

**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**  
**DIVISION OF FISH AND WILDLIFE**  
**3502 Striped Bass Spawning Season and Area Restrictions**  
**Statutory Authority: 7 Delaware Code, Sections 903(e)(2)(a)(3&5) and 930(b) (7 Del.C.**  
**§§903(e)(2)(a)(3&5) and 930(b))**

**FINAL**

**Order No. 2005-F-0004**

**Summary of Evidence and Information**

Pursuant to due notice vol. 8, issue 6 DE *Register of Regulations*, 859-860 (12/1/04), the Department of Natural Resources and Environmental Control proposes changes to Tidal Finfish Regulations 3502 and 3505 pertaining to striped bass season and area restrictions and to striped bass commercial fishing season; quotas; tagging and reporting requirements. The purpose of these amended regulations is to extend the commercial striped bass season without increasing the harvest quota and to require the use of non-offset circle hooks when fishing on striped bass spawning grounds during the spawning season.

A public hearing was held on December 30, 2004 to take comments on proposed amendments to Tidal Finfish Regulations 3502 and 3505. Comments were taken that evening and during the remainder of the comment period which remained open for written, faxed, or e-mail comments until 4:30 PM January 4, 2005.

**Findings of Fact**

903(e)(2)(a) 7 *Delaware Code* authorizes the Department of Natural Resources and Environmental Control (DNREC) to promulgate regulations concerning species of finfish that spend part or all their life cycle within the tidal waters of the state provided that such regulations are consistent with an interstate fisheries management plan developed for the protection and conservation of said species of finfish.

The Atlantic States Marine Fisheries Commission (ASMFC) Striped Bass Board approved Delaware's proposed regulatory changes for striped bass that were the subject of this hearing as being consistent with Amendment 6 to the Fishery Management Plan for Atlantic Striped Bass.

The majority of the speakers and those who sent e-mail comments favored the circle hook requirements as proposed, although two opposed the requirement for circle hooks.

Three respondents favored the proposed extensions to the commercial seasons while four opposed the extensions. Those who supported the extensions to the commercial season are commercial fishermen, while those who opposed it indicated that they are recreational fishermen.

The Delaware Advisory Council on Tidal Finfisheries suggested that the Department draft regulations to extend the commercial striped bass season and to consider circle hook requirements for striped bass catch and release fishing on the spawning grounds. After extensive discussions of various options at more than one meeting in the spring of 2004, the Advisory Council approved the regulatory changes included herein.

The draft regulations as proposed for extending the commercial gill net season should not result in excessive additional losses of discarded striped bass and other fishes because of the requirement that drift nets be used during the proposed season extensions in February rather than anchored nets. During most of the proposed season extensions in May, drift nets have to be used anyway because of existing statutes requiring the use of drift nets after May 10. Further, annual net closures to protect weakfish will prevent the use of any gill nets for the first week and a half in May, so during the proposed extended striped bass season after May 8 until the end of May, only drift nets may be used. Studies conducted by Department scientists in the late 1980s and again over the past couple of years indicate that by-catch losses are minimized when gill nets are drifted and attended continually as opposed to the usual practice of leaving the nets anchored overnight or sometimes longer, depending on the weather. Also, the seasonal poundage quotas would not be changed by the proposed season extensions.

Commercial fishermen can benefit from the proposed changes by taking advantage of any favorable market conditions during the proposed season extensions in order to achieve a better price for their catches. The longer the season lasts, the greater the likelihood exists that prices for striped bass will be favorable at some time during the open season because of annual price fluctuations caused by market supply and demand. Prices in other states frequently drive market demand for Delaware-caught striped bass.

