

**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL
DIVISION OF FISH AND WILDLIFE
3505 Striped Bass Commercial Fishing Seasons; Quotas; Tagging and Reporting Requirements**

Statutory Authority: 7 Delaware Code, Sections 903(e)(2)(a)(3&5) and 930(b) (7 Del.C. §§903(e)(2)(a)(3&5) and 930(b))

FINAL

Order No. 2005-F-0004

Summary of Evidence and Information

Pursuant to due notice vol. 8, issue 6 DE *Register of Regulations*, 859-860 (12/1/04), the Department of Natural Resources and Environmental Control proposes changes to Tidal Finfish Regulations 3502 and 3505 pertaining to striped bass season and area restrictions and to striped bass commercial fishing season; quotas; tagging and reporting requirements. The purpose of these amended regulations is to extend the commercial striped bass season without increasing the harvest quota and to require the use of non-offset circle hooks when fishing on striped bass spawning grounds during the spawning season.

A public hearing was held on December 30, 2004 to take comments on proposed amendments to Tidal Finfish Regulations 3502 and 3505. Comments were taken that evening and during the remainder of the comment period which remained open for written, faxed, or e-mail comments until 4:30 PM January 4, 2005.

Findings of Fact

903(e)(2)(a) 7 *Delaware Code* authorizes the Department of Natural Resources and Environmental Control (DNREC) to promulgate regulations concerning species of finfish that spend part or all their life cycle within the tidal waters of the state provided that such regulations are consistent with an interstate fisheries management plan developed for the protection and conservation of said species of finfish.

The Atlantic States Marine Fisheries Commission (ASMFC) Striped Bass Board approved Delaware's proposed regulatory changes for striped bass that were the subject of this hearing as being consistent with Amendment 6 to the Fishery Management Plan for Atlantic Striped Bass.

The majority of the speakers and those who sent e-mail comments favored the circle hook requirements as proposed, although two opposed the requirement for circle hooks.

Three respondents favored the proposed extensions to the commercial seasons while four opposed the extensions. Those who supported the extensions to the commercial season are commercial fishermen, while those who opposed it indicated that they are recreational fishermen.

The Delaware Advisory Council on Tidal Finfisheries suggested that the Department draft regulations to extend the commercial striped bass season and to consider circle hook requirements for striped bass catch and release fishing on the spawning grounds. After extensive discussions of various options at more than one meeting in the spring of 2004, the Advisory Council approved the regulatory changes included herein.

The draft regulations as proposed for extending the commercial gill net season should not result in excessive additional losses of discarded striped bass and other fishes because of the requirement that drift nets be used during the proposed season extensions in February rather than anchored nets. During most of the proposed season extensions in May, drift nets have to be used anyway because of existing statutes requiring the use of drift nets after May 10. Further, annual net closures to protect weakfish will prevent the use of any gill nets for the first week and a half in May, so during the proposed extended striped bass season after May 8 until the end of May, only drift nets may be used. Studies conducted by Department scientists in the late 1980s and again over the past couple of years indicate that by-catch losses are minimized when gill nets are drifted and attended continually as opposed to the usual practice of leaving the nets anchored overnight or sometimes longer, depending on the weather. Also, the seasonal poundage quotas would not be changed by the proposed season extensions.

Commercial fishermen can benefit from the proposed changes by taking advantage of any favorable market conditions during the proposed season extensions in order to achieve a better price for their catches. The longer the season lasts, the greater the likelihood exists that prices for striped bass will be favorable at some time during the open season because of annual price fluctuations caused by market supply and demand. Prices in other states frequently drive market demand for Delaware-caught striped bass.

The use of non-offset circle hooks when fishing with natural bait has been scientifically proven to reduce mortalities from catch and release of striped bass. Most striped bass hooked with circle hooks are hooked in the corner of the mouth and very few in the throat or gullet, thus increasing the likelihood of survival upon release. By present Delaware regulations no one may harvest striped bass on the spawning grounds during the spawning season, yet there presently exists a modest catch and release fishery for these same striped bass. Also fishing takes place during this same season and location for other species like channel catfish and white perch. Therefore it would be desirable to minimize as much as possible the unintended loss of striped bass by recreational fishermen due to catch and release.

