

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL
DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 903(e)(2)a (7 **Del.C.** §903(e)(2)a)
7 **DE Admin. Code** 3507

FINAL

Secretary's Order No. 2011-F-0030

3507 Black Sea Bass Size Limit; Trip Limits, Seasons; Quotas
Withdrawal of Proposed Amendments
Date of Issuance: May 17, 2011
Effective Date: June 11, 2011

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") under 29 **Del.C.** §§8001 *et seq.*, 29 **Del.C.** §§10111 *et seq.* and 7 **Del.C.** §6010 (a), the following findings, reasons and conclusions are entered as an Order of the Secretary in the above-referenced rulemaking proceeding:

On January 10, 2011, the Department opened a proposed rulemaking proceeding in Start Action Notice ("SAN") 2011-05 to promulgate regulation amendments Tidal Finfish Regulation 3507 concerning black sea bass. At that time, the Atlantic States Marine Fisheries Commission's (ASMFC) Management Board for Black Sea Bass for Flounder, Scup and Black Sea Bass was in the process of developing an Addendum to the Interstate Fisheries Management Plan. The Addendum would recommend management strategies necessary to reduce recreational harvest to levels recommended by the National Marine Fisheries Service to prevent overfishing. The aforementioned SAN was initiated with specific management recommendations in the form of seasons, minimum size limits, and creel limits, in anticipation of the State or Regional-specific management measures decreed by the ASMFC. The Department had planned that, at the time of the public hearing on March 24, 2011, the ASMFC-approved options that would allow Delaware to remain in compliance with the Interstate Management Plan for the upcoming season would be presented to the public for comment.

At the time of the ASMFC Board Meeting (which, by coincidence, was ultimately held in Alexandria, Virginia, just hours before the aforementioned public hearing on March 24, 2011), the Board recognized the inequities associates in coast-wide management for black sea bass, due primarily to the differences in the size distribution from north to south. Sea bass in the northern states tend to grow much larger than those in the southern region. Thus, increases in the minimum size range affect anglers in the south much more. As an example, during 2009 and 2010, landings from Delaware through Virginia declined by 56% with the larger minimum size limit in place. During that same period, however, recreational landings in the north increased up to 149%. To remedy this problem, and to meet the new Federal quota, the NMFS was requiring states to reduce their catch by almost one million fish.

In light of the above issues, the Board chose to adopt state-by-state measures (as opposed to regional measures as anticipated) to manage black sea bass for 2011. As a result of this Board action, the states from Massachusetts through New Jersey will have to significantly reduce landings, by as much as 43% over recent levels. States to the south, however, which includes Delaware, Maryland and Virginia, will *not* be required to adjust their regulations from those that were in place during 2010 for the 2011 season.

As a result of the Board actions as noted above, it is no longer necessary for the Department to move forward with the proposed regulation amendments that were previously thought to be needed in order for Delaware to remain in compliance with the aforementioned Interstate Management Plan for this species. Thus, the Department hereby withdraws the proposed regulation amendments to Tidal Finfish Regulation 3507 regarding black sea bass, as published in the March 2011 *Delaware Register of Regulations*.

In conclusion, the following findings and conclusions are entered:

1. The Department, acting through this Order of the Secretary and 29 **Del.C.** §10118(d), hereby withdraws the proposed regulation amendments to 7 **DE Admin. Code** 3507 as published in the *Delaware Register of Regulations* on March 1, 2011; and
2. The Department shall have this Order published in the *Delaware Register of Regulations* and in newspapers in the same manner as the notice of the proposed regulation.

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)~~ (TBD) 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 (5/1/09)

- 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 12:01a.m. ~~January 1, and ending midnight May 21, and beginning at 12:01 a.m. October 12 and ending mid-night October 31~~ (TBD).
- 12.1 It shall be unlawful for any recreational fisherman to have in possession more than ~~25~~ (TBD) 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 (6/1/08)

14 DE Reg. 113 (8/1/10)

14 DE Reg. 1382 (06/01/11) (Final)