

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Chapter 60; (7 Del.C., Ch. 60)

FINAL

Secretary's Order No.: 2012-F-0018
3552 Spanish Mackerel Size Limit and Creel Limit

Date of Issuance: June 8, 2012
Effective Date of the Amendment: July 11, 2012

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") the following findings, reasons and conclusions are entered as an Order of the Secretary in the above-referenced rulemaking proceeding.

Background and Procedural History

This Order considers proposed regulatory amendments to Delaware Tidal Finfish Regulation No. 3552 regarding Spanish mackerel. The Department's Division of Fish and Wildlife commenced the regulatory development process with Start Action Notice 2012-02. The Department published the proposed amendments in the March 1, 2012 *Delaware Register of Regulations* and held a public hearing on April 19, 2012. The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated May 10, 2012 (Report). The Report recommends certain findings, as well as the adoption of the proposed regulation amendments as attached to the Report as Appendix A.

Findings and Discussion

I find that the proposed regulation amendments are well-supported by the record developed by the Department, and adopt the Report to the extent it is consistent with this Order. The Department's experts in the Division of Fish and Wildlife developed the record and drafted the proposed regulation. It should be noted that at no time during this promulgation process did the Department receive public comment, nor were any members of the public in attendance at the public hearing of April 19, 2012, as discussed in the Report.

With the adoption of these regulatory amendments to Delaware Tidal Finfish Regulation No. 3552 as final, Delaware will be consistent with the Atlantic States Marine Fisheries Commission Omnibus Amendment to the Interstate Fisheries Management Plans for Spanish Mackerel and Spotted Sea Trout, and will bring the plans under the authority of the Atlantic Coastal Fisheries Cooperative Management Act of 1993, providing for more efficient and effective management and changes to management for the future.

In conclusion, the following findings and conclusions are entered:

- 1.) The Department has jurisdiction under its statutory authority to issue an Order adopting these proposed Amendments as final;
- 2.) The Department provided adequate public notice of the proposed regulatory amendments to this regulation, and provided the public with an adequate opportunity to comment on the proposed amendments, including at a public hearing;
- 3.) The Department held a public hearing on the proposed amendments to this regulation on April 19, 2012, in order to consider public comments before making any final decision, and has considered all relevant and timely public comment received;
- 4.) The Department's Hearing Officer's Report, including its recommended record and the recommended amendments to this regulation, as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;
- 5.) Promulgation of these regulatory amendments to Delaware Tidal Finfish Regulation No. 3552 would enable Delaware to remain in compliance and consistent with the Atlantic States Marine Fisheries Commission Omnibus Amendment to the Interstate Fisheries Management Plans for Spanish mackerel and Spotted Sea Trout, which will bring the plans under the authority of the Atlantic Coastal Fisheries Cooperative Management Act of 1993;
- 6.) With regard to the proposed amendments to Delaware's regulations concerning Spanish mackerel, the restrictions for 2012 would establish (1) a 12" fork length (FL) or 14" total length (TL) minimum size limit; (2) the creel limit at fifteen (i.e., fifteen fish per day); and (3) requiring that all Spanish mackerel be landed with head and fins intact. Additionally, Delaware must establish for its commercial fishery a 12" fork length (FL) or 14" total length (TL) minimum size limit and a trip limit (per vessel, per day) of 3,500 pounds;
- 7.) The recommended amendments to this regulation do not result in any substantive change from the proposed amendments as originally published in the March 1, 2012, *Delaware Register of Regulations*;

8.) The recommended amendments to this regulation satisfy the aforementioned federal requirements with regard to Delaware's management of Spanish mackerel, and thus will provide for more efficient and effective management and changes to management for the future;

9.) The Department shall submit this Order approving the final amendments to this 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.

Collin P. O'Mara, Secretary

3552 Spanish Mackerel Size Limit and ~~CreeL~~ Creel Limit Possession Requirements.

(Penalty Section 7 Del.C. §936(b)(2))

- 1.0 Unless otherwise authorized, it shall be unlawful for any person to possess any Spanish mackerel, (*Scomberomorus maculatus*), that measure less than fourteen (14) inches total length.
- 2.0 Unless otherwise authorized, it shall be unlawful for any recreational finfisherman to have in possession more than ~~ten (10)~~ fifteen (15) Spanish mackerel at or between the place caught and his/her personal abode or temporary or transient place of lodging.
- 3.0 Unless otherwise authorized, it shall be unlawful for any recreational finfisherman to possess any Spanish mackerel at or between the place caught and his/her personal abode or temporary or transient place of lodging without the head and fins intact.
- 4.0 Unless otherwise authorized, it shall be unlawful for any commercial finfisherman to possess or land more than 3,500 pounds of Spanish mackerel per vessel, per day.
- 5.0 Unless otherwise authorized, it shall be unlawful for any commercial finfisherman to possess any Spanish mackerel without the head and fins intact prior to selling, trading or bartering said Spanish mackerel.

4 DE Reg 1552 (3/1/01)

16 DE Reg. 94 (07/02/12) (Final)