

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 903(e)(2)(a), (7 Del.C. §903(e)(2)(a))
7 DE Admin. Code 3553

FINAL

Secretary's Order No.: 2008-F-0007

3553 River Herring Creel Limit

Date of Issuance: February 13, 2008
Effective Date of the Amendment: March 11, 2008

I. Background:

A public hearing was held on Thursday, January 24, 2008, at 7:00 p.m. at the University of Delaware, Hugh R. Sharp Campus, Cannon Laboratory, 700 Pilottown Road, Lewes, Delaware, to receive comment on proposed amendments to the existing Delaware Tidal Finfish Regulation 3553 concerning river herring creel limits. The stocks of blueback herring (*Alosa aestivalis*) and alewife (*Alosa pseudoharengus*), both commonly referred to as river herring, are currently in steep decline throughout the Atlantic coast. Concern over the status of these stocks has prompted four states to close their river herring fisheries entirely. A significant harvest by recreational fishermen has recently developed in the spawning areas where river herring concentrate (at the base of spillways and dams), and are easily exploited. Most are captured using nets and transported alive to use as live bait for striped bass.

The existing regulation is a possession limit that allows for multiple trips per day with no daily cap on landings. The Department believes this regulation is insufficient to protect remaining stocks of river herring from over-exploitation, and is difficult to enforce. Therefore, the Department is proposing to amend that current regulation from a possession limit to a daily creel (harvest) limit, and to reduce that limit from 25 river herring per person to 10 fish per person per day. This action would be consistent with the intent of the current Fisheries Management Plan for Shad and River Herring, and should protect stocks from overfishing until new requirements are adopted by the Atlantic States Marine Fisheries Commission Management Board for Shad and River Herring.

No members of the public attended this hearing on February 13, 2008. After the hearing, the Hearing Officer prepared her report regarding this matter, and submitted the same to the Secretary for his review. Proper notice of the hearing was provided as required by law.

II. Findings:

The Department has provided a reasoned analysis and a sound conclusion with regard to the proposed amendment to the Delaware regulations regarding River Herring and its creel limit, as reflected in the Hearing Officer's Report of February 13, 2008, which is attached hereto 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. Promulgation of these proposed amendments would amend the current regulation from a possession limit to a daily creel (harvest) limit, and would reduce that limit from 25 river herring per person to 10 fish per person per day;
7. The proposed amendment to the current river herring regulation would be consistent with the intent of the current Fisheries Management Plan for Shad and River Herring, and should protect stocks from

overfishing until new requirements are adopted by the Atlantic States Marine Fisheries Commission Management Board for Shad and River Herring.

8. 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;

9. The Department's proposed regulation, as published in the January 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

10. The Department's proposed amendments to Tidal Finfish Regulation 3553 are adequately supported, not arbitrary or capricious, and are 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

11. 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 Report dated February 13, 2008, and expressly incorporated herein, it is hereby ordered that the proposed amendments to State of Delaware Tidal Finfish Regulation No. 3553 – River Herring Creel Limits - be promulgated in final form in the customary manner and established rule-making procedure required by law.

IV. Reasons:

The promulgation of State of Delaware Tidal Finfish Regulation No. 3553 will amend that current regulation from a possession limit to a daily creel (harvest) limit, and will reduce that limit from 25 river herring per person to 10 fish per person per day. This action would be consistent with the intent of the current Fisheries Management Plan for Shad and River Herring, and should protect stocks from overfishing until new requirements are adopted by the Atlantic States Marine Fisheries Commission Management Board for Shad and River Herring.

In developing this regulation, 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 and purposes of 7 Del.C. §903 (e)(2)(a) and Chapter 15, respectively

John A. Hughes, Secretary

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)~~ ten (10) 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 (03/01/05)

11 DE Reg. 1259 (03/01/08) (Final)