

1 Delaware Department of Natural Resources and  
2 Environmental Control (DNREC)  
3 Division of Fish and Wildlife Public Hearing  
4 Proposed Amendments to 7 DE Admin. Code 3505  
5 Striped Bass Commercial Fishing Seasons; Quotas;  
6 Tagging and Reporting Requirements  
7

8 Docket No. 2023-R-F-0021  
9

10  
11 Moderated by Theresa Smith

12 Tuesday, January 30, 2024

13 6:00 p.m.  
14

15  
16 Remote Proceeding

17 DNREC

18 89 Kings Highway

19 Dover, DE 19901  
20

21  
22 Reported by: Andrew Weader

23 JOB NO.: 6391184  
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- List of Attendees:
- Theresa Smith, Hearing Officer
- John Clark, Presenter with DNREC
- Tanesha Perry, Hearing Officer Assistant
- Wes Townsend, Public Attendee
- Katie Kazimir, Public Attendee
- Lawrence Voss, Public Attendee
- Sarah Everhart, Public Attendee

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Mr. John Clark

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not in possession of reporter

P R O C E E D I N G S

1  
2 MS. SMITH: Good evening. Thank you  
3 all for your patience. We will now begin the hearing  
4 scheduled for tonight. The time is now 6 p.m. on  
5 Tuesday, January 30, 2024.

6 For ADA compliance, tonight's formal  
7 proceeding offers closed captioning in a variation of  
8 languages. Before I begin my introductory remarks, I  
9 will now hand it over with Tanesha Perry with the  
10 Department's Office of the Secretary to go over the  
11 closed captioning feature, which is available in  
12 multiple languages on the Zoom platform. Tanesha.

13 MS. PERRY: Thank you, Teresa.

14 Hello. My name is Tanesha Perry. I'm  
15 the Administrative Specialist with the Office of  
16 Secretary. I'm here to assist the hearing officer  
17 tonight.

18 I'd like to make sure that everyone is  
19 aware that the Zoom platform we're using has the  
20 ability for closed captioning in multiple languages.  
21 To start closed captioning, if you're using a  
22 computer, at the bottom of your screen you should see  
23 a show captions button. If you do not see the show  
24 captions button, you may have to select the three dots

1 that say more. Once you find your show captions  
2 button, you should click the carrot pointing up, which  
3 will bring up your translation options. You can  
4 select the -- your preferred language from there. If  
5 your preferred language isn't listed, you can select  
6 more and all languages will be listed.

7           If you're on a smartphone, at the  
8 bottom of your screen, select the captions button  
9 indicated by CC. If your preferred language is not  
10 listed at the bottom, you may have to select the three  
11 dots that say more. You should then select meeting  
12 settings with the gear icon next to it. Once the  
13 settings page comes up, located at the very bottom,  
14 select translation language. From there, you'll be  
15 able to select the preferred language, then select  
16 done at the top right corner, and then done again. If  
17 the captions are not automatically popping up, you may  
18 need to select captions again and select show  
19 captions.

20           Now, I'll turn it back over to the  
21 hearing officer, Teresa Smith.

22           MS. SMITH: Thank you, Ms. Perry. My  
23 name is Teresa Smith, as she said, and  
24 Secretary Garvin has appointed me to serve as the

1 hearing officer for tonight's goal proceeding.

2 We are here this evening to provide a  
3 virtual platform for the State of Delaware's  
4 Department of Natural Resources and Environmental  
5 Control to conduct its virtual public hearing on the  
6 proposed revisions to 7 DE Admin. Code 3505, Striped  
7 Bass Commercial Fishing Season; Quotas; Tagging and  
8 Reporting Requirements Docket Number 2023-R-F-0021.

9 The purpose of the hearing is to build  
10 a record in regard to the hearing matter by providing  
11 a formal legal platform for the public to learn about  
12 the proposed regulatory revisions and to enable the  
13 public to offer live comment.

14 First and foremost, this hearing is  
15 being conducted virtually. No one is together in the  
16 same room. Everyone is participating independently at  
17 their own respective locations. While we are not  
18 physically gathered tonight, however, Zoom does  
19 generate a list of those who are virtually present for  
20 this proceeding. So the department will have a record  
21 of those who have joined electronically for this  
22 event.

23 There is a court reporter virtually  
24 present who will prepare a verbatim transcript of the



1 hearing pursuant to the statutory requirement for  
2 DNREC to have the same prepared. And as always, that  
3 transcript will be posted on the hearing web page  
4 dedicated to this matter as soon as it is received.

5 In addition, I would encourage those  
6 who are attending the hearing to also visit the  
7 hearing web page dedicated to this matter for  
8 additional details concerning the proposed revisions  
9 to 7 DE Admin. Code 3505.

