

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL
DIVISION OF FISH AND WILDLIFE
Statutory Authority: 7 Delaware Code, Section 6010 (7 Del.C.§6010)

PROPOSED
3507 Black Sea Bass Size Limit; Landing Permits; Qualifying Criteria; Seasons; Quotas
3511 Summer Flounder Size Limits; Possession Limits;

PUBLIC NOTICE
SAN# 2006-01

1. Title of the Regulations:

Tidal Finfish Regulations

2. Brief Synopsis of the Subject, Substance and Issues:

The Atlantic States Marine Fisheries Commission's Summer Flounder, Scup and Black Sea Bass Management Board adopted a compliance requirement stipulating that all states in the management regime (Massachusetts through North Carolina) for Black Sea Bass include language in their regulations that clarify the methodology to be used when measuring Black Sea Bass for minimum size determinations. Specifically, each state is required to include language in total length definitions for Black Sea Bass that exclude any caudal filament as part of the measurement. It is proposed to amend tidal finfish regulation No. 3507 (1) and (2) in order to include language regarding the caudal filament.

The Summer Flounder Fishery Management Plan (FMP) details the annual process that the Summer Flounder Fishery Management Board, the Mid-Atlantic Management Council and the National Marine Fisheries Service are to use to establish conservation equivalency for the recreational summer flounder fishery. These agencies agreed that the states would implement conservationally equivalent measures rather than a coastwide management program for summer flounder in 2006. Delaware is obligated to cap the summer flounder recreational harvest at 116,000 fish for 2006. The harvest cap has been adjusted downward 22 percent from the previous year's level of 150,000 fish because of slower than projected rebuilding in the stock. Although Delaware and all the coastal states in the management regime must adjust their harvest cap downward, estimates of the Delaware 2005 harvest indicated that landings of summer flounder were 29 percent below the adjusted cap imposed for 2006. As such, it is anticipated that management measures for summer flounder in 2006 can be liberalized and still restrain the harvest below the cap target. It is proposed that a suite of management options will be developed that take into consideration the relatively low landings projected for 2005 and adjust the options that were presented in the previous years to reflect 29 percent liberalization in the harvest. These options will include potential minimum size limits ranging between 16.5 and 17.5 inches in combination with various creel limits that can range from 2 to 8 fish per day and also incorporate seasonal closures, if necessary, to restrain the harvest within the 2006 cap. These management options will be reviewed by the ASMFC Summer Flounder Technical Committee to determine if the correct data sets and analyses were used to project landings under the various options. Once the technical review is completed, those options that were approved will be presented at a public hearing in order to receive input from the fishing community on the various options.

3. Possible Terms of the Agency Action

Delaware is required to comply with specific Fishery Management Plans approved by the Atlantic States Marine Fisheries Commission. Failure to do so could result in complete closure of a specific fishery in Delaware

4. Statutory Basis or Legal Authority to Act:

7 Del.C. §903, 7 (e)(2)(a)

5. Other Regulations That May Be Affected By The Proposal:

None

6. Notice of Public Comment:

Individuals may present their comments or request additional information by contacting the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, DE 19901, (302) 739-9914. A public hearing on these proposed amendments will be held on March 9, 2006 at 7:30 P.M. in the DNREC Auditorium, 89 Kings Highway, Dover, DE 19901. The record will remain open for written comments until 4:30 PM, March 10, 2006.

7. Prepared By:

Richard Cole, (302) 739-4782, January 10, 2006

**3507 Black Sea Bass Size Limit; Landing Permits; Qualifying Criteria; Seasons;
Quotas**

(Formerly Tidal Finfish Reg. 23)

(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 (12) inches total length excluding any caudal filament.

6 DE Reg. 1230 (3/1/03)

6 DE Reg. 1360 (4/1/03)

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 by 4:30 PM on a date no later than 15 days after this regulation is signed by the Secretary of the Department.

9.0 It shall be unlawful for a commercial food fisherman to transfer quota allocation shares of black sea bass to another commercial food fishermen.

10.0 Each commercial food fishermen 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.

11.0 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. 1139 (02/01/06) (Prop.)

3511 Summer Flounder Size Limits; Possession Limits; (Formerly Tidal Finfish Reg. 4)

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

1.0 It shall be unlawful for any recreational fisherman to have in possession more than ~~four (4)~~ summer flounder at or between the place where said summer flounder were caught and said recreational fisherman's personal abode or temporary or transient place of lodging. (Note: creel limit to be determined in combination with seasonal closure and size limit.)

2.0 It shall be unlawful for any person, other than qualified persons as set forth in section 4.0 of this regulation, to possess any summer flounder that measure less than ~~seventeen and one-half (17.5)~~ inches between the tip of the snout and the furthest tip of the tail. (Note: creel limit to be determined in combination with seasonal closure and size limit.)

7 DE Reg. 1575 (5/1/04)

3.0 It shall be unlawful for any person while on board a vessel, to have in possession any part of a summer flounder that measures less than ~~seventeen and one-half (17.5)~~ inches between said part's two most distant points unless said person also has in possession the head, backbone and tail intact from which said part was removed. (Note: creel limit to be determined in combination with seasonal closure and size limit.)

4.0 Notwithstanding the size limits and possession limits in this regulation, a person may possess a summer flounder that measures no less than fourteen (14) inches between the tip of the snout and the furthest tip of the tail and a quantity of summer flounder in excess of the possession limit set forth in this regulation, provided said person has one of the following:

4.1 A valid bill-of-sale or receipt indicating the date said summer flounder were received, the amount of said summer flounder received and the name, address and signature of the person who had landed said summer flounder;

4.2 A receipt from a licensed or permitted fish dealer who obtained said summer flounder; or

4.3 A bill of lading while transporting fresh or frozen summer flounder.

4.4 A valid commercial food fishing license and a food fishing equipment permit for gill nets.

5.0 It shall be unlawful for any commercial finfisherman to sell, trade and or barter or attempt to sell, trade and or barter any summer flounder or part thereof that is landed in this State by said commercial fisherman after a date when

the de minimis amount of commercial landings of summer flounder is determined to have been landed in this State by the Department. The de minimis amount of summer flounder shall be 0.1% of the coast wide commercial quota as set forth in the Summer Flounder Fishery Management Plan approved by the Atlantic States Marine Fisheries Commission.

6.0 It shall be unlawful for any vessel to land more than 200 pounds of summer flounder in any one day in this State.

7.0 It shall be unlawful for any person, who has been issued a commercial food fishing license and fishes for summer flounder with any food fishing equipment other than a gill net, to have in possession more than ~~four (4)~~ summer flounder at or between the place where said summer flounder were caught and said person's personal abode or temporary or transient place of lodging. (Note: creel limit to be determined in combination with seasonal closure and size limit.)

1 DE Reg. 1767 (5/1/98)

2 DE Reg. 1900 (4/1/99)

3 DE Reg. 1088 (2/1/00)

4 DE Reg. 1552 (3/1/01)

5 DE Reg. 462 (8/1/01)

5 DE Reg. 2142 (5/1/02)

6 DE Reg. 1358 (4/1/03)

7 DE Reg. 1575 (5/1/04)

8 DE Reg. 1488 (4/1/05)

9 DE Reg. 1139 (02/01/06) (Prop.)