The State of New Jersey already has instituted a requirement for the use of circle hooks when fishing with any hook size greater than or equal to a size 2 hook when fishing on the striped bass spawning grounds of the Delaware River and its tributaries during the spawning season. A size 2 hook is roughly equivalent to the proposed Delaware measure which would require that a circle hook be used whenever the hook gap exceeds 3/8ths inches. Delaware chose the gap measurement to distinguish smaller hooks typically used for white perch and small catfish from hooks that would be used to take larger catfish and mature striped bass because the hook gap can be readily measured, while retail hook size designations vary between hook manufacturers and styles of hooks (see accompanying diagram 1).

Conclusions

The Department of Natural Resources and Environmental Control has a statutory obligations to manage the tidal water finfisheries of Delaware in a manner that "... perpetuates the historic significance of recreational and commercial fisheries... and that maintain optimum yields of fish, that provide a viable experience for recreational fishermen and provide sound business opportunities for commercial fishermen..." [§ 901(b) & (c), 7 *Delaware Code*].

The regulations as proposed will not increase commercial landings but will allow commercial interests to take advantage of potential market conditions so as to receive a more favorable price for their striped bass catches. The proposed season extensions should not appreciably increase by-catch or discard losses of striped bass or other fishes because of the requirement for the use of drift nets during the proposed season extensions.

A requirement for the use of circle hooks on striped bass spawning grounds during the spawning season is a conservation measure that should reduce the likelihood of catch and release-caused mortality, thus benefiting spawning striped bass at a time of year when they are most vulnerable to exploitation.

ORDER

It is hereby ordered this 12th day of January in the year 2005 that amendments to Tidal Finfish Regulations 3502 and 3505, copies of which are attached hereto, are adopted pursuant to 7 Del. C. 903(e)(2)(a) and are supported by the Department's findings of evidence and testimony received. This Order shall become effective on February 10, 2005.

John A. Hughes, Secretary

3505 Striped Bass Commercial Fishing Seasons; Quotas; Tagging and Reporting Requirements. (Formerly Tidal Finfish Reg. 8)

(Penalty Section 7 Del.C. §936(b)(2))

1.0 It shall be unlawful for any commercial food fisherman using a gill net to take and reduce to possession any striped bass at any time except when said commercial food fisherman is authorized by the Department to participate in a commercial gill net fishery for striped bass established herein. A commercial food fisherman may use a gill net to take and reduce to possession striped bass during the period beginning at 12:01 AM on February 15 ~~March 1~~ and ending at 4:00 P.M. on May 31 ~~April 30~~ next ensuing. It shall be unlawful to use any gill net having a stretched-mesh size greater than four (four) inches to take striped bass during the period February 15 until and including the last day in February unless the net is drifted. A commercial food fisherman may use a gill net to take and reduce to possession striped bass during the period beginning at 12:01 AM on November 15 and ending at 4:00 PM on December 31 next ensuing provided at least two (2) percent of the commercial allocation of striped bass for the gill net fishery, as determined by the Department, was not landed in the February – May ~~March – April~~ gill net fishery. In order for a

commercial food fisherman to be authorized by the Department to participate in a commercial gill net fishery, said commercial food fisherman shall have a valid food fishing equipment permit for a gill net and shall register in writing with the Department to participate in said fishery by February 15 for the ~~February 15 March - May 31 April~~ gill net fishery and by November 1 for the December gill net fishery.

2.0 It shall be unlawful for any commercial food fisherman using a hook and line to take and reduce to possession any striped bass at any time except when said commercial food fisherman is authorized by the Department to participate in a commercial hook and line fishery for striped bass established herein. A commercial food fisherman may use a hook and line to take and reduce to possession striped bass during the period beginning at 12:01 AM on ~~April September~~ 1 and ending at 4:00 PM on December 31 next ensuing. In order for a commercial food fisherman to be authorized to participate in the commercial hook and line fishery, said commercial food fisherman shall register in writing with the Department to participate in said fishery by ~~August March~~ 15.

