

In the Matter Of:

Department of Natural Resources & Environmental Control

PROPOSED REVISIONS - COBIA

July 22, 2021



DEPARTMENT OF NATURAL RESOURCES & ENVIRONMENTAL CONTROL
OF THE STATE OF DELAWARE

RE: Proposed Revisions to 7 DE)
Admin. Code 3550 "Cobia")
Docket #2021-R-F-0007)

.. .. .

Virtual Public Hearing
Dial-In Number: 1-408-418-9388
Event Number: 173 319 0455

Thursday, July 22, 2021
6:00 p.m.

.. .. .

BEFORE: Theresa Newman, Hearing Officer
FOR THE DIVISION: John Clark, DNREC

-- Transcript of Proceedings --

WILCOX & FETZER
Registered Professional Reporters
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1 MS. NEWMAN: Good evening. I
2 believe everyone is now connected and ready,
3 so we will now begin the virtual public
4 hearing.

5 I want to thank you all for taking
6 the time out of your busy schedules to
7 connect with us today. The date is Thursday,
8 July 22, 2021.

9 We are here this evening to provide
10 a virtual platform for the State of
11 Delaware's Department of Natural Resources
12 and Environmental Control to conduct its
13 virtual public hearing on the proposed
14 revisions to 7 DE Admin Code 3550, Cobia.

15 And immediately following the
16 adjournment of this hearing, we will then
17 conduct the same hearing platform for the
18 proposed revisions to 7 DE Admin Code 3542,
19 Tilefish.

20 My name is Theresa Newman, and
21 Secretary Garvin has appointed me to serve as
22 the hearing officer for tonight's formal
23 proceeding.

24 In adherence to the state of

1 emergency that was in effect during the time
2 the scheduling was completed for the hearing,
3 the Department scheduled a virtual hearing
4 for this matter before us tonight.

5 As this hearing is being conducted
6 virtually, no one is together in the same
7 room, everyone is participating independently
8 at their own respective locations.

9 While we are not physically
10 gathered together tonight, WebEx does
11 generate a list of those that are virtually
12 present for the proceedings so that the
13 Department will still have a record of those
14 who have electronically joined this event.

15 At the conclusion of the
16 introductory remarks, I will be turning the
17 hearing over to the Department staff to
18 provide their presentation for the record
19 being generated in this matter.

20 Whereas the Department would then
21 open the verbal comment portion of the
22 hearing following the Department's
23 presentation, the Department did not receive
24 registration for verbal comment for this

1 hearing.

2 It is important to note that the
3 Department offered the opportunity for verbal
4 comment as noticed in the legal ads and
5 online. Those that would have wished to
6 provide a verbal comment would have had to
7 register by 12:00 p.m. today, to which there
8 were no registrants by that time.

9 There is a court reporter virtually
10 present who will prepare a verbatim
11 transcript of this hearing, pursuant to the
12 statutory requirement for DNREC to have the
13 same prepared. And, as always, that
14 transcript will be posted on the hearing
15 webpage dedicated to this matter as soon as
16 it is received.

17 In addition, I would encourage
18 those who are attending tonight's hearing to
19 also visit the hearing webpage dedicated to
20 this matter for additional details concerning
21 the proposed regulatory matter.

22 The hearing webpage can be found
23 online under Administrative Law Section of
24 DNREC's website that will be listed at the

1 conclusion of tonight's hearing.

2 Before we begin the presentation
3 tonight, please be advised of the following
4 protocols that remain in place for all DNREC
5 public hearings:

6 All comment received must be solely
7 limited to the subject matter of tonight's
8 hearing. All comments pertinent to the
9 subject matter of this virtual hearing will
10 be incorporated into the record being
11 generated in this matter.

12 In order to ensure that everyone
13 who wishes to offer comment for the
14 Secretary's consideration is accommodated,
15 the record in this matter shall remain open
16 for a minimum of 15 days following tonight's
17 proceeding.

18 There is only one authentic record
19 of this formal proceeding tonight, and it is
20 the official court reporter's verbatim
21 transcript.

22 The statutory purpose of tonight's
23 hearing is to build a record with regard to
24 the Department's proposed actions.

1 A record consisting of the
2 transcript of the hearing tonight, all
3 written comment, all exhibits, and eventually
4 the Hearing Officer's Report will be reviewed
5 by Secretary Garvin.

