

# **DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**

## **DIVISION OF FISH AND WILDLIFE**

Statutory Authority: 7 Delaware Code, Section 903 (7 **Del.C.** §903)  
7 **DE Admin. Code** 3536

### **FINAL**

**Secretary's Order No. 2006-F-0049**

#### **Adoption of Amendment to Tidal Finfish Regulation No. 3536**

### **ORDER**

#### **Summary of Evidence and Information**

Pursuant to due notice published in Volume 10, Issue 4 of the *Delaware Register of Regulations* (10 **DE Reg.** 629 – 630 (10/1/2006)), The Department of Natural Resources and Environmental Control proposes to amend Tidal Finfish Regulation No. 3536 pertaining to fish pot requirements. Specifically, the proposed regulation would require two escape vents in the parlor of all fish pots utilized in Delaware's tidal waters. In addition, language is included in the proposed regulation that will require a minimum diameter size of 2.5 inches for all circular escape vents on fish pots.

The Atlantic States Marine Fisheries Commission's (ASMFC) Summer Flounder Board adopted a motion at the August 2005 meeting of the Board specifying that gear changes to fish pots, used for harvesting black sea bass, would need to comply with recommendations formulated at a public workshop that reviewed the latest scientific information regarding the effectiveness of escape vents in reducing bycatch of sub-legal size black sea bass. Findings from the workshop that was held on March 22, 2005 indicated that two escape vents in the parlor portion of a fish pot were more effective at reducing bycatch than a single vent. Furthermore, it was determined that scientific studies had indicated that circular escape vents, that were at least 2.5 inches in diameter, permitted black sea bass less than 11 inches (legal size limit) to escape from the pot and thus reduce discard mortality associated with hauling pots and sorting fish aboard the harvesting vessel.

A public hearing was held on the proposed amendment to Tidal Finfish Regulation No. 3536 on October 24, 2006. There were no attendees at the public hearing and no written testimony was received regarding this proposed amendment.

#### **Finding of Fact**

- The Atlantic States Marine Fisheries Commission has required that all states in the management unit (Massachusetts through North Carolina) include language in their regulations by January 1, 2007 that require at least two escape vents in the parlor portion on fish pots and that pots with circular escape vents have a minimum of 2.5 inch diameter circle vents in pots.
- If Delaware did not change its current regulations pertaining to fish pots then ASMFC could rule the state out of compliance and subject to a federally imposed moratorium on the landings of black sea bass.
- There was no opposition to the proposed requirements regarding the number of mandatory escape vents in each fish pot or the requirement that circular escape vents have a minimum diameter of 2.5 inches.
- The recommendations regarding two escape vents and the minimum diameter of 2.5 inches for circular escape vents are based on the best scientific information available as determined by a working group established by ASMFC to examine methods to reduce discard mortality of sub-legal size black sea bass in fish pots.

#### **Conclusions**

I have reached the following conclusions:

- Fish pots that are used in Delaware's territorial waters will be required to have two escape vents in the parlor portion of the pot and those pots that use circular escape vents must have vents with a minimum diameter of 2.5 inches.

## **ORDER**

It is hereby ordered this 14th day of November 2006 that amendments of Tidal Finfish Regulation No.3536 and 4 copies of which are attached hereto, are adopted pursuant to 7 **Del.C.** §903 (e)(2)(a) and are supported by the Department's findings of evidence. This order should become effective on December 15, 2006.

John A. Hughes, Secretary  
Department of Natural Resources and Environmental Control

### **3536 Fish Pot Requirements (Formerly Tidal Finfish Reg. 24)**

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

1.0 It shall be unlawful for any person to fish, set, place, use or tend any fish pot in the tidal waters of this state unless said fish pot has ~~an~~ two escape vents placed in ~~a lower corner of~~ the parlor portion of said pot which complies with one of the following minimum sizes: 1.375 inches by 5.75 inches; or a circular vent 2.375 inches in diameter; or a square vent with sides of 2 inches, inside measure. Pots constructed of wooden lathes must have spacing of at least 1.375 inches between one set of lathes.

2.0 It shall be unlawful for any person to fish, set, place, use or tend any fish pot in the tidal waters of this state unless said fish pot contains a panel (ghost panel) measuring at least 3.0 inches by 6.0 inches affixed to said pot with one of the following degradable materials:

2.1 Untreated hemp, jute or cotton string of 3/16 inches diameter or smaller; or

2.2 Magnesium alloy timed float release (pop-up devices) or similar magnesium alloy fasteners; or

2.3 Ungalvanized or uncoated iron wire of 0.094 inches diameter or smaller.

3.0 It shall be lawful for a person to take and reduce to possession any food fish, except tautog, black seabass or summer flounder, when said food fish is caught in his/her crab pot provided said food fish is not otherwise illegal to possess at that time.

4.0 It shall be lawful for a person to take and reduce to possession any food fish, except tautog, black seabass or summer flounder, when said food fish is caught in his/her blue crab dredge provided said food fish is not otherwise illegal to possess at that time.

**2 DE Reg. 1905 (4/1/99)**

**6 DE Reg. 350 (9/1/02)**

**10 DE Reg. 1035 (12/01/06) (Final)**