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Declaration of Regulation Change (18-02)

Under the authority of CGS Section 26-102 of the Connecticut General Statutes, the Commissioner of Energy and Environmental Protection: "... shall have the authority to declare a closed season on *any species of fish threatened with undue depletion* from any cause" (Emphasis added).

Therefore, as Commissioner of Energy and Environmental Protection, I find that with respect to coastal sharks:

- As apex predators, sharks serve an important role in coastal and pelagic marine ecosystems.
- Compared to other marine fish, sharks have a very low reproductive potential, making them vulnerable to overfishing and stock depletion.
- Concern for overexploitation of sharks prompted the National Oceanographic and Atmospheric Administration (NOAA) to develop a fishery management plan (FMP) and establish management measures:
 - to protect threatened shark species and shark species whose population status is unknown;
 - to rebuild stocks of overfished and depleted shark species; and
 - to manage shark species that can be sustainably harvested.
- The Atlantic States Marine Fisheries Commission (ASMFC) adopted an Interstate Fishery Management Plan for Atlantic Coastal Sharks (and subsequently, Addenda I-IV to that FMP) to complement federal management actions and increase protection of pregnant females and juveniles in inshore nursery areas.
- State cooperation and compliance with the ASMFC FMP is critical to preventing undue depletion of shark species.
- The ASFMC Coastal Shark FMP contains mandatory management provisions that member states are required to implement pursuant to the Atlantic Coastal Cooperative Management Act.

And, with respect to American shad:

- The last coastwide stock assessment, completed in 2007, found stocks were at all-time lows and did not appear to be recovering.
- The ASFMC implemented Amendment 3 to the American Shad and River Herring FMP in 2010, which aims to protect, enhance and restore Atlantic coast migratory stocks and critical habitat of American shad by:
 - maximizing the number of juvenile recruits emigrating from freshwater stock complexes;
 - restoring and maintaining spawning stock biomass and age structure; and
 - managing for optimum yield harvest levels.

- Amendment 3 requires states to submit sustainable fishery plans demonstrating adequate monitoring of commercial and recreational fisheries and bycatch levels as well as the existence of monitoring programs to generate juvenile and adult abundance indices.
- A Sustainable Fishery Plan was developed and approved for the Connecticut River that demonstrated the stock could support a commercial and/or recreational fishery that would not diminish future stock reproduction and recruitment.
- State cooperation and compliance with the ASFMC FMP is critical to preventing undue depletion of American shad.
- The ASFMC American Shad and River Herring FMP contains mandatory management provisions that member states are required to implement pursuant to the Atlantic Coastal Fisheries Cooperative Management Act.

And, with respect to Atlantic and shortnose sturgeon:

- Atlantic sturgeon was listed as endangered under the Endangered Species Act effective April 6, 2012.
- A benchmark stock assessment completed in 2017 indicated a slow recovery of the species since its listing and concluded the resource remains depleted.
- Amendment 1 to the ASFMC FMP for Atlantic Sturgeon, adopted in 1998, aims to:
 - establish 20 protected year classes of females in each spawning stock;
 - close the fishery to reestablish spawning stocks and increase numbers;
 - reduce or eliminate bycatch mortality of Atlantic sturgeon; and
 - determine spawning sites and provide protection of spawning habitat.
- NOAA Fisheries has identified otter trawls and sink gillnets as gears likely to encounter the species.
- DEEP Marine Fisheries staff identified two Atlantic sturgeon concentration areas that account for 87% of Atlantic sturgeon encountered in state waters from data collected over the course of 28 years by the Long Island Sound Trawl Survey.
- Selective area closures for trawling and gill netting and limiting gill net soak time can effectively minimize interactions with such gears and mortality caused by such interactions.
- The ASFMC Atlantic Sturgeon FMP contains mandatory management provisions that member states are required to implement pursuant to the Atlantic Coastal Fisheries Cooperative Management Act.
- Shortnose sturgeon was listed as endangered under the Endangered Species Act effective March 11, 1967 and continue to meet the listing criteria.