6 The Secretary will ultimately issue
7 an order, following that review process,
8 containing his decision on this matter and
9 the reasons therefor.

10 Per DNREC's standard hearing
11 protocols, there will be no Q and A or chat
12 session permitted during the hearing.

13 Lastly, it is important to note no
14 decision has already been made by the
15 Department, nor will any decision be made
16 tonight with regard to the proposed
17 regulatory matter.

18 As previously stated, DNREC wishes
19 to ensure that everyone is enabled to offer
20 their comments for inclusion into the record
21 being generated in this matter. In light of
22 the Administrative Procedures Act, the
23 Department is required to, at a minimum,
24 provide a comment period of a minimum of 15

1 days after the hearing.

2 As noticed in legal ads and online,
3 the Department stated that the public comment
4 period will be open through February -- or
5 I'm sorry -- through Friday, August 6, 2021.

6 Comments may be submitted through a
7 comment form link on the hearing webpage, via
8 email to DnrecHearingComments@delaware.gov,
9 or via the U.S. Postal Service at the
10 physical address for DNREC indicated on the
11 hearing webpage and/or the public notices
12 previously issued in this matter.

13 Written comment to DNREC may not be
14 submitted using social media platforms such
15 as Twitter, You Tube, or text messaging.

16 Please remember that all comment
17 received, either through USPS or via the
18 electronic mechanisms noted just now, as long
19 as it is received by the Department on or
20 before August 6, will bear the exact same
21 weight and will be considered equally by the
22 Department -- I'm sorry -- by the Secretary
23 prior to making his final decision in this
24 matter.

1 Lastly, the ultimate decision
2 regarding this matter is made by DNREC's
3 Secretary Garvin. This formal proceeding
4 tonight acts as a mechanism to enable the
5 Department to thoroughly vet the regulatory
6 matter to the public and to let the public
7 know the various ways to which comment may be
8 submitted for Secretary Garvin's
9 consideration, if so desired.

10 I will now hand it over to John
11 Clark with the Division of Fish and Wildlife
12 to provide the Department's presentation.

13 MR. CLARK: Thank you, Theresa.
14 I'm going to give a little background on why
15 we are amending, why we are proposing to
16 amend the Cobia regulation, and then I will
17 talk about the options for amending the
18 option.

19 The Atlantic States Marine
20 Fisheries Commission adopted Addendum 1 to
21 the Interstate Fishery Management Plans for
22 the Atlantic migratory group of Cobia in
23 October of 2020, which mandates changes
24 though recreational de minimis measures. And

1 de minimis, Delaware is a de minimis state
2 for Cobia, which means we have very low catch
3 of Cobia, so there are special regulations
4 that are allowed for states in such
5 situation.

6 States can either adopt the default
7 de minimis measures that are in Addendum 1 or
8 match the management measures of the nearest
9 non-de minimis state, which for Delaware is
10 Virginia.

11 We have two options under
12 consideration for this proposed regulation,
13 so DNREC is seeking comments on which of the
14 two options to amend the regulation that you
15 prefer.

16 And now we will go to the table,
17 and I will go over them.

18 As you can see from this table,
19 there are bolded items. Those represent
20 changes to our current measure. Our current
21 measure is a minimum length of 40 inches, a
22 possession limit of one per angler or three
23 per vessel, and an open season of June 1st
24 through September 15th.

1 The default de minimis option from
2 the Addendum 1 is a minimum length of
3 37 inches, which is obviously shorter than
4 the current minimum length; a possession
5 limit of one; and a vessel limit of one, down
6 from the current three. And the season will
7 be open all year, which is longer than the
8 current situation.

9 Our second option, option two, the
10 Virginia regulations are 40-inch minimum,
11 which maintains what we have now, but for a
12 vessel which can have two Cobia, only one
13 Cobia can be greater than 50 inches. So that
14 has changed in the lengths.

15 Possession limit for an individual
16 angler is still one. The vessel limit is
17 reduced from three Cobia to two. And the
18 season has been shortened to June 15th
19 through September 15th.

20 So those are our two options, and
21 that is a summary of the changes we are
22 proposing to the Cobia regulation.

23 With that, I will turn it back over
24 to you, Theresa.

1 MS. NEWMAN: (Speaking but muted)

2 MR. CLARK: I think you are muted,
3 Theresa.

4 MS. NEWMAN: Thank you. Prior to
5 the hearing, you submitted proposed exhibits
6 from the Department. Would you like to go
7 over those exhibits?

