

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Sections 102(c), 504, 508, 510 and 513
(7 Del.C. §§102(c), 504, 508, 510 and 513)
7 DE Admin. Code 3311 and 3567

FINAL

Secretary's Order No.: 2008-F-0048

Date of Issuance: September 15, 2008

Effective Date of the Amendment: October 11, 2008

I. Background:

A public hearing was held on Wednesday, August 27, 2008, at 7:00 p.m. at the DNREC Richardson & Robbins Building Auditorium to receive comment on proposed new Delaware Tidal Finfish Regulations 3567 and 3311 concerning the establishment of a registry system here in Delaware for both saltwater and freshwater fisherman, respectively. 7 Del.C., Chapter 5, proscribes licenses required for recreational fishing by residents and non-residents in Delaware fresh and tidal waters. In order to improve upon present means of determining recreational catch and effort in marine waters, by act of Congress in January of 2007, the federal National Marine Fisheries Service will establish a registry of recreational fishermen who fish in the federal coastal waters of the United States or who fish for anadromous species in state or federal coastal waters in 2009 and begin charging anglers for this registration in 2011. The fees so generated will be deposited in the federal treasury and not returned to the states according to existing federal plans.

The National Marine Fisheries Service has determined that any state such as Delaware that already has a complete name and address file of marine recreational fishermen via state-issued recreational fishing licenses will be exempt from the federal registry and the fees to be imposed. Delaware's recreational boat license, however, may cause Delaware to become a non-exempt state because the holder of a recreational boat license may take any number of non-licensed anglers with them on the licensed vessel. Thus, such unlicensed anglers would not be included in the database of all anglers. In addition, resident senior citizens age 65 and older also are exempt from Delaware recreational fishing license requirements. Therefore, to avoid a federal determination that Delaware is a non-exempt state, this regulation will establish a state-level registration process for all anglers fishing in Delaware at no additional cost to the angler. This new Delaware registration will be known as the FIN number (Fisherman Information Network).

Under this proposed registration system, all prospective Delaware anglers over the age of 16, whether they are licensed or not, will be required by this regulation to obtain a FIN number on an annual basis before fishing in Delaware waters. All hunters must presently comply with a similar federal registration process if they intend to hunt migratory birds (the HIP program). Those who also purchase a fishing license may write this FIN number on the space to be provided on their license. Those who do not need a fishing license (i.e., those who fall in the category of being legally unlicensed), but who intend to fish in Delaware's waters anyway, must carry their FIN number on their person.

The FIN number may be obtained in two ways: (1) by accessing a computer web site and following the directions; or (2) by phoning a toll-free number and following the verbal directions. The caller or computer user will be instructed to indicate whether they intend to fish in Delaware's freshwaters, marine (tidal) waters, or both, and then give their name, address, and phone number. Once all prospective Delaware fishermen have obtained a FIN number, Delaware will also be able to supply a complete computerized name, address, and telephone number file to the National Marine Fisheries Service, so that Delaware may be exempt from the federal recreational fishing registry and associated charges.

The Department has the statutory basis and legal authority to act with regard to this promulgation, pursuant to 7 Del.C. §§ 504, 508, 510, 513, 102(c), 903(a) and (b), and 903(f). Numerous members of the public attended this hearing on August 27, 2008 to ask questions and offer comment with regard to the Department's proposed new regulations concerning the FIN registry, and the same were taken into consideration during the Division's review of this proposed regulation.

Afterwards, the Hearing Officer prepared her report in the form of a Hearing Officer's Memorandum dated September 12, 2008. Proper notice of the hearing was provided as required by law.

II. Findings:

The Department has provided sound reasoning with regard to the proposed new regulations, as reflected in the Hearing Officer's Memorandum of September 12, 2008, which is attached and expressly incorporated into this Order. Moreover, the following findings and conclusions are entered at this time:

