

**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.1 (7 **Del.C.** §§901(c&d) & 903(e)(2)a.1)
7 DE Admin. Code 3591, 3592, & 3593

FINAL

Secretary's Order No.: 2022-F-0016

RE: Approving Final Regulation, pursuant to 7 Del. C. §903(e)(2)a.1, to Amend 7 DE Admin. Code 3591 *American Shad and Hickory Shad Creel Limits*; 3592 *Atlantic Ocean American Shad Season and Closure*; and establish 3593: *Minimum Thread, Twine, or Monofilament Diameter for Anchored Gill Nets*

Date of Issuance: August 26, 2022

Effective Date of the Amendment: 48 hours following publication of this Secretary's Order and regulation on the Department's website: <https://de.gov/dnrecorders>

Shad

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC"), pursuant to 7 *Del. C.* §903(e)(2)a.1 and all other relevant statutory authority, the following findings of fact based on the reasons and conclusions are entered as an Order of the Secretary in the above-referenced regulatory amendment.

Notwithstanding 29 *Del.C.* Ch. 101 (which sets forth the standardized procedures whereby a state agency shall promulgate regulations), the Department also has the statutory authority under 7 *Del. C.* §903(e)(2)a.1 to promulgate certain regulations in order to adopt a specified management measure for finfish, subject to 7 *Del.C.* Ch. 9, *Finfishing in Tidal Waters*, by the issuance of a Secretary's Order. The Department is allowed to follow this abbreviated regulatory promulgation process only in instances where the management measures are specified by, and ensures compliance or maintains consistency with, a fisheries management plan or rule established by the Atlantic States Marine Fisheries Commission ("ASMFC"), the *Atlantic Coastal Fisheries Cooperative Management Act*, the Mid-Atlantic Fishery Management Council, or the National Marine Fisheries Service.

Whenever the Department promulgates a regulation pursuant to 7 *Del. C.* §903(e)(2)a.1, it shall also (1) publish on its website a public notice with a copy of the Secretary's Order and final regulation that implements the specific management measure; and (2) file the Secretary's Order and regulation that implements the specified management measure in the next available issue of the *Delaware Register of Regulations*. The final regulation becomes effective 48 hours after the Department has published the aforementioned public notice on its website, as mandated by 7 *Del. C.* §903(e)(2)a.2.

Background, Procedural History and Findings of Fact

This order amends 7 DE Admin. Code 3591 *American Shad and Hickory Shad Creel Limits*; 3592 *Atlantic Ocean American Shad Season and Closure*; and establish 3593: *Minimum Thread, Twine, or Monofilament Diameter for Anchored Gill Nets*, to reduce fishing mortality on American Shad by adopting the mandatory management measures approved by the ASMFC's Shad and River Herring Management Board that are necessary to remain compliant with the *Delaware River Sustainable Fishing Plan for American Shad*. This order requires the reduction of the daily recreational possession limit and places restrictions on the anchored gill nets used by Delaware's commercial gill netters during the spring anchored gill net season. The 2020 ASMFC American Shad Benchmark Stock Assessment determined that the Delaware River American shad stock is experiencing unsustainable adult female mortality. In response and consistent with 2020 ASMFC Stock Assessment, these actions required by ASMFC will reduce fishing mortality and assist in rebuilding the Delaware River American shad population.

The proposed amendments cover the specific management measures required for Delaware's recreational and commercial American shad fisheries. Delaware must reduce its recreational American shad daily possession limit to two fish and require anchored gill nets used during the spring gill net season (March 1 - May 10) that have a stretched mesh equal to or greater than four inches to be constructed of thread, twine or monofilament with a minimum diameter of 0.52 mm. In addition, the proposed amendments will remove archaic text regarding the three-year process used to close the Atlantic Ocean to American shad fishing but will retain the text prohibiting fishing for American shad in the Atlantic Ocean. These proposed amendments will then align with the action required by the ASMFC *Delaware River Sustainable Fishing Plan for American Shad*.

