

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Sections 901(b) and 903(e); (7 Del.C., §§901(b) & 903(e))
7 DE Admin. Code 3521

FINAL

ORDER

3521 Weakfish Size Limits; Possession Limits; Seasons

Secretary's Order No. 2013-F-0014

Date of Issuance: May 9, 2013

Effective Date: June 11, 2013

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") under 29 Del.C. §§8001 et seq., 29 Del.C. §§10111 et seq. and 7 Del.C. §6010 (a), the following findings, reasons and conclusions are entered as an Order of the Secretary in the above-referenced rulemaking proceeding:

On July 10, 2012, the Department opened a proposed rulemaking proceeding in Start Action Notice ("SAN") 2012-11 to promulgate amendments to 7 DE Admin. Code 3521, "Weakfish Size Limits; Possession Limits; Seasons". The purpose of this proposed action was to amend the definition of weekends and weekdays as set forth in Section 5.0 of the aforementioned regulation. Under the provision of Amendment III to the Atlantic States Marine Fisheries Commission's Interstate Fishery Management Plan for Weakfish (ISFMP), Delaware was required to implement a 34-day commercial closure (when all fishing gear, except hook & line, were to be removed from the water). Delaware's present regulations include weeklong closures at the beginning of May, the end of June, and all weekends in May and June, in order to meet the ISFMP specifications. Last year, the Department received several requests from the commercial fishing sector to change the weekend closure periods from Friday through Sunday to Saturday through Monday. This requested change was intended to allow Delaware's commercial gill fishery to more adequately supply the recreational bait market with fresh Atlantic menhaden for weekend anglers.

A public hearing was held by the Department on October 31, 2012. No members of the public attended said hearing on the aforementioned proposed action, nor did the Department receive any public comment in support of the proposed measure during the open comment period. However, the Department did receive written comment (prior to the close of the comment period) on behalf of eleven individuals from the commercial fishing industry who were opposed to the proposed change. Opposition to the proposed change was based on the contention that the market quality of more lucrative foodfish species would suffer. For example, weakfish harvested on Fridays would not be shipped to markets by fish haulers until at least Monday. Weakfish do not maintain market quality for extended periods, and therefore prices paid to Delaware dealers and harvesters would be negatively impacted. Thus, if adopted, the proposed measures may negatively impact the broader Delaware gill net fishery.

It should be noted that the Advisory council on Tidal Finfisheries endorsed taking the proposed action to hearing, but based upon the comments received, the Council expressed no objection to the Department seeking other measures to address this issue. Therefore, based upon the comment received, and the fact that the proposed change has no bearing on Delaware's compliance with the ISFMP for Weakfish, its subsequent amendments and addenda, the Department's Division of Fish & Wildlife has determined that the best course of action at this time is to withdraw the proposed action as contained in Register Notice 2012-11.

The aforementioned proposed amendment to Delaware's Tidal Finfish Regulation 3521 regarding Weakfish was published in the October 2012 edition of the *Delaware Register of Regulations*. Subsequently, as noted above, the Department held a formal public hearing regarding the aforementioned proposed amendments regulation on October 31, 2012, and the public comment period was open for written comments through close of business November 15, 2012. Again, as a result of the public comments the Department received during that time period (and the fact that the proposed change has no bearing on Delaware's compliance with the ISFMP for Weakfish, its subsequent amendments and addenda), the Department has decided at this time to withdraw the current proposed regulation amendments previously published in the October 2012 *Delaware Register of Regulations*.

In conclusion, the following findings and conclusions are entered:

1. The Department, acting through this Order of the Secretary and 29 Del C. §10118(d), hereby withdraws the proposed regulation published in the *Delaware Register of Regulations* on October 1, 2012; and
2. The Department shall have this Order published in the *Delaware Register of Regulations* and in newspapers in the same manner as the notice of the proposed regulation.

3521 Weakfish Size Limits; Possession Limits; Seasons.

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

- 1.0 It shall be unlawful for any person to possess weakfish, *Cynoscion regalis*, taken with a hook and line, that measure less than thirteen (13) inches, total length.
- 2.0 It shall be unlawful for any person to whom the Department has issued a commercial food fishing license and a food fishing equipment permit for hook and line to have more than one (1) weakfish in possession during the period beginning at 12:01 AM on May 1 and ending at midnight on October 31 except on four specific days of the week as indicated by the Department on said person's food fishing equipment permit for hook and line.
- 3.0 It shall be unlawful for any person, who has been issued a valid commercial food fishing license and a valid food fishing equipment permit for fishing equipment other than a hook and line to possess weakfish, lawfully taken by use of such permitted food fishing equipment, that measure less than twelve (12) inches, total length.
 - 3.1 It shall be unlawful for any person, who has been issued a valid commercial food fishing license and a valid food fishing equipment permit to possess more than one hundred pounds (100 lbs) of weakfish per vessel per day (a day being 24 hours) or trip, whichever is the longer period of time.

13 DE Reg. 1354 (04/01/10)

- 4.0 It shall be unlawful for any person, except a person with a valid commercial food fishing license, to have in possession more than one (1) weakfish, not to include weakfish in one's personal abode or temporary or transient place of lodging. A person may have weakfish in possession that measure no less than twelve (12) inches, total length, and in excess of one (1) if said person has a valid bill-of-sale or receipt for said weakfish that indicates the date said weakfish were received, the number of said weakfish received and the name, address and signature of the commercial food fisherman who legally caught said weakfish or a bill-of-sale or receipt from a person who is a licensed retailer and legally obtained said weakfish for resale.

11 DE Reg. 514 (10/01/07)

13 DE Reg. 1354 (04/01/10)

- 5.0 It shall be unlawful for any person to fish with any gill net in the Delaware Bay or Atlantic Ocean or to take and reduce to possession any weakfish from the Delaware Bay or the Atlantic Ocean with any fishing equipment other than a hook and line during the following periods of time:
Every weekend day (defined as 12:01 AM on ~~Friday~~ Saturday through midnight ~~Sunday~~ Monday) in both May and June, plus contiguous weekdays (defined as 12:01 AM ~~Monday~~ Tuesday through midnight ~~Thursday~~ Friday) at the beginning of May and the end of June, such that the total number of closure days add up to thirty four (34) days. The exact dates of closures each year shall be mailed in advance to the affected public and published annually in the Delaware Fishing Guide.
- 6.0 The Department shall indicate on a person's food fishing equipment permit for hook and line four (4) specific days of the week during the period May 1 through October 31, selected by said person when applying for said permit, as to when said permit is valid to take in excess of one (1) weakfish but not more than 100 pounds per day. These four days of the week shall not be changed at any time during the remainder of the calendar year.

11 DE Reg. 514 (10/01/07)

13 DE Reg. 1354 (04/01/10)

- 7.0 It shall be unlawful for any person with a food fishing equipment permit for hook and line to possess more than one (1) weakfish while on the same vessel with another person who also has a food fishing equipment permit for hook and line unless each person's food fishing equipment permit for hook and line specifies the same day of the week in question for taking in excess of one (1) weakfish.

1 DE Reg 1770 (5/1/98)

2 DE Reg 1904 (4/1/99)

3 DE Reg 1088 (2/1/00)

4 DE Reg 1552 (3/1/01)

5 DE Reg. 2142 (5/1/02)

6 DE Reg. 1512 (5/1/03)

11 DE Reg. 514 (10/01/07)

13 DE Reg. 1354 (04/01/10)

16 DE Reg. 1284 (06/01/13) (Final)