In recognition of these findings, and in accordance with the aforementioned authority of the Commissioner of Environmental Protection pursuant to 26-102 of the Connecticut General Statutes, I hereby establish, by declaration, the prescribed conditions for the operation of the fisheries for American shad and coastal sharks in Connecticut waters and protection of Atlantic and shortnose sturgeon as specified on pages 4 through 10 of this declaration;

This declaration supersedes all previous declarations by the Commissioner of Energy and Environmental Protection regarding American shad, Atlantic sturgeon and shortnose sturgeon and

shark species other than spiny dogfish, and shall remain in effect between the date this declaration is signed and December 31, 2018, both dates inclusive.

Robert E. Kalszewski *12/29/17*
for Robert J. Klee Robert E. Kalszewski Date
Commissioner Deputy Commissioner

26-159a-1. Sport and commercial restrictions for marine and anadromous species

(f) Between January 1 and December 31, 2018, both dates inclusive, no person shall possess American shad taken from the waters of this state except from the waters of the Connecticut River and its tributaries. For the purposes of this subsection the seaward limit of the Connecticut River exception area is a line extending between the eastern extremity of Griswold Point at latitude 41 degrees 16.69 minutes north, longitude 72 degrees 18.84 minutes west, and the Saybrook Breakwater light at latitude 41 degrees 15.79 minutes north, longitude 72 degrees 20.56 minutes west. All American shad caught outside of the Connecticut River exception area as described in this subsection shall be immediately returned, without avoidable injury, to the waters from which taken.

26-159a-6. Use of commercial fishing gear.

(a) On any waters of Long Island Sound lying west of the Loran C 14935 line at Kimberly Reef, no person shall operate an otter trawl, beam trawl or similar device from one hour after sunset to one hour before sunrise.

(b) No person shall use, set or tend any otter trawl, beam trawl, sink gillnet or anchored gillnet in the following areas of Long Island Sound:

(1) Falkner Island Gear Restricted Area. An area approximately 22.5 mi² within a rectangle bounded by:

(A) 41 degrees 12.5 minutes latitude, -72 degrees 43.5 minutes longitude at the northwest corner;

(B) 41 degrees 12.5 minutes latitude, -72 degrees 36 minutes longitude at the northeast corner;

(C) 41 degrees 09.5 minutes latitude, -72 degrees 43.5 minutes longitude at the southwest corner; and

(D) 41 degrees 09.5 minutes latitude, -72 degrees 36 minutes longitude at the southeast corner.

(2) Connecticut River Mouth Gear Restricted Area. An area approximately 9 mi² within a rectangle bounded by:

(A) 41 degrees 16 minutes latitude, -72 degrees 23.5 minutes longitude at the northwest corner;

(B) 41 degrees 16 minutes latitude, -72 degrees 19 minutes longitude at the northeast corner;

(C) 41 degrees 14 minutes latitude, -72 degrees 23.5 minutes longitude at the southwest corner; and

(D) 41 degrees 14 minutes latitude, -72 degrees 19 minutes longitude at the southeast corner.

(c) Gillnets used to take American shad on the Connecticut River shall not be fished in excess of the following soak times:

(1) four (4) hours when water temperature is less than 68° F (20° C);

(2) two (2) hours when water temperature is between 68° F (20° C) and 77° F (25° C); and

- (3) when water temperature exceeds 77° F (25° C) the use of gillnets to take American shad shall be prohibited.

For the purposes of this subsection, soak time means the time elapsed between the onset of net deployment from the boat into the water and the complete retrieval of the net from the water into the boat.

Coastal sharks.

