

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 903(h) (7 **Del.C.** §903(h))
7 **DE Admin. Code** 3500

EMERGENCY

SECRETARY'S ORDER

Pursuant to 29 Del.C. §10119 and 7 Del.C. §903(h)

Order No. 2016-F-0039

3504 Striped Bass Possession Size Limit; Exceptions

AUTHORITY

Pursuant to 29 **Del.C.** §10119, the Department of Natural Resources and Environmental Control adopted on June 13, 2016 amendments through emergency order 2016-F-0027 to Tidal Finfish Regulation 3504 without prior notice or public hearing to assure that Delaware's commercial Striped Bass harvesters were not burdened with an unnecessary harvest constraint that would result in unintended wanton waste of fish, which collectively posed an actual and imminent danger to this fishing resource and its associated businesses. 7 **Del.C.** §903(h) authorizes the Department to adopt emergency regulations when such regulations are necessary to deal with an actual or imminent public health threat or danger to a fishing resource or habitat involving finfish. It is now necessary to extend the emergency order for 90 days, pursuant to 7 **Del.C.** §903(h) to retain its provisions while the amendments are considered through standard administrative procedures.

REASON FOR THE EMERGENCY ORDER

The Atlantic States Marine Fisheries Commission approved in 2014 Addendum IV to Amendment 6 to the Interstate Fisheries Management Plan for Atlantic Striped Bass (the Addendum) that imposed a 25% commercial quota poundage reduction on all states with commercial Striped Bass fisheries, resulting in Delaware reducing in 2015 its commercial quota poundage by 25%. The Addendum also required all states to reduce their recreational Striped Bass harvest by 25%, resulting in Delaware changing in 2015 its recreational Striped Bass size limit from a 28" minimum length to a slot size limit of 28" to 37" and 44" or greater. The regulation change implementing the new slot size limits for the recreational fishery inadvertently required the Striped Bass commercial hook and line fishery and commercial fall gill fishery to abide by these new recreational slot size limits. This presents a hardship for these two commercial fisheries as an additional and unnecessary constraint to their harvest within the already required 25% commercial poundage quota reduction.

If Delaware does not renew the emergency order to change the size limits for its Striped Bass, the current commercial hook and line fishery and upcoming fall commercial gill net fishery, will revert to our existing regulations and will once again be subject to the unintended and unnecessary harvest constraint of restrictive recreational fishery slot size limits that require greater effort to fill or prevent filling their reduced harvest quotas. This harvest constraint also threatens the Striped Bass population by increasing the number of Striped Bass that these two fisheries catch to reach or attempt to reach their harvest quota, with catches not meeting the slot size limits released (discarded) as a substantial portion of dead or dying fish (wanton waste).

The emergency order is being renewed for 90 days since there is insufficient time to promulgate and adopt the regulation change through the Administrative Procedures Act during the ongoing commercial hook and line fishery or before the upcoming commercial fall gill net fishery. Therefore, this action is being taken "to deal with an actual or imminent public health threat or danger to a fishing resource or habitat involving finfish" by returning the Striped Bass size limit for the commercial hook and line fishery and fall gill net fishery to the 28" minimum length. The Department has initiated the normal regulatory process through Start Action Notice #2016-13.

EFFECTIVE DATE OF ORDER

This Emergency Order shall take effect at 12:01 a.m. on September 13, 2016, and shall remain in effect for 90 days.

PETITION FOR RECOMMENDATIONS

The Department will receive, consider and respond to petitions by any interested person for recommendations or revisions of this Order. Petitions should be presented to the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, Delaware, 19901. A public hearing related to this matter is tentatively scheduled for October 24, 2016 at 6PM in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901.

ORDER

It is hereby ordered, the 13th day of September 2016 that the above referenced amendment to Tidal Finfish Regulation 3504, a copy of which is hereby attached, are adopted pursuant to 29 **Del.C.** §10119 and 7 **Del.C.** §903(h) and supported by the evidence contained herein.

David S. Small, Secretary
Department of Natural Resources and Environmental Control
9/13/16

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 is 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 or any striped bass that measures greater than thirty-seven (37) inches but less than forty-four (44) inches in total length, except that recreational hook and line fisherman may take two (2) striped bass measuring not less than twenty (20) inches and not greater than twenty-five (25) 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 is 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 is unlawful for any person to possess a striped bass that measures less than 28 inches in total length or a striped bass that measures greater than thirty-seven (37) inches but less than forty-four (44) 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~~ food fisherman and was legally taken and tagged by said commercial ~~gill net~~ food 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 is 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 is unlawful for any person to land any striped bass that measures less than twenty eight (28) inches in total length or a striped bass that measures greater than thirty seven (37) inches but less than forty four (44) inches, 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 is 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)
18 DE Reg. 889 (05/01/15)
20 DE Reg. 216 (10/01/16) (Emer.)