

MARYLAND REGISTER

**Proposed Action on Regulations**

<b>Transmittal Sheet</b>  <b>PROPOSED OR REPROPOSED</b>  <b>Actions on Regulations</b>	<b>Date Filed with AELR Committee</b>	<b>TO BE COMPLETED BY DSD</b>
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**2. COMAR Codification**

**Title Subtitle Chapter Regulation**

08 02 05 24

**3. Name of Promulgating Authority**

Department of Natural Resources

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**Title 08**  
**DEPARTMENT OF NATURAL RESOURCES**  
**Subtitle 02 FISHERIES SERVICE**

**08.02.05 Fish**

Authority: Natural Resources Article, §4-2A-03, Annotated Code of Maryland

**Notice of Proposed Action**

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The Secretary of Natural Resources proposes to amend Regulation .24 under COMAR 08.02.05 Fish.

**Statement of Purpose**

The purpose of this action is to make changes to the commercial fishery. Spiny dogfish are a highly migratory species of shark found in both federal and state waters. State and federal waters are managed through different processes. The National Oceanographic and Atmospheric Administration's National Marine Fisheries Service (NOAA Fisheries) is responsible for implementing management in federal waters. The Atlantic States Marine Fisheries Commission (Commission) is responsible for management of spiny dogfish in state waters (0-3 miles offshore). The Commission is a collaborative entity of the Atlantic coast states from Maine to Florida and is governed by the Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA). Maryland is included in the Commission fishery management plan and must comply with certain provisions contained in that plan. Spiny dogfish are currently managed under the Interstate Fishery Management Plan for Spiny Dogfish (2002) and Addenda I – V.

The proposed action reorganizes the regulation by moving text to more appropriate locations, corrects citations and makes it clear that the season for catching spiny dogfish is May 1 through April 30. The season corresponds with the federal season and adding it to the regulation helps clarify time periods associated with eligibility and reporting requirements.

The proposed action modifies the eligibility requirement from a 2 year/10,000 lb landing requirement to a 3 year/15,000 lbs requirement. Since limited entry was implemented there have been significant changes that impacted the fishery. Specifically, there were two seasons of harsh winters, the European market was lost, fuel costs increased, fish were mostly in federal waters in 2014/2015, and the price was \$0.14-17 per pound. All of these factors made it difficult or not worthwhile to catch the required 10,000 pounds of spiny dogfish. The workgroup felt the extra year would give harvesters flexibility with their businesses to pursue spiny dogfish and maintain their permit.

The proposed action includes provisions to allow new entrants into the spiny dogfish fishery by setting tiered catch limits based upon ownership of a permit and by

establishing a process to reissue a spiny dogfish permit that was revoked or not renewed. The proposed action describes the process for allocating the commercial quota by public notice. The catch limits will be established each year so that the entire quota may be caught and so that dead discards are reduced. Setting the catch limits in tiers will allow licensees to catch spiny dogfish while harvesting other species and could potentially increase the number of people in the fishery. Someone who owns an Atlantic striped bass permit may be allowed to have a higher vessel limit of spiny dogfish than the bycatch allowance. This will help achieve the quota by watermen that catch spiny dogfish as bycatch when targeting striped bass and may help reduce dead discards of spiny dogfish. The proposed action establishes a method for issuing a spiny dogfish permit when an existing permit expires for failing to declare two years in a row or not meeting harvest requirements. This will allow an opportunity for new participants, create stability in the fishery, and be consistent with goals of the Spiny Dogfish Industry Workgroup as well as the Department.

The proposed action eliminates paper permit cards. The paper permit cards are being removed because they are not necessary and more timely information is available to the Department for management of the fishery. Currently, the Department issues a separate spiny dogfish landing permit and harvesters are required to complete their card and submit it at the end of the season. Permits are listed on the commercial fishing license so an additional card is not necessary. Also, regulation requires spiny dogfish to be sold to a federally permitted dealer; therefore, landings data are available to managers within one week. Since permit cards are not required to be submitted until the end of the season, the dealer information is more timely.

### **Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

### **Estimate of Economic Impact**

#### **I. Summary of Economic Impact.**

The proposed action may have a positive impact for commercial harvesters.

<b>II. Types of Economic Impact.</b>	Revenue (R+/R-)	Expenditure (E+/E-)	Magnitude
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A. On issuing agency:			
Removal of Paper Permit	(E-)		\$1,000
B. On other State agencies:	NONE		
C. On local governments:	NONE		
	Benefit (+)		Magnitude
	Cost (-)		
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D. On regulated industries or trade groups:

(1) Catch Limits	(+)	Indeterminable
(2) Eligibility Requirements	(+)	Indeterminable
(3) Removal of Paper Permit	NONE	NONE

E. On other industries or trade groups: NONE

F. Direct and indirect effects on public: NONE

**III. Assumptions.** (Identified by Impact Letter and Number from Section II.)

A. Eliminating paper permits will have no economic impact on spiny dogfish permittees, but will save the Department approximately \$1000. Savings come from the cost of paper, printing, data entry, and staff time.