(a) **Definitions.** As used in this section:

- (1) “ASMFC” or “Atlantic States Marine Fisheries Commission” has the same meaning as provided in section 26-142a-16 of the Regulations of Connecticut State Agencies;
- (2) “Commercial fisherman” means a person who has sold a shark that such person caught in Connecticut waters or landed in Connecticut during a given commercial fishing year, or a person with sharks aboard such person’s vessel that are intended for sale. When either of these criteria is met, said person is, with regard to the provisions of this section, a commercial fisherman for the remainder of the commercial fishing year;
- (3) “Department” means the Department of Energy and Environmental Protection;
- (4) “Handline” means a mainline to which no more than two gangions or hooks are attached, which is retrieved by hand and not by mechanical means and which is attached to or in contact with the fisherman or the vessel;
- (5) “Sport fisherman” means a fisherman who is not a commercial fisherman;

(b) **General**

- (1) No person shall take from Connecticut waters, and no person shall possess, sell, exchange, or offer for sale or exchange in Connecticut regardless of where it was taken, any species of shark other than spiny dogfish (*Squalus acanthias*) and smooth dogfish (*Mustelus canis*) except that:
 - (A) A holder of an Atlantic Highly Migratory Species permit and, if a sport fisherman a shark endorsement, issued by the National Marine Fisheries Service may possess shark species in accordance with all provisions of 50 CFR 635, as amended from time to time, including but not limited to possession limits, minimum lengths and seasonal closures, provided that no shark species shall be harvested from Connecticut Waters when federal waters are closed to harvest for that species; or
 - (B) a holder of a Scientific Collector’s Permit issued by the department may possess sandbar shark (*Carcharhinus plumbeus*) for research or display purposes if specifically authorized to do so under the terms of the permit; or
 - (C) a holder of a display permit issued by the National Marine Fisheries Service under the provisions of 50 CFR 635.32 may possess shark species authorized by the terms of such permit.
- (2) Except as provided in section (e)(4) of this section, any shark species taken contrary to the provisions of this section shall be released in a manner that will ensure maximum probability of survival, but without removing the fish from the water.

(c) **Sport fishing**

- (1) No sport fisherman shall possess or land sharks that do not have the head, tail and fins naturally attached to the carcass. Such sharks may be gutted and may be bled by making an incision at the base of the caudal peduncle provided the tail is not removed. No sport fisherman shall fillet a shark at sea or cut a shark into pieces at sea.
- (2) No sport fisherman shall take sharks from Connecticut waters by any method other than rod and reel or handline.
- (3) No sport fisherman shall take sharks from Connecticut waters using hooks other than non-offset, non-stainless steel circle hooks, except when fishing with flies or artificial lures.

(d) **Commercial fishing**

- (1) The regulations contained in this subsection shall apply to all shark species except spiny dogfish (*Squalus acanthius*). The commercial fishery for spiny dogfish is regulated under section 26-159a-19 of the Regulations of Connecticut State Agencies.
- (2) Except as provided in subsection (e)(3) of this section, no commercial fisherman shall possess or land sharks that do not have the tail and fins naturally attached to the carcass. Fins may be cut as long as they remain attached to the carcass by natural means with at least a small portion of uncut skin. Said species may be gutted and may be bled by making an incision at the base of the caudal peduncle provided the tail is not removed. No commercial fisherman shall fillet at sea or otherwise cut said species into pieces at sea.
- (4) No commercial fisherman shall take shark species from Connecticut waters by any method other than rod and reel, handline or trawl net, except that smooth dogfish may also be taken by gill net.
- (5) No person shall purchase any shark species from commercial fishermen for resale unless such person, in addition to possessing a valid seafood dealer license issued pursuant to section 26-142a of the Connecticut General Statutes, also possesses a federal shark dealer permit issued pursuant to 50 CFR 635.4, as amended from time to time.

(e) **Smooth Dogfish (*Mustelus canis*)**

- (1) No person engaged in commercial fishing shall possess or land smooth dogfish, also known as smoothhound shark, in excess of the following possession limits that are based on Connecticut's annual smoothhound shark quota specified in the Coastal Sharks Fishery Management Plan of the Atlantic States Marine Fisheries Commission:
 - (A) When less than 100% of Connecticut's annual quota has been landed, the possession limit shall be 50 pounds; or
 - (B) when 100% of Connecticut's annual quota is landed, the possession limit shall be zero pounds.
- (2) The possession and landing limits specified in subdivision (1) of this subsection shall apply to the vessel, regardless of how many persons are on board. Possession

limits shall apply per trip or per day, whichever is the longer period of time. Transfer of smooth dogfish between vessels at sea is prohibited. In any instance when there is a violation of the possession limit on board a vessel carrying more than one person when the catch is commingled, the violation shall be deemed to have been committed by the owner of the vessel, or the operator of the vessel, if the owner is not on board.

