

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 903(e)(2)a.(3) (7 **Del.C.** §903(e)(2)a.(3))
7 **DE Admin. Code** 3504

FINAL

Secretary's Order No.: **2009-F-0006**

Date of Issuance: February 10, 2009

Effective Date of the Amendment: March 11, 2009

I. Background:

A public hearing was held on Monday, January 26, 2009, at 6:30 p.m. at the DNREC Richardson & Robbins Building Auditorium to receive comment on proposed amendments to Delaware Tidal Finfish Regulations 3504 concerning striped bass caught in tidal Delaware Estuary waterways by recreational anglers during a special two-month season. Delaware's current regulation requires a minimum size limit of 28 inches for striped bass caught by recreational anglers in all Delaware tidal waters.

The Department's Division of Fish and Wildlife received approval from the Atlantic States Marine Fisheries Commission to establish a special two-month slot limit season during the summer or early fall for tidal Delaware Estuary waterways. The Division established July and August as the special season for striped bass. The proposed amendment allows recreational anglers in tidal Delaware Estuary waters only (to wit: the Delaware Bay, Delaware River, and their tidal tributaries) to land two striped bass per day that are between 20 and 26 inches in total length during the July – August special season. During this two-month period, anglers in these areas are required to release any striped bass that are below or above the 20 to 26-inch slot limit. The proposed amendment does not apply to striped bass caught in Delaware's Atlantic coastal waters, the Inland Bays and their tributaries, or in any waters located within New Jersey or Pennsylvania's jurisdiction.

The Department has the statutory basis and legal authority to act with regard to this promulgation, pursuant to 7 **Del.C.** 903(e)(2)a.(3). No other regulations are affected by this proposed regulatory change. A few members of the public attended this hearing on January 26, 2009, however, no one offered public comment on this proposed amendment at that time. Afterwards, the Hearing Officer prepared her report in the form of a Hearing Officer's Memorandum dated February 9, 2009. Proper notice of the hearing was provided as required by law.

II. Findings:

The Department has provided sound reasoning with regard to the proposed regulatory amendment, as reflected in the Hearing Officer's Memorandum of February 9, 2009, which is attached and expressly incorporated into this Order. Moreover, the following findings and conclusions are entered at this time:

1. Proper notice of the hearing was provided as required by law.
2. The Department has jurisdiction under its statutory authority to make a determination in this proceeding;
3. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations;
4. The Department held a public hearing in a manner required by the law and regulations;
5. The Department considered all timely and relevant public comments in making its determination;
6. Delaware's current regulation requires a minimum size limit of 28 inches for striped bass caught by recreational anglers in all Delaware tidal waters;
7. The Department's Division of Fish and Wildlife received approval from the Atlantic States Marine Fisheries Commission to establish a special two-month slot limit season during the summer or early fall for tidal Delaware Estuary waterways;

8. The proposed amendment allows recreational anglers in tidal Delaware Estuary waters only (the Delaware Bay, Delaware River, and their tidal tributaries) to land two striped bass per day that are between 20 and 26 inches in total length during the July – August special season. During this two-month period, anglers in these areas are required to release any striped bass that are below or above the 20 to 26-inch slot limit;

9. The proposed amendment does not apply to striped bass caught in Delaware's Atlantic coastal waters, the Inland Bays and their tributaries, or in any waters located within New Jersey or Pennsylvania's jurisdiction;

10. The Department has reviewed this proposed amendment in the light of the Regulatory Flexibility Act, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;

11. The Department's proposed regulation, as published in the January 1, 2009 *Delaware Register of Regulations* and set forth in Attachment "A" hereto, is adequately supported, not arbitrary or capricious, and is consistent with the applicable laws and regulations. Consequently, it should be approved as a final regulation, which shall go into effect ten days after its publication in the next available issue of the *Delaware Register of Regulations*; and that

12. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary.

III. Order:

Based on the record developed, as reviewed in the Hearing Officer's Memorandum dated February 9, 2009 and expressly incorporated herein, it is hereby ordered that the proposed amendment to Delaware Tidal Finfish Regulation 3504, Striped Bass Possession Size Limit, be promulgated in final form in the customary manner and established rule-making procedure required by law.

IV. Reasons:

The promulgation of this regulatory amendment will enable the State of Delaware to become more in sync with the other striped bass producer areas in the Mid-Atlantic region, and hopefully allow Delaware anglers to catch and keep more of the male striped bass population during the summer that would otherwise have to be released.

In developing this amendment to Delaware's regulation regarding its striped bass, the Department has balanced the environmental need for the State of Delaware to promulgate regulations concerning this matter with the important interests and public concerns surrounding the same, in furtherance of the policy, purposes, and authority of 7 **Del.C.** 903(e)(2)a.(3).

David S. Small, Acting Secretary

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 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.
- 2.0 Notwithstanding, the provisions of 7 **Del.C.** §929(b)(1), it shall be 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 unlawful for any person to possess a striped bass that measures less than 28 inches, 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 unlawful for any person to land any striped bass that measures less than twenty-eight (28) inches in total length at any time, 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 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) (Final)