

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Sections 901(c) & (d) and 903(b), (e), (f) & (i); (7 Del.C. §§901(c) & (d) and 903(b), (e), (f) & (i))
7 DE Admin. Code 3531

PROPOSED

REGISTER NOTICE

SAN # 2018-08

3531 Tautog; Size Limits, Creel Limits and Seasons

1. TITLE OF THE REGULATIONS:

7 DE Admin. Code 3531 Tautog; Size Limits, Creel Limits and Seasons

2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

The Atlantic States Marine Fisheries Commission (ASMFC) approved Amendment 1 to the Interstate Fishery Management Plan for Tautog in October 2017. Amendment 1 provides for the regional management of the tautog resource based on the most recent stock assessment findings. The stock assessment indicated that the Delaware, Maryland and Virginia (DelMarVa) component of the stock is overfished but overfishing is not occurring. The recreational and commercial management measures proposed in this action will improve the stock condition and are required by Amendment 1.

Specifically, Amendment 1 requires that Delaware implement recreational and commercial management measures consisting of a 16-inch minimum size limit, a four fish possession limit and a closed season from May 16 through June 30. In addition, based upon evidence from law enforcement officials that indicated significant illegal sales of tautog, states with commercial tautog fisheries must implement a commercial harvest tagging program by January 1, 2019. Implementation of such a program will require preregistration, harvest tagging and tag reporting and accountability measures to deter the illegal sale of tautog.

Finally, to prevent or reduce mortality from lost commercial fishing gear, Amendment 1 requires certain degradable materials on pot and trap gear from which tautog are retained.

Although the required minimum size limit, possession limit and closed season and are currently in place through emergency Secretary's Order 2018-F-0035, these measures and the other proposed measures must be promulgated through the full provisions of the Administrative Procedures Act.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Del.C. §901(c) & (d), § 903(b), (e), (f) & (i)

5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL:

None

6. NOTICE OF PUBLIC COMMENT:

The hearing record on the proposed changes to 7 DE Admin. Code 3531 Tautog; Size Limits, Creel Limits and Seasons will open Wednesday, August 1, 2018. Individuals may submit written comments regarding the proposed changes via e-mail to Lisa.Vest@state.de.us or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. A public hearing on the proposed amendment will be held on Thursday, August 23, 2018 beginning at 6:00 PM in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901. Public comments will be received until close of business Friday, September 7, 2018.

7. PREPARED BY:

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3531 Tautog; Size Limits, Creel Limits and Seasons

1.0 Recreational and Commercial Size Limits

4.01.1 Notwithstanding the provisions of 7 Del.C. §§929 and 939, it shall be unlawful for any person to possess any tautog, *Tautoga onitis*, less than ~~fifteen (15)~~ sixteen (16) inches in total length.

2.0 Recreational and Commercial Possession Limits and Seasons

2.1 Notwithstanding the provisions of 7 Del.C. §§938, and 939, it shall be unlawful for any person to ~~possess take and reduce to possession~~ more than ~~five (5)~~ four (4) tautog per day during the period beginning at 12:00 a.m. on January 1 and ending at 11:59 p.m. on ~~March 31~~ May 15, and during the period beginning at 12:00 a.m. on July 17 and ending at 11:59 p.m. on ~~August~~ December 31, and during the period beginning at 12:00 a.m. on ~~September 29~~ and ending at 11:59 p.m. on ~~December 31~~, at or between the place where said tautog were caught and said person's personal abode, or temporary or transient place of lodging or, for a licensed commercial foodfisherman, point of sale.

3.0 Notwithstanding the provisions of 7 Del.C. §§938, 939, it shall be unlawful for any person to possess more than ~~three (3)~~ tautog during the period beginning at 12:00 a.m. on April 1 and ending at 11:59 p.m. on May 11, at or between the place where said tautog were caught and said person's personal abode or temporary or transient place of lodging.

4.02.2 Notwithstanding the provisions of subsections 1.0, 2.0 and 3.0 of this regulation 7 Del.C. §§938 and 939, it shall be unlawful for any person to ~~possess take and reduce to possession~~ any tautog during the period beginning at 12:00 a.m. on May ~~12~~ 16 and ending at 11:59 p.m. on July ~~16~~ and during the period beginning at 12:00 a.m. on ~~September 1~~ and ending at 11:59 p.m. on ~~September 28~~, except in said person's personal abode or temporary or transient place of lodging June 30.

3.0 Commercial Tagging

3.1 After December 31, 2018, it is unlawful for a commercial fisherman to possess tautog in Delaware unless it is tagged prior to landing with a tautog harvest tag issued by the Division in accordance with this section.

3.1.1 Tautog harvest tags must be firmly affixed to the bony portion of the gill cover (operculum) such that the tag number faces outward from the body and can be readily viewed.

3.2 The Division of Fish and Wildlife may only issue tautog harvest tags to those commercial fishermen that apply to participate in the commercial tautog fishery using a form provided by the Division and returning said form to the Division by no later than September 1 in the calendar year preceding their participation.

3.3 After December 31, 2018, it is unlawful to buy, sell, barter or trade or offer to buy, sell, barter or trade tautog unless the fish has a firmly affixed and lawfully applied tautog harvest tag issued by a state in accordance with Amendment 1 to the Interstate Fishery Management Plan for Tautog (October 2017).

3.4 It is unlawful for any person issued tautog harvest tags by the Division to fail to report the loss, theft, damage or defect of a tag to the Division within 12 hours of discovery.

3.5 It is unlawful for any person issued tautog harvest tags to not file a complete and accurate monthly accounting of tag use by the last working day of the month following tag use on a form provided by the Division.

3.6 It is unlawful to buy, sell, barter or trade or offer to buy, sell or trade any tautog that has attached a tag reported as lost, stolen, damaged, defective or otherwise unusable in accordance with subsection 3.4 of this section.

3.7 Unless reported in accordance with subsection 3.4 or 3.5 of this section, it is unlawful for any person issued tautog harvest tag(s) to not return to the Division all unused tags by no later than February 15 of the year following their issuance.

4.0 Gear Requirements

4.1 It is unlawful to retain tautog from any pot or trap unless the hinges or fasteners of at least one panel or door of the pot or trap is equipped with one of the following degradable materials:

4.1.1 Untreated hemp or jute string of not more than 3/16-inch (4.8 mm) diameter;

4.1.2 Magnesium alloy fasteners, timed float released (pop-up devices) or similar device approved by the Division;

4.1.3 Non-galvanized or non-coated iron wire of not more than 0.094-inch (2.39 mm) diameter.

1 DE Reg. 1771 (05/01/98)

6 DE Reg. 1360 (04/01/03)

11 DE Reg. 1257 (03/01/08)

15 DE Reg. 1177 (02/01/12)

16 DE Reg. 216 (08/01/12)