- (3) Commercial fishermen in state waters and in possession of a valid state commercial fishing license can eviscerate and remove the head and all fins of smooth dogfish while at sea provided smooth dogfish make up at least 25 percent, by weight, of total catch on board at the time of landing. Such fishermen may retain other sharks on board provided the fins of other shark species remain naturally attached to the carcass through offloading.
- (4) Any smooth dogfish taken contrary to this section shall, without avoidable injury, be returned immediately to the water from which taken.

Justification for Marine Fisheries Regulation Declaration 18-02

Need: To comply with mandatory provisions of Atlantic States Marine Fisheries Commission (ASMFC) Fishery Management Plans (FMP) for the subject species including waters closed to shad fishing, shark management measures that include the ability to close the smooth dogfish fishery once 100% of the state specific quota has been harvested and the allowance for finning of smooth dogfish. Also, to conserve endangered Atlantic and shortnose sturgeon populations occurring in state waters by substantially reducing interactions between certain commercial fishing gears. Atlantic and shortnose sturgeon are both Federal Endangered Species Act listed (endangered).

Under 16 U.S.C. Chapter 17 - Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA) Section 5106, states are required to implement and enforce ASMFC FMPs. If a state fails to implement mandatory measures of a Commission plan, the Secretary of Commerce is required to impose a moratorium on fishing for that species within the waters of the non-complying state.”

Management Background:

American shad: Amendment 3 requires that states close American shad fisheries unless they have an approved Sustainable Fishery Plan (SFP). The ASMFC Shad and River Herring Management Board approved, in October 2017, an updated Connecticut SFP for a shad fishery in the Connecticut River only. This plan allows for both recreational and commercial harvest in the Connecticut River; all other areas of the state are therefore catch and release only. The amendment to 26-159a-1 establishes the closed areas and applies to both recreational and commercial fisheries under the authority of CGS 26-102 in both the marine and inland districts. In accordance with CGS 26-102, the closed area is being adopted again for calendar year 2018.

Sturgeon: Atlantic sturgeon was listed as endangered under the Endangered Species Act effective April 6, 2012. Shortnose sturgeon was listed as endangered under the Endangered Species Act effective March 11, 1967. NOAA Fisheries has identified otter trawls and sink gillnets as gears likely to encounter the species and potentially result in serious injury or mortality. Greatly minimizing potential interactions between these commercial fishing gears and these endangered species is in the best interest of both the industry and the state authorizing these fisheries in state waters. Selective area closures for trawling and gill netting and limiting gill net soak time can effectively minimize interactions with such gears and the mortality caused by such interactions. Temperature dependent maximum soak times are based on NOAA guidelines for researchers using gillnets to collect sturgeon.

Coastal sharks: NOAA Fisheries has management authority for Highly Migratory Species (HMS), which includes shark species, under the Magnuson-Steven Fishery Conservation and Management Act. To assure seamless shark conservation between federal and state waters, NOAA Fisheries requested and ASMFC approved a complementary Coastal Shark Fishery Management Plan for state waters that mirrors the HMS plan. This includes the ability to close the smooth dogfish fishery once 100% of the state-specific quota has been harvested and includes an allowance for the finning of smooth dogfish. Amendment 5b to the Federal Consolidated Atlantic HMS Fishery Management Plan requires that effective January 1, 2018, recreational fishermen must have a shark endorsement (which requires on-line shark identification and regulation training) in

addition to a federal HMS permit. The amendment also requires sport fishermen to use non-offset, non-stainless steel circle hooks south of 41° 43' north latitude (which includes Long Island Sound) except when fishing with flies or artificial lures. These requirements are implemented to reduce incidental mortality in dusky shark.