The Department has the statutory basis and legal authority to act with regard to promulgation of the proposed amendments to 7 DE Admin. Code 3591 *American Shad and Hickory Shad Creel Limits*; 3592 *Atlantic Ocean American Shad Season and Closure*; and establish 3593: *Minimum Thread, Twine, or Monofilament Diameter for Anchored Gill Nets*, pursuant to 7 Del. C. §§901 (c & d) and 903(e)(2)a.1

ORDER

In accordance with 7 Del. C. §903(e)(2)a.1, it is hereby ordered, this 26th day of August, 2022 that the above referenced amendments to 7 DE Admin. Code 3591 *American Shad and Hickory Shad Creel Limits*; 3592 *Atlantic Ocean American Shad Season and Closure*; and establish 3593: *Minimum Thread, Twine, or Monofilament Diameter for Anchored Gill Nets*, a copy of which is hereby attached, are supported by the evidence contained herein and are hereby adopted. The above referenced amendment shall take effect 48 hours following publication of this Secretary's Order and regulation on the Department's website in accordance with 7 Del. C. §903(e)(2)a.2.

Shawn M. Garvin
Secretary

Shad

3591 American Shad and Hickory Shad Creel Limits.

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

1.0 It shall be unlawful for any person who does not have a valid commercial foodfishing license to have in possession more than ~~an aggregate of ten (10)~~ two American shad and ~~more than ten~~ hickory shad at or between the place caught and his/her personal abode or transient place of lodging.

2 DE Reg. 1906 (04/01/99)

2.0 It shall be unlawful for any person to take and reduce to possession any American shad or hickory shad from the Nanticoke River or its tributaries.

3 DE Reg. 1088 (02/01/00)

3592 Atlantic Ocean American Shad Season and Closure

1.0 ~~All Delaware licensed commercial gill netters who wish to harvest and land American shad, *Alosa sapidissima*, in the Atlantic Ocean must register with the Department their intent to participate in this Atlantic Ocean commercial shad fishery by February 1 each year during either or both of 2003 and 2004.~~

2.0 ~~If three or fewer licensed commercial gill netters register to participate in the Atlantic Ocean commercial American shad fishery in any given year in 2003 or 2004, then the season for that year shall open at 12:01 a.m. February 14 and shall close on or before midnight April 21. If more than three licensed commercial gill netters register to participate in the Atlantic Ocean commercial American shad fishery in any given year in 2003 or 2004, then the season start and end dates shall be adjusted according to the following table based on the number of registered Atlantic Ocean shad commercial gill net fishermen:~~

| Number of Registered Shad Fishermen | Season Length | Season Dates |
|--|----------------------|---------------------|
| 4 | 59 days | 14 Feb. – 13 April |
| 5 | 47 days | 20 Feb. – 7 April |
| 6 | 39 days | 24 Feb. – 3 April |
| 7 | 34 days | 27 Feb. – 1 April |
| 8 | 29 days | 1 March – 29 March |
| 9 | 26 days | 2 March – 27 March |
| 10 | 24 days | 3 March – 26 March |
| 11 | 21 days | 4 March – 24 March |

~~If more than 11 fishermen register to participate in the Atlantic Ocean commercial American shad fishery in 2003 or 2004, the season length for that year shall be shortened one day for each additional registered fisherman and the season dates shall be adjusted accordingly.~~

3.0 1.0 Beginning 12:01 a.m. on January 1, 2005, it shall be unlawful for any Delaware fisherman to take and reduce to possession any American shad caught by gill net from the waters of the Atlantic Ocean.

6 DE Reg. 1230 (03/01/03)

3593 Minimum Thread, Twine, or Monofilament Diameter for Anchored Gill Nets

- 1.0 Anchored gill nets with stretched mesh sizes greater than or equal to 4 inches fished during March 1 through May 10 must be constructed of a thread, twine or monofilament with a diameter greater than or equal to 0.52 mm.

26 DE Reg. 325 (10/01/22) (Final)