

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 903 (e)(2)(a) (7 Del.C. §903(e)(2)(a))
7 DE Admin. Code 3507 and 3511

PROPOSED

REGISTER NOTICE: SAN# 2009-02

1. Title of the Regulations:

Tidal Finfish Regulations

2. Brief Synopsis of the Subject, Substance and Issues:

The coast wide minimum size requirement for recreationally harvested black sea bass, as mandated by the Atlantic States Marine Fisheries Commission's (ASMFC) Fishery Management Plan (FMP) for Summer Flounder, Scup and Black Sea Bass for the 2009 fishing season is 12.5 inches. Delaware currently has a twelve (12) inch minimum size limit for recreationally harvested black sea bass. It is proposed to amend Tidal Finfish Regulation No. 3507 to adjust the current minimum size to comply with the ASMFC FMP.

The Summer Flounder Fishery Management Plan (FMP) details the annual process that the Atlantic States Marine Fisheries Commission's Summer Flounder Fishery Management Board, the Mid-Atlantic Fisheries Management Council and the National Marine Fisheries Service are to use for establishing conservation equivalency for the recreational summer flounder fishery. These agencies agreed that the states would implement conservationally equivalent measures rather than a coastwide management program for summer flounder in 2009. Delaware is obligated to cap the summer flounder recreational harvest at 65,000 fish for 2009. The harvest cap has been adjusted up from the previous year's level of 64,000 fish because the latest scientific stock assessment data indicates that overfishing is not occurring in the stock. In addition, it is estimated, based on the Marine Recreational Fisheries Statistics survey data, that approximately 33,000 summer flounder were harvested in Delaware during the 2008 fishing season. As such, a number of options will be considered that are designed to restrain the harvest at or below the cap for 2009. It is proposed that a suite of management options will be developed that take into consideration measures that have been successfully employed in the past to restrain the harvest while attempting to meet the needs of the fishing public. These options will include potential minimum size limits ranging between 18.5 and 19.5 inches. Three management options for Delaware have been reviewed by the ASMFC Summer Flounder Technical Committee to determine if the correct data sets and analyses were used to project landings under the various options. All three options were determined to be technically valid by the ASMFC Summer Flounder technical committee and were also approved by the ASMFC Summer Flounder Board on February 3, 2009. All approved options will be presented at a public hearing on March 26, 2009 in order to receive input from the fishing community on the various management strategies.

3. Possible Terms of the Agency Action:

Delaware is required to comply with specific Fishery Management Plans approved by the Atlantic States Marine Fisheries Commission. Failure to do so could result in complete closure of a specific fishery in Delaware.

4. Statutory Basis or Legal Authority to Act:

7 Del.C. § 903, (e)(2)(a)

5. Other Regulations That May Be Affected by the Proposal:

None

6. Notice of Public Comment:

Individuals may present their comments or request additional information by contacting the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, DE 19901, (302) 739-9914. A public hearing on these proposed amendments will be held on March 26, 2009 at 7:00 P.M. in the DNREC Auditorium, 89 Kings Highway, Dover, DE 19901. The record will remain open for written comments until 4:30 PM, April 3, 2009.

7. Prepared By:

Richard Cole
richard.cole@state.de.us
Ph: (302)739-4782
Fax: (302) 739-6780
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3507 Black Sea Bass Size Limits; 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 (12)~~ 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)

- 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, 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.
- 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 and who had applied for and secured from the Department a commercial food fishing license and has a reported landing history in either the federal or state reporting systems of landing by pot at least 10,000 pounds of black sea bass during the period 1994 through 2001. Those individuals that have landing history only in the federal data base must have possessed a state commercial food fishing license for at least one year during the time from 1994 through 2001.
- 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 submitted landings reports in either the

federal or state landing report systems for black sea bass harvested by hook and line during at least one year between 1994 and 2001.

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)

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 have in possession more than 25 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.

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)
- 12 DE Reg. 1174 (03/01/09) (Prop.)

