

HEARING OFFICER'S REPORT

TO: The Honorable Gregory Patterson
Cabinet Secretary, Dept. of Natural Resources and Environmental Control

FROM: Theresa Smith, Regulatory Specialist, Office of the Secretary,
Dept. of Natural Resources and Environmental Control

RE: **Proposed New Regulation 7 DE Admin. Code 3560 – *Total Length***

DATE: April 24, 2026

I. BACKGROUND AND PROCEDURAL HISTORY:

A public hearing was held on Wednesday, March 25, 2026, at 6:00 p.m. via the State of Delaware's Zoom Video Communication Platform by the Department of Natural Resources and Environmental Control ("DNREC," "Department"), to receive comment on the proposed new regulation, 7 DE Admin. Code 3560 - Total Length ("Regulation"). The proposed regulation establishes a legal definition of total fish length for purposes of 7 DE Admin. Code 3500 – Tidal Finfish. This proposed definition will apply to all regulations within that section that rely on the term "total length" to determine minimum and/or maximum size limits of fish species. It will also allow the Department to enforce a standardized method of measuring the total fish length.

Currently, Delaware regulations within 7 DE Admin. Code 3500 – Tidal Finfish utilizes the term "total length" to establish size limits for ten species, and as well the Delaware statutory code refers to it for two species. However, the term "total length" it is not formally defined, and clarity is needed to determine where to begin and end the measurement of the fish. The absence of a formal definition creates the potential for inconsistency when measuring the fish species.

In October 2025, the Atlantic States Marine Fisheries Commission (ASMFC) approved Addendum III to the Amendment 7 of the Atlantic Striped Bass Fisheries Management Plan, which includes a standardized definition of "total length" on where to

begin and end the measurement of fish, for all states within the Striped Bass Management Unit. Delaware is mandated to implement the definition of “total length” to remain in compliance with the ASMFC’s management plan.

While the requirement for adoption is specific to striped bass, the Department has elected to promulgate the definition as a standalone regulation applicable to all tidal finfish species. This approach ensures consistency across regulatory programs and avoids limiting the definition solely to striped bass, thereby promoting a standardized definition for enforcement and for clarity among anglers and stakeholders on how to measure fish under 7 DE Admin. Code 3500 – Tidal Finfish.

The Department has the statutory basis and legal authority to act regarding promulgation of the Amendments pursuant to 7 *Del. C.* §903. The Department published its proposed regulation in the March 1, 2026, *Delaware Register of Regulations*. Thereafter, the public hearing regarding this matter was held on March 25, 2026. There were no members of the public in attendance of the virtual hearing. Pursuant to Delaware law, the record remained open for fifteen (15) additional days after the date of the public hearing for receipt of public comment. The hearing record formally closed with regard to public comment at the close of business on April 10, 2026, with no written comments received by the Department during the phase of this proposed regulatory promulgation.

It should be noted that all notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

II. SUMMARY OF THE PUBLIC HEARING RECORD:

The public hearing record consists of the following documents: (1) a verbatim transcript; and (2) ten (10) documents introduced by Department staff at the public hearing held on March 25, 2026, and marked by Hearing Officer Theresa Smith accordingly as Department Exhibits 1-10. The Department’s person primarily

responsible for the drafting and overall promulgation of the proposed Regulation, John Clark, Environmental Program Administrator with the Division of Fish and Wildlife, developed the record with the relevant documents in the Department's files.

Accordingly, the Department's proposed Regulation is attached hereto as Appendix "A" for the Secretary's review, accordingly.


III. RECOMMENDED FINDINGS AND CONCLUSIONS:

Based on the record developed, I find and conclude that the Department has provided appropriate reasoning regarding the need for the proposed new Regulation, 7 DE Admin. Code 3560 – *Total Length*. Accordingly, I recommend promulgation of the same, in the customary manner provided by law.

Further, I recommend the Secretary adopt the following findings and conclusions:

1. The Department has the statutory basis and legal authority to act with regard to this proposed regulatory promulgation, pursuant to 7 *Del.C.* §903;
2. The Department has jurisdiction under its statutory authority, pursuant to 7 *Del.C.* Chapter 60, to issue an Order adopting these proposed Amendments as final;
3. The Department provided adequate public notice of the proposed new Regulation and all proceedings in a manner required by the law and regulations, and provided the public with an adequate opportunity to comment on the same, including at the time of the public hearing held on March 25, 2026, and during the 15 days subsequent to the hearing (through April 10, 2026), before making any final decision;
4. Promulgation of the proposed new Regulation, 7 DE Admin. Code 3560 – *Total Length* will enable the Department to consistently interpret and enforce fish minimum and maximum size limits by establishing a clear,

- standardized definition of total fish length across all applicable tidal finfish regulations;
5. The Department has reviewed the proposed Regulation in the light of the Regulatory Flexibility Act, consistent with 29 *Del.C.* Ch. 104, and has selected Exemption “B1,” as this regulation is not substantially likely to impose additional cost or burdens upon individuals and/or small businesses;
 6. The Department has reviewed this proposed regulatory promulgation in the light of 7 *Del.C.* §10003 and 29 *Del.C.* §10118(b)(3) and has determined that any impact of this regulation on the achievement of the State of Delaware's greenhouse gas emissions reduction targets will be *de minimis*;
 7. The Department’s proposed new Regulation, as published in the March 1, 2026, *Delaware Register of Regulations*, as set forth in Appendix “A” hereto, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they should be approved as a final Regulation, which shall go into effect ten days after their publication in the next available issue of the *Delaware Register of Regulations*;
 8. The Department shall submit the proposed new Regulation as a final Regulation to the *Delaware Register of Regulations* for publication in its next available issue and provide such other notice as the law and regulation require, and the Department determines is appropriate; and
 9. The Department shall serve and publish its Order on its internet site.



Theresa L. Smith
Public Hearing Officer