

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Sections 901(c & d), 903(e)(3) & 903(h) (7 **Del.C.** §§901(c & d), 903(e)(3) & 903(h)
7 **DE Admin. Code** 3507

FINAL

Secretary's Order No.: 2015-F-0037

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

Date of Issuance: September 15, 2015

Effective Date of the Amendment: October 11, 2015

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") pursuant to 7 **Del.C.** §§6006, 6010, 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 proceeding.

Background and Procedural History

This Order considers proposed regulations to amend 7 **DE Admin. Code** 3507, *Delaware Black Sea Bass: Size Limit, Trip Limits, Seasons, and Quotas*. The Department's Division of Fish and Wildlife commenced the regulatory development process with Start Action Notice 2015-05. The Department published its initial proposed regulation amendments in the August 1, 2015 *Delaware Register of Regulations*. The Department then held a public hearing on August 26, 2015. Consistent with 29 **Del.C.** §10118(a), the public hearing record remained open at that time for public comment through September 10, 2015.

The purpose of the Department's proposed promulgation is to adopt provisions consistent with federal measures for the recreational black sea bass fishery in compliance with Addendum XXV to the Atlantic States Marine Fisheries Commission's ("ASMFC") Interstate Fishery Management Plan for Summer Flounder, Scup, and Black Sea Bass.

Black sea bass are managed cooperatively by the ASMFC, the Mid-Atlantic Fishery Management Council ("MAFMC"), and the National Oceanic and Atmospheric Administration ("NOAA") Fisheries through the joint Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan. The ASMFC and MAFMC jointly approved a coast-wide recreational black sea bass harvest limit ("Recreational Harvest Limit", or "RHL") for 2015 of 2.33 million pounds. Consistent with Addendum XXV, the ASMFC's Summer Flounder, Scup, and Black Sea Bass Management Board approved the continuation of ad hoc regional management measures for 2015.

Addendum XXV to the Atlantic States Marine Fisheries Commission's Fishery Management Plan for Summer Flounder, Scup, and Black Sea Bass requires the southern region states (Delaware to North Carolina) to implement recreational fishery management measures for black sea bass consistent with those measures required for federal waters. The MAFMC's recommended federal recreational black sea bass measures for 2015 include a 12.5 inch minimum size limit, a 15 fish possession limit, and open seasons from May 15 through September 21, and October 22 through December 31. Effective June 19, 2015, NOAA Fisheries formally approved these measures. These measures, when combined with those being implemented in the northern region (Massachusetts through New Jersey), are expected to constrain recreational landings at or below the 2015 coast-wide RHL.

This action seeks to amend 7 **DE Admin. Code** 3507, *Delaware Black Sea Bass: Size Limit, Trip Limits, Seasons, and Quotas* by adopting provisions consistent with the aforementioned federal measures for the recreational black sea bass fishery in compliance with Addendum XXV to the ASMFC's Interstate Fishery Management Plan for Summer Flounder, Scup, and Black Sea Bass, to wit: formally adopt open seasons for the black sea bass fishery of May 15 – September 21, and October 22 – December 31, and corresponding closed seasons of January 1 – May 14, and September 22 – October 21, as set forth previously in the Department's emergency regulations adopted by Secretary Order Nos. 2015-F-0020 and 2015-F-0027, respectively.

The aforementioned proposed Amendments were presented and thoroughly vetted by the Department at the public hearing on August 26, 2015. No members of the public attended said public hearing, and no comments were received by the Department at any phase of this regulatory promulgation. Again, all proper notification and noticing requirements concerning this proposed promulgation were met by the Department in this matter. Proper notice of the hearing was provided as required by law.

The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated September 11, 2015 ("Report"). The Report documents the proper completion of the required regulatory amendment process, establishes the record, and recommends the adoption of the proposed Amendments as attached to the Report as Appendix "A".

Reasons and Conclusions

Based on the record developed by the Department's experts and established by the Hearing Officer's Report, I find that the proposed regulatory Amendments to 7 **DE Admin. Code** 3507, *Delaware Black Sea Bass: Size Limit, Trip Limits, Seasons, and Quotas*, are well-supported. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed regulatory Amendments be promulgated as final.

I find that the Department's experts in the Division of Fish and Wildlife fully developed the record to support adoption of these regulatory Amendments. The adoption of these regulatory Amendments will allow Delaware to (1) remain in compliance with the ASMFC's Addendum XXV to the Fishery Management Plan for Summer Flounder, Scup and Black Sea Bass, to wit: [1] a 12.5 inch minimum size limit; [2] a 15 fish possession limit; and [3] open seasons from May 15 through September 21, and October 22 through December 31; (2) mirror its black sea bass management measures with those of surrounding states, as well as those likely to be in place in federal waters; and (3) adopt said measures that, when combined with those being implemented in the northern region (Massachusetts through New Jersey), are expected to constrain recreational landings at or below the 2015 coast-wide RHL.

In conclusion, the following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to the proposed Amendments to 7 **DE Admin. Code** 3507, *Delaware Black Sea Bass: Size Limit, Trip Limits, Seasons, and Quotas*, pursuant to 7 **Del.C.** §§901(c & d), 903(e)(3), and 903(h);
2. The Department has jurisdiction under its statutory authority, pursuant to 7 **Del.C.** Ch. 60, to issue an Order adopting these proposed regulatory Amendments as final;
3. The Department provided adequate public notice of the proposed regulatory Amendments and all proceedings in a manner required by the law and regulations, provided the public with an adequate opportunity to comment on said Amendments, including at the time of the public hearing held on August 26, 2015, and held the record open through close of business on September 10, 2015, consistent with 29 **Del.C.** §10118(a), in order to consider public comment on these proposed regulatory Amendments before making any final decision;
4. The Department's Hearing Officer's Report, including its established record and the recommended proposed regulatory Amendments as set forth in Appendix "A", are hereby adopted to provide additional reasons and findings for this Order;
5. The adoption of these proposed regulatory Amendments will allow Delaware to (1) remain in compliance with the ASMFC's Addendum XXV to the Fishery Management Plan for Summer Flounder, Scup and Black Sea Bass, to wit: [1] a 12.5 inch minimum size limit; [2] a 15 fish possession limit; and [3] open seasons from May 15 through September 21, and October 22 through December 31; (2) mirror its black sea bass management measures with those of surrounding states, as well as those likely to be in place in federal waters; and (3) adopt said measures that, when combined with those being implemented in the northern region (Massachusetts through New Jersey), are expected to constrain recreational landings at or below the 2015 coast-wide RHL;
6. The Department has reviewed these proposed regulatory Amendments in the light of the Regulatory Flexibility Act, consistent with 29 **Del.C.** Ch. 104, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;
7. The Department's proposed regulatory amendments, as published in the August 1, 2015 *Delaware Register of Regulations*, and as set forth in Appendix "A" hereto, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they should be approved as final regulatory amendments, which shall go into effect ten days after their publication in the next available issue of the *Delaware Register of Regulations*; and
8. The Department shall submit this Order approving as final the proposed Amendments to 7 **DE Admin. Code** 3507, *Delaware Black Sea Bass: Size Limit, Trip Limits, Seasons, and Quotas* to the *Delaware Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

David S. Small, Secretary

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)

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

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 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 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 (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)

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 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 a.m. January 1, and ending midnight May ~~48~~14, and beginning at 12:01 a.m. September ~~49~~22 and ending mid-night October ~~47~~21.
- 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 May ~~49~~15 through September ~~48~~21 and during the period October ~~48~~22 through December 31.

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)

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) (Final)