

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Sections 901(c & d) and 903(e)(2)a;
(7 Del.C. §§901(c & d) & 903(e)(2)a)
7 DE Admin. Code 3521

FINAL

Secretary's Order No.: 2014-F-0017

Date of Issuance: August 11, 2014

Effective Date of the Amendment: September 11, 2014

3521 Weakfish Size Limits; Possession Limits; Seasons

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. 3521 regarding Weakfish. The Department's Division of Fish and Wildlife commenced the regulatory development process with Start Action Notice 2014-03. The Department published the proposed amendments in the May 1, 2014 *Delaware Register of Regulations* and held a public hearing on May 22, 2014. The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated March 1, 2014 (Report). The Report recommends certain findings and 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 amendments. As a result of the regulatory development process, the Department received public comments supporting this proposed regulation, as discussed in the Report.

The proposed amendments to Delaware's existing regulations for this species are consistent with the Interstate Fisheries Management Plan for Weakfish as adopted by the ASMFC. Moreover, the proposed management strategy will better accommodate commercial fishing needs while continuing to protect the weakfish resource and providing bait for recreational anglers. It should also be noted that all proper notification and noticing requirements concerning this proposed promulgation were met by the Department.

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 regulation amendments as final;
- 2.) The Department provided adequate public notice of the aforementioned proposed amendments, and provided the public with an adequate opportunity to comment on said proposed amendments, including at a public hearing;
- 3.) The Department held a public hearing on the proposed regulation amendments 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 proposed regulation amendments, as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;
- 5.) The recommended final proposed amendments do not reflect any change from the initial proposed amendments as published in the May 1, 2014, *Delaware Register of Regulations*;
- 6.) Promulgation of the proposed regulatory amendments to Delaware Tidal Finfish Regulation No. 3521 will enable Delaware to remain consistent with the Interstate Fisheries Management Plan, as adopted by the ASMFC, to manage Weakfish in Delaware, to wit: (1) modification of the commercial weakfish management approach of intermittent net closures from May 1 through June 30 to an uninterrupted closure (all gears) from May 1 through June 2; (2) allowance of a weakfish bycatch during the closure of up to 100 pounds per day or trip for the commercial gill net fishery and accommodates commercial fishing for species other than weakfish (e.g., Atlantic menhaden and black drum); (3) no impact to the gill net restrictions as established in 7 Del.C.

§923; (4) maintenance of existing recreational closures, as well as catch limits during the open season in all fisheries; and (5) elimination of mailed notices to netters, as the dates are annually published in the Delaware Fishing Guide, which is widely available in print, and is also posted online;

- 7.) The proposed regulation amendments are well supported by documents in the record; and that
- 8.) The Department shall submit this Order approving the final regulation amendments 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.

David S. Small, Secretary

3521 Weakfish Size Limits; Possession Limits; Seasons.

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

- 1.0 It ~~shall be~~ is 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~~ is 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 4~~ June 3 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~~ is 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~~ is 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, during the periods January 1 through April 30 and June 3 through December 31.

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

- 4.0 It ~~shall be~~ is 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 is unlawful for any person issued a valid commercial food fishing license to take and reduce to possession any weakfish during the period May 1 through June 2, except a person issued a valid commercial food fishing license and a valid gill net food fishing permit by the Department may retain not more than 100 pounds of weakfish per day or trip (whichever is the longer period of time) as bycatch, provided that the combined weight of all other finfish retained per said day or trip is greater than the combined weight of weakfish retained. [Note: All provisions of 7 Del.C. §923 continue to apply.]

56.0 It shall be is unlawful for any person, except a person issued a commercial food fishing license and a gill net equipment permit, 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 through midnight Sunday) in both May and June, plus contiguous weekdays (defined as 12:01 AM Monday through midnight Thursday) 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.

67.0 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 4~~ June 3 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)

78.0 It ~~shall be~~ is 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)

18 DE Reg. 235 (09/01/14) (Final)