10 The hearing tonight presented along  
11 with other related documents, are posted on the  
12 department of the hearing web page dedicated to this  
13 matter. The hearing web page can be found online  
14 under the Administrative Law section of DNREC's  
15 website that will be listed towards the end of the  
16 hearing.

17 At the conclusion of my introductory  
18 remarks, I will be turning the hearing record over to  
19 department staff to provide their presentation for the  
20 record being generated in this matter. Following  
21 department's presentation, the public comment portion  
22 of the hearing will begin.

23 For those who pre-registered with DNREC  
24 to offer live comment this evening, they will be

1 recognized in the order that their pre-registration  
2 was received, and each commenter will be given three  
3 minutes to provide their verbal comment. If you are  
4 unable to finish your comment within the three  
5 minutes, you are encouraged to submit your full  
6 comments in writing to DNREC. All comments have equal  
7 weight, whether they are offered live this evening or  
8 in writing between now and when the record closes,  
9 which will be February 14, 2024. I will provide more  
10 details about the comment portion of the proceeding  
11 after the presentations conclude.

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

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

20 In the light of Administrative Act  
21 procedure, and to ensure everyone who wishes to offer  
22 comment for the Secretary's consideration is  
23 accommodated, the department is required to, at a  
24 minimum, provide a comment period of 15 days after the

1 hearing.

2                   There's only one authentic record of  
3 the formal proceeding tonight and is the official  
4 court reporter's verbatim transcript.

5                   The statutory purpose of tonight's  
6 hearing is to build the record with -- with regard to  
7 the department's proposed actions. A record  
8 consisting of a transcript of the hearing tonight, all  
9 written comments, all exhibits, and eventually the  
10 hearing officer's report will be reviewed by  
11 Secretary Garvey. The Secretary will ultimately issue  
12 an order following that review process containing his  
13 decision on this matter and their reasons therefore.  
14 Per DNREC's standard hearing protocols, there will be  
15 no Q&A or chat session permitted during the hearing.

16                   It is important to note that no  
17 decision has already been made by the department nor  
18 will any decision be made tonight with regard to the  
19 proposed regulatory matter.

20                   As previously stated, DNREC wishes to  
21 ensure that everyone is able to offer their comments  
22 for inclusion into the record being generated in this  
23 matter. As noticed in the legal ads and online, the  
24 Department stated that the public comment period will

1 be opened through February 14, 2024. Comments may be  
2 submitted through a comment form link on the hearing  
3 web page, via e-mail to  
4 dnrechearingcomments@delaware.gov, or via the  
5 U.S. Postal Service at the physical address for DNREC  
6 indicated on the hearing web page and/or the public  
7 notices previously issued in this matter. Written  
8 comments to DNREC may not be submitted using social  
9 media platforms such as Twitter, Facebook, YouTube, or  
10 text messaging.

11           Please remember that all comment  
12 received either through USPS or via the electronic  
13 mechanism read just now, as long as it -- as it is  
14 received by the comment on or before February 14th,  
15 will bear the exact same weight and will be considered  
16 equally by the Secretary prior to making his final  
17 decision in this matter.

18           While comments are appreciated, each  
19 comment must be limited solely to the subject matter  
20 of tonight's hearing. Multiple comments saying the  
21 same thing do not outweigh one singular comment.  
22 Simply put, comments are not votes. A single well  
23 supported comment may carry more weight than 1000 form  
24 letters.

1 I also want to note that only comments  
2 submitted directly to DNREC and entered by myself into  
3 the hearing record in this matter will be posted on  
4 the hearing web page and be considered by the  
5 department as a part of the decision process. The  
6 department has not partnered with any outside  
7 organizations or websites to assist in the public  
8 submission of comments in this matter, so again, only  
9 submit your comments to DNREC directly.

10 Lastly, the ultimate decision regarding  
11 this matter is made by DNREC Secretary Garvin. This  
12 formal proceeding tonight acts as a mechanism to  
13 enable the department to thoroughly back the hearing  
14 matter to the public and to let the public know the  
15 various ways to which the comment may be received and  
16 submitted for Secretary Garvin's consideration if so  
17 desired.

18 I will now hand it over to John Clark  
19 with the Division of Fish and Wildlife to provide the  
20 department's presentation.

21 MR. CLARK: Thank you, Hearing Officer  
22 Smith. I will can now proceed to -- let me get this.

23 Okay. Before I get to the  
24 presentation, I'd just like to review the exhibits

1 that we have submitted for this proposed regulatory  
2 action.

3 Exhibit 1 is a copy of the final  
4 minutes from the September 19, 2023 Advisory Council  
5 Tidal Fin Fish Fisheries Meeting, which documents the  
6 discussion of this proposal and the Council's  
7 unanimous vote to recommend that the DNREC's Division  
8 of Fish and Wildlife proceed with this regulatory  
9 action.

