

LAWS OF DELAWARE
VOLUME 82
CHAPTER 125
150th GENERAL ASSEMBLY
FORMERLY
HOUSE BILL NO. 6
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 7 OF THE DELAWARE CODE RELATING TO FINFISHING IN TIDAL WATERS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 903, Title 7 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 903 Department of Natural Resources and Environmental Control; authority; permits; regulations.

(e) The Department in accordance with the procedures set forth in ~~§ 905 of this title~~ the Administrative Procedures Act, §§ 10101 through 10119 of Title 29, shall have the authority to promulgate regulations, which shall have the force and effect of law, to enhance the conservation and management of coastal finfisheries, including the biological and socioeconomic aspects of coastal finfisheries. Any regulation pertaining to fishing for food fish shall require a statement addressing whether or not said regulation will have a significant impact upon the conservation of the fishery in question. Except where otherwise provided in this section, such regulations shall be consistent with this chapter, and may only include, and encompass, the following areas:

(2)a. The Department may promulgate such other regulations concerning a species of finfish that spend part or all of their life cycle within the tidal waters of the State; provided that such regulations are consistent with ~~an interstate~~ a fisheries management plan or rule developed promulgated pursuant to or adopted by the Atlantic States Marine Fisheries Commission, the Atlantic Coastal Fisheries Cooperative Management Act, the Mid-Atlantic Fishery Management Council, or the National Marine Fisheries Service for the protection and conservation of said species of finfish. Such regulations may include management measures, as described herein, that are necessary to implement the fisheries management plan or rule.

1. Notwithstanding paragraph (e) of this section and Chapter 101 of Title 29, the Department may promulgate regulations to adopt a specified management measure for finfish subject to this chapter by issuance of an Order signed by the Secretary of the Department where the management

measure is specified in one or more of the following, and adopting the specific management measure ensures compliance or maintains consistency with one or more of the following:

A. A fisheries management plan or rule established pursuant to or by the Atlantic States Marine Fisheries Commission, as set forth in §§ 1501 through 1504 of this title and the Atlantic Coastal Fisheries Cooperative Management Act, 16 U.S.C. § 5104(b).

B. A fisheries management plan or rule established pursuant to or by the Mid-Atlantic Fishery Management Council.

C. A fisheries management plan or rule established pursuant to or by the National Marine Fisheries Service.

2. Whenever the Department promulgates a regulation to adopt a specified management measure pursuant to paragraph (e)(2)a.1. of this section, the Department shall do all of the following:

A. Publish on its website a public notice with a copy of the Secretary's Order and regulation that implement the specified management measure. The regulation will become effective 48 hours after the Department publishes on its website the public notice required by this paragraph.

B. File the Secretary's Order and regulation that implement the specified management measure in the next issue of the Delaware Register of Regulations.

3. Any regulations or management measures promulgated under subsection (e)(2)a.1. must be consistent with the original specified management measure promulgated pursuant to or adopted by the Atlantic States Marine Fisheries Commission, the Atlantic Coastal Fisheries Cooperative Management Act, the Mid-Atlantic Fishery Management Council, or the National Marine Fisheries Service.

b. ~~Such regulations may~~ Management measures may include and encompass the following:

1. Minimum and/or maximum size limits of a species according to § 929 of this title;
2. Restrictions on the quantities of a species that may be taken;
3. Restrictions on the periods of time that a species may be taken;
4. Restrictions on the areas from which a species may be taken; and
5. Restrictions on the mesh sizes of nets from which a species may be taken.
6. Restrictions on the fishing equipment or methods to fish for a species.

~~b~~c. In lieu of ~~an interstate fishery~~ a fisheries management plan for any species of finfish, the Department, in conjunction with the State of New Jersey's Department of Environmental Protection, may develop a ~~fishery~~ fisheries management plan for said species and promulgate interim regulations concerning said species of finfish within the Delaware River and Delaware Bay; provided that the State of New Jersey's Department of Environmental Protection adopts substantially similar interim regulations. Said interim regulations, in Delaware, shall become effective on the date substantially similar regulations become effective in the State of New Jersey.

