

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 901(c & d), 903(e)(2)a and 903(e)(3)
(7 Del.C. §901(c & d), 903(e)(2)a and 903(e)(3))
7 DE Admin. Code 3500

PROPOSED

REGISTER NOTICE #2014 - 12

3500 Tidal Finfish

1. TITLE OF THE REGULATION:

3502 Striped Bass Spawning Season and Area Restrictions

3503 Striped Bass Recreational Fishing Seasons; Methods of Take; Creel Limit; Possession Limit
3504 Striped Bass Possession Size Limit; Exceptions
3505 Striped Bass Commercial Fishing Seasons; Quotas; Tagging and Reporting Requirements
3506 Striped Bass; Total Length Measurement

2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUE:

The purpose of this action is to adopt provisions consistent with Addendum IV to Amendment 6 to the Atlantic States Marine Fisheries Commission's (Commission) Interstate Fishery Management Plan for Atlantic Striped Bass. Addendum IV adopted new biological reference points based on the results of the 2013 benchmark stock assessment. The assessment indicated that the 2012 spawning stock biomass (SSB) was well below the target SSB and was approaching the overfished threshold. Projections show that SSB is likely to fall below the threshold in coming years. In response, Addendum IV requires states to reduce their coastal striped bass harvest by 25%.

Delaware will accomplish the specified 25% commercial fishery reduction through a direct administrative adjustment to the annual commercial quota. The 25% recreational fishery reduction will be achieved through a specific combination of lengths, seasons and possession limits approved by the Commission.

This action also seeks to clarify the commercial tagging and reporting requirements and proposes minor editorial changes, not intended to change meaning.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

§901(c & d), § 903(e) (2)a & 903(e) (3), Title 7 Delaware Code

5. LIST OF OTHER REGULATIONS THAT MAY BE IMPACTED OR AFFECTED BY THE PROPOSAL:

N/A

6. NOTICE OF PUBLIC COMMENT:

The hearing record on the proposed changes to 7 DE Admin. Code §§3502, 3503, 3504, 3505, 3506 pertaining to striped bass will be open February 1, 2015. Individuals may submit written comments regarding the proposed changes via e-mail to Lisa.Vest@state.de.us or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. A public hearing on the proposed amendment will be held on February 23, 2015 beginning at 6:00 PM in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901.

7. PREPARED BY:

Stewart Michels Stewart.Michels@state.de.us (302) 739-9914

David E. Saveikis, Director

Bass (Striped Bass; Black Sea Bass)

Option	Size Limit(s)	Possession Limit(s)	Open Season/Areas
B5	≥ 33 inches	2	All year & waters, except catch & release on spawning grounds Apr. 1 – May 31
B6	28 - 34 inches	2	All year & waters, except catch & release on spawning grounds Apr. 1 – May 31
B7	28 - 34 inches	1	All year & waters, except catch & release on spawning grounds Apr. 1 – May 31
	≥ 36 inches	1	
B8	28 - 36 inches	1	All year & waters, except catch & release on spawning grounds Apr. 1 – May 31
	≥ 38 inches	1	
B9	28 - 37 inches	1	All year & waters, except catch & release on spawning grounds Apr. 1 – May 31
	≥ 40 inches	1	
CE1	28 - 37 inches and ≥ 44 inches	2	All year & waters, except catch & release on spawning grounds Apr. 1 – May 31 and summer slot (*)
	*20 - 25 inches	2	*DE Bay, River & tidal tribs Jul 1 - Aug 31

3502 Striped Bass Spawning Season and Area Restrictions.

(Penalty Section 7 Del.C. §936(b)(2))

- 1.0 The spawning season for striped bass (*Morone saxatilis*) in Delaware shall begin at 12:01 A.M. on April 1 and continue through midnight on May 31 of each calendar year.
- 2.0 It ~~shall be~~ is unlawful for any person to take and retain any striped bass during the striped bass spawning season from the Nanticoke River or its tributaries, the Delaware River and its tributaries to the north of a line extending due east beginning at and including the south jetty at the mouth of the C & D Canal, or the C & D Canal or its tributaries.
- 3.0 It ~~shall be~~ is unlawful for any person to fish a fixed gill net in the Nanticoke River or its tributaries or the C & D Canal or its tributaries during the striped bass spawning season.
- 4.0 It ~~shall be~~ is unlawful for any person to fish during the striped bass spawning season in the Nanticoke River or its tributaries or the C & D Canal or its tributaries with a ~~draft~~ drift gill net of multi- or mono-filament twine larger than 0.28 millimeters in diameter (size #69) or a stretched mesh size larger than five and one-half (5 1/2) inches.
- 5.0 It ~~shall be~~ is unlawful for any person to fish any fixed gill net in the Delaware River north of a line beginning at Liston Point (River Mile 48.06) and continuing due east to the boundary with New Jersey during January, February, March, April or May.
- 6.0 It ~~shall be~~ is unlawful for any person to fish during the striped bass spawning season defined in 3502 section 1.0 and in the areas defined in 3502 section 2.0 with natural bait using any hook other than ~~3504~~ a non-offset circle hook when said hook measures greater than three-eighths (3/8s) inches as measured from the point of the hook to the shank of the hook.

