

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 903(h) and 29 Delaware Code, Section 10119 (7 Del.C. §903(h) & 29 Del.C. §10119)
7 DE Admin. Code 3505

EMERGENCY

ORDER No: 2023-F-0031

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

AUTHORITY

Pursuant to 7 Del.C. §903(h) and 29 Del.C. §10119, the Department of Natural Resources and Environmental Control ("Department") is adopting amendments to Tidal Finfish Regulation 7 DE Admin. Code 3505: *Striped Bass Commercial Fishing Seasons; Quotas; Tagging and Reporting Requirements* ("Regulation"). The Department is authorized under 29 Del.C. §10119 to adopt emergency regulations when an agency determines that an imminent peril to the public health, safety or welfare requires the amendment of a regulation with less than the notice required by 29 Del.C. §10115. Moreover, 7 Del.C. §903(h) authorizes the Department to adopt emergency regulations when such regulations are necessary to deal with an actual or imminent public health threat or danger to a fishing resource or habitat involving finfish.

REASON FOR THE EMERGENCY ORDER

In response to the evolving seasonal distribution of migratory striped bass and market conditions, Delaware's commercial gill net fisherman requested a modification to the dates of Delaware's spring anchor gill net season for 2024. The contingent of the coastal migratory striped bass population that spawns in the Delaware River has been entering Delaware Bay earlier in the year compared to when the current Regulation was established in the 1990s. Consequently, they become available to anchor gill netters sooner. For the past three years, the compensation offered to gill netters for early-season striped bass has been substantial. Therefore, the gill netters aim to capitalize on these conditions by focusing on catching striped bass in February rather than delaying until March. Delaware's Advisory Council on Tidal Finfisheries approved a motion by unanimous consent to recommend that the Department undertake this management measure. The Department is implementing this management measure, as recommended by Delaware's Advisory Council on Tidal Finfisheries, through this Emergency Order until this revision to the Regulation can be completed in accordance with 29 Del.C. Chapter 101.

This Emergency Order revises the dates for the 2024 anchor gill net season from March 1 through May 10 to February 15 through April 26. This measure is compliant with the Atlantic States Marine Fisheries Commission's Amendment 7 to the *Interstate Fishery Management Plan for Atlantic Striped Bass* and it will result in no change to Delaware's commercial striped bass quota. The Department finds it necessary to adopt these measures pursuant to 7 Del.C. §903(h) and implement the revisions prior to the commencement of the 2024 anchor gill new season. Furthermore, under the procedures set forth in 29 Del.C. §10119, I find it necessary to enact these management measure to ensure the welfare of the commercial striped bass fishery.

EFFECTIVE DATE OF ORDER

This Emergency Order shall take effect February 15, 2024, and shall remain in effect for 120 days. At the expiration of 120 days, the Department may choose to renew this Emergency Order once for a period not exceeding 60 days, consistent with 29 Del.C. §10119(3).

PETITION FOR RECOMMENDATIONS

The Department will receive, consider, and respond to petitions by any interested person for recommendations or revisions of this Order. Petitions should be presented to the Fisheries Section, Division of Fish & Wildlife, 89 Kings Highway, Dover, DE 19901.

ORDER

It is hereby ordered, this 1st day of December, 2023 that the above-referenced amendments to 7 DE Admin. Code 3505 Striped Bass Commercial Fishing Seasons; Quotas; Tagging and Reporting Requirements, copies of which are

hereby attached, are adopted pursuant to 7 *Del.C.* §903(h) according to the procedures of 29 *Del.C.* §10119 and supported by the evidence contained herein.

Lisa Borin Ogden
For Shawn M. Garvin
Secretary

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

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

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

- 1.0 It 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 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~~ beginning at 12:01 AM on April 27 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 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. Except as otherwise provided, 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 February 1.
- 3.0 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 the State's ASMFC commercial striped bass quota will be allotted to each fishery by the Department as follows: 95% for the February 15 - May 31 gill net fishery, 5% 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.
- 4.0 It 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.
- 5.0 It is unlawful for any commercial food fisherman to possess any landed 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.
- 6.0 The Department 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 participant's 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.

- 7.0 It 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, provided said transfer is made prior to said tags being issued by the Department.
- 8.0 It 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.
- 9.0 It is unlawful to apply any striped bass tag issued by the Department to a striped bass if said tag had previously been applied to another striped bass.
- 10.0 It 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 at an official weigh station.
- 11.0 The Department 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, if requested, 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.
- 12.0 Each commercial food fisherman participating in a striped bass fishery shall file 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 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 (09/01/97)

4 DE Reg 1552 (03/01/01)

8 DE Reg 1169 (02/01/05)

18 DE Reg. 889 (05/01/15)

20 DE Reg. 467 (12/01/16)

22 DE Reg. 674 (02/01/19)

27 DE Reg. 466 (01/01/24) (Emer.)