

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 103 (7 Del.C. §103)
7 DE Admin. Code 3304

FINAL

3304 Creel Limits and Seasons

Secretary's Order No.: 2010-F-0009

Date of Issuance: March 11, 2010

Effective Date of the Amendment: April 11, 2010

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") the following findings, reasons and conclusions are entered as an Order of the Secretary in the above-referenced rulemaking proceeding.

Background and Procedural History

This Order considers proposed regulation amendments to the Delaware Non-Tidal Finfish Regulation No. 3304 regarding largemouth bass (Amendments). The Department's Division of Fish and Wildlife commenced the regulatory development process with Start Action Notice 2009-29. The Department published the proposed regulatory amendments in the December 1, 2009 *Delaware Register of Regulation* and held a public hearing on December 29, 2009. The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated February 29, 2010 (Report). The Report recommends certain findings and the adoption of the proposed Amendments as attached to the Report as Appendix A.

Findings and Discussion

I find that the proposed Amendments are well-supported by the record developed by the Department, and adopt the Report to the extent it is consistent with this Order. The Department's experts developed the record and drafted the proposed Amendments. As a result of the informal regulatory development process, the Department received several public comments, the overwhelming majority of which voiced full support of this proposed promulgation, as set forth in the Report.

I find that the Department's experts in the Division of Fish and Wildlife fully developed the record to support adoption of these Amendments. With the adoption of the Regulation Amendments to Delaware Non-Tidal Finfish Regulation No. 3304 as final, the specialized size regulations for largemouth bass in the freshwater state-owned impoundments of Andrews Lake (Frederica), Derby Pond (Camden) and Hearn's Pond (Seaford) would be eliminated, and the statewide size limit of twelve (12) inches would be reinstated. In the future, should DNREC discover the need in a pond for adjustment of its fish community, the Department would go in and physically remove the overabundance of smaller fish (or larger fish, if that were the problem) from that pond and transport them to other Delaware ponds that could benefit from having those additional fish moved into that community. In conclusion, the following findings and conclusions are entered:

1. The Department has jurisdiction under its statutory authority to issue an Order adopting these proposed Amendments as final;
2. The Department provided adequate public notice of the proposed Amendments, and provided the public with an adequate opportunity to comment on the proposed Amendments, including at a public hearing;
3. The Department held a public hearing on the proposed Amendments in order to consider public comments before making any final decision, and has considered all relevant and timely public comments it received;
4. The Department's Hearing Officer's Report, including its recommended record and the recommended Amendments, as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;

5. The recommended Amendments do not reflect any substantive changes from the proposed regulation Amendments as published in the December 1, 2009, *Delaware Register of Regulations*;

6. The recommended Amendments should be adopted as final regulation Amendments because (1) they are consistent with Department's recent findings that the bass population now shows a more normal size distribution; (2) the previously promulgated specialized regulations are no longer necessary; (3) the elimination of the existing slot limits for largemouth bass will enable these state-owned impoundments to once again attract bass fishing tournaments by reinstating the statewide size limit of twelve (12) inches for anglers that visit said ponds; and (4) they are well supported by documents in the record; and that

7. The Department shall submit this Order approving the final regulation 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.

Collin P. O'Mara, Secretary

3304 Creel Limits and Seasons

(Penalty Section 7 **Del.C.** §1304)

1.0 Closed Seasons.

1.1 Unless otherwise provided by law or regulation of the Department, there shall be no closed season, size limits or possession limits on any species of fish taken by hook and line in any non-tidal waters of this State.

2.0 Bass.

2.1 Statewide limits.

2.1.1 It shall be unlawful for any person to have in possession more than six (6) largemouth and/or smallmouth bass at or between the place where said largemouth and/or smallmouth bass were caught and said person's personal abode or temporary or transient place of lodging.

2.1.2 Unless otherwise authorized in this regulation, it shall be unlawful for any person to possess any largemouth bass that measure less than twelve (12) inches in total length. Any largemouth bass taken which is less than the twelve (12) inches in total length shall be immediately returned to the water with the least possible injury.

2.1.3 It shall be unlawful for any person to possess any smallmouth bass measuring from twelve (12) inches to and including (17) inches in total length. Any smallmouth bass taken which is greater than twelve (12) inches and less than seventeen (17) inches shall be immediately returned to the water with the least possible injury.

2.1.4 Notwithstanding 2.1.1 of this section, it shall be unlawful for any person to have in possession more than one (1) smallmouth bass measuring more than seventeen (17) inches in total length at or between the place where said smallmouth bass was caught and said person's personal abode or temporary or transient place of lodging.

2.1.5 It shall be lawful for any person to have in possession while fishing up to six (6) smallmouth bass that are less than twelve (12) inches in total length.