D(1). Establishing catch limits in three tiers will benefit Atlantic striped bass permit holders because they will be able to catch more spiny dogfish than they could before. The impact is indeterminable because it is unknown how many permit holders will participate. Spiny dogfish permit holders and other licensees may benefit from this action because the limits can be adjusted as the season progresses to ensure that the quota is caught. The actual amount of the impact cannot be determined.

D(2). Changing the requirement from 2 years to 3 years will enable permit holders to have greater business flexibility. Permit holders will have greater flexibility to determine when to fish based on weather conditions, market values and other situations. Failure to meet the harvest eligibility requirement means that the permit will be revoked. The actual impact is not able to be determined.

D(3). Removing the paper permit will not have an economic impact on fishermen, but it will save them time and effort since they will only have to complete their commercial catch log, not two different forms.

### **Economic Impact on Small Businesses**

The proposed action has a meaningful economic impact on small business. An analysis of this economic impact follows.

The proposed action may benefit commercial harvesters. Please see Types of Impact for information.

### **Impact on Individuals with Disabilities**

The proposed action has no impact on individuals with disabilities.

### **Opportunity for Public Comment**

Comments may be sent to Spiny Dogfish Regulations, Regulatory Staff, Department of Natural Resources Fisheries Service, B-2, 580 Taylor Avenue, Annapolis, MD 21401, or call 410-260-8300, or email to [fisheriespubliccomment.dnr@maryland.com](mailto:fisheriespubliccomment.dnr@maryland.com), or fax to

410-260-8310. Comments will be accepted through February 22, 2016. A public hearing has not been scheduled.

### **Economic Impact Statement Part C**

A. Fiscal Year in which regulations will become effective: FY 2016

B. Does the budget for the fiscal year in which regulations become effective contain funds to implement the regulations?

No

C. If 'yes', state whether general, special (exact name), or federal funds will be used:

D. If 'no', identify the source(s) of funds necessary for implementation of these regulations:

No additional funds are necessary to implement this action. The action saves the Department money by removing paper permits.

E. If these regulations have no economic impact under Part A, indicate reason briefly:

F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.

G. Small Business Worksheet:

### **Attached Document:**

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#### **.24 Spiny Dogfish.**

A.—B. (text unchanged)

C. Commercial *Season and Catch Limits*.

(1) (text unchanged)

[(2) An individual licensed to catch fish for commercial purposes may not catch, possess, or land more than 1,000 pounds of spiny dogfish per vessel per day from the Atlantic Ocean, its coastal bays, and their tributaries unless the individual possesses a Maryland spiny dogfish landing permit.]

(2) *The season for catching spiny dogfish is May 1 through April 30.*

(3) *The commercial catch limits for spiny dogfish shall be established and may be modified through a public notice issued in accordance with §I of this regulation.*

(4) *The public notice establishing the commercial catch limit issued in accordance with §I of this regulation shall state the catch limit in pounds per vessel per day for an individual:*

(a) *Licensed to catch finfish;*

(b) *Licensed to catch finfish and in possession of a Maryland striped bass permit that has been registered in the Atlantic Ocean fishery; and*

(c) *Licensed to catch finfish and in possession of a Maryland spiny dogfish landing permit.*

[(3)] (5) (text unchanged)

[(4)] (6) Regardless of the number of authorized individuals [with Maryland spiny dogfish landing permits] on board any one [federally permitted] vessel, no more than one spiny dogfish vessel [trip] limit may be landed from one vessel per [trip] day.

D. Spiny Dogfish Landing Permit Declaration.

(1)—(3) (text unchanged)

(4) An individual who fails to declare for 2 consecutive years may no longer declare in subsequent years unless the individual receives a permit through [§F] §E(7) or §G of this regulation.

(5) An individual is eligible to declare for a permit to catch and land spiny dogfish in Maryland if they:

(a) Are licensed in accordance with Natural Resources Article, §4-701, Annotated Code of Maryland;

(b) Meet the vessel requirements described in §D(6) of this regulation; and

(c) Meet the following requirements:

(i) The individual provides proof that they owned or had a share of ownership in a vessel that landed at least 1,000 pounds of spiny dogfish between May 1, 2004, and March 8, 2013, and have not previously held a Maryland spiny dogfish landing permit;

(ii) The individual has declared an intent to fish for spiny dogfish in accordance with §D of this regulation within 2 years of the current declaration, not transferred the permit, and owned a vessel that landed a minimum of 15,000 pounds of spiny dogfish within 3 years of the current season; or

(iii) The individual has received a spiny dogfish landing permit in accordance with §E(7) of this regulation or through a transfer in accordance with §G of this regulation within the past 3 seasons.