1. Proper notice of the hearing was provided as required by law.
2. The Department has jurisdiction under its statutory authority to make a determination in this proceeding;
3. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations;
4. The Department held a public hearing in a manner required by the law and regulations;
5. The Department considered all timely and relevant public comments in making its determination;
6. Congress authorized the National Marine Fisheries Service (NMFS) to compile a nationwide registry of all anglers fishing in saltwater beginning in 2009, and to begin charging for participation in this registry as of 2011;
7. Delaware's ability to provide a complete registry of its marine recreational fishermen from its state-issued fishing license program would result in Delaware anglers being exempt from participation in the aforementioned federal registry and federal license fees;
8. To avoid a federal determination that Delaware is a non-exempt state, the state-level registration process, to be known as the FIN program (Fisherman Information Network), would be established for all anglers fishing in Delaware;
9. This promulgation would require all prospective Delaware anglers age 16 or older, licensed or not, to obtain a FIN number on an annual basis before fishing in Delaware waters. The FIN number would be available at no cost to anglers by either calling a toll-free number or by providing requested information online. Each person who requests a FIN number should write this number on his or her fishing license, or for those who are legally unlicensed, be able to produce this number when asked by an authorized enforcement agent to do so;
10. Once all Delaware fishermen have obtained a FIN number and the NMFS has a copy of Delaware's saltwater angler registry, Delaware would be exempt from the federal marine recreational fishing registry and its charges;
11. The Department has reviewed this proposed amendment in the light of the Regulatory Flexibility Act, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;
12. The Department's proposed regulation, as published in the August 1, 2008 *Delaware Register of Regulations* and set forth in Attachment "A" hereto, is adequately supported, not arbitrary or capricious, and is consistent with the applicable laws and regulations. Consequently, it should be approved as a final regulation, which shall go into effect ten days after its publication in the next available issue of the *Delaware Register of Regulations*; and that
13. The Department's proposed new regulations, to wit: Delaware Non-Tidal Finfish Regulation 3311: Freshwater Fisherman Registry, and Delaware Tidal Finfish Regulation 3567: Tidal (Salt) Water Fisherman Registry, are adequately supported, not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they should be approved as final regulations, which shall go into effect ten days after its publication in the next available issue of the *Delaware Register of Regulations*; and that

14. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary.

III. Order:

Based on the record developed, as reviewed in the Hearing Officer's Memorandum dated September 12, 2008 and expressly incorporated herein, it is hereby ordered that the proposed new regulations, to wit: Delaware Non-Tidal Finfish Regulation 3311: Freshwater Fisherman Registry, and Delaware Tidal Finfish Regulation 3567: Tidal (Salt) Water Fisherman Registry, be promulgated in final form in the customary manner and established rule-making procedure required by law.

IV. Reasons:

The promulgation of these new regulations will enable the State of Delaware to formally establish the FIN (Fisherman Information Network) program, thus enabling Delaware to provide a complete registry of its marine recreational fishermen from its state-issued fishing license program. The institution of this FIN program will result in Delaware anglers being exempt from participation in the aforementioned federal registry and federal license fees, which are scheduled to begin in 2011. The program will not result in any additional cost to Delaware anglers, and it will enable the Department to use the data it generates for its own surveying needs in the future as well, for both marine fishing and for freshwater fishing.

In developing the FIN program, the Department has balanced the absolute environmental need for the State of Delaware to promulgate regulations concerning this matter with the important interests and public concerns surrounding the same, in furtherance of the policy, purposes, and authority of 7 Del.C. §§ 504, 508, 510, 513, 102(c), 903(a) and (b), and 903(f).

John A. Hughes, Secretary

3311 Freshwater Fisherman Registry

1.0 All persons ages 16 and older who wish to fish in Delaware's fresh or tidal waters or both in any given year must first obtain a Fisherman Identification Network (F.I.N.) number for the year in question before fishing. This number may be obtained at no cost to the angler by calling a toll free number and providing the required information over the phone or by entering the required information on-line through an internet access portal designated by the Department for that purpose. Each person who requests a F.I.N. number is to write this number on his or her Delaware fishing license, or those who are legally unlicensed must be able to produce this number when checked by an enforcement agent when fishing in Delaware waters. Failure to provide a valid F.I.N. number for the year in question is a violation of 7 Del.C. §501 in the case of residents, or 7 Del.C. §506 in the case of non-residents, and will be treated the same as a failure to have a fishing license before going fishing. Information provided during the process of obtaining a F.I.N. number shall be treated as confidential and may only be shared with the National Marine Fisheries Service for the purpose of compliance with federal requirements for a national registry of marine fishermen.

3567 Tidal Water Fisherman Registry

1.0 All persons ages 16 and older who wish to fish in Delaware's fresh or tidal waters or both in any given year must first obtain a Fisherman Identification Network (F.I.N.) number for the year in question before fishing. This number may be obtained at no cost to the angler by calling a toll free number and providing the required information over the phone or by entering the required information on-line through an internet access portal designated by the Department for that purpose. Each person who requests a F.I.N. number is to write this number on his or her Delaware fishing license, or those who are legally unlicensed must be able to produce this number when checked by an enforcement agent when fishing in Delaware waters. Failure to provide a valid F.I.N. number for the year in question is a violation of 7 Del.C. §501 in the case of residents, or 7 Del.C. §506 in the case of non-

residents, and will be treated the same as a failure to have a fishing license before going fishing. Information provided during the process of obtaining a F.I.N. number shall be treated as confidential and may only be shared with the National Marine Fisheries Service for the purpose of compliance with federal requirements for a national registry of marine fishermen.

12 DE Reg. 493 (10/01/08) (Final)