1. These interim regulations may include ~~and encompass~~ the following management measures:

~~1~~A. Minimum and/or maximum size limits of a species that may be taken and possessed;

~~2~~B. Restrictions on the quantities of a species that may be taken;

~~3~~C. Restrictions on the periods of time that a species may be taken;

~~4~~D. Restrictions on the areas from which a species may be taken; ~~and~~

~~5~~E. Restrictions on the mesh sizes of nets from which a species may be taken.

F. Restrictions on the fishing equipment or methods to fish for a species.

2. Upon the acceptance by the Department of ~~an interstate fishery~~ a fisheries management plan for a species of finfish adopted pursuant to paragraph (e)(2)a. of this section, all interim regulations adopted pursuant to paragraph (e)(2)c. of this section pertaining to the management of said species shall become void ~~upon the effective date of new regulations promulgated by~~ once the Department promulgates new regulations implementing the applicable fisheries management plan. ~~according to subparagraph a. of this paragraph.~~

~~ed.~~ Any regulation adopted pursuant to paragraphs ~~(e)(2)a. and b~~ (e)(2)a. and (e)(2)c. of this section shall be consistent with the management principles for development of ~~interstate fishery~~ fisheries management plans or rules as set forth under § 901 of this title.

(3) The Department may promulgate such other regulations concerning any species of finfish, ~~including~~ or marine mammals, that spend part or all of their life cycle within the tidal waters of the State; provided, that such regulations are consistent with management plans approved by the U.S. Secretary of Commerce for the protection and conservation of said finfish or marine mammal.

(h) The Department shall have the authority to adopt emergency regulations involving finfish subject to this chapter in accordance with ~~without following the procedures set forth in § 905 of this title~~ the Administrative Procedures Act § 10119 of Title 29. ~~when such regulations are necessary to deal with an actual or imminent public health threat or danger to a fishing resource or habitat involving finfish subject to this chapter. Emergency regulations may be adopted by the Department for a period not to exceed 90 days, and may be renewed for sufficient cause for an additional 90-day period. As soon as practicable after adoption of emergency regulations hereunder, the Department shall conduct a public hearing on the matter to obtain and consider all relevant information present to determine if continuation of the emergency regulations is justified.~~

Section 2. Amend § 905, Title 7 of the Delaware Code by making deletions as shown by strike through as follows:

~~§ 905 Procedures for promulgation of regulations; public hearing notice; submission to Council; approval.~~

~~(a) Except as otherwise provided in this chapter, the Department shall conduct a public hearing on any relevant issue involved with the proposal of any regulation relating directly to finfishing in tidal waters of this State by the Department.~~

~~(b) Before any public hearing is held by the Department pursuant to subsection (a) of this section, the Department shall complete the following procedure:~~

~~(1) Publish notice of the public hearing in a newspaper of general circulation in the State no less than 20 days in advance of the public hearing; and~~

~~(2) Said published notice shall include a brief description of the proposed regulation, the time and location of the public hearing, and also the manner in which the public may respond to the Department on the proposed regulation.~~

~~(c) The Department shall attempt to notify each person who has been issued a commercial food fishing license or a food fishing equipment permit by the Department, and also any other interested person, of any public hearing on any proposed regulation at least 20 days in advance of any public meeting, but only if said parties have written to the Department requesting that such notice be sent to them at a specific address, and also provided that the Department has received the person's request within 1 year of the date of the public hearing scheduled on the proposed regulation.~~

~~(d) Except as otherwise provided in this chapter, after the Department has held a public hearing on any proposed regulation, the Department shall then submit said regulation and any summary of said public hearing that may have been prepared by the Department to the Council Chairperson. The Council Chairperson shall then submit the proposed regulation to the Council for its consideration and subsequent advice to the Department.~~

~~(e) Except as otherwise provided in this chapter, all final and effective regulations of the Department relating to finfisheries in the tidal waters of the State shall be filed with the Secretary of State, and shall become effective on the day of the filing thereof.~~

Approved July 17, 2019