8 DE Reg. 1169 (2/1/05)

3503 Striped Bass Recreational Fishing Seasons; Methods of Take; Creel Limit; Possession Limit.

(Penalty Section 7 Del.C. §936(b)(2))

- 1.0 It ~~shall be~~ is lawful for any person to take and reduce to possession striped bass from the tidal waters of this State at any time except as otherwise set forth in this regulation or in Tidal Finfish Regulations 3502 and 3504.
- 2.0 It ~~shall be~~ is unlawful for any recreational fisherman to take or attempt to take any striped bass from the tidal waters of this State with any fishing equipment other than a hook and line or a spear while said recreational fisherman using the spear is underwater. Recreational gill net permittees are not authorized to take and reduce to possession any striped bass in gill nets.

- 3.0 Unless otherwise authorized, it ~~shall be~~ is unlawful for any recreational fisherman to take and reduce to possession ~~more than two (2)~~ **[TBD from Table]** striped bass per day (**a day being 24 hours**) from the tidal waters of this State. Any striped bass taken from the tidal waters of this State that is not immediately returned, without unnecessary injury, to the same waters from which it was taken, is deemed taken and reduced to possession for purposes of this subsection.
- 4.0 Unless otherwise authorized, it ~~shall be~~ is unlawful for any recreational fisherman to have in possession more than ~~two (2)~~ **[TBD from Table]** striped bass at or between the place said striped bass was taken and said fisherman's personal abode or temporary or transient place of lodging.

7 DE Reg. 1205 (3/1/04)

3504 Striped Bass Possession Size Limit; Exceptions.

(Penalty Section 7 Del.C. §936(b)(2))

- 1.0 Notwithstanding, the provisions of 7 Del.C. §929(b)(1), it ~~shall be~~ is unlawful for any recreational fisherman to take and reduce to possession any striped bass that ~~measures less than twenty-eight (28) inches in total length, except that recreational hook and line fisherman may take two (2) striped bass measuring not less than 20 inches and not greater than 26 inches from the Delaware River, Delaware Bay, or their tributaries during the months of July and August~~ **[TBD from Table]**.
- 2.0 Notwithstanding, the provisions of 7 Del.C. §929(b)(1), it ~~shall be~~ is unlawful for any commercial food fisherman to take and reduce to possession any striped bass that measure less than twenty-eight (28) inches in total length from the tidal waters of this State except that commercial gill net fishermen may take striped bass measuring no less than twenty (20) inches in total length from the tidal waters of the Delaware River and Delaware Bay or their tributaries during the period from February 15 through May 31 or from the tidal waters of the Nanticoke River or its tributaries during the period from February 15 through the month of March.
- 3.0 It ~~shall be~~ is unlawful for any person to possess a striped bass that measures ~~less than 28 inches~~ **[TBD based on Table]**, total length, unless said striped bass is in one or more of the following categories:
- 3.1 It has affixed, a valid strap tag issued by the Department to a commercial gill net fisherman and was legally taken and tagged by said commercial gill net fisherman from the tidal waters of the Delaware River and Delaware Bay or their tributaries during the period from February 15 through May 31; or from the tidal waters of the Nanticoke River or its tributaries during the period from February 15 through the month of March; or
- 3.2 It was legally landed in another state for commercial purposes and has affixed a valid tag issued by said state's marine fishery authority; or
- 3.3 It entered Delaware packed or contained for shipment, either fresh or frozen, and accompanied by a bill-of-lading with a destination to a state other than Delaware; or
- 3.4 It was legally landed in another state for non commercial purposes by the person in possession of said striped bass and there is affixed to either the striped bass or the container in which the striped bass is contained a tag that depicts the name and address of the person landing said striped bass and the date, location, and state in which said striped bass was landed; or
- 3.5 It is the product of a legal aquaculture operation and the person in possession has a written bill of sale or receipt for said striped bass.
- 4.0 It shall be unlawful for any commercial finfisherman to possess any striped bass for which the total length has been altered in any way prior to selling, trading or bartering said striped bass.
- 5.0 The words "land" and "landed" shall mean to put or cause to go on shore from a vessel.
- 6.0 It ~~shall be~~ is unlawful for any person to land any striped bass that measures ~~less than twenty-eight (28) inches in total length at any time~~ **[TBD based on Table]**, except those striped bass caught in a commercial gill net legally fished in the waters of Delaware River or Delaware Bay or their tributaries during the period from February 15 through May 31 or from a commercial gill net legally fished in the tidal waters of the Nanticoke River or its tributaries during the period from February 15 through the month of March.
- 7.0 It ~~shall be~~ is unlawful for a commercial finfisherman authorized to fish during Delaware's commercial striped bass fishery to land any striped bass that measures less than twenty (20) inches in total length.