8 MR. CLARK: Oh, would you like each
9 exhibit to be -- you want me to read a list
10 of the exhibits?

11 MS. NEWMAN: If you can give a
12 brief summary of each exhibit, that would be
13 great.

14 MR. CLARK: Okay. Shoot. Let me
15 just get to where I can actually see them.
16 Okay. Let me get to the exhibits here.
17 Pretty much the same thing for both.

18 Okay. We have meeting minutes of a
19 Tidal Finfish Advisory Council where the
20 change to the Cobia regulation was discussed.
21 That is Exhibit 1.

22 Exhibit 2 is a copy of the Start
23 Action Notice.

24 Exhibit 3 is a copy of the

1 Regulatory Flexibility Analysis Regulatory
2 Impact Statement corresponding to the
3 proposed action, as published in the July 1,
4 Delaware Register of Regulations.

5 Exhibit 4 is a copy of the register
6 notice and the proposed amendment to the
7 Cobia regulation, once again published in the
8 July 1, 2021 Delaware Register of
9 Regulations.

10 Exhibit 5 is evidence of the
11 publication of the legal notice regarding the
12 amendments that were published in the
13 Delaware State News and the Wilmington News
14 Journal on Sunday, June 27, 2021.

15 Exhibit 6 is notice of this public
16 hearing as it appeared in the Delaware
17 statewide calendar and posted on July 8,
18 2021.

19 Exhibit 7 is a copy of the legal
20 notice for tonight's public hearing as posted
21 on DNREC's public notices website, starting
22 on June 27, 2021.

23 Exhibit 8 is additional noticing
24 sent to the fisheries e-mail Listserv,

1 certain Blackboard Connect subscribers, and
2 posted to the Division's Facebook page
3 regarding tonight's hearing on the proposed
4 amendment.

5 And Exhibit 9 is a copy of the
6 legal notice for tonight's public hearing
7 posted on the bulletin board in the DNREC
8 building.

9 Exhibit 10 is a copy of the
10 presentation on proposed amendments to the
11 Cobia regulation which I just presented
12 tonight.

13 And finally, Exhibit 11 for the
14 Cobia is the one comment we have received to
15 date for the Cobia proposed changes.

16 And that covers all our exhibits,
17 Theresa.

18 MS. NEWMAN: Thank you, Mr. Clark.
19 I do hereby mark these exhibits as
20 Department's Exhibits 1 through 10. Does
21 this conclude the Department's presentation?

22 MR. CLARK: Yes, it does.

23 MS. NEWMAN: Thank you. As the
24 Department received no registration for

1 public comment by 12:00 p.m. today, there
2 will not be a public comment portion for
3 tonight's hearing.

4 Again, if you wish to submit public
5 comment, please follow the instructions that
6 were given during my entry remarks, and they
7 are available on the screen for those who are
8 virtually present.

9 Again, this hearing matter will be
10 open through Friday, August 6, 2021.

11 Before concluding the Cobia hearing
12 matter, I would like to thank you all for
13 attending the first part of the virtual
14 hearing.

15 We will now take a three-minute
16 break before beginning the virtual hearing
17 for Tilefish. Please remain logged in if you
18 would like to attend the meeting of the
19 hearing for Tilefish.

20 This now concludes the hearing
21 matter of 7 DE Admin Code 3550, Cobia. The
22 time is now 6:12 p.m. Thank you.

23 (Concluded at 6:12 p.m.)
24

CERTIFICATE

I, Lorena J. Hartnett, a Notary Public and Registered Professional Reporter, do hereby certify that the foregoing is an accurate and complete transcription of the proceeding held at the time and place stated herein, and that the said proceeding was recorded by me and then reduced to typewriting under my direction, and constitutes a true record of the testimony given by said witnesses.

I further certify that I am not a relative, employee, or attorney of any of the parties or a relative or employee of either counsel, and that I am in no way interested directly or indirectly in this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office on this 23rd day of July 2021.

A handwritten signature in dark ink, appearing to read "Lorena J. Hartnett", written over a horizontal line.

Lorena J. Hartnett
Registered Professional Reporter

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