

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 3507

FINAL

Secretary's Order No.: 2023-F-0008

RE: Approving Final Regulation, pursuant to 7 Del. C. §903(e)(2)a.1, to Amend 7 DE Admin. Code 3507: Black Sea Bass Size Limit; Trip Limits, Seasons; Quotas

Date of Issuance: April 28, 2023

Effective Date of the Amendment: 48 hours following publication of this Secretary's Order and regulation on the Department's website

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

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 3507: *Black Sea Bass Size Limit; Trip Limits, Seasons; Quotas* as part of an effort to reduce Black Sea Bass mortality in the recreational fishery by adopting specified management measures approved by the ASMFC's Summer Flounder, Scup, and Black Sea Bass Board ("Board") at its March 2, 2023 meeting. Specifically, this amendment sets the recreational open season as May 15 through December 31 with a 9-day in-season closure from October 1 through 9. This order is necessary to keep Delaware compliant with the ASMFC Addendum XXXIV to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan: Harvest Control Rule for Recreational Management of Summer Flounder, Scup, Black Sea Bass, and Bluefish.

The estimated 2022 recreational Black Sea Bass harvest exceeded the 2022 Recreational Harvest Limit ("RHL"), the Board was then required to take action to constrain the 2023 recreational Black Sea Bass harvest to the 2023 RHL by using the percent reduction method under the Harvest Control Rule. To that, the Board has required all regions in the management unit to develop management measures that are expected to reduce 2023 recreational harvest by 10% in their region, based on projections generated by the Recreational Demand Model and thus constrain harvest to the RHL for the management unit. The Southern Black Sea Bass Region, to which Delaware belongs, proposed and had approved by the Board, the previously stated measure that reduces the harvest by 10%.

The Department has the statutory basis and legal authority to act with regard to promulgation of the proposed amendments to 7 DE Admin. Code 3507: *Black Sea Bass Size Limit; Trip Limits, Seasons; Quotas* pursuant to 7 Del. C. §§901 (c), (d) and 903(e)(2)a.1. This specific management measure is required by the ASMFC Summer Flounder, Scup, and Black Sea Bass Board action taken on March 2, 2023.

ORDER

In accordance with 7 *Del. C.* §903(e)(2)a.1, it is hereby ordered, this 28th day of April, 2023 that the above referenced amendments to 7 DE Admin. Code 3507: *Black Sea Bass Size Limit; Trip Limits, Seasons; Quotas*, 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.

Shawn M. Garvin
Secretary

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

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 inches, total length excluding any caudal filament.

25 DE Reg. 1145 (06/01/22)

- 2.0 It shall be unlawful for any recreational person to have in possession any black sea bass that measures less than thirteen inches total length excluding any caudal filament.

6 DE Reg. 1230 (03/01/03)

6 DE Reg. 1360 (04/01/03)

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

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

25 DE Reg. 1145 (06/01/22)

- 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 Atlantic States Marine Fisheries Commission, for the pot fishery; 4 percent for the commercial hook and line fishery.

25 DE Reg. 1145 (06/01/22)

- 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 (05/01/98)

2 DE Reg. 1900 (04/01/99)

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

4 DE Reg. 1665 (04/01/01)

4 DE Reg. 1859 (05/01/01)

5 DE Reg. 2142 (05/01/02)

6 DE Reg. 348 (09/01/02)

6 DE Reg. 1230 (03/01/03)

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 an 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.

22 DE Reg. 227 (09/01/18)

- 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. ~~December 12~~ January 1, and ending midnight May 14 and beginning at 12:01 a.m. October 1 and ending midnight October 9.
- 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 of May 15 through September 30 and October 10 through December 44 31.

7 DE Reg. 1575 (05/01/04)

6 DE Reg. 1230 (03/01/03)

8 DE Reg. 1488 (04/01/05)

9 DE Reg. 1759 (05/01/06)

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)

19 DE Reg. 313 (10/01/15)

22 DE Reg. 227 (09/01/18)

25 DE Reg. 1145 (06/01/22)

26 DE Reg. 1072 (06/01/23) (Final)