managed in State waters. In 2013, the department implemented a limited entry permit system for tidal fish licensees wishing to harvest spiny dogfish, based on the recommendations of the workgroup. In response to concerns raised through the workgroup, this regulation addresses poor harvests and low spiny dogfish prices experienced in recent years, which have made it

difficult for tidal fish licensees to catch enough dogfish to maintain their permit eligibility. The department continues to meet with the workgroup and to adjust regulations to meet the needs of the fishery.

Currently, an individual is required to record the individual's spiny dogfish harvests on his or her permit card and to submit the completed permit card to the department at the end of the fishing season. The department advises that the permit cards are no longer necessary. Permits and other fishing authorizations are now listed on an individual's commercial fishing license and the department has alternative means of collecting harvest data.

Summary of Regulation

The regulation implements changes to the commercial spiny dogfish fishery approved by the Spiny Dogfish Industry Workgroup at its meeting on May 27, 2015. The regulation modifies eligibility requirements for the fishery's limited entry permit system from a 2 year/10,000 pound landing requirement to a 3 year/15,000 pound requirement. The regulation also clarifies when a spiny dogfish permit is deemed "relinquished" and establishes a process for reissuing relinquished or revoked spiny dogfish permits to individuals wishing to enter the fishery. Additionally, the regulation eliminates paper spiny dogfish permit cards.

The regulation provides for the distribution of the State's total commercial spiny dogfish quota, which is set by ASMFC, among different "tiers" of participants in the fishery: (1) individuals licensed to catch finfish; (2) individuals licensed to catch finfish and in possession of a Maryland striped bass permit registered in the Atlantic Ocean fishery; and (3) individuals licensed to catch finfish and in possession of a Maryland spiny dogfish landing permit. The regulation authorizes the department to set and modify catch limits for each of these tiers by public notice.

Finally, the regulation makes several clarifying and corrective changes. Provisions are reorganized and erroneous citations are corrected. The regulation clarifies that the season for catching spiny dogfish in State waters is May 1 through April 30, which corresponds with the season for catching spiny dogfish in federal waters. The regulation also clarifies the procedure for establishing or modifying catch limits or seasons for spiny dogfish by public notice. The department may only make changes by public notice in order to implement the ASMFC Management Plan for Spiny Dogfish. The public notice must state the effective hour and date of the changes, and the department must make a reasonable effort to modify catch limits to ensure that the quota is harvested and not exceeded. A violation of a restriction set by public notice is a violation of the regulation.

Legal Issues

The regulation presents no legal issues of concern.

Statutory Authority and Legislative Intent

The department cites § 4-2A-03 of the Natural Resources Article as statutory authority for the regulation. Section 4-2A-03 grants the department broad authority to adopt regulations limiting the taking, possession, transportation, exportation, processing, sale, or shipment for species the department determines to be “in need of conservation.” In 2001, the department designated spiny dogfish as “in need of conservation” in accordance with § 4-2A-03.

This authority is correct and complete. The regulation complies with the legislative intent of the law.

Fiscal Analysis

There is no material fiscal impact on State or local agencies.

Agency Estimate of Projected Fiscal Impact

The department advises that State expenditures decrease minimally as a result of the regulation and there is no impact on local governments. The Department of Legislative Services concurs.

Impact on Budget

There is no material impact on the State operating or capital budget.

Agency Estimate of Projected Small Business Impact

The department advises that the regulation has a meaningful economic impact on small businesses in the State. Commercial harvesters may benefit from the proposed action through catch limits that allow for greater overall harvest and through greater business flexibility. The Department of Legislative Services concurs.

Contact Information

Legal Analysis: April M. Morton – (410) 946/(301) 970-5350

Fiscal Analysis: Scott D. Kennedy – (410) 946/(301) 970-5510