

Secretary's Order No.: **2008-F-0048**

RE: Proposed New Delaware Tidal Finfish Regulation 3567: Saltwater Fisherman Registry; and New Non-Tidal Finfish Regulation 3311: Freshwater Fisherman Registry

Date of Issuance: September 15, 2008

Effective Date of the Amendment: October 11, 2008

I. Background:

A public hearing was held on Wednesday, August 27, 2008, at 7:00 p.m. at the DNREC Richardson & Robbins Building Auditorium to receive comment on proposed new Delaware Tidal Finfish Regulations 3567 and 3311 concerning the establishment of a registry system here in Delaware for both saltwater and freshwater fisherman, respectively. 7 Del.C., Chapter 5, proscribes licenses required for recreational fishing by residents and non-residents in Delaware fresh and tidal waters. In order to improve upon present means of determining recreational catch and effort in marine waters, by act of Congress in January of 2007, the federal National Marine Fisheries Service will establish a registry of recreational fishermen who fish in the federal coastal waters of the United States or who fish for anadromous species in state or federal coastal waters in 2009 and begin charging anglers for this registration in 2011. The fees so generated will be deposited in the federal treasury and not returned to the states according to existing federal plans.

The National Marine Fisheries Service has determined that any state such as Delaware that already has a complete name and address

file of marine recreational fishermen via state-issued recreational fishing licenses will be exempt from the federal registry and the fees to be imposed. Delaware's recreational boat license, however, may cause Delaware to become a non-exempt state because the holder of a recreational boat license may take any number of non-licensed anglers with them on the licensed vessel. Thus, such unlicensed anglers would not be included in the database of all anglers. In addition, resident senior citizens age 65 and older also are exempt from Delaware recreational fishing license requirements. Therefore, to avoid a federal determination that Delaware is a non-exempt state, this regulation will establish a state-level registration process for all anglers fishing in Delaware at no additional cost to the angler. This new Delaware registration will be known as the FIN number (Fisherman Information Network).

Under this proposed registration system, ***all*** prospective Delaware anglers over the age of 16, whether they are licensed or not, will be required by this regulation to obtain a FIN number on an annual basis before fishing in Delaware waters. All hunters must presently comply with a similar federal registration process if they intend to hunt migratory birds (the HIP program). Those who also purchase a fishing license may write this FIN number on the space to be provided on their license. Those who do not need a fishing license (i.e., those who fall in

the category of being legally unlicensed), but who intend to fish in Delaware's waters anyway, must carry their FIN number on their person.

The FIN number may be obtained in two ways: (1) by accessing a computer web site and following the directions; or (2) by phoning a toll-free number and following the verbal directions. The caller or computer user will be instructed to indicate whether they intend to fish in Delaware's freshwaters, marine (tidal) waters, or both, and then give their name, address, and phone number. Once all prospective Delaware fishermen have obtained a FIN number, Delaware will also be able to supply a complete computerized name, address, and telephone number file to the National Marine Fisheries Service, so that Delaware may be exempt from the federal recreational fishing registry and associated charges.

The Department has the statutory basis and legal authority to act with regard to this promulgation, pursuant to 7 Del.C. §§ 504, 508, 510, 513, 102(c), 903(a) and (b), and 903(f). Numerous members of the public attended this hearing on August 27, 2008 to ask questions and offer comment with regard to the Department's proposed new regulations concerning the FIN registry, and the same were taken into consideration during the Division's review of this proposed regulation.

Afterwards, the Hearing Officer prepared her report in the form of a Hearing Officer's Memorandum dated September 12, 2008. Proper notice of the hearing was provided as required by law.

II. Findings:

The Department has provided sound reasoning with regard to the proposed new regulations, as reflected in the Hearing Officer's Memorandum of September 12, 2008, 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. Congress authorized the National Marine Fisheries Service (NMFS) to compile a nationwide registry of all anglers fishing in saltwater beginning in 2009, and to begin charging for participation in this registry as of 2011;
7. Delaware's ability to provide a complete registry of its marine recreational fishermen from its state-issued fishing license

program would result in Delaware anglers being exempt from participation in the aforementioned federal registry and federal license fees;

8. To avoid a federal determination that Delaware is a non-exempt state, the state-level registration process, to be known as the FIN program (Fisherman Information Network), would be established for all anglers fishing in Delaware;
9. This promulgation would require ***all*** prospective Delaware anglers age 16 or older, licensed or not, to obtain a FIN number on an annual basis before fishing in Delaware waters. The FIN number would be available at no cost to anglers by either calling a toll-free number or by providing requested information online. Each person who requests a FIN number should write this number on his or her fishing license, or for those who are legally unlicensed, be able to produce this number when asked by an authorized enforcement agent to do so;
10. Once all Delaware fishermen have obtained a FIN number and the NMFS has a copy of Delaware's saltwater angler registry, Delaware would be exempt from the federal marine recreational fishing registry and its charges;

