

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Sections 901(b); 903(3)(2)a3
(7 Del.C. §§901(b); 903(3)(2)a3)
7 DE Admin. Code 3507

PROPOSED

PUBLIC NOTICE SAN# 2010-13

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

1. Title of the Regulations:

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

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

The Fishery Management Plan (FMP) for black sea bass was implemented by the National Marine Fisheries Service (NMFS) and the Atlantic States Marine Fisheries Commission (ASMFC) in 1996 to manage the coastwide black sea bass stock. The recreational fishery is allocated 51% of the Total Allowable Landings (TAL) each year as a harvest limit. The coastwide recreational quota for 2009 was just over 1.1 million pounds but it is estimated that at least 2.9 million pounds of black sea bass were harvested. The harvest limit for the 2010 recreational fishery has been increased to 1,830,390 pounds but additional regulatory measures are necessary in 2010 to prevent the harvest cap from being exceeded.

The ASMFC Black Sea Bass Management Board adopted a motion at the February Commission meeting to require states to implement a seasonal closure in 2010 in order to restrain the recreational harvest within the target harvest limit. The open fishing season adopted by the Board would extend from May 22 to September 12, 2010 and is required as part of the compliance program of the FMP. In addition, the Board's motion specified the current 12.5" minimum size and 25-fish creel limit remain in place.

Delaware will be required to implement the seasonal recommendation since current regulations have no provisions regarding specific dates for a harvesting season for black sea bass. The size limit and creel limit will not require any regulatory adjustments for 2010.

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. Should the NMFS relax the recommended seasonal closure as a result of further landings analysis, the Department could modify the season through emergency action.

4. Statutory Basis or Legal Authority to Act:

7 Del.C. § 903, (e)(2)(a)3, § 901(b), Title 7 Delaware Code

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 May 21, 2010 at 6:00 P.M. in the DNREC Auditorium, 89 Kings Highway, Dover, DE 19901.

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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)

- 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 take and reduce to possession or to land any black sea bass beginning at 12:01 AM January 1, 2010 and ending midnight May 21, 2010 and beginning at midnight on September 12, 2010 and ending at midnight on December 31, 2010.

12.1 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)

13 DE Reg. 1431 (05/01/10) (Proposed)