

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Sections 901(c) & (d); 903(e)(2)a
(7 Del.C. §§901(c) & (d); 903(e)(2)a)
7 DE Admin. Code 3518

FINAL

Secretary's Order No.: 2013-F-0049

3518 Black Drum Size Limit; Possession Limit; Landing Limit; Dealer Limit

Date of Issuance: November 13, 2013

Effective Date of the Amendment: December 11, 2013

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 regulations to amend 7 **DE Admin. Code** 3518: Black Drum Size Limit; Possession Limit; Landing Limit; Dealer Limit. The Department's Division of Fish and Wildlife commenced the regulatory development process with Start Action Notice 2013-22. The Department published its initial proposed regulation amendments in the September 1, 2013 *Delaware Register of Regulations*. The Department then held a public hearing on September 30, 2013. The public hearing record remained open at that time for public comment through October 15, 2013.

The Atlantic States Marine Fisheries Commission ("ASMFC") approved an Interstate Fishery Management Plan ("IFMP") for Black Drum in May 2013. The plan was initiated to address a significant increase in harvest in the commercial and recreational fisheries. The IFMP requires all states to maintain current regulations for black drum and ultimately adopt a coastwide minimum size limit of at least 14 inches by January 1, 2016. Delaware's current regulations include a 16-inch minimum size limit and a 3 fish recreational size limit. However, these measures, as well as Delaware's commercial fishery management measures, only apply to the Delaware River and Delaware Bay. Therefore, in support of the spirit of the IFMP, the present action seeks to expand the applicability of Delaware's current restrictions statewide (to include all tidal waters of state). Such action will ensure compliance with the new IFMP until modified through amendment or addendum.

It should be noted that, prior to the adoption of an Interstate Fishery Management Plan for Black Drum, Delaware and New Jersey developed a Bi-State Management Plan ("Plan"). Under this Plan, Delaware adopted commercial and recreational measures consistent with New Jersey's regulations at that time. Unfortunately, however, the regulatory provisions of that Plan were only applicable to the Delaware Bay and River, so they did not apply to the Inland Bays or State waters along the Atlantic Coast.

Through the present proposed regulation amendments, the Department seeks to extend Delaware's existing Black Drum regulations to make them effective statewide by striking references specific to the Delaware Estuary. This will result in a statewide minimum size limit of 16 inches in total length and a statewide recreational possession limit of three black drum per day. The commercial daily landing and dealer possession limits shall remain at 10,000 pounds, and the annual commercial quota shall remain at 65,000 pounds. It should be noted that the size limit is more conservative than that specified in the ASMFC's IFMP, but it is consistent with those measures previously adopted by Delaware under the aforementioned Bi-State Plan, and will contribute to the conservation of Black Drum in Delaware by affording better protection to juvenile recruits. With the adoption of the proposed changes, Delaware will be in compliance with the ASMFC's plan at least through January of 2016, or until such time as the plan is modified through amendment or addendum.

The proposed amendments were thoroughly vetted by the Department at the public hearing on September 30, 2013. No negative comment was received by the Department from the public at any time during the course of this proposed promulgation. It should also be noted that all proper notification and noticing requirements concerning this proposed promulgation were met by the Department. Proper notice of the hearing was provided as required by law.

The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated October 31, 2013 (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 I adopt the Report to the extent it is consistent with this Order. The Department's experts developed the record and drafted the proposed amendments.

I find that the Department's experts in the Division of Fish and Wildlife fully developed the record to support adoption of these amendments. The adoption of this Order will allow Delaware to (1) expand the applicability of Delaware's current Black Drum restrictions statewide (to include all tidal waters of state); and (2) ensure compliance with the ASMFC's IFMP at least through January of 2016, or until such time as the plan is modified through amendment or addendum.

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 both the initial proposed amendments, as well as the proposed amendments, including at the public hearing held on September 30, 2013;

3.) The Department held a public hearing on September 30, 2013 in order to consider public comment before making any final decision;

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 adoption of this Order will allow Delaware to (1) expand the applicability of Delaware's current Black Drum restrictions statewide (to include all tidal waters of state); and (2) ensure compliance with the ASMFC's IFMP at least through January of 2016, or until such time as the plan is modified through amendment or addendum;

6.) The recommended amendments should be adopted as final regulation amendments because Delaware will be able to (1) remain consistent with those measures previously adopted by Delaware under the Bi-State Plan with New Jersey while maintaining compliance with the new IFMP; (2) contribute to the conservation of Black Drum in Delaware by affording better protection to juvenile recruits; and lastly, because (3) the amendments are well supported by documents in the record;

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

3518 Black Drum Size Limit; Possession Limit; Landing Limit; Dealer Limit

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

1.0 Definition

~~The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:~~

~~"Delaware Estuary" means all those tidal waters located within an area to the north of a straight line drawn between Cape May Point, New Jersey and Cape Henlopen, Delaware, but not including the tributaries of the Delaware River and Delaware Bay.~~

2.0 Size limit

~~It shall be unlawful for a person to possess a black drum (*Pogonias cromis*) taken from the Delaware Estuary that measures less than sixteen (16) inches, total length.~~

3.0 Possession Limits

~~3.1 It shall be unlawful for a recreational fisherman to take and reduce to possession more than three (3) black drum per day (a day being 24 hours) from the Delaware Estuary.~~

~~3.2 It shall be unlawful for a commercial fisherman or a vessel, regardless of the number of licensed commercial fishermen onboard that vessel, to possess or land more than 10,000 pounds of black drum taken from the Delaware Estuary in any one (1) day.~~

4.0 Landing Limit

~~It shall be unlawful for a commercial fisherman to sell, trade or barter or attempt to sell, trade or barter black drum or parts of black drum that are landed from the Delaware Estuary in this State after a date when the Department has determined or projected that 65,000 pounds of black drum have been or will be landed in this State from the Delaware Estuary by the commercial fishery in a calendar year.~~

5.0 Dealer limit

~~It shall be unlawful for a food fish dealer to accept from a commercial fisherman or a vessel more than 10,000 pounds of black drum harvested from the Delaware Estuary in any one (1) day.~~

13 DE Reg. 1352 (04/01/10)
17 DE Reg. 646 (12/01/13) (Final)