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 August 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
13. The Department's proposed new regulations, to wit: Delaware Non-Tidal Finfish Regulation 3311: Freshwater Fisherman Registry, and Delaware Tidal Finfish Regulation 3567: Tidal (Salt) Water Fisherman Registry, are adequately supported, not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they should be approved as final regulations, 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 Memorandum dated September 12, 2008 and expressly incorporated herein, it is hereby ordered that the proposed new regulations, to wit: Delaware Non-Tidal Finfish Regulation 3311: Freshwater Fisherman Registry, and Delaware Tidal Finfish Regulation 3567: Tidal (Salt) Water Fisherman Registry, be promulgated in final form in the customary manner and established rule-making procedure required by law.

IV. Reasons:

The promulgation of these new regulations will enable the State of Delaware to formally establish the FIN (Fisherman Information Network) program, thus enabling Delaware to provide a complete registry of its marine recreational fishermen from its state-issued fishing license program. The institution of this FIN program will result in Delaware anglers being exempt from participation in the aforementioned federal registry and federal license fees, which are scheduled to begin in 2011. The program will not result in any additional cost to Delaware anglers, and it will enable the Department to use the data it generates for its own

surveying needs in the future as well, for both marine fishing and for freshwater fishing.

In developing the FIN program, 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, purposes, and authority of 7 Del.C. §§ 504, 508, 510, 513, 102(c), 903(a) and (b), and 903(f).

/s/ John A. Hughes

John A. Hughes
Secretary

MEMORANDUM

TO: John A. Hughes, Secretary

FROM: Lisa A. Vest, Hearing Officer

RE: Proposed New Delaware Tidal Finfish Regulation 3567:
Saltwater Fisherman Registry; and New Non-Tidal Finfish
Regulation 3311: Freshwater Fisherman Registry

DATE: September 12, 2008

I. Background:

A public hearing was held on Wednesday, August 27, 2008, at 7:00 p.m. at the DNREC Richardson & Robbins Building Auditorium to receive comment on proposed new Delaware Tidal Finfish Regulations 3567 and 3311 concerning the establishment of a registry system here in Delaware for both saltwater and freshwater fisherman, respectively. 7 Del.C., Chapter 5, proscribes licenses required for recreational fishing by residents and non-residents in Delaware fresh and tidal waters. In order to improve upon present means of determining recreational catch and effort in marine waters, by act of Congress in January of 2007, the federal National Marine Fisheries Service will establish a registry of recreational fishermen who fish in the federal coastal waters of the United States, or who fish for anadromous species such as striped bass in state or federal coastal waters in 2009 and begin charging anglers for this registration in 2011. The working assumption is that these two federal categories of anglers will include nearly all who fish in marine

coastal waters. The fees so generated will be deposited in the federal treasury and not returned to the states according to existing federal plans.

The National Marine Fisheries Service has determined that any state such as Delaware that already has a complete name and address file of marine recreational fishermen via state-issued recreational fishing licenses will be exempt from the federal registry and the fees to be imposed. Delaware's recreational boat license, however, may cause Delaware to become a non-exempt state because the holder of a recreational boat license may take any number of non-licensed anglers with them on the licensed vessel. Thus, such unlicensed anglers would not be included in the database of all anglers. In addition, resident senior citizens age 65 and older also are exempt from Delaware recreational fishing license requirements. Therefore, to avoid a federal determination that Delaware is a non-exempt state, this regulation will establish a state-level registration process for all anglers fishing in Delaware at no additional cost to the angler. This new Delaware registration will be known as the FIN number (Fisherman Information Network).

Under this proposed registration system, ***all*** prospective Delaware anglers over the age of 16, whether they are licensed or not, will be required by this regulation to obtain a FIN number on an annual basis before fishing in Delaware waters. All hunters must presently comply

with a similar federal registration process if they intend to hunt migratory birds (the HIP program). Those who also purchase a fishing license may write this FIN number on the space to be provided on their license. Those who do not need a fishing license (i.e., those who fall in the category of being legally unlicensed), but who intend to fish in Delaware's waters anyway, must carry their FIN number on their person.

The FIN number may be obtained in two ways: (1) by accessing a computer web site and following the directions; or (2) by phoning a toll-free number and following the verbal directions. The caller or computer user will be instructed to indicate whether they intend to fish in Delaware's freshwaters, marine (tidal) waters, or both, and then give their name, address, and phone number. Once all prospective Delaware fishermen have obtained a FIN number, Delaware will also be able to supply a complete computerized name, address, and telephone number file to the National Marine Fisheries Service, so that Delaware may be exempt from the federal recreational fishing registry and associated charges.

