

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 901(c & d), 903(e)(2)a and 903(e)(3)
(7 Del.C. §901(c & d), 903(e)(2)a and 903(e)(3))
7 DE Admin. Code 3500

PROPOSED

REGISTER NOTICE

SAN #2016-13

3500 Tidal Finfish

1. TITLE OF THE REGULATIONS:

7 DE Admin. Code 3503 Striped Bass Recreational Fishing Seasons; Methods of Take; Creel Limit; Possession Limit

7 DE Admin. Code 3504 Striped Bass Possession Size Limit; Exceptions

7 DE Admin. Code 3505 Striped Bass Commercial Fishing Seasons; Quotas; Tagging and Reporting Requirements

2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

This action proposes to amend Delaware's tidal finfish regulations pertaining to the recreational and commercial Striped Bass fisheries. The Department removed an unnecessary harvest constraint (slot size limit) on the commercial fishery that resulted in the needless waste of Striped Bass through Emergency Secretary's Order No. 2016-F-0027, pursuant to 29 Del.C. §10119 and 7 Del.C. §903(h) (20 DE Reg. 6 (07/01/16)). This action proposes to adopt those measures through the normal regulatory process. In addition, the proposed amendments modify Striped Bass tagging requirements for consistency with the recently adopted 7 Del.C. §943. Specifically, the amendments provide for tagging of Striped Bass by commercial harvesters at any time prior to landing and clarify that recreational anglers are not required to tag Striped Bass. Several additional measures are proposed to address tracking, reporting and quota management in the commercial fishery, as noted in Addendum III to Amendment 6 to the Atlantic Striped Bass Interstate Fishery Management Plan. Among the measures proposed are: lost tag reporting; application of weigh station tags within 12 hours of landing; and actions to be taken to ensure compliance with commercial reporting and tagging requirements.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Del.C. §901(c & d), §903(e)(2)a & §903(h)

5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL:

None

6. NOTICE OF PUBLIC COMMENT:

The hearing record on the proposed changes to 7 DE Admin Code 3503 Striped Bass Recreational Fishing Seasons; Methods of Take; Creel Limit; Possession Limit; 3504 Striped Bass Possession Size Limit; Exceptions; and, 3505 Striped Bass Commercial Fishing Season; Quotas; Tagging and Reporting Requirements will be open October 1, 2016. Individuals may submit written comments regarding the proposed changes via e-mail to Lisa.Vest@state.de.us or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. A public hearing on the proposed amendment will be held on October 24, 2016 beginning at 6:00 PM in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901.

7. PREPARED BY:

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3500 Tidal Finfish

Bass (Striped Bass; Black Sea Bass)

(Break in Continuity of Sections)

3503 Striped Bass Recreational Fishing Seasons; Methods of Take; Creel Limit; Possession Limit.

(Penalty Section 7 Del.C. §936(b)(2))

- 1.0 It is lawful for any person to take and reduce to possession striped bass from the tidal waters of this State at any time except as otherwise set forth in this regulation or in Tidal Finfish Regulations 3502 and 3504.
- 2.0 It is unlawful for any recreational fisherman to take or attempt to take any striped bass from the tidal waters of this State with any fishing equipment other than a hook and line or a spear while said recreational fisherman using the spear is underwater. Recreational gill net permittees are not authorized to take and reduce to possession any striped bass in gill nets.
- 3.0 Unless otherwise authorized, it is unlawful for any recreational fisherman to take and reduce to possession more than two (2) striped bass per day (a day being 24 hours) from the tidal waters of this State. Any striped bass taken from the tidal waters of this State that is not immediately returned, without unnecessary injury, to the same waters from which it was taken, is deemed taken and reduced to possession for purposes of this subsection.
- 4.0 Unless otherwise authorized, it is unlawful for any recreational fisherman to have in possession more than two (2) striped bass at or between the place said striped bass was taken and said fisherman's personal abode or temporary or transient place of lodging.
- 5.0 Notwithstanding 7 Del.C. §943, which only relates to commercial fishermen, it is lawful for a recreational fisherman to possess striped bass that have not been tagged, unless otherwise prohibited.

7 DE Reg. 1205 (3/1/04)

18 DE Reg. 889 (05/01/15)

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 in total length but less than forty-four (44) inches in total length, except that recreational hook and line fisherman may only take two (2) striped bass measuring not less than twenty (20) inches in total length and not greater than twenty-five (25) inches in total length 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, except in accordance with Section 1.0 or 2.0 of this section or~~ 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~~ taken and reduced to possession in another state for ~~non-commercial~~ noncommercial 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. The words "take and reduce to possession" shall mean the removal of any striped bass from Delaware waters with the intent to keep or harvest the striped bass.

- 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)

3505 Striped Bass Commercial Fishing Seasons; Quotas; Tagging and Reporting Requirements.

(Penalty Section 7 Del.C. §936(b)(2))

