

In the Matter Of:

Department of Natural Resources & Environmental Control

PROPOSED REVISIONS - TILEFISH

July 22, 2021



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

RE: Proposed Revisions to 7 DE)
Admin. Code 3542 "Tilefish")
Docket #2021-R-F-0007)

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

Thursday, July 22, 2021
6:15 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: All right. We are
2 back. So thank you all who have remained
3 logged in.

4 We will now begin the second part
5 of tonight's proceeding where you will hear
6 me repeat much of the remarks I previously
7 stated, so please bear with me.

8 Again, the date is Thursday
9 July 22, 2021. We are here this evening to
10 provide a virtual platform for the State of
11 Delaware's Department of Natural Resources
12 and Environmental Control to conduct its
13 virtual hearing on the proposed revisions to
14 7 DE Admin Code 3542, Tilefish.

15 My name is Theresa Newman, and
16 Secretary Garvin has appointed me to serve as
17 a hearing officer for tonight's formal
18 proceeding.

19 In adherence to the state of
20 emergency that was in effect at the time, the
21 scheduling timing of this hearing, the
22 Department scheduled a virtual hearing for
23 the matter before us tonight.

24 As this hearing is being conducted

1 virtually, no one is together in the same
2 room. Everyone is participating
3 independently at their own respective
4 locations.

5 While we are not physically
6 gathered together tonight, WebEx does
7 generate a list of those that are virtually
8 present for this proceeding so the Department
9 will have a same record of those who have
10 electronically joined this event.

11 At the conclusion of the
12 introductory remarks, I will be handing the
13 hearing over to the Department staff to
14 provide their presentation for the record
15 being generated in this matter.

16 Whereas the Department would then
17 open the verbal comment portion of the
18 hearing following the Department's
19 presentation, the Department did not receive
20 registration for verbal comment for this
21 hearing.

22 It is important to note that the
23 Department did offer the opportunity for
24 verbal comment as noticed in the legal ads

1 and online. Those that would have wished to
2 provide a verbal comment would have to
3 register by 12:00 p.m. today, which there
4 were no registrants by that time.

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

13 In addition, I would encourage
14 those who are attending tonight's hearing to
15 also visit the hearing webpage dedicated to
16 this matter for additional details concerning
17 the proposed regulatory matter.

18 The hearing webpage can be found
19 online under the Administrative Law Section
20 of DNREC's website that will be listed at the
21 conclusion of tonight's hearing.

22 Before we begin the presentation
23 tonight, please be advised of the following
24 protocols that remain in place for all DNREC

1 public hearings:

2 All comments received must be
3 solely limited to the subject matter of
4 tonight's hearing.

5 All comments pertinent to the
6 subject matter of the virtual hearing will be
7 incorporated into the record being generated
8 in this matter.

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

15 There is only one authentic record
16 of the formal proceeding tonight, and it is
17 the official court reporter's verbatim
18 transcript.

19 The statutory purpose of tonight's
20 proceeding is to build a record with regards
21 to the Department's proposed actions. A
22 record consisting of the transcript of the
23 hearing tonight, all comments, all exhibits,
24 and eventually the Hearing Officer's Report

1 will be reviewed by the Secretary -- will be
2 reviewed by Secretary Garvin.

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

7 Per DNREC's standard hearing
8 protocols, there will be no Q and A or chat
9 session permitted during the hearing.

10 Lastly, it is important to note
11 that no decision has already been made by the
12 Department, nor will a decision be made
13 tonight with regard to the proposed
14 regulatory matter.

15 As previously stated, DNREC wishes
16 to ensure that everyone is enabled to offer
17 their comment for inclusion into the record
18 being generated in this matter.

19 In light of the Administrative
20 Procedures Act, the Department is required
21 to, at a minimum, provide a comment period of
22 a minimum of 15 days after the hearing.

23 As noticed in the legal ads and
24 online, the Department stated that the public

1 comment period would be open through Friday,
2 August 6, 2021.

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

10 Written comments to DNREC may not
11 be submitted using social media platforms
12 such as Twitter, Facebook, YouTube, or text
13 messaging.

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

22 Lastly, the ultimate decision
23 regarding this matter is made by DNREC's
24 Secretary Garvin.

1 This formal proceeding tonight acts
2 at a mechanism to enable the Department to
3 thoroughly vet the regulatory matter to the
4 public and to let the public know the various
5 ways to submit comments for the Secretary's
6 consideration, if so desired.

7 I will now hand it over to John
8 Clark with the Division of Fish and Wildlife
9 to provide the Department's presentation.

10 MR. CLARK: Thank you, Theresa.

11 MS. NEWMAN: You are welcome.

12 MR. CLARK: Okay. I'm going to
13 give a little background as to why DNREC
14 wants, is proposing to change the Tilefish
15 regulation, and then give a summary of the
16 change proposed.

