

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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A P P E A R A N C E S

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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

C O N T E N T S

1
2
3
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Mr. John Clark

PAGE

13

E X H I B I T S

NO.	DESCRIPTION	PAGE
Exhibit 1	Advisory Council on Tidal Finfisheries Minutes (September 19, 2023)	16
Exhibit 2	Start Action Notice (November, 2023)	16
Exhibit 3	RFA-RIS Gill Net Season	16
Exhibit 4	Register Notice as Published in January 2024 Register	16
Exhibit 5	Proposed Amendments to 3505	16
Exhibit 6	Legal Notice and Affidavit Delaware State News	16
Exhibit 7	Legal Notice and Affidavit Wilmington News Journal	16
Exhibit 8	Notice on DNREC Public Hearing Website	16
Exhibit 9	Notice of Hearing on State of Delaware Event Calendar	16
Exhibit 10	Notice of Meeting on DDFW Facebook Page	16
Exhibit 11	E-mail Sent to Gill Net Permit Holders	16

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

E X H I B I T S (Cont'd)

NO.	DESCRIPTION	PAGE
Exhibit 12	Notice on DNREC Bulletin Board	16
Exhibit 13	DNREC Presentation	16

Exhibits 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 entitled Finfisheries 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 haven't 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 entitled 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 entitled Finfisheries 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

0	20th 19:1	89 1:18	ads 11:23
0021 1:8 8:8	23rd 15:12	9	advised 10:13
1	25386 23:16	9 4:18 15:4	advisory 4:3
1 4:3 14:3 16:2	27065 24:14	90 16:15	14:4 17:5
16:3	27th 18:18	9th 14:24	18:22
10 4:20 15:6	29th 15:14	a	affidavit 4:12
1000 12:23	2nd 19:2	ability 6:20	4:14
10th 16:12	3	23:10 24:7	amendment
18:19	3 4:8 14:12	able 7:15 11:21	14:16
11 4:22 15:9	30 1:12 6:5	accommodated	amendments
12 5:3 15:15	31st 16:9	10:23	1:4 4:11
13 3:3 5:4	3505 1:4 4:11	account 16:13	analysis 14:13
15:18 16:2,3	8:6 9:9	accurate 23:9	anchor 16:11
14 10:9 12:1	4	24:5	16:13,15,19,21
14th 12:14	4 4:9 14:14	act 10:20 16:24	17:7,11,12,14
21:19	41 16:20	action 4:6 14:2	17:18,20 18:16
15 10:24	5	14:9,10 18:3,4	18:18,24 19:3
15th 16:9 18:17	5 4:11 14:16	18:7 23:12,16	andrew 1:22
16 4:5,7,8,10,11	6	24:8,12	23:2,17
4:13,15,17,19	6 4:12 6:4	actions 11:7	appeared 14:20
4:21,23 5:3,4	14:19	acts 13:12 20:9	appears 15:2,7
17th 18:9	610 21:8	ada 6:6	15:16
18th 17:8	6391184 1:23	adding 17:11	appointed 7:24
19 4:5 14:4	6:00 1:13	17:18	appreciated
17:9	6:19 22:7,10	addition 9:5	12:18
19901 1:19	7	additional 9:8	appreciates
1st 16:11 18:17	7 1:4 4:14 8:6	17:11	20:4
2	9:9 14:22	address 12:5	approximately
2 4:6 14:10	7th 14:21	15:11	16:15
2023 1:8 4:5,7	8	admin 1:4 8:6	april 17:8,19
8:8 14:4 17:9	8 4:16 15:1	9:9	18:18
2024 1:12 4:10	16:21	administrative	asked 20:24
6:5 10:9 12:1		6:15 9:14	assist 6:16 13:7
14:17 18:14		10:20	assistant 2:5

