

# DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

## DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Sections 901(b), (c), and (d); and 903(a), (b), and (e)(2)a.  
(7 Del.C. §§901(b), (c), and (d) & 903(a), (b) & (e)(2)a.)  
7 DE Admin. Code 3542

### FINAL

Secretary's Order No: 2021-F-0021

RE: Approving Final Amendments to 7 DE Admin. Code 3542-*Tilefish*

Date of Issuance: August 16, 2021

Effective Date: September 11, 2021

### 3542 Tilefish

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") pursuant to 7 Del.C. §§6006 and 6010, and all other relevant statutory authority, the following findings of fact based on the record, reasons and conclusions are entered as an Order of the Secretary in the above-referenced regulatory proceeding.

#### Background, Procedural History and Findings of Fact

This Order relates to 7 DE Admin. Code 3542-*Tilefish* ("Amendments"). The Department proposes revisions to the existing Tilefish regulations 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 the Mid-Atlantic Marine Fisheries Council's ("MAFMC") federal water regulation for Tilefish.

This action is being taken by the Department to provide consistency between the State of Delaware and federal waterlines. In 2016, Delaware implemented Tilefish Regulations for Golden and Blueline Tilefish that limits recreational landing to a total of seven Tilefish between the two types of fish and both have a no closed season. The recreational possession limits established by Delaware are less stringent than the new federal regulations for Tilefish.

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

The conflicting limits established by Delaware and MAFMC for Tilefish have proven to be confusing for anglers and could inadvertently lead to violations by anglers harvesting Tilefish between the waterlines.

The Department proposes to amend the Regulation to be identical to that of the federal regulations for consistency purposes. The Amendments will increase the recreational landing limit for Tilefish as per the aforementioned limits established by MAFMC 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 the formal promulgation of these Amendments, pursuant to 7 Del.C. §§901(b), (c), &(d); 903(a), (b) & (e)(2)a. The Department published its initial 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 with no comments received by the Department for the formal promulgation. Pursuant to 29 Del.C. §10118(a), the hearing record ("Record") remained open for receipt of additional written comment for 15 days following the public hearing. The Record formally closed on August 6, 2021.

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.

Subsequent to the close of the Record, the Hearing Officer prepared the Hearing Officer's Report dated August 9, 2021 ("Report"), which expressly incorporated the Department's Amendments into the Record generated in this matter. The Report documents the proper completion of the required regulatory amendment process, establishes the Record, and recommends the adoption of the proposed Amendments as attached to the Report as Appendix "A."

#### Reasons and Conclusions

Based on the Record developed by the Department's experts in the Division of Fish and Wildlife, and established by the Hearing Officer's Report, I find that the proposed regulatory Amendments to 7 DE Admin. Code 3542-*Tilefish* are well-supported. I further find that the Department's experts fully developed the record to support adoption of these

Amendments. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed Amendments be promulgated as final.

The following reasons and conclusions are entered:

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 the MAFMC's federal water regulation for Tilefish;
5. The Department has reviewed the proposed Amendments in 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.

Shawn M. Garvin  
Secretary

### **3542 Tilefish**

#### **1.0 Tilefish possession limits**

- 1.1 It is unlawful for a recreational finfisherman to possess aboard a vessel more than ~~seven (7) tilefish in aggregate to include eight golden tilefish (*Lopholatilus chamaelonticeps*)~~, unless otherwise authorized by the Department. It is unlawful for a recreational finfisherman to possess more than three blueline tilefish (*Caulolatilus microps*) or golden tilefish (*Lopholatilus chamaelonticeps*) 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, 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.
- 4.21.3 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.
- 4.31.4 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)**

**25 DE Reg. 295 (09/01/21) (Final)**