



STATE OF DELAWARE  
**DEPARTMENT OF NATURAL RESOURCES  
AND ENVIRONMENTAL CONTROL**

OFFICE OF THE  
SECRETARY

89 KINGS HIGHWAY  
DOVER, DELAWARE 19901

PHONE: (302) 739-9000  
FAX: (302) 739-6242

**Secretary's Order No.: 2012-F-0036**

**RE:            Approving Final Regulations to Amend 7 DE Admin. Code 3507,  
               *Delaware Black Sea Bass: Size Limit, Trip Limits, Seasons, and Quotas***

**Date of Issuance: September 18, 2012**

**Effective Date of the Amendment: October 11, 2012**

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 2012-08. The Department published its initial proposed regulation Amendments as an Emergency Regulation, pursuant to Secretary Order No. 2012-F-0019, in the June 1, 2012 *Delaware Register of Regulations*, and then as formal proposed regulation Amendments in the August 1, 2012 *Delaware Register of Regulations*. The Department then held a public hearing on August 30, 2012. The public

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hearing record remained open at that time for public comment through September 14, 2012.

The Atlantic States Marine Fisheries Commission (ASMFC) approved Addendum XXII to the Fishery Management Plan for Summer Flounder, Scup, and Black Sea Bass. Addendum XXII established a regional management approach, and required the southern region states (Delaware to North Carolina) to implement management measures consistent with those required for federal waters. The Department was notified on May 17, 2012 by the National Oceanic and Atmospheric Administration that this newly approved federal rule included an open season for the recreational black sea bass fishery from May 19 through October 14. In response, the Department issued an Emergency Order (Secretary Order No. 2012-F-0019) to remain consistent with Addendum XXII, and to prevent Delaware anglers and dependent businesses from being disadvantaged by remaining closed to recreational sea bass fishing through May 21. This present promulgation seeks to formally revise Delaware's Tidal Finfish Regulation 3507 with regard to Black Sea Bass, so that Delaware will remain compliant with Addendum XXII subsequent to the expiration of the aforementioned Emergency Order.

The Department is now promulgating revisions to Delaware Tidal Finfish Regulation No. 3507 to formally adopt the full provisions of the federal rule for the recreational black sea bass fishery, and to remain compliant with Addendum XXII. The federal rule establishes the following: (1) a 12.5 inch minimum size limit; (2) an open season from January 1 through February 28, with a corresponding 15-fish per person possession limit; and (3) open seasons from May 19 through October 14, and then from November 1 through December 31 with corresponding 25-fish per person possession

limits. It should be noted that, based on the stock projections completed in 2011, the black sea bass stock is not overfished, nor is overfishing occurring. The projections indicate the stock is at about 111% of its biomass target.

The proposed Amendments were thoroughly vetted by the Department at the public hearing on August 30, 2012. No member of the public attended said hearing. Pursuant to Delaware law, the record remained open for fifteen (15) additional days subsequent to the date of the public hearing, for the purpose of receiving additional public comment. No public comment was received by the Department from the public at any time during the course of this proposed promulgation. It should also be noted that all proper notification and noticing requirements concerning this proposed promulgation were met by the Department. Proper notice of the hearing was provided as required by law.

The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated September 17, 2012 (Report). The Report recommends certain findings and the adoption of the proposed Amendments as attached to the Report as Appendix A.

### **Findings and Discussion**

I find that the 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 Amendments. As previously noted, no members of the public attended the hearing held on August 30, 2012, and no public comment was received by the Department from the public at any time during the course of this proposed promulgation.

I find that the Department's experts in the Division of Fish and Wildlife fully developed the record to support adoption of these Amendments. The adoption of this Order will allow Delaware to remain in compliance with the ASMFC's Addendum XXII to the Fishery Management Plan for Summer Flounder, Scup and Black Sea Bass, to wit: (1) a 12.5 inch minimum size limit; (2) an open season from January 1 through February 28, with a corresponding 15-fish per person possession limit; and (3) open seasons from May 19 through October 14, and then from November 1 through December 31 with corresponding 25-fish per person possession limit.

