

HEARING OFFICER'S REPORT

TO: The Honorable Shawn M. Garvin
Cabinet Secretary, Dept. of Natural Resources and Environmental Control

FROM: Theresa Newman, Regulatory Specialist, Office of the Secretary,
Dept. of Natural Resources and Environmental Control

RE: **Proposed Regulation Amendments to 7 DE Admin. Code 3542 Tilefish**

DATE: August 9, 2021

I. BACKGROUND AND PROCEDURAL HISTORY:

A public hearing was held on Thursday, July 22, 2021, at 6:00 p.m. via the State of Delaware Cisco WebEx Meeting Platform by the Department of Natural Resources and Environmental Control (“DNREC,” “Department”), to receive comment on proposed regulatory amendments (“Amendments”) to 7 DE Admin. Code 3542 Tilefish (“Regulation”). Pursuant to 7 *Del. C.* §§901(b), (c), &(d); 903(a), (b) & (e)(2)a, the Department is proposing revisions to the Regulation to implement changes to the recreational and commercial daily possession limits and establish a closed recreational season for Tilefish throughout Delaware state waters, thus making the Regulation identical to that of the federal water regulation.

Delaware currently maintains a more conservative regulation for its’ waters than those approved by Mid-Atlantic Marine Fisheries Council (“MAFMC”) for federal waters. In 2016, Delaware implemented Tilefish Regulations for Golden and Blueline Tilefish that limits recreational landing to a total of seven (7) Tilefish between the two types of fish and both have no closed season. The recreational possession limits established by Delaware are lower than the new federal waters limits, with no closed recreational season for Blueline Tilefish, and have a lower daily commercial landings limit.

In 2020 and 2021, the MAFMC adopted federal regulations that limit recreational landings to: (1) eight (8) Golden Tilefish, with no closed season; (2) three (3) Blueline Tilefish per private vessel; (3) five (5) Blueline Tilefish per United States Coast Guard uninspected for-hire vessel; (4) seven (7) Blueline Tilefish per United States Coast Guard inspected for-hire vessel, and (5) with a closed season for Blueline Tilefish from November 1 through April 30.

The conflicting limits established by Delaware and MAFMC have proven to be confusing for anglers and could inadvertently lead to violations by anglers harvesting Tilefish between the waterlines. For consistency between the water lines, the Department is proposing to amend the Regulation to be identical to that of the federal regulations.

On September 23, 2020, Delaware's Advisory Council on Tidal Finfisheries voted unanimously recommending that Delaware's Tilefish management measures be revised to match the 2020 through 2021 federal waters recreational management measures. The Department proposes to increase the recreational landing limit for Tilefish as per the aforementioned limits established by MAFMC for federal waters and increase the commercial daily landings limit for state waters from 300 pounds to the federal waters limit of 500 pounds.

The Department has the statutory basis and legal authority to act with regard to promulgation of the Amendments pursuant to §§901(b), (c), &(d); 903(a), (b) & (e)(2)a. The Department published its proposed regulation Amendments in the July 1, 2021, *Delaware Register of Regulations*. Thereafter, the public hearing regarding this matter was held on July 22, 2021. There were two (2) members of the public in attendance at the virtual public hearing. Pursuant to Delaware law, the record remained open for fifteen (15) additional days after the date of the public hearing for receipt of public comment. The hearing record formally closed regarding public comment at the close of business on August 6, 2021, with no comments received by the Department during the phase of this proposed regulatory promulgation.

It should be noted that all notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

II. SUMMARY OF THE PUBLIC HEARING RECORD:

The public hearing record consists of the following documents: (1) a verbatim transcript and (2) ten (10) documents introduced by Department staff at the public hearing held on July 22, 2021 and marked by Hearing Officer Theresa Newman accordingly as Department Exhibits 1-10. The Department's person primarily responsible for the drafting and overall promulgation of these proposed Amendments, John Clark, Environmental Program Administrator with the Division of Fish and Wildlife, developed the record with the relevant documents in the Department's files.