atlantic 17:1 attacks 20:8 attendance 20:11,12,18 21:14 attendee 2:6,7 2:8,9 attendees 2:2 attending 9:6 attorney 23:14 24:10 audio 23:8 24:3 authentic 11:2 automatically 7:17 19:24 availability 17:21 available 6:11 20:23 22:4 aware 6:19	board 5:3 15:17 bottom 6:22 7:8,10,13 bring 7:3 build 8:9 11:6 bulletin 5:3 15:17 button 6:23,24 7:2,8	chat 11:15 check 21:5 clarify 15:12 clark 2:4 3:3 13:18,21 16:6 19:6 click 7:2 close 18:17 19:1 closed 6:7,11 6:20,21 closes 10:8 code 1:4 8:6 9:9 comes 7:13 coming 17:22 comment 8:13 9:21,24 10:3,4 10:10,22,24 11:24 12:2,11 12:14,19,21,23 13:15 19:7,10 19:19 21:17 commenter 10:2 19:23 20:1 commenter's 20:1 commenters 20:3 comments 10:6 10:6,15,17 11:9,21 12:1,8 12:18,20,22 13:1,8,9 18:6 19:20,22 20:5	20:16 21:18 22:1 commercial 1:5 8:7 15:10 commonwealth 23:19 compliance 6:6 computer 6:22 concerning 9:8 conclude 10:11 21:23 concluded 22:9 concludes 19:4 21:17 22:6 conclusion 9:17 conduct 8:5 conducted 8:15 16:18 confirming 21:13 consideration 10:22 13:16 considered 12:15 13:4 consisting 11:8 cont'd 5:1 contact 21:2 containing 11:12 control 1:2 8:5 copy 14:3,10,12 14:14 15:18 corner 7:16 council 4:3 14:4 17:5,16
b	c		
b 4:1 5:1 back 7:20 13:13 bass 1:5 8:7 16:8,14,17,20 17:21,22,24 18:1 bay 17:22 bear 12:15 behavior 20:7 best 23:10 24:6 better 17:20 birds 17:1	c 2:1 3:1 6:1 calendar 4:19 15:5 call 19:16 20:20,21,23 21:9 called 19:10,14 captioning 6:7 6:11,20,21 captions 6:23 6:24 7:1,8,17 7:18,19 carrot 7:2 carry 12:23 cc 7:9 center 15:17 certificate 23:1 24:1 certify 23:4 24:2 change 17:4 18:16,22,23 changing 17:3 17:5,12		

<p>18:6,8,22 council's 14:6 counsel 23:11 23:14 24:7,10 couple 20:20 court 8:23 11:4 current 16:7</p>	<p>19:12 20:4 department's 6:10 9:21 11:7 13:20 16:2 description 4:2 5:2 desired 13:17 destructive 16:17 details 9:8 10:10 digital 23:8 24:3 directly 13:2,9 discard 16:17 16:20 discouraging 20:7 discussed 17:6 18:8 discussion 14:6 18:20 disruptive 20:6 division 1:3 13:19 14:7 15:7 16:18 17:7 dnrec 1:2,17 2:4 4:16 5:3,4 9:2,23 10:6,14 11:20 12:5,8 13:2,9,11 15:7 17:7,9,17 19:9 dnrec's 9:14 11:14 14:7</p>	<p>15:2,16 dnrehearing... 12:4 docket 1:8 8:8 documented 16:24 documents 9:11 14:5 dots 6:24 7:11 dover 1:19 drift 16:10,16 drifted 16:21 duly 23:5</p>	<p>employed 23:11,14 24:8 24:11 employee 23:13 24:10 enable 8:12 13:13 encourage 9:5 encouraged 10:5 endangered 16:24 ensure 10:21 11:21 entered 13:2 entire 16:10 entitled 14:5 17:6 18:22 environmental 1:2 8:4 equal 10:6 equally 12:16 es 23:4 evening 6:2 8:2 9:24 10:7 20:12 event 4:19 8:22 eventually 11:9 everhart 2:9 exact 12:15 exhibit 4:3,6,8 4:9,11,12,14,16 4:18,20,22 5:3 5:4 14:3,10,12 14:14,16,19,22</p>
<p>d</p>			
<p>d 6:1 date 18:10 day 16:23 days 10:24 17:11,13 18:23 19:3 ddfw 4:20 de 1:4,19 8:6 9:9 dead 16:24 decision 11:13 11:17,18 12:17 13:5,10 dedicated 9:4,7 9:12 22:4 delaware 1:1 4:13,19 14:18 14:21 16:14 17:22 18:14 delaware's 8:3 15:10 delaware.gov 12:4 department 1:1 8:4,20 9:12,19 10:23 11:17,24 13:5,6,13 16:1</p>		<p>e</p>	
		<p>e 2:1,1 3:1 4:1 4:22 5:1 6:1,1 12:3 15:9,11 15:13 earlier 17:23 early 18:1 edmonds 24:2 24:15 effect 20:6 effects 17:15 efficient 16:16 16:22 either 12:12 19:2 electronic 12:12 15:24 electronically 8:21 eliminating 17:19</p>	