[(5)] (6) Vessel Requirements.

(a)—(d) (text unchanged)

(e) Any change in vessel ownership shall be reported to the Department [so that a revised permit card may be issued].

[(6)] (7) (text unchanged)

(8) If an individual is no longer eligible to declare for a spiny dogfish landing permit, the permit shall be deemed relinquished to the Department.

#### E. Spiny Dogfish Landing Permit.

[(1)] An individual is eligible to declare for a permit to catch and land spiny dogfish in Maryland if they are licensed in accordance with Natural Resources Article, §4-701, Annotated Code of Maryland, and meet the following requirements:

(a) The individual provides proof that they owned or had a share of ownership in a vessel that landed at least 1,000 pounds of spiny dogfish between May 1, 2004, and March 8, 2013, and have not previously held a Maryland spiny dogfish landing permit;

(b) The individual has declared an intent to fish for spiny dogfish in accordance with §D of this regulation within the previous 2-year period and has not transferred the permit;

(c) The individual, beginning March 2015, has declared an intent to fish for spiny dogfish in accordance with §D of this regulation within 2 years of the current declaration, not transferred the permit, and owned a vessel that landed a minimum of 10,000 pounds of spiny dogfish within 2 years of the current declaration periods; or

(d) The individual has received a spiny dogfish landing permit through a transfer in accordance with §F of this regulation within the past license year.]

[(2)] (1) A spiny dogfish landing permit is valid from May 1 [of the year of issuance] through April 30 [of the following year].

[(3)] (2) (text unchanged)

[(4)] (3) Proof of eligibility for a Maryland spiny dogfish landing permit as required in [§E(1)] §D(5) of this regulation shall be documented by records of the Department or records of the National Marine Fisheries Service.

[(5)] (4) — [(6)] (5) (text unchanged)

(6) Spiny dogfish landing permits that have been relinquished or revoked may be issued to another individual in accordance with §E(7) of this regulation.

(7) Distribution of spiny dogfish landing permits that have been relinquished or revoked.

(a) If a spiny dogfish landing permit is relinquished or revoked, the Department shall publish a notice on the Fisheries Service website announcing that applications for permits are being accepted.

(b) The public notice shall state the application process.

(c) The Secretary shall make a reasonable effort to disseminate public notice through various other media so that an affected person has reasonable opportunity to be informed.

F. (text unchanged)

#### G. Permanent Transfer of a Landing Permit.

(1) A commercial tidal fish licensee may permanently transfer a spiny dogfish landing permit if:

(a) The transferor:

(i)—(ii) (text unchanged)

(iii) Harvested a minimum of 20,000 pounds within the previous 4-year period on the same vessel that qualified for the permit under [§E(1)] §D(5) of this regulation; and

(b) (text unchanged)

(2) (text unchanged)

#### H. Reporting and Penalties.

(1) [In addition to the requirements of] An individual shall record the harvest of spiny dogfish in accordance with Natural Resources Article, §4-206, Annotated Code of Maryland[, an individual in possession of a Maryland spiny

dogfish landing permit shall record the harvest of spiny dogfish on the permit daily and submit the completed permit to the Department within 30 days from the end of the spiny dogfish season].

(2) (text unchanged)

(3) In addition to any other penalty, failure to comply with this regulation may result in the *suspension of the current permit or the denial of a subsequent [spiny dogfish landing] permit.*

(4) (text unchanged)

#### I. General

(1) The Secretary may *establish or* modify catch limits or [open or close a season in State waters by publishing a notice in a daily newspaper of general circulation at least 48 hours in advance, stating the effective hour and date] *seasons for spiny dogfish in order to implement the Atlantic States Marine Fisheries Commission Interstate Fishery Management Plan for Spiny Dogfish, by issuing a public notice on the Fisheries Service website.*

(2) *The public notice shall state its effective hour and date and shall be published on the Fisheries Service website at least 48 hours in advance of the effective hour and date.*

[(2)] (3) (text unchanged)

(4) *The Secretary shall make a reasonable effort to modify catch limits to ensure that the quota is harvested and not exceeded.*

(5) *A violation of the restrictions set by the Secretary in accordance with §I of this regulation is a violation of this regulation.*

[(3)] (6) — [(4)] (7) (text unchanged)

MARK J. BELTON  
Secretary of Natural Resources