

**In the Matter Of:**

*Department of Natural Resources & Environmental Control*

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*PROPOSED REVISIONS TO THE HORSESHOE CRAB REGULATIONS*

*March 23, 2023*

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

RE: Proposed Revisions to the Horseshoe  
Crab Regulations  
7 De Admin. Code 3200  
Docket #2023-R-F-0001

.. . . . .

Virtual Public Hearing  
Thursday, March 23, 2023  
6:00 p.m.

.. . . . .

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

-- Transcript of Proceedings --

WILCOX & FETZER  
Registered Professional Reporters  
1330 King Street - Wilmington, Delaware 19801

(302) 655-0477

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MS. NEWMAN: All right. Good evening. I believe everyone is connected and ready, so we will now begin the virtual public hearing.

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

I want to thank you all for taking the time out of your busy schedules. The date is Thursday, March 23, 2023. We are here this evening to provide a virtual platform for the State of Delaware's Department of Natural Resources and Environmental Control to conduct its virtual public hearing on Docket Number 2023-R-F-0001, the Proposed Revisions to 7 DE Admin Code 3200, Horseshoe Crabs.

First and foremost, this hearing is being conducted virtually. No one is gathered together in the same room. Everyone is participating independently at their own respective locations.

1           While we are not physically  
2 gathered tonight, Zoom does generate a list  
3 of those that are virtually present for this  
4 proceeding, so the Department will have the  
5 record of those who have electronically  
6 joined this event.

7           At the conclusion of the  
8 introductory remarks, I will be turning the  
9 hearing over to Department staff to provide  
10 their presentation for the record being  
11 generated in this matter.

12           Once the presentations conclude,  
13 those persons who preregistered in advance of  
14 this hearing will be acknowledged and  
15 provided an opportunity to offer comment on  
16 the proposed regulatory matter in alignment  
17 with DNREC's standard comment protocols.

18           There is a court reporter virtually  
19 present who will prepare a verbatim  
20 transcript of this hearing pursuant to the  
21 statutory requirement for DNREC to have the  
22 same prepared. And, as always, that  
23 transcript will be posted on the hearing  
24 webpage dedicated to this matter as soon as

1 it is received.

2 In addition, I would encourage  
3 those who are attending the hearing to also  
4 visit the DNREC Hearing webpage dedicated to  
5 this matter for additional details concerning  
6 the proposed regulations.

7 The hearing webpage can be found  
8 online under the Administrative Law Section  
9 of DNREC's website that will be listed at the  
10 conclusion of tonight's hearing.

11 Before we begin the presentation,  
12 please be advised of the following protocols  
13 that remain in place for all DNREC public  
14 hearings.

15 All comments received must be  
16 limited solely to the subject matter of  
17 tonight's hearing. All comments pertinent to  
18 the subject matter of this virtual hearing  
19 will be incorporated into the record being  
20 generated in this matter.

21 In order to ensure that everyone  
22 who wishes to offer comment for the  
23 Secretary's consideration is accommodated,  
24 the record in this matter will remain open

1 for a minimum of 15 days following tonight's  
2 proceeding.

3           There is one authentic record of  
4 the formal proceeding tonight, and it is the  
5 official court reporter's verbatim  
6 transcript.

7           The statutory purpose of tonight's  
8 hearing is to build the record with regard to  
9 the Department's proposed actions. A record  
10 consisting of the transcript of the hearing  
11 tonight, all written comment, all exhibits,  
12 and eventually the Hearing Officer's Report,  
13 will be reviewed by Secretary Garvin.

14           The secretary will ultimately issue  
15 an order following the review process,  
16 containing his decision on this matter and  
17 the reasons therefor.

18           Per DNREC's standard hearing  
19 protocols, there will be no Q and A or chat  
20 session permitted during the hearing. Those  
21 who preregistered to offer verbal comment  
22 will be acknowledged to speak at the  
23 conclusion of the presentation portion of  
24 tonight's proceeding. Additional

1 instructions regarding the offering of verbal  
2 comment tonight will be provided at that  
3 time.

4 It is important to note no decision  
5 has already been made by the Department, nor  
6 any decision will be made tonight with  
7 regards to the proposed regulatory matter.

