

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 903(e)(2)(a) (7 Del.C. §903(e)(2)(a))
7 DE Admin. Code 3507 and 3758

PROPOSED

REGISTER NOTICE SAN# 2008-03

3507 Black Sea Bass Size Limit; Trip Limits, Seasons; Quotas 3758 Possession of V-notched Lobsters Prohibited

1. Title of the Regulations:

Tidal Finfish Regulation and Shellfish Regulation

2. Brief Synopsis of the Subject, Substance and Issues:

The commercial black sea bass fishery in Delaware is managed by an individual quota system (ITQ) that is distributed to those fishermen meeting specific qualifying criteria for participation in either the fish pot or commercial hook and line fisheries. The current regulations do not allow the transfer of quota between individuals. However, declining quotas due to slower than anticipated stock recovery rates and a lack of participation by some individuals that are assigned quotas has created a situation where it would be advantageous to the fishermen to transfer quota in order to fully utilize Delaware's annual commercial black sea bass quota. This amendment to the regulation would permit eligible participants in the commercial sea bass fishery to make a one-time per season transfer of their quota, either in part or in total, to another eligible participant in either the commercial sea bass pot fishery or the commercial sea bass hook and line fishery respectively on forms to be supplied by the Department.

The purpose of the proposed lobster regulatory change is to bring Delaware in to compliance with Addendum XI to Amendment 3 of the Atlantic States Marine Fisheries Commission lobster management plan for federal waters off Delaware in what is known as Lobster Conservation Management Area 5. Delaware is required to re-define marking requirements for female lobsters. The mark used, called a V-notch, is presently defined in Delaware regulations as a straight-sided triangular cut without setal hairs at least ¼ inch in depth in the right of center tail flipper. The proposed change will re-define a V-notch as being at least 1/8 inch deep with or without setal hairs.

3. Possible Terms of the Agency Action:

Changes to regulation Tidal Finfish Regulation 3507 and Shellfish Regulation 3758 would go into effect immediately upon promulgation. These regulations revisions would remain in effect indefinitely or until changed.

4. Statutory Basis Or Legal Authority To Act:

7 Del.C. §903, (e)(2)(a) and 7 Del.C. §1902, §2502

5. Other Regulations That May Be Affected By The Proposal:

N/A

6. Notice of Public Comment:

Individuals may address questions to the Fisheries Section, Division of Fish and Wildlife, (302) 739 3441. A public hearing on these proposed regulations will be held in the Department of Natural Resources and Environmental Control Auditorium, at 89 Kings Highway, Dover, DE at 7:00 PM on April 24, 2008. Individuals may present their opinion and evidence either at the hearing or in writing to Lisa Vest, Hearing Officer, Department of Natural Resources and Environmental Control, 89 Kings Highway, Dover, DE 19901 or via e-mail to Lisa.Vest@state.de.us. The hearing record will remain open for written or e-mail comments until 4:30 PM April 30, 2008.

7. **Prepared By:**
Richard Cole, 302-739-4782, February 19, 2008

3507 Black Sea Bass Size Limit; Trip Limits, Seasons; Quotas (Formerly Tidal Finfish Reg. 23)
(Penalty Section 7 Del.C. §936(b)(2))

1.0 It shall be unlawful for any commercial person to have in possession any black sea bass (*Centropristis striata*) that measures less than eleven (11) inches, total length excluding any caudal filament.

2.0 It shall be unlawful for any recreational person to have in possession any black sea bass that measures less than twelve (12) inches total length excluding any caudal filament.

6 DE Reg. 1230 (3/1/03)

6 DE Reg. 1360 (4/1/03)

3.0 It shall be unlawful for any commercial fisherman to land, to sell, trade and or barter any black sea bass in Delaware unless authorized by a black sea bass landing permit issued by the Department. The black sea bass landing permit shall be presumed to transfer with the vessel whenever it is bought, sold, or otherwise transferred, unless there is a written agreement, signed by the transferor/seller and transferee/buyer, or other credible written evidence, verifying that the transferor/seller is retaining the vessel's fishing and permit history for purposes of replacing the vessel.

4.0 The black sea bass pot fishery and the black sea bass commercial hook and line fishery shall be considered separate black sea bass fisheries. The total pounds allocated to each fishery by the Department shall be as follows: 96 percent of the State's commercial quota, as determined by the ASMFC, for the pot fishery; 4 percent for the commercial hook and line fishery.