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 Amendments, and provided the public with an adequate opportunity to comment on both the initial proposed Amendments, as well as the proposed Amendments, including at the public hearing held on August 30, 2012;
- 3.) The Department held a public hearing on August 30, 2012 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 Amendments as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;

5.) The adoption of this Order will allow Delaware to remain in compliance with the ASMFC's Addendum XXII to the Fishery Management Plan for Summer Flounder, Scup and Black Sea Bass, to wit: (1) a 12.5 inch minimum size limit; (2) an open season from January 1 through February 28, with a corresponding 15-fish per person possession limit; and (3) open seasons from May 19 through October 14, and then from November 1 through December 31 with corresponding 25-fish per person possession limit;

6.) The recommended 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;

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



## HEARING OFFICER'S REPORT

**TO:** The Honorable Collin P. O'Mara  
Cabinet Secretary, Department of Natural Resources and Environmental Control

**FROM:** Lisa A. Vest   
Public Hearing Officer, Office of the Secretary  
Department of Natural Resources and Environmental Control

**RE:** **Proposed Regulations Amendments to 7 DE Admin. Code 3507,  
*Delaware Black Sea Bass: Size Limit, Trip Limits, Seasons, and Quotas***

**DATE:** September 17, 2012

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### **I. BACKGROUND AND PROCEDURAL HISTORY:**

A public hearing was held on Thursday, August 30, 2012, at 7:00 p.m. at the Department of Natural Resources and Environmental Control ("DNREC", "Department"), 89 Kings Highway, Dover, Delaware to receive comment on proposed amendments ("amendments") to 7 DE Admin. Code 3507, *Delaware Black Sea Bass: Size Limit, Trip Limits, Seasons, and Quotas*.

The Atlantic States Marine Fisheries Commission (ASMFC) approved Addendum XXII to the Fishery Management Plan for Summer Flounder, Scup, and Black Sea Bass. Addendum XXII established a regional management approach with regard to this fishery, and required the southern region states (Delaware to North Carolina) to implement management measures consistent with those required for federal waters. The Department was notified on May 17, 2012 by the National Oceanic and Atmospheric Administration that this newly approved federal rule included an open season for the recreational black sea bass fishery from May 19 through October 14. In response, the Department issued an Emergency Order (Secretary Order No. 2012-F-0019) to remain consistent with Addendum XXII and to prevent Delaware anglers and dependent businesses from being disadvantaged by remaining closed to recreational sea bass fishing

through May 21. This present promulgation seeks to formally revise Delaware's Tidal Finfish Regulation 3507 with regard to Black Sea Bass so that Delaware will remain compliant with Addendum XXII subsequent to the expiration of the aforementioned Emergency Order.

The Department is proposing revisions to Delaware Tidal Finfish Regulation No. 3507 to formally adopt the full provisions of the aforementioned federal rule for the recreational black sea bass fishery, thus remaining compliant with Addendum XXII. The federal rule establishes the following: (1) a 12.5 inch minimum size limit; (2) an open season from January 1 through February 28, with a corresponding 15-fish per person possession limit; and (3) open seasons from May 19 through October 14, and then from November 1 through December 31 with corresponding 25-fish per person possession limits. It should be noted that, based on the stock projections completed in 2011, the black sea bass stock is not overfished, nor is overfishing occurring. The projections indicate the stock is at about 111% of its biomass target.

The Department has the statutory basis and legal authority to act with regard to the proposed amendments to 7 DE Admin. Code 3507, pursuant to 7 Del. C. §§901 and 903(e)(2)a.3.

No member of the public attended the hearing held by the Department in this matter on August 30, 2012, nor was any public comment received by the Department at any time during this proposed promulgation. Proper notice of the hearing was provided as required by law.

## **II. SUMMARY OF THE PUBLIC HEARING RECORD:**

The public hearing record consists of the following documents: (1) a verbatim transcript; and (2) ten documents introduced at the public hearing held on August 30, 2012, and marked by this Hearing Officer accordingly as Department Exhibits 1-10. The Department's persons primarily responsible for the drafting and overall promulgation of these proposed amendments,

Stewart Michels and John Clark, developed the record with the relevant documents in the Department's files.

Following the submission of the Department's exhibits into the record at the aforementioned public hearing, Mr. Clark proceeded to offer a brief summary as to the Department's proposed actions in this matter. Black sea bass are a highly sought after marine species that range from Florida to the Gulf of Maine. They occur in both State and Federally managed waters, and are one of four (4) species that are jointly managed by the Atlantic States Marine Fisheries Commission ("ASMFC") and the Mid-Atlantic Fisheries Management Council ("MAFMC"). Delaware is a member of both the ASMFC and the MAFMC.