8 As previously stated, DNREC wishes  
9 to ensure that everyone is enabled to offer  
10 their comments for inclusion into the record  
11 being generated in this matter.

12 In light of the Administrative  
13 Procedures Act, the Department is required  
14 to, at a minimum, provide a comment period of  
15 a minimum of 15 days after the hearing.

16 As noticed in the legal ads and  
17 online, the Department stated that the public  
18 comment period will be open through Friday,  
19 April 7, 2023.

20 Comments may be submitted through a  
21 comment form link on the hearing webpage, via  
22 e-mail to [DNRECHearingComments@Delaware.gov](mailto:DNRECHearingComments@Delaware.gov),  
23 or via the U.S. Postal Services at the  
24 physical address for DNREC indicated on the

1 hearing webpage and/or the public notices  
2 previously issued in this matter.

3           Written comments to DNREC may not  
4 be submitted using social media platform such  
5 as Twitter, Facebook, YouTube or text  
6 messaging.

7           Please remember all comment  
8 received either through USPS or via the  
9 electronic mechanisms noted just now, as long  
10 as it is received by the Department on or  
11 before April 7th, will bear the exact same  
12 weight and will be considered equal by the  
13 Secretary prior to making his final decision  
14 in this matter.

15           Lastly, the ultimate decision  
16 regarding the matter, this matter, is made by  
17 DNREC's Secretary Garvin. This formal  
18 hearing acts as a mechanism to enable the  
19 Department to thoroughly vet the regulatory  
20 matter to the public and to let the public  
21 know the various ways to which comment may be  
22 submitted for Secretary Garvin's  
23 consideration if so desired.

24           I will now hand it over to Mr. John

1 Clark with the Division of Fish and Wildlife  
2 to provide the Department's presentation.

3 MR. CLARK: Thank you, Hearing  
4 Officer Newman. I would like to start by  
5 presenting the Division of Fish and  
6 Wildlife's exhibits on Proposed Amendments to  
7 Delaware Administrative Code 3200,  
8 Horseshoe Crabs.

9 Exhibit 1 are the draft meeting  
10 minutes from the January 9, 2023 meeting of  
11 the Council on Shellfisheries, which include  
12 the Council's recommendations to the Division  
13 of Fish and Wildlife on this proposed  
14 regulatory action.

15 Exhibit 2 is a copy of the approved  
16 Start Action Notice, Number 2023-01,  
17 pertaining to the proposed amendments.

18 Exhibit 3 is a copy of the  
19 Regulatory Flexibility Analysis and  
20 Regulatory Impact Statement corresponding to  
21 the proposed action and as published in the  
22 March 1, 2023 Delaware Register of  
23 Regulations.

24 Exhibit 4 is a copy of the register

1 notice, Start Action Notice 2023-01, and the  
2 Proposed Amendment to 7 Delaware  
3 Administrative Code 3200, Horseshoe Crabs, as  
4 published in the March 1, 2023 Delaware  
5 Register of Regulations.

6 Exhibit 5 is the evidence for the  
7 publication of the legal notice regarding the  
8 Proposed Amendments to 7 Delaware  
9 Administrative Code 3200 in the Delaware  
10 State News and Wilmington News Journal on  
11 March 2, 2023.

12 Exhibit 6: Notice of this public  
13 hearing as it appeared on Delaware's  
14 Statewide Calendar and posted on February 21,  
15 2023.

16 Exhibit 7 is notice of this public  
17 hearing as it appears on DNREC's public  
18 hearings website.

19 Exhibit 8 is additional noticing  
20 regarding tonight's hearing on the Proposed  
21 Amendment to 7 Delaware Administrative Code  
22 3200, sent by e-mail on March 9th and then  
23 again on March 21, 2023, to the Fisheries  
24 Listserv of e-mail addresses, and to those

1 commercial fishermen who registered to  
2 receive notices from the Fisheries Section  
3 through the Blackboard Connect noticing  
4 service, and as posted on March 9, 2023, on  
5 the Division's Facebook page.

6 And finally, Exhibit 9 is a copy of  
7 the presentation on the proposed amendments  
8 that will be presented this evening. And  
9 that is all the exhibits, so I will begin  
10 with the presentation.

