



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL

OFFICE OF THE
SECRETARY

89 KINGS HIGHWAY
DOVER, DELAWARE 19901

PHONE: (302) 739-9000
FAX: (302) 739-6242

Secretary's Order No.: 2013-F-0014

Re: *Withdrawal of Proposed Regulation Amendments to 7 DE Admin Code 3521, "Weakfish Size Limits; Possession Limits; Seasons", as Published in the October 1, 2012 Delaware Register of Regulations*

Date of Issuance: May 9, 2013

Effective Date: June 11, 2013

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") under 29 *Del. C. §§8001 et seq.*, 29 *Del. C. §§10111 et seq.* and 7 *Del. C. §6010 (a)*, the following findings, reasons and conclusions are entered as an Order of the Secretary in the above-referenced rulemaking proceeding:

On July 10, 2012, the Department opened a proposed rulemaking proceeding in Start Action Notice ("SAN") 2012-11 to promulgate amendments to 7 DE Admin Code 3521, "Weakfish Size Limits; Possession Limits; Seasons". The purpose of this proposed action was to amend the definition of weekends and weekdays as set forth in Section 5.0 of the aforementioned regulation. Under the provision of Amendment III to the Atlantic States Marine Fisheries Commission's Interstate Fishery Management Plan for Weakfish

Delaware's Good Nature depends on you!

(ISFMP), Delaware was required to implement a 34-day commercial closure (when all fishing gear, except hook & line, were to be removed from the water). Delaware's present regulations include weeklong closures at the beginning of May, the end of June, and all weekends in May and June, in order to meet the ISFMP specifications. Last year, the Department received several requests from the commercial fishing sector to change the weekend closure periods from Friday through Sunday to *Saturday through Monday*. This requested change was intended to allow Delaware's commercial gill fishery to more adequately supply the recreational bait market with fresh Atlantic menhaden for weekend anglers.

A public hearing was held by the Department on October 31, 2012. No members of the public attended said hearing on the aforementioned proposed action, nor did the Department receive any public comment *in support of* the proposed measure during the open comment period. However, the Department *did* receive written comment (prior to the close of the comment period) on behalf of eleven individuals from the commercial fishing industry who were *opposed* to the proposed change. Opposition to the proposed change was based on the contention that the market quality of more lucrative foodfish species would suffer. For example, weakfish harvested on Fridays would not be shipped to markets by fish haulers until at least Monday. Weakfish do not maintain market quality for extended periods, and therefore prices paid to Delaware dealers and harvesters would be negatively impacted. Thus, if adopted, the proposed measures may negatively impact the broader Delaware gill net fishery.

It should be noted that the Advisory council on Tidal Finfisheries endorsed taking the proposed action to hearing, but based upon the comments received, the Council expressed no objection to the Department seeking other measures to address this issue. Therefore, based upon the comment received, and the fact that the proposed change has no bearing on Delaware's compliance with the ISFMP for Weakfish, its subsequent amendments and addenda, the Department's Division of Fish & Wildlife has determined that the best course of action at this time is to withdraw the proposed action as contained in Register Notice 2012-11.

The aforementioned proposed amendment to Delaware's Tidal Finfish Regulation 3521 regarding Weakfish was published in the October 2012 edition of the Delaware Register of Regulations. Subsequently, as noted above, the Department held a formal public hearing regarding the aforementioned proposed amendments regulation on October 31, 2012, and the public comment period was open for written comments through close of business November 15, 2012. Again, as a result of the public comments the Department received during that time period (and the fact that the proposed change has no bearing on Delaware's compliance with the ISFMP for Weakfish, its subsequent amendments and addenda), the Department has decided at this time to withdraw the current proposed regulation amendments previously published in the October 2012 *Delaware Register of Regulations*.

In conclusion, the following findings and conclusions are entered:

1. The Department, acting through this Order of the Secretary and 29 *Del C. §10118(d)*, hereby withdraws the proposed regulation published in the *Delaware Register of Regulations* on October 1, 2012; and

2. The Department shall have this Order published in the *Delaware Register of Regulations* and in newspapers in the same manner as the notice of the proposed regulation.



Collin P. O'Mara
Secretary