

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Sections 901 (c & d) and 903(e)(2)a.1 (7 Del.C. §§901(c & d) & 903(e)(2)a.1)

7 DE Admin. Code 3504

FINAL

Secretary's Order No.: 2023-F-0011

RE: Approving Final Regulation, pursuant to 7 Del. C. §903(e)(2)a.1, to Amend 7 DE Admin. Code 3504 - *Striped Bass Possession Size Limit; Exceptions*

Date of Issuance: May 19, 2023

Effective Date of the Amendment: 48 hours following publication of this Secretary's Order and regulation on the Department's website: <https://de.gov/dnrecorders>

3504 Striped Bass Possession Size Limit; Exceptions

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC"), pursuant to 7 Del. C. §903(e)(2)a.1, and all other relevant statutory authority, the following findings of fact based on the record, reasons and conclusions are entered as an Order of the Secretary in the above-referenced regulatory amendment.

Notwithstanding 29 Del.C. Ch. 101 (which sets forth the standardized procedures whereby a state agency shall promulgate regulations), the Department also has the statutory authority under 7 Del. C. §903(e)(2)a.1 to promulgate certain regulations in order to adopt a specified management measure for finfish, subject to 7 Del.C. Ch. 9, *Finfishing in Tidal Waters*, by the issuance of a Secretary's Order. The Department is allowed to follow this abbreviated regulatory promulgation process only in instances where the management measures are specified by, and ensures compliance or maintains consistency with, a fisheries management plan or rule established by the Atlantic States Marine Fisheries Commission ("ASMFC"), the *Atlantic Coastal Fisheries Cooperative Management Act*, the Mid-Atlantic Fishery Management Council, or the National Marine Fisheries Service.

Whenever the Department promulgates a regulation pursuant to 7 Del. C. §903(e)(2)a.1, it shall also (1) publish on its website a public notice with a copy of the Secretary's Order and final regulation that implements the specific management measure; and (2) file the Secretary's Order and regulation that implements the specified management measure in the next available issue of the Delaware Register of Regulations. The final regulation becomes effective 48 hours after the Department has published the aforementioned public notice on its website, as mandated by 7 Del. C. §903(e)(2)a.2.

Background, Procedural History and Findings of Fact

This order amends 7 DE Admin. Code 3504 - *Striped Bass Possession Size Limit; Exceptions* as part of an effort to reduce Striped Bass mortality in the recreational fishery by adopting a specified emergency management measure approved by the Atlantic States Marine Fisheries Commission's ("ASMFC") Atlantic Striped Bass Management Board ("Board"). Specifically, this amendment reduces the maximum length of a striped bass that may be legally possessed by a recreational angler from 35 inches to 31 inches. This order is required for Delaware to remain compliant with the ASMFC Emergency Order, approved by the Board on May 2, 2023, mandating that all entities in the management unit put the reduction in maximum length into effect by July 2, 2023.

The estimated 2022 recreational striped bass removals (harvest and dead discards) increased by 40% from the 2021 removals. The increase is jeopardizing the rebuilding of the striped bass population to the target level by 2029, as required by Amendment 7 to the *Interstate Fishery Management Plan for Atlantic Striped Bass*. Striped bass recruitment, as observed in the size of year classes, has mostly been below average over the past ten years, except for the year 2015. The 2015 class was one of the largest populations in the past 30 years and the survival of its members is critical to maintaining the spawning stock biomass needed to rebuild the striped bass population. Unfortunately, nearly all surviving members of the 2015 class now fall within the current recreational size limit, not less than 28 inches or greater than or equal to 35 inches in total length. This emergency action should greatly reduce the proportion of the 2015 class vulnerable to harvest, allowing them to survive, continue to spawn and replenish the population.

The Department has the statutory basis and legal authority to act with regard to promulgation of the proposed amendments to 7 DE Admin. Code 3504 - *Striped Bass Possession Size Limit; Exceptions*, pursuant to 7 Del. C. §§901 (c & d) and 903(e)(2)a.1.

ORDER

In accordance with 7 *Del. C.* §903(e)(2)a.1, it is hereby ordered, this 19th day of May, 2023 that the above referenced amendments to 7 DE Admin. Code 3504 - *Striped Bass Possession Size Limit; Exceptions*, a copy of which is hereby attached, are supported by the evidence contained herein and are hereby adopted. The above referenced amendment shall take effect 48 hours following publication of this Secretary's Order and regulation on the Department's website in accordance with 7 *Del. C.* §903(e)(2)a.2.

Lisa Borin-Ogden
For Shawn M. Garvin
Secretary

3504 Striped Bass Possession Size Limit; Exceptions

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 is unlawful for any recreational fisherman to take and reduce to possession any striped bass that measures less than 28 inches in total length or any striped bass that measures greater than ~~or equal to 35~~ 31 inches in total length, except that a recreational hook and line fisherman may only take one striped bass measuring not less than 20 inches in total length and not greater than 25 inches in total length from the Delaware River, Delaware Bay, or their tributaries during the months of July and August.
- 2.0 Notwithstanding, the provisions of 7 **Del.C.** §929(b)(1), it is unlawful for any commercial food fisherman to take and reduce to possession any striped bass that measure less than 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 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 March 31.
- 3.0 It is unlawful for any person to possess a striped bass except in accordance with Section 1.0 or 2.0 of this section or 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 food fisherman and was legally taken and tagged by said commercial food fisherman; 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 taken and reduced to possession in another state for noncommercial 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 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 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 The words "take and reduce to possession" shall mean the removal of any striped bass from Delaware waters with the intent to keep or harvest the striped bass.
- 7.0 It 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 20 inches in total length.

3 DE Reg. 1088 (02/01/00)

4 DE Reg. 230 (07/01/00)

4 DE Reg. 1552 (03/01/01)

6 DE Reg. 1512 (05/01/01)

7 DE Reg. 1205 (03/01/04)

8 DE Reg. 1718 (06/01/05)

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

18 DE Reg. 889 (05/01/15)
20 DE Reg. 467 (12/01/16)
24 DE Reg. 175 (08/01/20)
26 DE Reg. 1070 (06/01/23) (Final)