3511 Summer Flounder Size Limits; Possession Limits; Seasons

(Penalty Section 7 Del.C. §936(b)(2))

- 1.0 It shall be unlawful for any recreational fisherman to have in possession more than four (4) summer flounder at or between the place where said summer flounder were caught and said recreational fisherman's personal abode or temporary or transient place of lodging.
- 2.0 It shall be unlawful for any person, other than qualified persons as set forth in section 4.0 of this regulation, to possess any summer flounder that measure less than ~~nineteen and one half (19.5)~~ inches between the tip of the snout and the furthest tip of the tail. **(Note: size limit to be determined in combination with creel limit.)**

7 DE Reg. 1575 (5/1/04)

- 3.0 It shall be unlawful for any person while on board a vessel, to have in possession any part of a summer flounder that measures less than ~~nineteen and one half (19.5)~~ inches between said part's two most distant points unless said person also has in possession the head, backbone and tail intact from which said part was removed. **(Note: size limit to be determined in combination with creel limit.)**
- 4.0 Notwithstanding the size limits and possession limits in this regulation, a person may possess a summer flounder that measures no less than fourteen (14) inches between the tip of the snout and the furthest tip of the tail and a quantity of summer flounder in excess of the possession limit set forth in this regulation, provided said person has one of the following:
 - 4.1 A valid bill-of-sale or receipt indicating the date said summer flounder were received, the amount of said summer flounder received and the name, address and signature of the person who had landed said summer flounder;
 - 4.2 A receipt from a licensed or permitted fish dealer who obtained said summer flounder; or
 - 4.3 A bill of lading while transporting fresh or frozen summer flounder.
 - 4.4 A valid commercial food fishing license and a food fishing equipment permit for gill nets.
- 5.0 It shall be unlawful for any commercial finfisherman to sell, trade and or barter or attempt to sell, trade and or barter any summer flounder or part thereof that is landed in this State by said commercial fisherman after a date when the de minimis amount of commercial landings of summer flounder is determined to have been landed in this State by the Department. The de minimis amount of summer flounder shall be 0.1% of the coast wide commercial quota as set forth in the Summer Flounder Fishery Management Plan approved by the Atlantic States Marine Fisheries Commission.
- 6.0 It shall be unlawful for any vessel to land more than 200 pounds of summer flounder in any one day in this State.

7.0 It shall be unlawful for any person, who has been issued a commercial food fishing license and fishes for summer flounder with any food fishing equipment other than a gill net, to have in possession more than four (4) summer flounder at or between the place where said summer flounder were caught and said person's personal abode or temporary or transient place of lodging.

Note: Proposed options for creel limits and minimum size limits to restrict the recreational summer flounder harvest in Delaware during 2009. These options embody varying levels of risk with regard to Delaware potentially exceeding its allowable harvest quota for 2009, with the smallest size limit being the most risky and the largest minimum size limit being the least risky.

| <u>Option</u> | <u>Season Closure</u> | <u>Number of Open Days</u> | <u>Bag Limit</u> | <u>Minimum Size - inches</u> |
|---------------|-----------------------|----------------------------|------------------|------------------------------|
| <u>1</u> | | <u>365</u> | <u>4</u> | <u>18.5</u> |
| <u>2</u> | | <u>365</u> | <u>4</u> | <u>19.0</u> |
| <u>3</u> | | <u>365</u> | <u>4</u> | <u>19.5</u> |

- 1 DE Reg. 1767 (5/1/98)
- 2 DE Reg. 1900 (4/1/99)
- 3 DE Reg. 1088 (2/1/00)
- 4 DE Reg. 1552 (3/1/01)
- 5 DE Reg. 462 (8/1/01)
- 5 DE Reg. 2142 (5/1/02)
- 6 DE Reg. 1358 (4/1/03)
- 7 DE Reg. 1575 (5/1/04)
- 8 DE Reg. 1488 (4/1/05)
- 9 DE Reg. 1759 (5/1/06)
- 10 DE Reg. 1722 (05/01/07)
- 11 DE Reg. 1493 (05/01/08)