<p>15:1,4,6,9,15 15:18 16:3,3 exhibits 5:6 11:9 13:24 15:22,24 16:1 16:2 extend 21:18</p>	<p>five 18:23 flexibility 14:13 following 9:20 10:13 11:12 19:19 foregoing 23:3 23:4 24:4 foremost 8:14 form 12:2,23 formal 6:6 8:11 11:3 13:12 20:9,10,10 22:1 found 9:13 full 10:5 further 18:8 23:13 24:9</p>	<p>given 10:2 19:22 20:11 go 6:10 15:20 22:5 goal 8:1 going 20:22 good 6:2 18:2 great 16:14 18:2</p>	<p>highway 1:18 holders 4:23</p>
<p>f</p>	<p>g</p>	<p>h</p>	<p>i</p>
<p>f 1:8 8:8 facebook 4:21 12:9 15:8 favor 18:7 feature 6:11 20:20,21 february 10:9 12:1,14 16:9 17:19 18:17 19:1 21:19 fin 17:6 final 12:16 14:3 finally 15:18 financially 23:15 24:11 find 7:1 finfisheries 4:4 14:5 18:22 finish 10:4 first 8:14 16:6 18:12 fish 1:3 13:19 14:8 15:7 16:18 17:6,8,9 fisheries 17:6 fishing 1:5 8:7 16:23</p>	<p>g 6:1 garvey 11:11 garvin 7:24 13:11 garvin's 13:16 gathered 8:18 gear 7:12 generate 8:19 generated 9:20 10:19 11:22 21:22 gill 4:8,22 15:10,10 16:7 16:8,10,11,13 16:21 17:7,18 17:20</p>	<p>h 4:1 5:1 hand 6:9 13:18 20:18,21 harvey 19:13 20:14 hearing 1:3 2:3 2:5 4:16,18 6:3 6:16 7:21 8:1,5 8:9,10,14 9:1,3 9:6,7,10,12,13 9:16,18,22 10:16,18 11:1 11:6,8,10,14,15 12:2,6,20 13:3 13:4,13,21 15:2,4,6,13,16 15:19 19:8,17 19:20,21 21:16 21:18,20,21,23 22:2,4,6 hearings 10:14 15:2 hello 6:14 hereto 23:15 24:11</p>	<p>icon 7:12 identification 16:4 impact 14:13 impetus 18:3 important 11:16 inclusion 11:22 19:10 22:1 incorporated 10:18 increase 17:15 independently 8:16 indicated 7:9 12:6 information 21:2 ins 20:20,23 21:9 interested 23:15 24:12 introductory 6:8 9:17 issue 11:11 issued 12:7 issues 19:16</p>
			<p>j</p>
			<p>january 1:12 4:10 6:5 14:17 14:21,24 15:12</p>