2.2 Becks Pond.

2.2. Notwithstanding 2.1.1 of this section, it shall be unlawful for any person to have in possession while fishing on Becks Pond more than two (2) largemouth bass.

2.2.2 Notwithstanding 2.1.2 of this section, it shall be unlawful for any person to have in possession while fishing on Becks Pond any largemouth bass less than fifteen (15) inches in total length. Any largemouth bass less than fifteen (15) inches in total length shall be immediately returned to Becks Pond with the least possible injury.

~~2.3 Andrews Lake.~~

~~2.3.1 Notwithstanding 2.1.1 of this section, it shall be unlawful for any person to have in possession while fishing on Andrews Lake more than one (1) largemouth bass of the six~~

~~(6) allowed in possession to be larger than fifteen (15) inches in total length. Largemouth bass measuring less than twelve (12) inches may be taken and possessed within the six (6) allowed in possession while fishing on Andrews Lake.~~

~~2.3.2 Notwithstanding 2.1.2 of this section, it shall be unlawful for any person to have in possession while fishing on Andrews Lake any largemouth bass measuring from twelve (12) inches to and including fifteen (15) inches in total length.~~

~~2.4 Derby Pond and Hearn's Pond.~~

~~2.4.1 Notwithstanding 2.1 of this section, it shall be unlawful for any person to have in possession while fishing on Derby Pond or Hearn's Pond more than one (1) largemouth bass of the six (6) allowed in possession to be larger than eighteen (18) inches. Largemouth bass measuring less than fifteen (15) inches may be taken and retained up to the legal possession limit while fishing on Derby Pond or Hearn's Pond.~~

~~2.4.2 Notwithstanding the provisions of 2.1.2 of this section, it shall be unlawful for any person to have in possession while fishing on Derby Pond or Hearn's Pond any largemouth bass measuring from fifteen (15) inches to and including eighteen (18) inches in total length.~~

2.53 Trout.

2.53.1 Season. It shall be unlawful for any person to fish for rainbow, brown and/or brook trout in designated trout streams, except between and including the first Saturday of April and the second Saturday of March of each succeeding year.

2.53.2 Hours of Fishing. It shall be unlawful for any person to fish for rainbow, brown and/or brook trout in designated trout streams on the opening day of the trout season before 7:30 a.m. and thereafter for the remainder of the trout season between one-half hour after sunset and one-half hour before sunrise.

2.53.3 Possession. It shall be unlawful for any person to catch and/or have in his or her possession in any one day during the prescribed open season more than six (6) rainbow, brown and/or brook trout. On any day after a person takes his or her legal limit of trout, said person shall be prohibited from fishing in a designated trout stream on the same day, unless otherwise authorized by law or this regulation.

2.53.4 Trout Stamp. It shall be unlawful for any person to fish in a designated trout stream on or before the first Saturday in April and June 30, of the same year, and on or before the first Saturday in October and November 30, of the same year, unless said person has in his or her possession a valid trout stamp, or, unless said person is exempted by law from having a trout stamp.

2.53.5 Restricted Trout Stream.

2.53.5.1 It shall be unlawful for any person to fish in a restricted trout stream with more than two (2) flies on a line at any one time.

2.53.5.2 It shall be unlawful for any person to use any metallic, wooden, plastic or rubber spinners, spoons, lures, plugs and/or natural bait on any restricted trout stream.

2.53.5.3 It shall be unlawful for any person to have in his or her possession more than four (4) trout within 50 feet of any restricted trout stream. On the restricted trout stream only, trout may be caught and released as long as the four (4) trout possession limit is not exceeded. All trout released must be returned to the water as quickly as possible with the least possible injury.

2.53.6 Closure of Trout Stream. It shall be unlawful for any person to fish in a designated trout stream within two weeks (14 days) of a scheduled opening of the trout season.

2.64 Striped Bass (hybrids)

2.64.1 It shall be unlawful for any person to have in his or her possession while fishing in the non-tidal waters of this State more than two (2) striped bass (*Morone saxatilis*) and/or striped bass hybrids (*Morone saxatilis crysops*) or any striped bass or striped bass hybrid under the length of fifteen (15) inches measured from the tip of the snout to the tip of the tail.

2.75 Panfish Limits.

2.75.1 It shall be unlawful for any person to have in possession while fishing in any State-owned non-tidal water more than fifty (50) panfish in aggregate to include bluegill, pumpkinseed, redear sunfish, black crappie, white crappie, white perch or yellow perch, provided no more than twenty-five (25) of the fifty (50) allowed in possession are of any one species.

3 DE Reg. 289 (8/1/99)

3 DE Reg. 1738 (6/1/00)

13 DE Reg. 1350 (04/01/10)