10 Exhibit 2 is a copy of the Start Action  
11 Notice.

12 Exhibit 3 is a copy of the Regulatory  
13 Flexibility Analysis Regulatory Impact Statement.

14 Exhibit 4 is a copy of the Register  
15 Notice.

16 Exhibit 5 is the proposed amendment as  
17 to the regulation as published in the January 2024  
18 Delaware Register of Regulations.

19 Exhibit 6 is the legal notice and proof  
20 of publication of the notice as it appeared in the  
21 January 7th Delaware State News.

22 Exhibit 7 is proof of publication and  
23 the legal notice of the notice that was published on  
24 January 9th in the Wilmington News Journal.

1           Exhibit 8 is notice of this public  
2 hearing as it appears on the DNREC's Public Hearings  
3 website.

4           Exhibit 9, Notice of this hearing on  
5 the State calendar.

6           Exhibit 10 is notice of this hearing as  
7 it appears on the DNREC Division of Fish and Wildlife  
8 Facebook page.

9           Exhibit 11, an e-mail sent to  
10 Delaware's Commercial Gill Net permittees. Those gill  
11 net permittees that we had their e-mail address for, I  
12 should clarify, on January 23rd notifying them of this  
13 hearing, and that same e-mail was resent on  
14 January 29th.

15           Exhibit 12 is the notice of this public  
16 hearing as it appears on DNREC's Public Meeting  
17 Notices Bulletin Board in the Visitor Center.

18           And finally, Exhibit 13 is a copy of  
19 the hearing presentation, which I will now proceed to  
20 go through.

21           MS. SMITH: Before you proceed with the  
22 presentation, John, I'd like to mark those exhibits  
23 into the record. I have received all of the  
24 electronic versions of the proposed exhibits by the

1 department, and I hereby mark these exhibits as  
2 Department's Exhibits 1 through 13.

3 (Exhibit 1 through Exhibit 13 were  
4 marked for identification.)

5 You may proceed, John.

6 MR. CLARK: Thank you. First, I'll  
7 start by reviewing the current gill net season. The  
8 spring striped bass gill net season will open on  
9 February 15th and it runs through May 31st. The  
10 entire period is open for drift gill netting, but  
11 anchor gill netting is only open from March 1st  
12 through May 10th.

13 Anchor gill netting does account for  
14 the great majority of Delaware striped bass landings,  
15 approximately 90 percent of spring landings. Anchor  
16 netting is more efficient than drift netting, but can  
17 also be more destructive. Striped bass discard  
18 mortality studies conducted by the Division of Fish  
19 and Wildlife showed that from anchor nets, striped  
20 bass discard mortality was 41 percent versus only  
21 8 percent for drifted gill nets. And anchor nets,  
22 because they are more efficient, they're out there  
23 fishing all day long. They kill other species. We  
24 have documented dead Endangered Species Act listed in



1 Atlantic Sturgeon and protected water birds among  
2 others.

3           So why are we changing this -- the --  
4 or proposing to change this. I shouldn't say  
5 changing. Proposing. Okay. The Advisory Council  
6 Tidal Fin Fish Fisheries discussed modifications to  
7 the spring anchor gill net season with DNREC Division  
8 of Fish and Wildlife at its April 18th and then its  
9 September 19, 2023 meetings. DNREC Fish and Wildlife  
10 stipulated at these meetings it would not support  
11 adding additional anchor net days, but it would  
12 support changing the anchor net season while  
13 maintaining the same number of days for as I mentioned  
14 before, because anchor netting can have unintended  
15 side effects that we are not looking to increase.

16           The Council passed a motion unanimously  
17 at the September meeting recommending that DNREC  
18 modify the spring anchor gill net season by adding two  
19 weeks in February and eliminating two weeks in April  
20 and May to better synchronize the spring anchor gill  
21 net season with the availability of striped bass since  
22 striped bass have been coming into Delaware Bay and  
23 River earlier in the year as the waters warm up, and  
24 the market for striped bass. Although the market for

1 striped bass early in the season typically was not  
2 that great, the last few years it has been good. So  
3 that was the impetus for this action.

4 After this action was started, the  
5 proposal that is to get this proposed regulation  
6 moving, the Council did receive comments from several  
7 matters that were not in favor of this action. And  
8 the Council further discussed this recommendation at  
9 its January 17th meeting and recommended a minor  
10 modification to the start and end date of the proposed  
11 regulation.