11 Okay. The first part and the main  
12 impetus for the Proposed Amendments to 7  
13 Delaware Administrative Code 3200, Horseshoe  
14 Crabs, is to comply with the Atlantic States  
15 Marine Fisheries Commission Addendum VIII to  
16 the Horseshoe Crab Management Plan.

17 So a little background: The  
18 Atlantic States Marine Fisheries Commission  
19 (ASMFC) approved Addendum VIII to the  
20 Interstate Fishery Management Plan for  
21 horseshoe crab in November 2022.

22 Addendum VIII implements the  
23 revised Adaptive Resource Management, or ARM,  
24 model. And to briefly describe this taken

1 right from ASMFC, "The objectives of the ARM  
2 revision were to address previous peer-review  
3 critiques, including many new sources of data  
4 and horseshoe crab mortality, and adopt new  
5 modeling software since the old ARM software  
6 is obsolete. The new ARM represents the best  
7 and most recent information for managing  
8 horseshoe crabs of Delaware Bay-origin with  
9 consideration of the needs for migrating  
10 shorebirds, such as the Red Knot."

11           So our implementation of Addendum  
12 VIII, this requires -- through this amendment  
13 we require Delaware's annual horseshoe crab  
14 harvest quota to be set by ASMFC through  
15 Addendum VIII.

16           Addendum VIII adopts the harvest  
17 limit for 2023 generated by the revised ARM  
18 model, which for Delaware is 164,364 male  
19 horseshoe crabs. This is a slight increase  
20 from the Addendum VII quota, which we were  
21 under right through 2022, which was about a  
22 little more than 2,200 crabs less.

23           Very important: This regulation  
24 does not determine either the amount or

1 composition of Delaware's annual horseshoe  
2 crab quota, both of which are determined by  
3 ASMFC. Delaware is a member state of ASMFC  
4 and a full participant in the ASMFC  
5 quota-setting process.

6 So that was the proposed amendment  
7 to comply with Addendum VIII.

8 Because we are making these -- we  
9 are proposing these changes to the  
10 regulation, we went back in and looked at  
11 areas where we could clarify the wording in  
12 the regulation and update some of the  
13 processes there.

14 So one of the things we are  
15 proposing to do is revise the text regarding  
16 harvest methods to clarify actions considered  
17 hand harvest and actions considered dredge  
18 harvest.

19 A second change we want to make is  
20 to change the possession limits from a volume  
21 measurement of currently 300 cubic feet to a  
22 count, which would be 3,000 horseshoe crabs  
23 per day.

24 The reason for this change is that

1 when the volume measurement was put into  
2 place, it was before there was a quota. And  
3 a standard way to collect horseshoe crabs was  
4 to throw them in the back of a truck, a  
5 pickup truck with fence sides to stick up  
6 higher on the bed, and the estimated volume  
7 of that was about 300 cubic feet.

8 Now that we are under a strict  
9 quota and our fishery is managed on a daily  
10 basis where every harvester must call in  
11 their catch every day, which has to be called  
12 in a number, so the harvesters have to count  
13 what they have caught. And we just figured  
14 this would make more sense to go to a count.  
15 Plus, from our enforcement standpoint, it is  
16 much clearer to enforce a number than a  
17 volume measure.

18 Because we do have this very hard  
19 quota limit and a strict accounting, we  
20 figured it would make it more simple to  
21 streamline things to have a uniform daily  
22 possession limit for the hand harvest and the  
23 dredge fisheries.

24 We are also changing -- the dredge

1 fishery has only occurred in about two of the  
2 past five years, because most years the  
3 horseshoe crab quota is landed by the hand  
4 harvest. So we want to change the regulation  
5 to reflect the operation of the fishery and  
6 to specify that a dredge fishery will only  
7 occur if quota remains after the hand harvest  
8 fishery closes.

9 And that means we will change the  
10 timing of the dredge lottery from January, as  
11 it's supposed to be now in the regulation, to  
12 the end of the hand harvest season to allow  
13 DNREC to tally hand harvest landings and  
14 determine if the lottery and the dredge  
15 season will even occur that year.

16 So that is a very brief summary of  
17 the changes we are proposing. And the  
18 commenting guidelines are here. And I will  
19 turn it back to Hearing Officer Newman.