- 1.0 It is unlawful for any commercial food fisherman using a gill net to take and reduce to possession any striped bass at any time except when said commercial food fisherman is authorized by the Department to participate in a commercial gill net fishery for striped bass established herein. A commercial food fisherman may use a gill net to take and reduce to possession striped bass during the period beginning at 12:01 A.M. on February 15 and ending at 4:00 P.M. on May 31 next ensuing. It is unlawful to use any gill net having a stretched-mesh size greater than four (4) inches to take striped bass during the period beginning at 12:01 A.M. on February 15 until and including the last day in February unless the net is drifted. A commercial food fisherman may use a gill net to take and reduce to possession striped bass during the period beginning at 12:01 A.M. on November 15 and ending at 4:00 P.M. on December 31 next ensuing provided at least two (2) percent of the commercial allocation of striped bass for the gill net fishery, as determined by the Department, was not ~~landed~~ taken and reduced to possession in the February - May gill net fishery. In order for a commercial food fisherman to be authorized by the Department to participate in a commercial gill net fishery, said commercial food fisherman shall have a valid food fishing equipment permit for a gill net and shall register in writing with the Department to participate in said fishery by February 1 for the February 15 - May 31 gill net fishery and by ~~November~~ October 1 for the November 15 - December 31 gill net fishery.
- 2.0 It is unlawful for any commercial food fisherman using a hook and line to take and reduce to possession any striped bass at any time except when said commercial food fisherman is authorized by the Department to participate in a commercial hook and line fishery for striped bass established herein. Except as otherwise provided, A commercial food fisherman may use a hook and line to take and reduce to possession striped bass during the period beginning at 12:01 A.M. on April 1 and ending at 4:00 P.M. on December 31 next ensuing. In order for a commercial food fisherman to be authorized to participate in the commercial hook and line fishery, said commercial food fisherman shall register in writing with the Department to participate in said fishery by March 15.
- 3.0 It is unlawful for any commercial food fisherman using a hook and line, during the striped bass hook and line fishery established for subsection 2.0 herein, to ~~take~~ land striped bass by means of a gill net or to have any gill net on board or to otherwise have in possession on or near his person any gill net.
- 4.0 The striped bass gill net fishery in February - May, the striped bass gill net fishery in November - December and the striped bass hook and line fishery in April - December shall be considered separate striped bass fisheries. Each participant in a striped bass fishery shall be assigned an equal share of the total pounds of striped bass allotted by the Department to that fishery. A share shall be determined by dividing the number of pre-registered participants in that fishery into the total pounds of striped bass allotted to that fishery by the Department. The total pounds of the State's ASMFC commercial striped bass quota will be allotted to each fishery by the Department ~~shall be~~ as follows: 95% of the State's commercial quota, as determined by the ASMFC, for the February 15 - May 31 gill net fishery, 10% of the State's commercial quota for the April - December hook and line fishery and, provided that in excess of two (2)% of the February 15 - May 31 gill net fishery allocation was not landed, said remainder for the November - December gill net fishery. Any overage of the State's commercial quota will be subtracted from the next year's commercial quota proportionally to the appropriate fishery.
- 5.0 It is unlawful for any commercial food fisherman to land, during a striped bass fishing season, more than the total pounds assigned by the Department to said individual commercial food fisherman.

- 6.0 It is unlawful for any commercial food fisherman to possess any landed striped bass that does not have locked into place through the mouth and gill (operculum) opening a striped bass harvest tag issued to said commercial fisherman by the Department. ~~Said tag shall be locked into place immediately after taking said striped bass if said striped bass is taken by hook and line. Said tag shall be locked into place immediately upon completing fishing each gill net or gill net series if said striped bass is taken by anchor gill net or immediately after retrieving each gill net into the boat at the conclusion of each drift if said striped bass is taken by drift gill net.~~
- 7.0 The Department may issue tags to commercial food fishermen who register in writing with the Department to participate in a striped bass fishery. Each participant shall initially be issued a quantity of striped bass harvest tags that is to be determined by the Department by dividing said ~~participants~~ participant's assigned share in pounds by the estimated weight of a striped bass expected to be landed. If a commercial food fisherman needs additional tags to fulfill his or her assigned share, the Department shall issue additional tags after verifying the balance of the share from reports submitted by an official weigh station to the Department.
- 8.0 It is lawful for a commercial food fisherman who is authorized to be issued striped bass harvest tags by the Department to transfer said tags to another commercial food fisherman, authorized to participate in the same striped bass fishery, provided said transfer is made prior to said tags being issued by the Department.
- 9.0 It is unlawful for any commercial food fisherman to apply a tag to a striped bass unless said tag had been issued or legally transferred to said commercial food fisherman by the Department.
- 10.0 It is unlawful to apply any striped bass tag issued by the Department to a striped bass if said tag had previously been applied to another striped bass.
- 11.0 It is unlawful for any commercial food fisherman to sell, barter or trade any striped bass, to attempt to sell, barter or trade any striped bass or to transport, to have transported or to attempt to have transported any striped bass out of the ~~s~~State unless said striped bass has been weighed and tagged ~~by~~ at an official weigh station.
- 12.0 It is unlawful for a commercial food fisherman to retain or provide to another a landed striped bass unless the striped bass has been tagged in accordance with subsection 6.0 and weighed and lawfully tagged at a weigh station operating under contract with the Department within 12 hours of landing.
- 13.0 The Department may appoint individuals and their agents as official weigh stations to weigh and tag all striped bass landed in a commercial striped bass fishery. Official weigh stations, if requested, shall be compensated by the Department for each striped bass weighed and tagged. An official weigh station shall enter into an agreement with the Department to maintain records and report on a regular basis each commercial food fisherman's daily landings of striped bass weighed and tagged at said station. The Department shall provide official weigh stations with tags to be applied to each striped bass weighed.
- 134.0 Each commercial food fisherman participating in a striped bass fishery shall file a complete and accurate report with the Department on forms provided by the Department on all striped bass landed during said fishery. Each report shall be filed with the Department within 30 days after the end date of each fishery. All unused tags issued or legally transferred to a commercial food fisherman shall be returned to the Department with said report. Lost tags must be immediately reported to the Department. Failure to file a complete and accurate report or failure to return all unused tags ~~may~~ shall limit or disqualify the commercial food fishermen from participation in future striped bass fisheries, in addition to any other lawful enforcement action taken by the Department.

1 DE Reg 270 (9/1/97)

4 DE Reg 1552 (3/1/01)

8 DE Reg 1169 (2/1/05)

18 DE Reg. 889 (05/01/15)

20 DE Reg. 265 (10/01/16) (Prop.)