The Department has the statutory basis and legal authority to act with regard to this promulgation, pursuant to 7 Del.C. §§ 504, 508, 510, 513, 102(c), 903(a) and (b), and 903(f). Numerous members of the public attended this hearing on August 27, 2008 to ask questions and offer comment with regard to the Department's proposed new regulations concerning the FIN registry, and the same were taken into consideration

during the Division's review of this proposed regulation. Proper notice of the hearing was provided as required by law.

II. Summary of Hearing Record:

A. Department Presentation at Hearing:

At the time of the hearing on August 27, 2008, Roy Miller, the Department's Fisheries Section Administrator of the Division of Fish and Wildlife, submitted the Department's exhibits pertaining to these proposed regulations to the Hearing Officer, and offered a brief explanation with regard to the salient points of the proposed amendments to these regulations.

Mr. Miller began the Department's presentation by explaining that the federal government intends to establish a National Saltwater Angler Registry Program, and that the same will begin in January of 2009, according to the proposed rule in the Federal Register. In so doing, what the federal government proposes to do is to create a registry of all saltwater fishermen in this country, the purpose of which is to improve the gathering of national recreational fishing statistics. The existing program, currently known as MRFSS (Marine Recreational Fishing Statistics Survey), is the method the government uses now to estimate recreational catch and effort for all of the species for which there is the greatest concern, such as striped bass and summer flounder. The MRFSS survey is the best available information at present, although the survey itself has been widely criticized among many sport-fishing interests for its methodology of random digit dialing of coastal counties (to identify fishing households) and field-intercept surveys. Another drawback of the current system is that the federal government only

surveys coastal counties, so consequently, West Virginia, Pennsylvania and Ohio are all overlooked.

Due to the numerous problems associated with the MRFSS, the federal government has developed a plan to create a national registry, which, once established, will eliminate the random digit dialing (long considered inefficient), and instead call fishing families directly to survey their fishing habits and catches. The proposed new registry also allows the federal government to begin charging for it (beginning in 2011), which essentially equates it with a marine federal saltwater fishing license. Most people do not like the prospect of Delaware's license revenue going to a federal fishing license and none of those monies coming back to the State of Delaware (instead, they would go into the Federal Treasury). So, when the federal government published their notice of this plan in the Federal Register, they included a determination that those states which already had their own saltwater fishing license (of which Delaware is now one) would be exempt from this registry, and that (again, come 2011) they would be exempt from any federal charges.

In order to be exempt from the aforementioned federal charges, however, the State of Delaware must meet certain criteria. There are two main classes of exemptions that are problematic for the federal government's registry system here in Delaware: (1) senior citizens who are Delaware residents are not required to be licensed, so the federal government wouldn't have any way to contact any resident over the age of 65 who fishes; and (2) those that possess a boat fishing license. If the owner of a vessel purchases a boat fishing license, all others who fish in that boat do not need a license, and so there could potentially be a significant number of people who never purchase a license because of

that. The federal government has told the State of Delaware that it needs to account for those people who are exempt from licensing in order to complete this Federal Registry. Thus, Delaware is proposing its equivalent of a registry of fishermen, and is calling it the FIN number (Fisherman Information Network). Simply put, the Department is proposing that all people who would fish in Delaware, whether they fish fresh, salt, crab, clam, etc., would call a toll-free number and get a FIN number, or alternatively go online and obtain a FIN number at no additional cost to the angler.

That FIN number would be good in any state, assuming that Delaware is granted exempt status. Thus, if a fisherman obtained a Delaware FIN number, that fisherman could fish in Maryland or New Jersey without further registration. Mr. Miller was quick to clarify that, in such a scenario, it would not exempt that fisherman from needing a Maryland or New Jersey state fishing license, but it would exempt you from obtaining a Federal Registry number to fish in another state.

When a fisherman either calls or goes online to obtain this FIN number, he or she will be asked a series of questions, beginning with “do you fish freshwater, saltwater, or both?” Additional requests will be for that person’s name, address, telephone number, and (perhaps) a date of birth. That person will then be issued a FIN number, which the fisherman must be able to produce if challenged in the field by an enforcement officer. The FIN number is free of charge to those to whom it is issued. Information generated on the number of freshwater fishermen in Delaware will be useful for future surveys yet to be designed.

While the Department agrees that it is yet another extra step which potentially inconveniences Delaware fishermen, it is still a worthwhile expenditure of the fishermen's time when the alternative is considered. The FIN program is patterned after the Federal HIP number for migratory bird hunters, which has been in place with the Department for some time now.