12 So first, I'll show here the -- the  
13 strikethrough version of the proposed regulation as  
14 printed in the January 2024 Delaware Register of  
15 Regulations. And as mentioned, what this will do is  
16 change the opening of the anchor net season to  
17 February 15th instead of March 1st, and it will close  
18 the season on -- for anchor nets on April 27th instead  
19 of on May 10th.

20 After the discussion at the January  
21 meeting, the modification recommended by the  
22 Advisory Council Tidal Fin Fish Fisheries is to change  
23 the -- both those by five days. So with the change  
24 recommended at the meeting, the season for anchor nets

1 would open on February 20th and it would close on  
2 May 2nd. So either way, it's the same number of  
3 anchor netting days.

4 And that concludes my presentation.  
5 And I will stop sharing my screen now.

6 MS. SMITH: Thank you, Mr. Clark.

7 We will now turn to the public comment  
8 portion of tonight's hearing. Those who  
9 pre-registered by noon today with DNREC to offer live  
10 comment for inclusion into the record will be called  
11 upon in the order the registration was received. The  
12 Department only received one registrant,  
13 Harvey Yankinson [ph].

14 At the time your name is called, you  
15 will be unmuted. If for any reason you are having  
16 technical issues, we will call your name twice and  
17 move on with the remainder of the hearing.

18 Before I begin, I want to stress the  
19 following parameters of the public comment portion of  
20 the hearing. Comments must be related to the subject  
21 matter of tonight's hearing. Each registrant will be  
22 given three minutes to offer comments for the record.  
23 The timer will begin when the commenter starts  
24 talking, and the system will automatically mute the

1 commenter at the three minute mark. The commenter's  
2 video will remain off while speaking. There's no  
3 sharing or yielding of the commenters three minutes.

4 While the department appreciates all  
5 comments received, there will be no -- there will be a  
6 zero tolerance policy in effect for disruptive  
7 behavior, discouraging remarks, offensive language, or  
8 personal attacks.

9 This formal proceeding acts -- this  
10 formal -- this is a formal proceeding, and as such,  
11 should be given this respect by all attendance -- all  
12 in attendance this evening.

13 With that being said, may I have  
14 Mr. Harvey Yankinson [ph] unmuted? Please state your  
15 name for the record, and the organization you are  
16 representing, and you may begin with your comments.

17 MS. PERRY: Mr. Yankinson, if you're in  
18 attendance, can you raise your hand?

19 MS. SMITH: Tanesha, is there a  
20 feature? I see there's a couple call-ins. What is  
21 the feature to raise your hand if you are a call-in?

22 MS. PERRY: Here, I'm going to unmute  
23 the call-ins, and if Mr. Yankinson [ph] is available.  
24 I've asked him to unmute.

1 MS. SMITH: Okay. Did we receive any  
2 other contact information for Mr. Yankinson [ph] with  
3 his registration?

4 MS. PERRY: That's what I'm about to  
5 check for his phone number.

6 MS. SMITH: Thank you. Thank you all  
7 patiently for waiting.

8 MS. PERRY: It is a 610 number, so  
9 neither of the call-ins --

10 MS. SMITH: Okay. Thank you.

11 MS. PERRY: -- match that number.

12 MS. SMITH: Thank you, Ms. Perry, for  
13 confirming that.

14 As Mr. Yankinson is not in attendance  
15 tonight, we will move on with the remainder of the  
16 hearing.

17 That now concludes the comment portion  
18 of the hearing. I want to extend the written comments  
19 will be received again between now and February 14th  
20 and will be posted on the hearing web page so that  
21 everyone can see the hearing record as it is  
22 generated.

23 As we conclude tonight's hearing, I  
24 want to remind everyone of all the ways in which you

1 can offer comments for inclusion into the formal  
2 hearing record. It is on the screen, or should be on  
3 the screen soon for you to record if you need to, but  
4 is also available on the hearing web page dedicated to  
5 this matter if you need to go there.

6 That now concludes the hearing for  
7 tonight, and it is now 6:19. Thank you all for  
8 joining.

9 (Whereupon, the meeting concluded at  
10 6:19 p.m.)

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CERTIFICATE

I, ANDREW WEADER, the officer before whom the foregoing proceedings were taken, do hereby certify that any witness(es) in the foregoing proceedings, prior to testifying, were duly sworn; that the proceedings were recorded by me and thereafter reduced to typewriting by a qualified transcriptionist; that said digital audio recording of said proceedings are a true and accurate record to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

*Andrew Weader*

ANDREW WEADER

Notary Public in and for the  
Commonwealth of Pennsylvania

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CERTIFICATE OF TRANSCRIBER

I, PATRICIA EDMONDS, do hereby certify that this transcript was prepared from the digital audio recording of the foregoing proceeding, that said transcript is a true and accurate record of the proceedings to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

*Patricia Edmonds*

PATRICIA EDMONDS



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