15:14 18:9,14 18:20 job 1:23 john 2:4 3:3 13:18 15:22 16:5 joined 8:21 joining 22:8 journal 4:15 14:24	light 10:20 limited 10:15 12:19 link 12:2 list 2:2 8:19 listed 7:5,6,10 9:15 16:24 live 8:13 9:24 10:7 19:9 located 7:13 locations 8:17 long 12:13 16:23 looking 17:15	11:19,23 12:7 12:17,19 13:3 13:8,11,14 19:21 22:5 matters 18:7 mechanism 12:13 13:12 media 12:9 meeting 4:20 7:11 14:5 15:16 17:17 18:9,21,24 22:9 meetings 17:9 17:10 mentioned 17:13 18:15 messaging 12:10 minimum 10:24 minor 18:9 minute 20:1 minutes 4:4 10:3,5 14:4 19:22 20:3 moderated 1:11 modification 18:10,21 modifications 17:6 modify 17:18 mortality 16:18 16:20	motion 17:16 move 19:17 21:15 moving 18:6 multiple 6:12 6:20 12:20 mute 19:24
k	made 11:17,18 13:11 mail 4:22 12:3 15:9,11,13 maintaining 17:13 majority 16:14 make 6:18 making 12:16 march 16:11 18:17 mark 15:22 16:1 20:1 marked 16:4 market 17:24 17:24 match 21:11 matter 8:10 9:4 9:7,13,20 10:16,17 11:13	m	n
katie 2:7 kazimir 2:7 kill 16:23 kings 1:18 know 13:14 knowledge 23:10 24:6			n 2:1 3:1,1 6:1 name 6:14 7:23 19:14,16 20:15 natural 1:1 8:4 need 7:18 22:3 22:5 neither 21:9 23:11 24:7 net 4:8,22 15:10,11 16:7 16:8 17:7,11 17:12,18,21 18:16 nets 16:19,21 16:21 18:18,24 netting 16:10 16:11,13,16,16 17:14 19:3 news 4:13,15 14:21,24 noon 19:9 notary 23:18 note 11:16 13:1 notice 4:6,9,12 4:14,16,18,20 5:3 14:11,15 14:19,20,23,23
l			
landings 16:14 16:15 language 7:4,5 7:9,14,15 20:7 languages 6:8 6:12,20 7:6 lastly 13:10 law 9:14 lawrence 2:8 learn 8:11 legal 4:12,14 8:11 11:23 14:19,23 letters 12:24			

<p>15:1,4,6,15 noticed 11:23 notices 12:7 15:17 notifying 15:12 november 4:7 number 8:8 17:13 19:2 21:5,8,11</p>	<p>organization 20:15 organizations 13:7 outcome 23:16 24:12 outside 13:6 outweigh 12:21 own 8:17</p>	<p>period 10:24 11:24 16:10 permit 4:22 permitted 11:15 permittees 15:10,11 perry 2:5 6:9 6:13,14 7:22 20:17,22 21:4 21:8,11,12 personal 20:8 pertinent 10:17 ph 19:13 20:14 20:23 21:2 phone 21:5 physical 12:5 physically 8:18 place 10:14 platform 6:12 6:19 8:3,11 platforms 12:9 please 10:13 12:11 20:14 pointing 7:2 policy 20:6 popping 7:17 portion 9:21 10:10 19:8,19 21:17 possession 5:6 postal 12:5 posted 9:3,11 13:3 21:20</p>	<p>pre 9:23 10:1 19:9 preferred 7:4,5 7:9,15 prepare 8:24 prepared 9:2 24:3 present 8:19,24 presentation 5:4 9:19,21 10:12 13:20,24 15:19,22 19:4 presentations 10:11 presented 9:10 presenter 2:4 previously 11:20 12:7 printed 18:14 prior 12:16 23:5 procedure 10:21 proceed 13:22 14:8 15:19,21 16:5 proceeding 1:16 6:7 8:1,20 10:10 11:3 13:12 20:9,10 24:4 proceedings 23:3,5,6,9 24:6 process 11:12 13:5</p>
o	p		
<p>o 3:1 6:1 offensive 20:7 offer 8:13 9:24 10:21 11:21 19:9,22 22:1 offered 10:7 offers 6:7 office 6:10,15 officer 2:3,5 6:16 7:21 8:1 13:21 23:2 officer's 11:10 official 11:3 okay 13:23 17:5 21:1,10 once 7:1,12 online 9:13 11:23 open 16:8,10 16:11 19:1 opened 12:1 opening 18:16 options 7:3 order 10:1 11:12 19:11</p>	<p>p 2:1,1 6:1 p.m. 1:13 6:4 22:10 page 3:2 4:2,21 5:2 7:13 9:3,7 9:12,13 12:3,6 13:4 15:8 21:20 22:4 parameters 19:19 part 13:5 participating 8:16 parties 23:12 23:14 24:8,11 partnered 13:6 passed 17:16 patience 6:3 patiently 21:7 patricia 24:2 24:15 pennsylvania 23:19 percent 16:15 16:20,21</p>		

