

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL
DIVISION OF FISH AND WILDLIFE
Statutory Authority: 7 Delaware Code, Sections 903(2)(b7) (7 Del.C. §§903(2)(b7))

ORDER No. 2005-F-0011

3308 Fish Stocking Practices, 3553 River Herring Creel Limit

Summary Of Evidence And Information

Pursuant to due notice in Vol. 8, Issue 6 *Delaware Register of Regulations*, pp. 859 and 861, the Department of Natural Resources and Environmental Control proposes changes to Non-Tidal Fishing Regulation 3308 pertaining to adding the northern snakehead fish (*Channa argus*) and the blotched snakehead fish (*Channa maculata*) to the list of species for which it shall be unlawful for any person to transport, purchase, possess or sell within Delaware. Further, the Department of Natural Resources and Environmental Control proposes adopting a possession limit of 25 blueback herring (*Alosa aestivalis*) and/or alewife (*Alosa pseudoharengus*) per person per day unless said person has a valid bill-of-sale or receipt for said river herring that indicates the date said river herring were received; and the name, address and signature of the commercial food fisherman who legally caught said river herring; or a bill-of-sale or receipt from a person who is a licensed retailer and legally obtained said river herring for resale.

Public hearings were held on January 4 and February 1, 2005 to take comments on proposed amendment to Non-Tidal Fishing Regulation 3308 and new Tidal Fishing Regulation 3553. The comment period for these hearings remained open until February 7, 2005.

Findings Of Fact

- The exotic northern snakehead fish is known to be an aggressive predator that is capable of reproducing in Maryland and Pennsylvania, even though the species is native to southeast Asia. The U.S. Fish and Wildlife Service has declared all known species of snakehead fishes to be injurious wildlife that may not be imported into states and territories of the U.S. The surrounding states of Maryland, Pennsylvania, and New Jersey have already outlawed the possession of northern snakehead fishes (*Channa argus*), and Maryland recently included the blotched snakehead (*Channa maculata*) in their ban because both species are tolerant of temperate climates and are a threat to survive and breed in the mid-Atlantic area. By banning both the northern and blotched snakehead fishes, Delaware's proposal would complement action already taken by Maryland. This regulation would make it illegal to possess any of the two target species of snakeheads in Delaware. This action is necessary to protect native and naturalized populations of gamefish and fish food organisms from an additional source of competition and predation.
- 903(e)(2)(a) 7 Delaware Code authorizes the Department of Natural Resources and Environmental Control (DNREC) to promulgate regulations concerning species of finfish that spend part or all their life cycle within the tidal waters of the state provided that such regulations are consistent with an interstate fisheries management plan developed for the protection and conservation of said species of finfish. The most recent amendment (Amendment 1) to the Interstate Fishery Management Plan for Shad and River Herring was released by the Atlantic States Marine Fisheries Commission in April 1999. All jurisdictions were urged to conserve and restore river herring populations throughout their range along the Atlantic Coast.
- The proposed daily possession limit (creel limit) should serve to discourage the development of a fishery in Delaware conducted by recreational fishermen seeking to take river herring to be sold as live bait for striped bass. In neighboring states fisheries were developing where river herring concentrate at the base of dams while on their spawning migrations. At such confined locations river herring would be vulnerable to overharvest. In addition Delaware has been actively attempting to restore river herring populations by installing fish ladders over dams so that remnant river herring adults can reach ancestral spawning areas. It is these spawning adults that are sought after as bait for large striped bass, and as a result, live river herring can bring a premium price. Bait and tackle dealers and commercial crabbers will still be able to obtain river herring from commercial fishermen, but recreational fishermen will not be able to keep more than they need for a day of fishing.
- Pennsylvania and New Jersey have already taken regulatory action to set a daily harvest limit on river

herring by recreational fishermen in order to discourage expansion of this fishery.

- All comments received on the proposal favored both regulatory changes.
- The Delaware Advisory Council on Tidal Finfisheries was apprised of both proposed regulatory changes in separate actions in 2004. The Advisory Council endorsed the proposed ban on snakehead fishes in Delaware on October 20, 2004 but did not vote on the river herring proposal because a quorum was not present on the night it was discussed (March 17, 2004).

Conclusions

- The Department of Natural Resources and Environmental Control has a statutory obligation to manage the freshwater (non-tidal) fisheries to ...assure the conservation of freshwater fish,...as it deems necessary or advisable for the protection and conservation of wildlife or freshwater fish (§103 7 **Del.C.**). Further, the Department has the statutory obligation to manage the tidal water finfisheries of Delaware in a manner that is ...consistent with an interstate fisheries management plan developed for the protection and conservation of said species of finfish. (§903(2)b7 **Del.C.**).
- The regulations as proposed will help prevent the unwanted introduction into the wild of two species of exotic fishes declared by the U.S. Fish and Wildlife Service to be injurious.
- The regulations as proposed will help prevent the establishment of a commercialized-bait fishery among recreational fishermen within spawning tributaries for river herring. The river herring comprise two species which the State is actively attempting to restore to former abundance through the building of fish ladders to increase access to historical spawning areas.

ORDER

It is hereby ordered this ____ day of February in the year 2005 that amendments to Non-Tidal Fishing Regulation 3308 and new Tidal Fishing Regulation 3553, copies of which are attached hereto, are adopted pursuant to §103, 7 **Del.C.** and §903(2)b7 **Del.C.** and are supported by the Department's findings of evidence and testimony received. This Order shall become effective on March 10, 2005.

John A. Hughes, Secretary
Department of Natural Resources
and Environmental Control

3308 Fish Stocking Practices (Formerly NT-7)

(Penalty Section 7 **Del.C.** §1304)

1.0 Stocking Fish Practices.

1.1 It shall be unlawful for any person to stock any species of fish into the non-tidal public waters of this State without the written permission of the Director. This regulation does not prohibit the stocking of private impoundments.

2.0 Transportation, Possession and Sale.

2.1 It shall be unlawful for any person to transport, purchase, possess, or sell walking catfish (*Clarius batrachus*) or the white amur or grass carp (*Ctenopharyngodon idella*) or live northern snakehead fish (*Channa argus*) or blotched snakehead fish (*Channa maculata*) without the written permission of the Director.

3 DE Reg. 289 (8/1/99)

3553 River Herring Creel Limit

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

Unless otherwise authorized, it shall be unlawful for any person to have in possession, except a person with a valid Delaware commercial food fishing license, more than twenty-five (25) blueback herring and/or alewife (*Alosa aestivalis* and/or *Alosa pseudoharengus*), collectively known as river herring, at or between the place caught and his/her personal abode or temporary or transient place of lodging; or unless said person has a valid bill-of-sale or receipt

for said river herring that indicates the date said river herring were received, the number of said river herring received and the name, address and signature of the commercial food fisherman who legally caught said river herring;, or a bill-of-sale or receipt from a person who is a licensed retailer and legally obtained said river herring for resale.

8 DE Reg. 1315 (3/1/05)