In 2009, the National Marine Fisheries Service set the Allowable Biological Catch ("ABC") for Black Sea Bass at 4.5 million pounds for both 2010 and 2011, based on an ad hoc assessment. A 2012 assessment for black sea bass was accepted and resulted in a 4.57 million pounds ABC for 2012, which was almost identical to the previous years. A subsequent analysis of the discard mortality of black sea bass, however, led to a drop in the recreational share of the ABC from 1.8 million pounds to 1.3 million pounds. This ABC will remain the same until 2015.

For this present year, the federal rule was finally established in May 2012. Delaware was notified on May 17, 2012 by the National Oceanic and Atmospheric Administration that the newly approved federal rule included an open season for the recreational black sea bass fishery from May 19 through October 14. This late rule establishment necessitated that Delaware initiate Emergency Regulations to immediately change its starting season date, in order to remain compliant with ASMFC's Addendum XXII. Thus, on May 18, 2012, Secretary Order No. 2012-F-0019 was issued, in order for Delaware to remain consistent with Addendum XXII, and to

prevent Delaware anglers and dependent businesses from being disadvantaged by remaining closed to recreational sea bass fishing through May 21.

These current proposed revisions to 7 DE Admin. Code 3507 (initially promulgated as the aforementioned Emergency Regulations, and now proposed as a formal regulatory revision promulgation) will ultimately result in 65 extra days of fishing in 2013. For 2012, the additional days added to the season will only be six (6), but the Department believes that the federal rule will remain in place until 2015.

As previously noted, no members of the public attended the hearing held on August 30, 2012. Pursuant to Delaware law, the record remained open for fifteen (15) additional days subsequent to the date of the public hearing, for the purpose of receiving additional public comment. Again, no public comment was received by the Department from the public at any time during the course of this proposed promulgation. It should also be noted that all proper notification and noticing requirements concerning this proposed promulgation were met by the Department.

### **III. RECOMMENDED FINDINGS AND CONCLUSIONS:**

Based on the record developed, I find and conclude that the Department has provided appropriate reasoning regarding the need for the proposed amendments to 7 DE Admin. Code 3507, *Delaware Black Sea Bass: Size Limit, Trip Limits, Seasons, and Quotas*, as noted above. Accordingly, I recommend promulgation of these proposed amendments in the customary manner provided by law.

Further, I recommend the Secretary adopt the following findings and conclusions:

1. Proper notice of the hearing was provided as required by law.
2. The Department has jurisdiction under its statutory authority to make a determination in this proceeding;
3. The Department provided adequate public notice of all proceedings in a manner required by the law and regulations;
4. The Department held its public hearing in a manner required by the law and regulations;
5. Promulgation of the proposed regulatory amendments to 7 DE Admin. Code 3507, *Delaware Black Sea Bass: Size Limit, Trip Limits, Seasons, and Quotas*, will allow Delaware to remain in compliance with the ASMFC's Addendum XXII to the Fishery Management Plan for Summer Flounder, Scup and Black Sea Bass, to wit: (1) a 12.5 inch minimum size limit; (2) an open season from January 1 through February 28, with a corresponding 15-fish per person possession limit; and (3) open seasons from May 19 through October 14, and then from November 1 through December 31 with corresponding 25-fish per person possession limits;
6. The recommended 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;

7. The Department has reviewed these proposed regulatory amendments in the light of the Regulatory Flexibility Act, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;
8. The Department's aforementioned proposed regulatory amendments concerning *Delaware Tidal Finfish Regulation 3507*, as published in the August 1, 2012 *Delaware Register of Regulations* and as set forth in Appendix "A" hereto, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they should be approved as final regulatory amendments, which shall go into effect ten days after their publication in the next available issue of the *Delaware Register of Regulations*; and
9. The Department shall submit the proposed regulation amendments as final amendments to the *Delaware Register of Regulations* for publication in its next available issue, and shall provide such other notice as the law and regulations require, and as the Department determines is appropriate.



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LISA A. VEST  
Public Hearing Officer

## **APPENDIX “A”**



## **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)**

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

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~~March 1, and ending midnight May ~~24~~18, and beginning at 12:01 a.m. October ~~4~~215 and ending midnight 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 during the period May 19 through October 14 and during the period November 1 through December 31.

12.2 It shall be unlawful for any recreational fisherman to have in possession more than 15 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 during the period January 1 through February 28.

**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)**

