

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 903(h) (7 **Del.C.** §903(h))
7 **DE Admin. Code** 3507

EMERGENCY

SECRETARY'S ORDER No. 2015-F-0020

Pursuant to 29 Del.C. §10119

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

AUTHORITY:

Pursuant to 29 **Del.C.** §10119, the Department of Natural Resources and Environmental Control is adopting amendments to Tidal Finfish Regulation 3507 without prior notice or public hearing to assure that Delaware's recreational black sea bass season is consistent with the federal recreational black sea bass season and to avoid the actual and imminent danger to this fishing resource and its associated businesses. 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

Delaware's recreational black sea bass fishery is presently closed by regulation from January 1 through May 18 and September 19 through October 17. A federal regulation was published on March 25, 2015 that will open the black sea bass season on May 15, 2015. Therefore, if Delaware does not use an emergency order to open its recreational black sea bass season on May 15, 2015, the date the federal recreational black sea bass season will open, Delaware's recreational black sea bass season will open on May 19, 2015 as previously established through the normal regulatory process. This will prevent Delaware anglers from fishing the crucial first four days, including the critical first weekend, of the federal black sea bass season, causing an economic danger to our fishing resource businesses, such as charter boats, bait shops and tackle dealers that depend on this fishery.

A black sea bass management region extending from Delaware through North Carolina is formally recognized by Addendum XXI of the Atlantic States Marine Fisheries Commission's summer flounder, scup, and black sea bass Interstate Fisheries Management Plan, approved in 2011, and was delineated based on shared biological and fishery characteristics among the states in this region. Delaware's black sea bass regulations, as per the management plan, are kept consistent with federal regulations. Consequently, Delaware's rule-making process typically begins when the federal regulations are published. The federal rule opening the recreational black sea bass season in federal waters was published, March 25, 2015 and will open federal waters on May 15, 2015. Delaware's normal regulatory process takes four months, so Delaware will not be able to maintain consistency with federal regulations unless an emergency order is issued to open our black sea bass recreational fishery on May 15, 2015. All other states in our management region have already stated their intent to open their seasons on May 15, 2015, thus Delaware anglers and associated businesses will be denied this angling and economic opportunity if Delaware does not also open its season on May 15, 2015.

Therefore, this Emergency Order changes the date in the relevant regulation, 7 **DE Admin. Code** 3507, from a closure period of January 1 through midnight May 18 to a closure period from January 1 through midnight May 14, allowing the season to open on May 15 consistent with the federal regulation.

EFFECTIVE DATE OF ORDER

This Emergency Order shall take effect at 12:01 a.m. on May 5, 2015 and shall remain in effect for 90 days.

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 and Wildlife, 89 Kings Highway, Dover, Delaware, 19901.

ORDER

It is hereby ordered, the 5th day of May 2015 that the above referenced amendment to Tidal Finfish Regulation 3507 (12.0), a copy of which is hereby attached, are adopted pursuant to 7 **Del.C.** §903(h) and supported by the evidence contained herein.

David S. Small, Secretary
Department of Natural Resources and Environmental Control

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 ~~48~~14, 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 ~~49~~15 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)

18 DE Reg. 923 (06/01/15) (Emer.)