

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 903(b)(e)(2)b (7 **Del.C.**, §903(b)(e)(2)b
7 **DE Admin. Code** 3521

FINAL

Secretary's Order No.: 2010-F-0012

3521 Weakfish Size Limit; Possession Limit; Seasons

Date of Issuance: March 11, 2010

Effective Date of the Amendment: April 11, 2010

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 2009-32. The Department published the proposed amendments in the January 1, 2010 *Delaware Register of Regulations* and held a public hearing on January 21, 2010. The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated March 2, 2010 (Report). The Report recommends certain findings and the adoption of the proposed new regulation as attached to the Report as Appendix A.

Findings and Discussion

I find that the proposed new regulation is 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. As a result of the regulatory development process, the Department received public comments supporting this proposed regulation, as discussed in the Report.

With the adoption of these regulatory amendments to Delaware Tidal Finfish Regulation No. 3521 as final, Delaware will be able to remain in compliance with the Interstate Fisheries Management Plan, as adopted by the ASMFC, to manage Weakfish in Delaware, to wit: (1) reduce the recreational creel limit for Weakfish from six (6) to one (1) fish per person, per day; and (2) limit commercial fishermen to no more than 100 pounds per vessel per day or per trip.

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 new regulation, and provided the public with an adequate opportunity to comment on the proposed new regulation, including at a public hearing;
- 3.) The Department held a public hearing on the proposed new regulation 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 new regulation, as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;
- 5.) The recommended new regulation does not reflect any change from the proposed regulation as published in the January 1, 2010, *Delaware Register of Regulations*;
- 6.) The recommended regulation should be adopted as a final new regulation because (1) Delaware will be

enabled to remain in compliance with the Interstate Fisheries Management Plan, as adopted by the ASMFC, to manage Weakfish in Delaware, to wit: (1) reduce the recreational creel limit for Weakfish from six (6) to one (1) fish per person, per day; and (2) limit commercial fishermen to no more than 100 pounds per vessel per day or per trip; and (4) the new regulation is well supported by documents in the record; and that

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

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 ~~six (6)~~ 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.
- 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 ~~six (6)~~ 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 ~~six (6)~~ 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)

- 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 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.
- 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 ~~six (6)~~ 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)

- 7.0 It shall be unlawful for any person with a food fishing equipment permit for hook and line to possess more than ~~eight (8)~~ 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 ~~six (6)~~ 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)