proof 14:19,22 proposal 14:6 18:5 proposed 1:4 4:11 8:6,12 9:8 11:7,19 14:1 14:16 15:24 18:5,10,13 proposing 17:4 17:5 protected 17:1 protocols 10:13 11:14 provide 8:2 9:19 10:3,9,24 13:19 providing 8:10 public 1:3 2:6,7 2:8,9 4:16 8:5 8:11,13 9:21 10:14 11:24 12:6 13:7,14 13:14 15:1,2 15:15,16 19:7 19:19 23:18 publication 14:20,22 published 4:9 14:17,23 purpose 8:9 11:5 pursuant 9:1 put 12:22	q	recorded 23:6 recording 23:8 24:4 reduced 23:7 regard 8:10 11:6,18 regarding 13:10 register 4:9,10 14:14,18 18:14 registered 9:23 19:9 registrant 19:12,21 registration 10:1 19:11 21:3 regulation 14:17 18:5,11 18:13 regulations 14:18 18:15 regulatory 8:12 11:19 14:1,8 14:12,13 related 9:11 19:20 23:11 24:7 relative 23:13 24:10 remain 10:14 20:2 remainder 19:17 21:15	remarks 6:8 9:18 20:7 remember 12:11 remind 21:24 remote 1:16 report 11:10 reported 1:22 reporter 5:6 8:23 reporter's 11:4 reporting 1:6 8:8 representing 20:16 required 10:23 requirement 9:1 requirements 1:6 8:8 resent 15:13 resources 1:1 8:4 respect 20:11 respective 8:17 review 11:12 13:24 reviewed 11:10 reviewing 16:7 revisions 8:6,12 9:8 rfa 4:8 right 7:16 ris 4:8
	q&a 11:15 qualified 23:7 quotas 1:5 8:7		
	r		
	r 1:8 2:1 6:1 8:8 raise 20:18,21 read 12:13 reason 19:15 reasons 11:13 receive 18:6 21:1 received 9:4 10:2,15 12:12 12:14 13:15 15:23 19:11,12 20:5 21:19 recognized 10:1 recommend 14:7 recommendat... 18:8 recommended 18:9,21,24 recommending 17:17 record 8:10,20 9:18,20 10:8 10:18 11:2,6,7 11:22 13:3 15:23 19:10,22 20:15 21:21 22:2,3 23:9 24:5		

