

# **DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**

## **DIVISION OF FISH AND WILDLIFE**

Statutory Authority: 7 Delaware Code, Section 903(b)(e)(2)b (7 **Del.C.**, §903(b)(e)(2)b

### **FINAL**

**Secretary's Order No.: 2010-F-0010**

**3518 Black Drum Size Limit; Possession Limit; Landing Limit; Dealer Limit**

**Date of Issuance: March 11, 2010**

**Effective Date of the Amendment: April 11, 2010**

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") the following findings, reasons and conclusions are entered as an Order of the Secretary in the above-referenced rulemaking proceeding.

### **Background and Procedural History**

This Order considers proposed new regulation Delaware Tidal Finfish Regulation No. 3518 regarding Black Drum. The Department's Division of Fish and Wildlife commenced the regulatory development process with Start Action Notice 2009-27. The Department published the proposed regulatory amendments in the January 1, 2010 *Delaware Register of Regulations* and held a public hearing on January 21, 2010. The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated February 29, 2010 (Report). The Report recommends certain findings and the adoption of the proposed new regulation as attached to the Report as Appendix A.

### **Findings and Discussion**

I find that the proposed new regulation is well-supported by the record developed by the Department, and adopt the Report to the extent it is consistent with this Order. The Department's experts in the Division of Fish and Wildlife developed the record and drafted the proposed regulation. As a result of the regulatory development process, the Department received only one public comment, which supported this proposed regulation, as set forth in the Report.

With the adoption of this new Regulation, Delaware Tidal Finfish Regulation No. 3518, as final, Delaware will be able to enter into a joint Fisheries Management Plan with the State of New Jersey, and mirror the current regulations in New Jersey to manage Black Drum in Delaware, to wit: (1) a 16-inch minimum size limit for both recreational and commercial anglers; (2) a recreational creel limit of three (3) drum per day, per angler; (3) an annual commercial landing quota of 65,000 pounds, with a 10,000 pound daily limit for commercial fishermen, and such commercial limits are per vessel or per individual, for both the vessel or the dealers receiving those fish.

In conclusion, the following findings and conclusions are entered:

- 1.) The Department has jurisdiction under its statutory authority to issue an Order adopting these proposed Amendments as final;
- 2.) The Department provided adequate public notice of the proposed new regulation, and provided the public with an adequate opportunity to comment on the proposed new regulation, including at a public hearing;
- 3.) The Department held a public hearing on the proposed new regulation in order to consider public comments before making any final decision, and has considered all relevant and timely public comment received;
- 4.) The Department's Hearing Officer's Report, including its recommended record and the recommended new regulation, as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;
- 5.) The recommended new regulation does not reflect any change from the proposed regulation as published in the December 1, 2009, *Delaware Register of Regulations*;
- 6.) The recommended regulation should be adopted as a final new regulation because (1) the Department will

be better enabled to conserve Black Drum here in Delaware until a broader Fisheries Management Plan is enacted; (2) the long-term viability of this species will be better ensured, for the benefit of both current and future generations of the fishing public; (3); the Black Drum's continued role within the Delaware Estuary's ecosystem will be better preserved; and (4) the new regulation is well supported by documents in the record; and that

7.) The Department shall submit this Order approving the final regulation 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.

Collin P. O'Mara, Secretary

### **3518 Black Drum Size Limit: Possession Limit: Landing Limit: Dealer Limit**

(Penalty Section 7 **Del.C.** §936(b)(2))

#### **1.0 Definition**

The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

"Delaware Estuary" means all those tidal waters located within an area to the north of a straight line drawn between Cape May Point, New Jersey and Cape Henlopen, Delaware, but not including the tributaries of the Delaware River and Delaware Bay.

#### **2.0 Size limit**

It shall be unlawful for a person to possess a black drum (*Pogonias cromis*) taken from the Delaware Estuary that measures less than (sixteen (16) inches [~~(Option A) thirty-two (32) inches (Option B)~~], total length.

#### **3.0 Possession Limits**

3.1 It shall be unlawful for a recreational fisherman to take and reduce to possession more than three (3) [~~(Option A) two (2) (Option B)~~] black drum per day (a day being 24 hours) from the Delaware Estuary.

3.2 It shall be unlawful for a commercial fisherman or a vessel, regardless of the number of licensed commercial fishermen onboard that vessel, to possess or land more than 10,000 pounds [~~(Option A) 5,000 pounds (Option B)~~] of black drum taken from the Delaware Estuary in any one (1) day.

#### **4.0 Landing Limit**

It shall be unlawful for a commercial fisherman to sell, trade or barter or attempt to sell, trade or barter black drum or parts of black drum that are landed from the Delaware Estuary in this State after a date when the Department has determined or projected that 65,000 pounds [~~(Option A) 50,000 pounds (Option B)~~] of black drum have been or will be landed in this State from the Delaware Estuary by the commercial fishery in a calendar year.

#### **5.0 Dealer limit**

It shall be unlawful for a food fish dealer to accept from a commercial fisherman or a vessel more than 10,000 pounds [~~(Option A) 5,000 pounds (Option B)~~] of black drum harvested from the Delaware Estuary in any one (1) day.

13 DE Reg. 1352 (04/01/10)