20 MS. NEWMAN: Thank you, Mr. Clark.  
21 Does that conclude the Department's  
22 presentation?

23 MR. CLARK: It does.

24 MS. NEWMAN: Okay. Thank you. I

1 have received the exhibits that you  
2 introduced in the beginning of your  
3 presentation, and I hereby mark those  
4 exhibits as Department's Exhibits 1 through  
5 9.

6 Now that the presentation has  
7 concluded, we will now turn our attention to  
8 those who preregistered for the opportunity  
9 to offer verbal comment at tonight's hearing.

10 Per the protocol set forth on  
11 DNREC's public hearing webpage, those wishing  
12 to offer verbal comments during the virtual  
13 hearings must be preregistered with DNREC no  
14 later than noon on the day of the hearing.

15 The order of those commenting  
16 tonight was established by those that did  
17 pre-register through the Department's  
18 preregistration process.

19 All commenters must adhere to the  
20 Department's protocols with regard to  
21 offering verbal comment, including making  
22 their comments as concise as possible,  
23 respecting the three-minute time limit, and  
24 limiting their comments to the subject matter

1 of the hearing.

2           There is only one preregistered  
3 commenter. To assist the commenter with  
4 regard to the amount of time they have, there  
5 is a visual timer that will appear on the  
6 screen to count down the three minutes.

7           When it is that speaker's turn to  
8 comment, the speaker's audio will be unmuted,  
9 their identity will be confirmed, and the  
10 timer will begin.

11           At the end of the three minutes,  
12 the speaker's audio will be automatically  
13 placed back on mute.

14           And please note that there is no  
15 live video feed of the commenter, and it is  
16 audio only.

17           The commenter will be  
18 transcribed -- the comment will be  
19 transcribed by the court reporter and thereby  
20 incorporated into the hearing record.

21           If the speaker is not able to  
22 finish their comment within the three-minute  
23 time period, the Department encourages them  
24 to submit their completed comment in writing

1 no later than April 7th.

2 With that being said, may I have  
3 Mr. Piascinski unmuted? And for the record,  
4 please provide your first and last name, and  
5 then you may begin your comment.

6 MR. PIASCINSKI: Hello.

7 MS. NEWMAN: Hello.

8 MR. PIASCINSKI: Hello. Yeah, my  
9 name is Rob Piascinski.

10 MS. NEWMAN: Thank you. You may  
11 begin your comment.

12 MR. PIASCINSKI: All right. I have  
13 a concern with the old 1.3 where it has been  
14 changed to "without manual or mechanical  
15 equipment to hand harvest."

16 I would like some clarification on  
17 that, if possible, because that sounds like I  
18 couldn't even use a wheelbarrow to push them  
19 off of the beach.

20 My second comment would be about  
21 5.1, the 16-year-old or less, and 5.2, all  
22 the stuff there about help and not being  
23 allowed to drive within so far of the beach.  
24 I think that both of them need to just

1 disappear and be replaced with two helpers of  
2 whatever age.

3           6.7, the 3,000 daily limit, I would  
4 like to see also a 6,000 possession limit, no  
5 limit for dealers who buy these, and a  
6 2 percent overage on the count part.

7           We have in our every other  
8 commercial fishery -- in other words, if I  
9 miscount by one or two crabs, I don't want a  
10 ticket. And there's days when we pick up on  
11 a really late tide and then a real early tide  
12 the next day, where it's possible we couldn't  
13 get the day before's crabs to the buyer  
14 before we picked up again. So that's my  
15 concern on the possession limit.

16           That's pretty much all I got to  
17 say.

18           MS. NEWMAN: Thank you,  
19 Mr. Piascinski. So that was our one  
20 commenter for the night. And this does  
21 conclude the hearing for tonight. I want to  
22 thank you all for joining.

23           Again, if you do wish to submit  
24 public comment in writing, please follow the

1 instructions that were given during my  
2 introduction remarks. And as also available  
3 on the screen coming up, the hearing record  
4 will remain open through Friday, April 7th.

5 Thank you all for attending the  
6 virtual hearing. The virtual hearing is now  
7 concluded at 6:18 p.m.

8 (Concluded at 6:18 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 March 2023.



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Lorena J. Hartnett  
Registered Professional Reporter

Proposed Revisions to the Horseshoe Crab Regulations - March 23, 2023

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