5.0 The Department may only issue a black sea bass landing permit for the pot fishery to a person who is the owner of a vessel permitted by the National Marine Fisheries Service in accordance with 50 CFR §§ 648.4 and who had applied for and secured from the Department a commercial food fishing license and has a reported landing history in either the federal or state reporting systems of landing by pot at least 10,000 pounds of black sea bass during the period 1994 through 2001. Those individuals that have landing history only in the federal data base must have possessed a state commercial food fishing license for at least one year during the time from 1994 through 2001.

6.0 The Department may only issue a black sea bass landing permit for the commercial hook and line fishery to a person who has applied for and secured from the Department a commercial food fishing license and a fishing equipment permit for hook and line and submitted landings reports in either the federal or state landing report systems for black sea bass harvested by hook and line during at least one year between 1994 and 2001.

1 DE Reg.1767 (5/1/98)

2 DE Reg 1900 (4/1/99)

3 DE Reg 1088 (2/1/00)

4 DE Reg 1665 (4/1/01)

4 DE Reg 1859 (5/1/01)

5 DE Reg 2142 (5/1/02)

6 DE Reg. 348 (9/1/02)

6 DE Reg. 1230 (3/1/03)

7.0 Any overage of the State's commercial quota will be subtracted by the Atlantic States Marine Fisheries Commission from the next year's commercial quota.

Any overage of an individual's allocation will be subtracted from that individual's allocation the next year and distributed to those individuals in the appropriate fishery that did not exceed their quota.

8.0 Each participant in a black sea bass fishery shall be assigned a equal share of the total pounds of black sea bass allotted by the Department for that particular fishery. A share shall be determined by dividing the number of pre-registered participants in one of the two recognized fisheries into the total pounds of black sea bass allotted to the fishery by the Department. In order to pre-register an individual must indicate their intent in writing to participate in this fishery.

9.0 ~~It shall be unlawful for a commercial food fisherman to transfer quota allocation shares of black sea bass to another commercial food fishermen.~~ Individual shares of the pot fishery quota may be transferred to

another participant in the pot fishery. Any transfer of black sea bass individual pot quota shall be limited by the following conditions:

9.1 A maximum of one transfer per year per person.

9.2 No transfer of shares of the black sea bass pot fishery quota shall be authorized unless such transfer is documented on a form provided by the Department and approved by the Secretary in advance of the actual transfer.

10.0 Individual shares of the commercial hook and line fishery quota may be transferred to another participant in the commercial hook and line fishery. Any transfer of black sea bass individual commercial hook and line quota shall be limited by the following conditions:

10.1 A maximum of one transfer per year per person.

10.2 No transfer of shares of the black sea bass commercial hook and line quota shall be authorized unless such transfer is documented on a form provided by the Department and approved by the Secretary in advance of the transfer.

~~40~~11.0 Each commercial food fishermen participating in a black sea bass fishery shall report to the Department, via the interactive voice phone reporting system operated by the Department, each days landings in pounds at least one hour after packing out their harvest.

~~41~~2.0 It shall be unlawful for any recreational fisherman to have in possession more than 25 black sea bass at or between the place where said black sea bass were caught and said recreational fisherman's personal abode or temporary or transient place of lodging.

7 DE Reg. 1575 (5/1/04)

6 DE Reg. 1230 (3/1/03)

8 DE Reg. 1488 (4/1/05)

9 DE Reg. 1759 (5/1/06)

3758 Possession of V-notched Lobsters Prohibited (Formerly S-26)

(Penalty Section 7 Del.C. §1912)

1.0 It shall be unlawful for any person to possess a V-notched female lobster. V-notched female lobster means any female lobster bearing a V-notch, a straight-sided triangular cut with or without setal hairs at least $\frac{1}{8}$ inch in depth and tapering to a sharp point, in the flipper next to the right of center flipper as viewed from the rear of the female lobster. V-notched female lobster also means any female lobster which is mutilated in a manner which could hide, obscure or obliterate such a mark. The right flipper will be examined when the underside of the lobster is down and its tail is toward the person making the determination.

2 DE Reg 1898 (4/1/99)

11 DE Reg. 1338 (04/01/08) (Prop.)