

# DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

## DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 6010, (7 Del.C. §6010)  
7 DE Admin. Code 3521

### FINAL

Secretary's Order No.: 2007-F-0041

**RE: Proposed Amendments to Delaware Tidal Finfish  
Regulation 3521: Weakfish Size Limits, Possession Limits, and Seasons**

**Date of Issuance: September 17, 2007**

**Effective Date of the Amendment: October 11, 2007**

#### **I. Background:**

A public hearing was held on Wednesday, August 29, 2007, at 7:00 p.m. at the DNREC Richardson & Robbins Building Auditorium to receive comment on proposed amendments to the existing Delaware Tidal Finfish Regulation 3521 concerning weakfish size limits, possession limits, and seasons. In accordance with Addendum II to Amendment 4 of the Atlantic States Marine Fisheries Commission's Interstate Fishery Management Plan for Weakfish, Delaware is required to lower the recreational possession limit on weakfish from eight (8) per day to six (6) per day by October 29, 2007. Similarly, the commercial hook and line daily harvest limit shall be reduced as well, from eight (8) per day to six (6) per day, except on four specific days of the week as indicated by the Department for food fishing equipment permits for hook and line. During the four days of the week so specified, commercial hook and line fisherman are not constrained by daily harvest limits, although minimum size limits still apply. The Atlantic States Marine Fisheries Commission took this action in order to conserve weakfish as an aid to future stock recovery. All major weakfish harvesting states along the Atlantic seaboard are required to take this action.

If commercial fishing removals of weakfish should rise to a pre-determined level consistent with average removals over the last five years, the Commission will give consideration to further restraints on commercial fishing. Similarly, if Delaware (or any other state's commercial weakfish landings) exceeds its five-year mean by more than 25% in any single year, the Commission will review the findings and take action as it deems appropriate. If the commercial measures in the Weakfish Plan are modified, it would be incumbent upon Delaware to come into compliance with the applicable changes.

No members of the public attended this hearing on August 29, 2007, and no public comment or questions were received by the Department regarding this proposed action. 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 response given to each such comment, as reflected in the Hearing Officer's Report of September 14, 2007, 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. Promulgation of these proposed amendments would bring Delaware into compliance with Addendum II to Amendment 4 of the Atlantic States Marine Fisheries Commission's Interstate Fishery

Management Plan for Weakfish, by lowering the recreational possession limit on weakfish from eight (8) to six (6) per day by October 29, 2007;

7. Similarly, the commercial hook and line daily harvest limit shall be reduced as well, from eight (8) per day to six (6) per day. Commercial fisherman may declare four days of the week between the period May 1 through October 31, and during those four days of the week, they are not subject to the recreational creel limit. On all other days of the week, and during the rest of the year, commercial hook and line fisherman are subject to the recreational creel limit, and minimum size limits still apply;

8. The Atlantic States Marine Fisheries Commission has taken this action to conserve weakfish as an aid to future stock recovery, and all major weakfish harvesting states along the Atlantic seaboard are required to take this action;

9. If commercial fishing removals of weakfish should rise to a pre-determined level consistent with average removals over the last five years, the Commission will give consideration to further restraints on commercial fishing. Similarly, if Delaware exceeds its five-year mean by more than 25% in any single year, the Commission will review the findings and take action as it deems appropriate;

10. If the commercial measures in the Weakfish Plan are modified, it would be incumbent upon Delaware to come into compliance with the applicable changes;

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 September 1, 2007 *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 amendments to Tidal Finfish Regulation 3521 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

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 Report dated September 14, 2007, and expressly incorporated herein, it is hereby ordered that the proposed amendments to State of Delaware Tidal Finfish Regulation No. 3521 – Weakfish Size Limits, Possession Limits, and Seasons - 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. 3521 will bring Delaware into compliance with Addendum II to Amendment 4 of the Atlantic States Marine Fisheries Commission's Interstate Fishery Management Plan for Weakfish. This action is being taken by the Commission to conserve weakfish as an aid to future stock recovery. Thus, it is incumbent upon Delaware to be in compliance with the Commission's plan, not only to avoid federal sanctions against Delaware and its weakfish refinery, but to protect this species with these conservation measures to ensure that weakfish will continue to be found in Delaware waters in the future.

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., Ch. 60.

John A. Hughes, Secretary

### **3521 Weakfish Size Limits; Possession Limits; Seasons. (Formerly Tidal Finfish Reg. 10)**

(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 ~~eight (8)~~ six (6) 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.

**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 ~~eight (8)~~ six (6) 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 ~~eight (8)~~ six (6) 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.

**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 ~~eight (8)~~ six (6) weakfish per day. These four days of the week shall not be changed at any time during the remainder of the calendar year.

**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) 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 ~~eight (8)~~ six (6) 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) (Final)**