3 DE Reg. 1088 (2/1/00)

4 DE Reg. 230 (7/1/00)

4 DE Reg. 1552 (3/1/01)

6 DE Reg. 1512 (5/1/01)

7 DE Reg. 1205 (3/1/04)

8 DE Reg. 1718 (6/1/05)

12 DE Reg. 1228 (03/01/09)

3505 Striped Bass Commercial Fishing Seasons; Quotas; Tagging and Reporting Requirements.

(Penalty Section 7 Del.C. §936(b)(2))

- 1.0 It ~~shall be~~ is 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 A.M. on February 15 and ending at 4:00 P.M. on May 31 next ensuing. It ~~shall be~~ is unlawful to use any gill net having a stretched-mesh size greater than four (4) 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 A.M. on November 15 and ending at 4:00 P.M. 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 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 1 for the February 15 - May 31 gill net fishery and by November 1 for the December gill net fishery.
- 2.0 It ~~shall be~~ is 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 A.M. on April 1 and ending at 4:00 P.M. 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 March 15.
- 3.0 It ~~shall be~~ is 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 - May, the striped bass gill net fishery in November - December and the striped bass hook and line fishery in April - 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 - May 31 gill net fishery, 10% of the State's commercial quota for the April - December hook and line fishery and, provided that in excess of two (2)% of the February 15 - May 31 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~~ is 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~~ is unlawful for any commercial food fisherman to possess any striped bass that does not have locked into place through the mouth and gill (operculum) opening a striped bass harvest tag issued to said commercial fisherman by the Department. Said tag shall be locked into place immediately after taking said striped bass if said striped bass is taken by hook and line. Said tag shall be locked into place immediately upon completing fishing each gill net or gill net series if said striped bass is taken by anchor gill net or immediately after retrieving each gill net into the boat at the conclusion of each drift if said striped bass is taken by drift gill net.
- 7.0 The Department ~~shall~~ may 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 striped bass harvest 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~~ is lawful for a commercial food fisherman who is authorized to be issued striped bass harvest 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~~ is 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~~ is unlawful for ~~any commercial food fisherman~~ to apply a any striped bass tag issued by the Department to a striped bass if said tag had previously been applied to another striped bass.
- 11.0 It ~~shall be~~ is 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~~ may 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~~ a complete and accurate 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~~ a complete and accurate 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)

3506 Striped Bass; Total Length Measurement.

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

- 1.0 Unless otherwise authorized, it ~~shall be~~ is unlawful for ~~any commercial finfisherman~~ to possess any striped bass for which the total length has been altered in any way ~~prior to selling, trading or bartering~~ for the purpose of retaining said striped bass in accordance with §3504.

3507 Black Sea Bass Size Limit; Trip Limits, Seasons; Quotas

(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 and one-half (12.5) inches total length excluding any caudal filament.

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

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

12 DE Reg. 1430 (05/01/09)

14 DE Reg. 1382 (06/01/11)

- 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 to an eligible transferee as defined in 7 **Del.C.** §2903, 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.

17 DE Reg. 542 (11/01/13)

- 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 pertaining to black sea bass and was either issued a black sea bass landing permit by the Department in 2013 or was the transferee of black sea bass landing permit issued by the Department as per 3507 (3.0). The number of black sea bass landings permits issued by the Department for the pot fishery in any year will not exceed six.

17 DE Reg. 542 (11/01/13)

- 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 was either issued a black sea bass landing permit by the Department in 2013 or was the transferee of black sea bass landing permit issued by the Department as per 3507 (3.0). The number of black sea bass landings permits issued by the Department for the commercial hook and line fishery in any year will not exceed thirteen.

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)

17 DE Reg. 542 (11/01/13)

- 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 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.
- 11.0 Each commercial food fisherman 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.
- 12.0 It shall be unlawful for any recreational fisherman to take and reduce to possession or to land any black sea bass beginning at 12:01 a.m. January 1, and ending midnight May 18, and beginning at 12:01 a.m. September 19 and ending mid-night October 17.
- 12.1 It shall be unlawful for any recreational fisherman to have in possession more than 15 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 during the period May 19 through September 18 and during the period October 18 through December 31.

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)

11 DE Reg. 1662 (06/01/08)

14 DE Reg. 113 (08/01/10)

16 DE Reg. 431 (10/01/12)

17 DE Reg. 543 (11/01/13)

17 DE Reg. 1090 (05/01/14)