For the Secretary's review, these proposed new regulations affecting both saltwater and freshwater fishermen here in Delaware are expressly incorporated into this report, and are attached hereto as Attachment "A" for that purpose. It should also be noted that 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.

B. Public Comment:

Numerous persons in attendance at the public hearing on August 27, 2008 offered their comments and questions to the Department about these proposed new regulations. The following are the concerns voiced, followed immediately by the Department's response to the same:

1. ***Concerns that the FIN number would replace the social security number on a license application.*** This is incorrect. First of all, the Department cannot do anything about the SSN being required on licenses, as it is both a state and federal requirement to have the same. When applying for the FIN number, however, fishermen will not be

asked for their SSN. They may be asked for the last four digits as a unique identifier, but there is no way to steal someone's identity with that information.

2. ***Concerns that persons fishing off another person's boat may not have a FIN number themselves, and (under that scenario) the boat owner would be responsible for reporting on the catch of his boat.*** Under this FIN program, every person over the age of 16 who fishes would be responsible for obtaining their own FIN number.

3. ***Would a FIN number be required for a person who obtains the surf vehicle fishing permit (who is exempt from licensing)?*** Again, under this FIN program, if a person drops a line in the water to fish, they are going to need a FIN number. No exceptions.

4. ***Is the FIN number good for just a year?*** It is, but the reason the Department may ask a person for an additional identifier (such as the last 4 digits of a SSN) is so that when that person calls in 2010 to obtain a FIN number, they won't have to repeat all of their contact information again. Rather, that person could simply be looked up.

5. ***If you buy your fishing license online now, will it automatically issue you a FIN number?*** That is the Department's goal. Mr. Miller noted that when someone applies for their fishing license, it may not necessarily be the same contractor that handles both the licensing and the FIN numbers. However, the Department will take that under advisement and consider it in the future.
6. ***Are there any other states that have exemptions such as Delaware that must be addressed?*** Most states do, and while Delaware is unsure how other states are addressing their exemptions, there are several states (such as Maryland, Virginia, and the Potomac River Fishery Commission) that are very interested in Delaware's proposal.
7. ***Is this something for which a person registers in the state where they live?*** If a person fishes in Delaware and gets a FIN number, then that FIN number will be good in any other state. For example, if you are from New Jersey and fish in Delaware, and obtain a Delaware FIN number, you are covered.
8. ***If a person fishes freshwater, do they still need a FIN number?*** Delaware is saying that they do, however, they will never be contacted by the NMFS. In other words, the Department is making everybody get a FIN number, because

Delaware does not know ahead of time where a person will fish.

9. ***If you fish in a pond and you are confronted by an enforcement officer, will you need a FIN number?***

Legally, yes, but the chances are the enforcement officer will not even ask you for it in that scenario.

There were other comments offered for the record, all of which offered support for the Department regarding this proposed FIN registry program. The record remained open for public comment through August 31, 2008, however, no additional comments or concerns were received by the Department during that time.

III. Conclusions and Recommendations:

Based on the above discussion, I conclude that the Department has provided appropriate reasoning regarding the need for these proposed new regulations to Delaware's Tidal Finfish program, and has thoroughly addressed any public questions and/or comments provided during the various phases of the record developed in this matter. Accordingly, I recommend promulgation of these proposed amendments in the customary manner provided by law.

Further, I recommend the following findings:

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. Congress authorized the National Marine Fisheries Service (NMFS) to compile a nationwide registry of all anglers fishing in saltwater beginning in 2009, and to begin charging for participation in this registry as of 2011;
7. Delaware's ability to provide a complete registry of its marine recreational fishermen from its state-issued fishing license program would result in Delaware anglers being exempt from participation in the aforementioned federal registry and federal license fees;
8. To avoid a federal determination that Delaware is a non-exempt state, the state-level registration process, to be known as the FIN program (Fisherman Information Network), would be established for all anglers fishing in Delaware;
9. This promulgation would require ***all*** prospective Delaware anglers age 16 or older, licensed or not, to obtain a FIN number on an annual basis before fishing in Delaware waters. The FIN

number would be available at no cost to anglers by either calling a toll-free number or by providing requested information online. Each person who requests a FIN number should write this number on his or her fishing license, or for those who are legally unlicensed, be able to produce this number when asked by an authorized enforcement agent to do so;

10. Once all Delaware fishermen have obtained a FIN number and the NMFS has a copy of Delaware's saltwater angler registry, Delaware would be exempt from the federal marine recreational fishing registry and its charges;
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 August 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

13. The Department shall submit the proposed regulation as a final regulation to the Delaware Register of Regulation for publication in its next available issue, and shall provide written notice to the persons affected by the Order.

/s/ Lisa A. Vest
LISA A. VEST
Hearing Officer

/ahear/FIN Reg.08