

# 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

### FINAL

Secretary's Order No.: 2010-F-0021

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

Date of Issuance: July 20, 2010

Effective Date of the Amendment: August 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 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 2010-13. The Department published its initial proposed regulation Amendments in the May 1, 2010 *Delaware Register of Regulations*, and held a public hearing on May 21, 2010. The public hearing record remained open at that time for public comment through May 31, 2010.

Subsequent to the Department's initial publication of its proposed regulation Amendments on May 1, 2010, but prior to the public hearing held on May 21, 2010, the Flounder, Scup and Black Sea Bass Management Board of the Atlantic States Marine Fisheries Commission reviewed the final landings data on black sea bass. These data indicated that the original plan calling for 44% harvest reduction of this species would not be necessary. Instead, updated management measures were developed and approved that anticipated harvest reduction of this species by 26%. The new proposal maintained the original season, but also added an additional season, to extend through the months of November and December. The new season, although slightly more conservative than required, was developed as a buffer to account for the uncertainty and the effectiveness in the new regulations.

As required, in order to remain in compliance with the above referenced ASMFC Fisheries Management Plan for black sea bass and be consistent with all other coastal states, the Department's Division of Fish and Wildlife is proposing to adopt the regulation that was approved by the Board as noted above, and to revise the original draft regulation to include additional language which reflects the longer open season. Under the revised proposed regulations, the season will be open from May 22nd through October 11th, and then again from November 1st through December 31st. Again, the Board is requiring states to implement this seasonal closure in order to keep the ASMFC's 2010 recreational harvest cap of 1.8 million pounds from being exceeded. The current 12.5" minimum size and 25 fish creel limit remain in place at this time.

The revised proposed Amendments were thoroughly vetted by the Department at the public hearing on May 21, 2010. No comment was received by the Department subsequent to the holding of said public hearing, and thus no additional revisions have been made to the proposed revised regulation Amendments. The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated July 1, 2010 (Report). The Report recommends certain findings and the adoption of the proposed revised Amendments as attached to the Report as Appendix A.

#### Findings and Discussion

I find that the revised proposed Amendments are well-supported by the record developed by the Department,

and I adopt the Report to the extent it is consistent with this Order. The Department's experts developed the record and drafted the proposed revised Amendments. Throughout the regulatory development process regarding this promulgation, the Department received public comment, as noted in the Report, and the same was fully addressed by Department staff in a thorough and balanced manner, accurately reflecting the information as contained in the public hearing record which was developed in this matter.

I find that the Department's experts in the Division of Fish and Wildlife fully developed the record to support adoption of these revised Amendments. With the adoption of this Order, Delaware will (1) allow Delaware to remain in compliance with the Summer Flounder, Scup and Black Sea Bass Fishery Management Plan, as implemented by both the NMFS and the ASMFC; (2) implement additional regulatory measures necessary to prevent the 2010 harvest cap from being exceeded; and (3) make Delaware's black seas bass fishing regulations identical to management measures adopted by surrounding states and those likely to be in place in federal waters.

In conclusion, the following findings and conclusions are entered:

- 1.) The Department has jurisdiction under its statutory authority to issue an Order adopting these revised proposed Amendments as final;
- 2.) The Department provided adequate public notice of the proposed Amendments, and provided the public with an adequate opportunity to comment on both the initial proposed Amendments, as well as the proposed revised Amendments, including at the public hearing held on May 21, 2010;
- 3.) The Department held a public hearing on May 21, 2010 in order to consider public comment before making any final decision;
- 4.) The Department's Hearing Officer's Report, including its recommended record and the recommended revised Amendments as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;
- 5.) The recommended revised Amendments should be adopted as final regulation Amendments because Delaware will be able to (1) mirror its black sea bass management measures with those of surrounding states, as well as those likely to be in place in federal waters; (2) remain in compliance with the aforementioned Fishery Management Plan for this species, as implemented by both the NMFS and the ASMFC; and lastly, because (3) the amendments are well supported by documents in the record;
- 6.) 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

### **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 12:01 a.m. October 12 and ending mid-night October 31].

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)**

**14 DE Reg. 113 (08/01/10) (Final)**