river 17:23 room 8:16 runs 16:9	settings 7:12,13 several 18:6 sharing 19:5 20:3 show 6:23,23 7:1,18 18:12 showed 16:19 side 17:15 signature 23:16 24:14 simply 12:22 single 12:22 singular 12:21 skills 23:10 24:6 smartphone 7:7 smith 1:11 2:3 6:2 7:21,22,23 13:22 15:21 19:6 20:19 21:1,6,10,12 social 12:8 solely 10:16 12:19 soon 9:4 22:3 speaking 20:2 specialist 6:15 species 16:23 16:24 spring 16:8,15 17:7,18,20 staff 9:19 standard 11:14	start 4:6 6:21 14:10 16:7 18:10 started 18:4 starts 19:23 state 4:13,18 8:3 14:21 15:5 20:14 stated 11:20,24 statement 14:13 statutory 9:1 11:5 stipulated 17:10 stop 19:5 stress 19:18 strikethrough 18:13 striped 1:5 8:6 16:8,14,17,19 17:21,22,24 18:1 studies 16:18 surgeon 17:1 subject 10:16 10:17 12:19 19:20 submission 13:8 submit 10:5 13:9 submitted 12:2 12:8 13:2,16 14:1	support 17:10 17:12 supported 12:23 sure 6:18 sworn 23:5 synchronize 17:20 system 19:24
s s 2:1 3:1 4:1 5:1 6:1 sarah 2:9 saying 12:20 scheduled 6:4 screen 6:22 7:8 19:5 22:2,3 season 4:8 8:7 16:7,8 17:7,12 17:18,21 18:1 18:16,18,24 seasons 1:5 secretary 6:10 6:16 7:24 11:11,11 12:16 13:11,16 secretary's 10:22 section 9:14 see 6:22,23 20:20 21:21 select 6:24 7:4 7:5,8,10,11,14 7:15,15,18,18 sent 4:22 15:9 september 4:5 14:4 17:9,17 serve 7:24 service 12:5 session 11:15	t t 3:1,1 4:1 5:1 tagging 1:6 8:7 taken 23:3,12 24:9 talking 19:24 tanisha 2:5 6:9 6:12,14 20:19 technical 19:16 teresa 6:13 7:21,23 testifying 23:5 text 12:10 thank 6:2,13 7:22 13:21 16:6 19:6 21:6 21:6,10,12 22:7 theresa 1:11 2:3 thing 12:21 thoroughly 13:13 three 6:24 7:10 10:2,4 19:22 20:1,3		

tidal 4:3 time 6:4 19:14 timer 19:23 today 19:9 together 8:15 tolerance 20:6 tonight 6:4,17 8:18 9:10 11:3 11:8,18 13:12 21:15 22:7 tonight's 6:6 8:1 10:16 11:5 12:20 19:8,21 21:23 top 7:16 towards 9:15 townsend 2:6 transcriber 24:1 transcript 8:24 9:3 11:4,8 24:3 24:5 transcriptionist 23:8 translation 7:3 7:14 true 23:9 24:5 tuesday 1:12 6:5 turn 7:20 19:7 turning 9:18 twice 19:16 twitter 12:9 two 17:18,19	typewriting 23:7 typically 18:1	virtual 8:3,5 10:18 virtually 8:15 8:19,23 visit 9:6 visitor 15:17 voss 2:8 vote 14:7 votes 12:22	wilmington 4:15 14:24 wishes 10:21 11:20 witness 23:4 writing 10:6,8 written 11:9 12:7 21:18	
	u		x	
	u.s. 12:5 ultimate 13:10 ultimately 11:11 unable 10:4 unanimous 14:7 unanimously 17:16 under 9:14 unintended 17:14 unmute 20:22 20:24 unmuted 19:15 20:14 using 6:19,21 12:8 usps 12:12	w	x 4:1 5:1	
	v	waiting 21:7 want 13:1 19:18 21:18,24 warm 17:23 water 17:1 waters 17:23 way 19:2 ways 13:15 21:24 weader 1:22 23:2,17 web 9:3,7,12,13 12:3,6 13:4 21:20 22:4 website 4:17 9:15 15:3 websites 13:7 weeks 17:19,19 weight 10:7 12:15,23 wes 2:6 wildlife 1:3 13:19 14:8 15:7 16:19 17:8,9	y	yankinson 19:13 20:14,17 20:23 21:2,14 year 17:23 years 18:2 yielding 20:3 youtube 12:9
		z	zero 20:6 zoom 6:12,19 8:18	