3.0 It shall be unlawful for any commercial food fisherman using a hook and line, during the striped bass hook and line fishery established for subsection 2.0 herein, to take striped bass by means of a gill net or to have any gill net on board or to otherwise have in possession on or near his person any gill net.

4.0 The striped bass gill net fishery in ~~February March - May April~~, the striped bass gill net fishery in November - December and the striped bass hook and line fishery in ~~April September~~ - December shall be considered separate striped bass fisheries. Each participant in a striped bass fishery shall be assigned an equal share of the total pounds of striped bass allotted by the Department to that fishery. A share shall be determined by dividing the number of pre-registered participants in that fishery into the total pounds of striped bass allotted to that fishery by the Department. The total pounds of striped bass allotted to each fishery by the Department shall be as follows: 95% of the State's commercial quota, as determined by the ASMFC, for the ~~February 15 March - May 31 April~~ gill net fishery, 10% of the State's commercial quota for the ~~April September~~ - December hook and line fishery and, provided that in excess of two (2) % of the ~~February 15 March - May 31 April~~ gill net fishery allocation was not landed, said remainder for the November - December gill net fishery. Any overage of the State's commercial quota will be subtracted from the next year's commercial quota proportionally to the appropriate fishery.

5.0 It shall be unlawful for any commercial food fisherman to land, during a striped bass fishing season, more than the total pounds assigned by the Department to said individual commercial food fisherman.

6.0 It shall be unlawful for any commercial food fisherman to possess any striped bass that does not have locked into place through the mouth and gill a tag issued to said commercial fisherman by the Department. Said tag shall be locked into place immediately after taking said striped bass.

7.0 The Department shall issue tags to commercial food fishermen who register in writing with the Department to participate in a striped bass fishery. Each participant shall initially be issued a quantity of tags that is to be determined by the Department by dividing said participants assigned share in pounds by the estimated weight of a striped bass expected to be landed. If a commercial food fisherman needs additional tags to fulfill his or her assigned share, the Department shall issue additional tags after verifying the balance of the share from reports submitted by an official weigh station to the Department.

8.0 It shall be lawful for a commercial food fisherman who is authorized to be issued striped bass tags by the Department to transfer said tags to another commercial food fisherman, authorized to participate in the same striped bass fishery, provided said transfer is made prior to said tags being issued by the Department.

9.0 It shall be unlawful for any commercial food fisherman to apply a tag to a striped bass unless said tag had been issued or legally transferred to said commercial food fisherman by the Department.

10.0 It shall be unlawful for any commercial food fisherman to apply a tag to a striped bass if said tag had previously been applied to another striped bass.

11.0 It shall be unlawful for any commercial food fisherman to sell, barter or trade any striped bass, to attempt to sell, barter or trade any striped bass or to transport, to have transported or to attempt to have transported any striped bass out of the state unless said striped bass has been weighed and tagged by an official weigh station.

12.0 The Department shall appoint individuals and their agents as official weigh stations to weigh and tag all striped bass landed in a commercial striped bass fishery. Official weigh stations shall be compensated by the Department for each striped bass weighed and tagged. An official weigh station shall enter into an agreement with the Department to maintain records and report on a regular basis each commercial food fisherman's daily landings of striped bass weighed and tagged at said station. The Department shall provide official weigh stations with tags to be applied to each striped bass weighed.

13.0 Each commercial food fisherman participating in a striped bass fishery shall file an acceptable report with the Department on forms provided by the Department on all striped bass landed during said fishery. Each report shall be filed with the Department within 30 days after the end date of each fishery. All unused tags issued or legally transferred to a commercial food fisherman shall be returned to the Department with said report. Failure to file an acceptable report or failure to return all unused tags may disqualify the commercial food fishermen from future striped bass fisheries.

1 DE Reg 270 (9/1/97)

4 DE Reg 1552 (3/1/01)

8 DE Reg 1169 (2/1/05)