The use of non-offset circle hooks when fishing with natural bait has been scientifically proven to reduce

mortalities from catch and release of striped bass. Most striped bass hooked with circle hooks are hooked in the corner of the mouth and very few in the throat or gullet, thus increasing the likelihood of survival upon release. By present Delaware regulations no one may harvest striped bass on the spawning grounds during the spawning season, yet there presently exists a modest catch and release fishery for these same striped bass. Also fishing takes place during this same season and location for other species like channel catfish and white perch. Therefore it would be desirable to minimize as much as possible the unintended loss of striped bass by recreational fishermen due to catch and release.

The State of New Jersey already has instituted a requirement for the use of circle hooks when fishing with any hook size greater than or equal to a size 2 hook when fishing on the striped bass spawning grounds of the Delaware River and its tributaries during the spawning season. A size 2 hook is roughly equivalent to the proposed Delaware measure which would require that a circle hook be used whenever the hook gap exceeds 3/8ths inches. Delaware chose the gap measurement to distinguish smaller hooks typically used for white perch and small catfish from hooks that would be used to take larger catfish and mature striped bass because the hook gap can be readily measured, while retail hook size designations vary between hook manufacturers and styles of hooks (see accompanying diagram 1).

### **Conclusions**

The Department of Natural Resources and Environmental Control has a statutory obligations to manage the tidal water finfisheries of Delaware in a manner that "... perpetuates the historic significance of recreational and commercial fisheries... and that maintain optimum yields of fish, that provide a viable experience for recreational fishermen and provide sound business opportunities for commercial fishermen..." [§ 901(b) & (c), 7 *Delaware Code*].

The regulations as proposed will not increase commercial landings but will allow commercial interests to take advantage of potential market conditions so as to receive a more favorable price for their striped bass catches. The proposed season extensions should not appreciably increase by-catch or discard losses of striped bass or other fishes because of the requirement for the use of drift nets during the proposed season extensions.

A requirement for the use of circle hooks on striped bass spawning grounds during the spawning season is a conservation measure that should reduce the likelihood of catch and release-caused mortality, thus benefiting spawning striped bass at a time of year when they are most vulnerable to exploitation.

### **ORDER**

It is hereby ordered this 12<sup>th</sup> day of January in the year 2005 that amendments to Tidal Finfish Regulations 3502 and 3505, copies of which are attached hereto, are adopted pursuant to 7 Del. C. 903(e)(2)(a) and are supported by the Department's findings of evidence and testimony received. This Order shall become effective on February 10, 2005.

John A. Hughes, Secretary

#### **3502 Striped Bass Spawning Season and Area Restrictions. (Formerly Tidal Finfish Reg. 2)**

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

**1.0** The spawning season for striped bass (*Morone saxatilis*) in Delaware shall begin at 12:01 AM on April 1 and continue through midnight on May 31 of each calendar year.

**2.0** It shall be unlawful for any person to take and retain any striped bass during the striped bass spawning season from the Nanticoke River or its tributaries, the Delaware River and its tributaries to the north of a line extending due east beginning at and including the south jetty at the mouth of the C & D Canal, or the C & D Canal or its tributaries.

**3.0** It shall be unlawful for any person to fish a fixed gill net in the Nanticoke River or its tributaries or the C & D Canal or its tributaries during the striped bass spawning season.

**4.0** It shall be unlawful for any person to fish during the striped bass spawning season in the Nanticoke River or its tributaries or the C & D Canal or its tributaries with a draft gill net of multi- or mono-filament twine larger than 0.28

millimeters in diameter (size #69) or a stretched mesh size larger than five and one-half (5 1/2) inches.

**5.0** It shall be unlawful for any person to fish any fixed gill net in the Delaware River north of a line beginning at Liston Point (River Mile 48.06) and continuing due east to the boundary with New Jersey during January, February, March, April or May.

**6.0** It shall be unlawful for any person to fish during the **striped bass** spawning season defined in 3502 section 1.0 in the areas defined in 3502 section 2.0 with natural bait using any hook other than a non-offset circle hook when said hook measures greater than three-eighths (3/8s) inches as measured from the point of the hook to the shank of the hook.

**8 DE Reg 1169 (2/1/05)**