Accordingly, the Department's proposed Amendments are attached hereto as Appendix "A" for the Secretary's review.

III. RECOMMENDED FINDINGS AND CONCLUSIONS:

Based on the record developed, I find and conclude that the Department has provided appropriate reasoning regarding the need for the proposed regulatory amendments to 7 DE Admin. Code 3542 Tilefish. Accordingly, I recommend promulgation of the same, in the customary manner provided by law.

Further, I recommend the Secretary adopt the following findings and conclusions:

1. The Department has the statutory basis and legal authority to act with regard to this proposed regulatory promulgation, pursuant to 7 *Del. C.* §§901(b), (c),&(d); 903(a), (b) & (e)(2)a;

2. The Department has jurisdiction under its statutory authority, pursuant to 7 *Del.C.* Chapter 60, to issue an Order adopting these proposed Amendments as final;

3. The Department provided adequate public notice of the initial proposed Amendments and all proceedings in a manner required by the law and regulations, and provided the public with an adequate opportunity to comment on the same, including at the time of the public hearing held on July 22, 2021, and during the 15 days subsequent to the hearing (through August 6, 2021), before making any final decision;

4. Promulgation of the proposed Amendments to 7 DE Admin. Code 3542 Tilefish will enable the Department to implement changes to the recreational and commercial daily possession limits and establish a closed recreational season for Tilefish, throughout Delaware state waters, thus making the Regulation identical to that of the federal water regulation;

5. The Department has reviewed the proposed Amendments in the light of the Regulatory Flexibility Act, consistent with 29 *Del.C.* Ch. 104, and has selected Exemption “B1,” as this regulation is not substantially likely to impose additional cost or burdens upon individuals and/or small businesses;

6. The Department’s proposed regulatory Amendments, as initially published in the July 1, 2021, *Delaware Register of Regulations*, and as set forth in Appendix “A” hereto, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they should be approved as final regulatory Amendments, which shall go into effect ten days after their publication in the next available issue of the *Delaware Register of Regulations*; and

7. The Department shall submit the proposed Amendments as final regulatory amendments to the *Delaware Register of Regulations* for publication in its next available issue and provide such other notice as the law and regulation require, and the Department determines is appropriate.



Theresa L. Newman
Public Hearing Officer

3542 Tilefish

1.0 Tilefish possession limits

1.1 It is unlawful for a recreational finfisherman to possess aboard any vessel more than ~~eight~~ seven (7) golden tilefish (*Lopholatilus chamaelonticeps*), unless otherwise authorized by the Department. ~~tilefish in aggregate to include~~ It is unlawful for a recreational finfisherman to possess more than three blueline tilefish (*Caulolatilus microps*) if fishing from a private vessel, more than five blueline tilefish if fishing from a United States Coast Guard uninspected for-hire vessel, or more than seven blueline tilefish if fishing from a United States Coast Guard inspected for-hire vessel or golden tilefish (*Lopholatilus chamaelonticeps*), unless otherwise authorized by the Department.

1.2 It shall be unlawful for any recreational fisherman to take and reduce to possession or to land any blueline tilefish (*Lopholatilus chamaelonticeps*) beginning at 12:01 a.m. November 1 and ending midnight April 30.

~~4.2~~ 1.3 Notwithstanding the provisions of subsection 1.1, a person issued a valid commercial food fishing license may possess aboard a vessel up to ~~300~~ 500 pounds of tilefish in aggregate to include blueline tilefish (*Caulolatilus microps*) or golden tilefish (*Lopholatilus chamaelonticeps*) in any number, provided said tilefish were taken using gear for which said person is lawfully permitted under 7 **Del.C.** §915.

~~4.3~~ 1.4 It is unlawful for a person issued a valid commercial food fishing license to possess aboard a vessel more than ~~300~~ 500 pounds of tilefish in aggregate to include blueline tilefish (*Caulolatilus microps*) or golden tilefish (*Lopholatilus chamaelonticeps*).

19 DE Reg. 649 (01/01/16)