Special Notes:

Sturgeon: Marine Fisheries staff identified two comparatively small (31.5 mi² total) Atlantic sturgeon concentration areas that together account for 87% of all Atlantic sturgeon encountered in state waters during 28 years of LIS Trawl Survey sampling (1984-2011), proposed here as Gear Restricted Areas (GRAs).

Through iterative spatial analysis of Atlantic sturgeon catches in the trawl survey, staff worked to identify the smallest gear restricted area that provided the greatest protection for this species. The resulting GRAs identified were similarly examined for concentrations of the three principal commercial (quota managed) species: black sea bass, scup and summer flounder. The GRAs account for less than 16% of the black sea bass catch, 9% of scup and 15% of summer flounder catch in Connecticut waters and a far smaller percentage of total landings in the state given the extensive amount of commercial fishing that takes place in federal or other states' waters. Overall, we find that the GRAs can provide significant protection for Atlantic sturgeon with only minor impact on the industry. No reduction in total harvest of any of these commercial species is anticipated; rather, fish will simply be harvested in locations outside the GRAs.

Coastal Sharks: An HMS Shark Permit (recreational, commercial or for-hire) is required to take sharks in federal waters, which is where virtually all targeted shark fishing occurs in our region. Shark species other than dogfish are extremely rare in Connecticut state waters, yet we are obligated to enact all of the conservation measures for the 42 oceanic shark species in five management groups identified in the shark FMP. At the same time, we are aware that a few individuals may actually target large sharks from time to time in Long Island Sound. By closing all shark fishing (other than for dogfish) unless the person has an HMS shark permit and, if a sport fisherman a shark endorsement, we can provide a clear no-take message to casual anglers who may inadvertently catch a shark, while preserving the fishing opportunity for individuals who are at least familiar enough with shark fishing (and presumably shark identification) that they have obtained an HMS shark permit and know the federal rules.

A federal Commercial Shark Dealer Permit is required under federal regulations to buy and sell any shark caught in state waters. Commercial Shark Dealer Permits are open access and can be obtained by contacting the NMFS Southeast Regional Office in St. Petersburg, FL at 727-824-5326. Applications are available on the web at: <http://sero.nmfs.noaa.gov/permits>.

Public Input/Notice:

American Shad: Public input on other species included in this declaration were received at the time changes were last considered under ASMFC plan adjustments.

Sturgeon: No public hearings have been held. This is an emergency action in response to the Federal ESA endangered listing of Atlantic sturgeon.

Coastal Sharks: Public hearings were held in Old Lyme and Bridgeport in November 2012 on a suite of proposed actions. No comments regarding coastal shark management were received at

either hearing. A public hearing on Addendum IV to the Coastal Shark FMP was held on June 15, 2016 in Old Lyme, Connecticut. There was no attendance at that hearing and no written comments were received.

DECLARATION AUTHORITY

CGS Sec. 26-102. Fish spawning areas and refuges. The commissioner may establish fish spawning areas and refuges on any waters; and he may establish closed areas and safety zones on public lands and waters and, with the consent of the owner, on private lands and waters, and close any such area to fishing and trespassing. The commissioner shall have emergency authority to declare a closed season on any species of fish threatened with undue depletion from any cause and, the provisions of section 26-116 notwithstanding, if such cause is any person, firm or corporation engaged in commercial fishing activity, the commissioner shall have the additional emergency power to establish prescribed conditions for the operation of such commercial fishing activity, or suspend or prohibit the right of such person, firm or corporation to operate within such waters for such period of time as the commissioner deems necessary. The commissioner may, if he deems it necessary, close any waters, or portions thereof, in the inland district to fishing for limited periods of time.

Sec. 26-117. Fine for violation. Any person who violates any provision of sections **26-102** and 26-111 to 26-116, inclusive, or any regulation issued by the commissioner pursuant thereto shall be fined one hundred fifty-four dollars. Each fish taken or possessed contrary to said provisions or to the regulations issued by the commissioner shall constitute a separate offense.