17 The Mid-Atlantic Marine Fisheries
18 Council approved management actions for
19 Federal waters that resulted in a significant
20 increase to the recreational possession
21 limits for both Golden and Blueline Tilefish.
22 It imposed a closed season for Blueline
23 Tilefish and increased the daily landings
24 limit for the commercial Tilefish fishery.

1 Delaware's Tilefish regulation has
2 lower recreational possession limits than the
3 new Federal limits, no closed recreational
4 season for Blueline Tilefish, and a lower
5 daily commercial landings limit.

6 Delaware's different recreational
7 possession limits have proven confusing to
8 the angling public. Because Tilefish are
9 only caught in Federal waters, this is a fish
10 that's only found in deep waters of the
11 ocean. So for Delaware to have different
12 regulations for the State waters just adds
13 confusion rather than helping anything.

14 The proposed amendments will
15 harmonize Delaware's Tilefish regulation with
16 the Federal water rules.

17 So a summary of the regulations
18 right now in place for Delaware waters has
19 been in place since 2016: Seven Tilefish,
20 any combination of Golden and Blueline, and
21 no closed season.

22 As you can see, our combined
23 Tilefish limit is less than just the new
24 Golden Tilefish limit.

1 The Golden Tilefish have no closed
2 season in Federal waters.

3 For Blueline Tilefish, the Federal
4 water regulation is three per angler on a
5 private vessel, five for an angler on an
6 uninspected for-hire vessel, and seven on an
7 inspected for-hire vessel. And, plus, there
8 is a closed season of November 1st through
9 April 30th.

10 So, as you can see, there is quite
11 a big difference here. And we want to change
12 it so that we match the Federal regulations
13 and remove that confusion.

14 In addition, the commercial
15 possession limit for Federal waters is
16 increased from 300 pounds to 500 pounds. So,
17 once again, we want to match the Federal
18 regulations so any commercial fisherman
19 targeting Tilefish can take advantage of that
20 increased limit.

21 So that's a summary of the changes
22 we are proposing to the Tilefish regulation.

23 And I can now go through the
24 exhibits and just shrink this down so I can

1 see the exhibits. And here we go. Okay.

2 So the Tilefish exhibits:

3 Exhibit 1 are the meeting minutes
4 from the meeting of the Advisory Council on
5 Tidal Finfisheries, which include the
6 Council's motion to recommend Delaware adopt
7 the Federal water regulations for Tilefish.

8 Exhibit 2 is a copy of the approved
9 Start Action Notice pertaining to this
10 regulatory proposal.

11 Exhibit 3 is a copy of the
12 Regulatory Flexibility Analysis, Regulatory
13 Impact Statement corresponding to the
14 proposed action published in the July 1, 2021
15 Delaware Register of Regulations.

16 Exhibit 4 is a copy of the register
17 notice and the proposed amendment to the
18 Tilefish regulation as published in the same
19 Register of Regulations.

20 Exhibit 5 is evidence for the
21 publication of the legal notice regarding the
22 proposed amendments to the Tilefish
23 regulation that were published in the
24 Delaware State News and the Wilmington News

1 Journal on Sunday, June 27, 2021.

2 Exhibit 6 is a notice of this
3 public hearing as it appeared in Delaware's
4 Statewide Calendar and posted on July 8,
5 2021.

6 Exhibit 7 is a copy of the legal
7 notice for tonight's public hearing, posted
8 on DNREC's public notices website starting on
9 June 27, 2021.

10 Exhibit 8, additional noticing sent
11 to the Fisheries e-mail Listserv, certain
12 Blackboard Connect subscribers the Fisheries
13 has, and posted on the Division of Fish and
14 Wildlife's Facebook page regarding tonight's
15 hearing on the Tilefish regulation proposed
16 changes.

17 Exhibit 9 is a copy of the legal
18 notice for tonight's public hearing as posted
19 on the bulletin board in the DNREC lobby as
20 of July 8.

21 And, finally, Exhibit 10 is a copy
22 of the presentation I just gave about the
23 proposed amendments to the Tilefish
24 regulation.

1 So that concludes the exhibits,
2 Theresa, and I will turn it back over to you.

3 MS. NEWMAN: Thank you, Mr. Clark.
4 I have received the Department's Exhibits 1
5 through 10, and I do hereby mark these
6 exhibits as Department's Exhibits 1 through
7 10.

8 As the Department received no
9 registration for public comment by 12:00 p.m.
10 today, there will be no verbal public comment
11 given -- verbal comment portion of the
12 hearing given tonight.

13 Again, if you wish to submit public
14 comment, please follow the instructions that
15 were given during the introductory remarks,
16 and it is also available on the screen.

17 The hearing record will remain open
18 through Friday, August 6, 2021, to which you
19 can submit your comments.

20 I want to thank you all for
21 attending the virtual hearing tonight. The
22 hearing is now concluded at 6:27 p.m. Thank
23 you.

24 (Concluded at 6:27 p.m.)

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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.



Lorena J. Hartnett
Registered Professional Reporter

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