

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 942(b) (7 Del.C. §942(b))

ERRATA

3545 Invasive Finfish

Secretary's Order No.: 2013-F-0015

**RE: Approving Final Regulations to Amend 7 DE Admin. Code 3500, for the addition of a new section in the Tidal Finfish Regulations, to wit:
7 DE Admin. Code §3545: *Invasive Finfish***

Date of Issuance: May 9, 2013

Effective Date of the Amendment: June 11, 2013

* **Please Note:** This regulation was inadvertently excluded in the Final Regulations that were published on June 1, 2013. It is being published here as an Errata. The effective date remains the same.

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 regulations to amend 7 **DE Admin. Code** 3500, specifically, for the inclusion of a new section in Delaware's Tidal Finfish regulations, to wit: 7 **DE Admin. Code** §3545: Invasive Finfish. The Department's Division of Fish and Wildlife commenced the regulatory development process with Start Action Notice 2012-24. The Department published its initial proposed regulation in the March 1, 2013 *Delaware Register of Regulations*. The Department then held a public hearing on March 21, 2013. The public hearing record remained open at that time for public comment through April 5, 2013.

The proposed new section of the Delaware Tidal Finfish regulations seeks to enable the Department to (1) formally designate snakehead fish, blue catfish, flathead catfish, walking catfish, and grass carp as invasive finfish species; (2) prohibit the unauthorized stocking, possession, purchase, transport or sale of live invasive finfish; and (3) specify fishing equipment and methods to take invasive finfish species. Snakehead fish, blue catfish, flathead catfish, walking catfish and grass carp are all invasive finfish species whose introduction or proliferation are likely to cause economic and/or environmental harm to Delaware's tidal waters. The proposed action will assist in preventing the introduction or proliferation of these invasive fishes in Delaware.

The proposed Amendments were thoroughly vetted by the Department at the public hearing on March 21, 2013, at which time comments supporting this proposal were received from both the Center for the Inland Bays and the Delaware Mobile Surf Fishermen, or DMS Inc. Pursuant to Delaware law, the record remained open for fifteen (15) additional days subsequent to the date of the public hearing, for the purpose of receiving additional public comment. No additional public comment was received by the Department from the public during the post-hearing phase of this proposed promulgation. It should also be noted that all proper notification and noticing requirements concerning this proposed promulgation were met by the Department. Proper notice of the hearing was provided as required by law.

The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated April 25, 2013 (Report). The Report recommends certain findings and the adoption of the proposed Amendments as attached to the Report as Appendix A.

Findings and Discussion

I find that the proposed Amendments are well-supported by the record developed by the Department, and I adopt the Report to the extent it is consistent with this Order. The Department's experts developed the record and drafted the proposed Amendments. As previously noted, comment voicing support of this proposed action was received from the public that attended the hearing held on March 21, 2013. No additional public comment was received by the Department from the public during the post-hearing phase of this proposed promulgation.

I find that the Department's experts in the Division of Fish and Wildlife fully developed the record to support adoption of these Amendments. The adoption of this Order will allow Delaware to (1) formally designate snakehead fish, blue catfish,

flathead catfish, walking catfish, and grass carp as invasive finfish species; (2) prohibit the unauthorized stocking, possession, purchase, transport or sale of live invasive finfish; and (3) specify fishing equipment and methods to take invasive finfish species.

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 Amendments, and provided the public with an adequate opportunity to comment on the proposed Amendments, including at the public hearing held on March 21, 2013;

3.) The Department held a public hearing on March 21, 2013 in order to consider public comment before making any final decision;

4.) The Department's Hearing Officer's Report, including its recommended record and the recommended Amendments as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;

5.) The adoption of this Order will allow Delaware to amend its existing Tidal Finfish Regulations (7 DE Admin. Code §3500) to include a new section, §3545, Invasive Finfish, which will (1) formally designate snakehead fish, blue catfish, flathead catfish, walking catfish, and grass carp as invasive finfish species; (2) prohibit the unauthorized stocking, possession, purchase, transport or sale of live invasive finfish; and (3) specify fishing equipment and methods to take invasive finfish species;

6.) The recommended Amendments should be adopted as final regulation Amendments because Delaware will be enabled to (1) formally identify those finfish species which are categorized as invasive, whose introduction or proliferation are likely to cause economic and/or environmental harm to Delaware's tidal waters; (2) assist in preventing the introduction or proliferation of said invasive fishes in Delaware; and lastly, because (3) the amendments are well supported by documents in the record;

7.) The Department shall submit this Order approving the 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.

Collin P. O'Mara, Secretary

3545 Invasive Finfish

(Penalty Section 7 Del.C. 936(b)(2))

1.0 Definitions

1.1 For the purpose of Tidal Finfish Regulation 3545, the following words and phrases shall have the following meaning ascribed to them, unless the context clearly indicates otherwise:

"Bow and arrow" means an instrument with one or more pointed barbed or barbless prongs or blades affixed to a straight shaft and propelled by a stringed mechanical device.

"Director" means the Director of the Division of Fish and Wildlife.

"Invasive finfish" means any species of the family Channidae, including but not limited to the northern snakehead (*Channa argus*) and blotched snakehead (*C. maculata*); blue catfish (*Ictalurus furcatus*); flathead catfish (*Pylodictis olivaris*); walking catfish (*Clarias batrachus*); and grass carp (*Ctenopharyngodon idella*).

2.0 Transportation, Possession and Sale

It is unlawful to transport, purchase, possess, or sell a live invasive finfish without the written permission of the Director.

3.0 Stocking

It is unlawful to stock any invasive finfish, including the eggs thereof or other biological material, capable of spread, reproduction or propagation, into the tidal waters of this state without the written permission of the Director.

4.0 Equipment and Methods Used for Invasive Species Fishing

4.1 It is lawful for a person to take invasive finfish with any fishing equipment or method for which they are licensed, permitted or lawfully exempt.

4.2 It is lawful for a licensed, permitted or lawfully exempt recreational angler to take invasive finfish in Delaware's tidal waters with a bow and arrow.

17 DE Reg. 7 (07/01/13) (Errata)