

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 942(b) (7 Del.C. §942(b))

PROPOSED

3545 Invasive Finfish

REGISTER NOTICE #2012 - 24

1. TITLE OF THE REGULATION:

3545 Invasive Finfish

2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUE:

This action proposes the addition of a new section in the Tidal Finfish regulations (7 Del.C. §3500) to include definitions and measures to control the proliferation of invasive finfish in Delaware's tidal waters (§3545 Invasive Finfish). Snakehead fish, blue catfish, flathead catfish, walking catfish and grass carp are invasive finfish species likely to cause environmental and economic harm. This action proposes to: formally designate these fish as invasive finfish species; prohibit the stocking, possession, purchase, transport or sale of live invasive finfish; and specify fishing equipment and methods to take invasive finfish species.

Based on the best available biological information, the US Fish & Wildlife Service (USFWS) added the entire Channidae (snakehead) and Clariidae (walking catfish) families to the list of injurious fish, mollusks and crustaceans covered under the Lacey Act. Northern snakehead, native to Asia, are present in Delaware's tidal and non-tidal waters. The USFWS agreed that snakehead fishes threaten ecological harmony, present major risks to ecosystems and aquatic communities and could eliminate some threatened and endangered species that are restricted in distribution. There are no known records of walking catfish in Delaware. This family of fishes is native to Asia. Walking catfish have the ability to rapidly reproduce and spread, including overland and their potential to outcompete native fishes and their potential to impact aquaculture make them a threat to Delaware's environment and economy.

Blue catfish (*Ictalurus furcatus*) and flathead catfish (*Pylodictis olivaris*) are native to the Mississippi River drainage. Flathead catfish have already been reported in Delaware's tidal waters and blue catfish have been found in adjoining states with shared waters. Both species function as top-level predators with broad diets, attain large sizes and are salinity tolerant. The introduction of these species in nearby states contributed to the extirpation of native ictalurid species such as white catfish and bullheads through competition and predation.

Grass carp (*Ctenopharyngodon idella*), a native to Asia, feed on submerged aquatic vegetation. When adequately controlled, through barriers and sterility, this species can be an effective tool at controlling nuisance aquatic vegetation. Uncontrolled, the species can denude large expanses of beneficial submerged aquatic vegetation. Submerged aquatic vegetation is valuable spawning, nursery and foraging habitat for native centrarchids and other aquatic species. The removal of submerged aquatic vegetation often leads to increased phytoplankton and diminished water quality.

SNAKEHEAD FISH, BLUE CATFISH, FLATHEAD CATFISH, WALKING CATFISH AND GRASS CARP are invasive finfish species whose introduction or proliferation are likely to cause economic and/or environmental harm to Delaware's tidal waters. The proposed action will assist in preventing the introduction or proliferation of these invasive fishes in Delaware.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Delaware Code, Section 942(b) (7 Del.C., §942(b))

5. LIST OF OTHER REGULATIONS THAT MAY BE IMPACTED OR AFFECTED BY THE PROPOSAL:

N/A

6. NOTICE OF PUBLIC COMMENT:

The hearing record on the proposed inclusion of a §3545 Invasive Finfish regulation will be open March 1, 2013. Individuals may submit written comments regarding the proposed changes via e-mail to Lisa.Vest@state.de.us or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. A public hearing on the proposed amendment will be held on March 21, 2013 beginning at 6 pm in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901.

7. PREPARED BY:

David E. Saveikis, Director

3545 Invasive Finfish

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

1.0 Definitions

- 1.1 For the purpose of Tidal Finfish Regulation 3545, the following words and phrases shall have the following meaning ascribed to them, unless the context clearly indicates otherwise:
- “Bow and arrow” means an instrument with one or more pointed barbed or barbless prongs or blades affixed to a straight shaft and propelled by a stringed mechanical device.
- “Director” means the Director of the Division of Fish and Wildlife.
- “Invasive finfish” means any species of the family Channidae, including but not limited to the northern snakehead (*Channa argus*) and blotched snakehead (*C. maculata*); blue catfish (*Ictalurus furcatus*); flathead catfish (*Pylodictis olivaris*); walking catfish (*Clarias batrachus*); and grass carp (*Ctenopharyngodon idella*).

2.0 Transportation, Possession and Sale

It is unlawful to transport, purchase, possess, or sell a live invasive finfish without the written permission of the Director.

3.0 Stocking

It is unlawful to stock any invasive finfish, including the eggs thereof or other biological material, capable of spread, reproduction or propagation, into the tidal waters of this state without the written permission of the Director.

4.0 Equipment and Methods Used for Invasive Species Fishing

- 4.1 It is lawful for a person to take invasive finfish with any fishing equipment or method for which they are licensed, permitted or lawfully exempt.
- 4.2 It is lawful for a licensed, permitted or lawfully exempt recreational angler to take invasive finfish in Delaware’s tidal waters with a bow and arrow.

16 DE Reg. 931 (03/01/13) (Prop.)