

**Secretary's Order No.: 2010-F-0009**

**Approving Final Delaware Regulation Amendments  
7 DE Admin. Code 3304: Largemouth Bass – Creel Limits and Seasons**

**Date of Issuance: March 11, 2010**

**Effective Date of the Amendment: April 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 regulation amendments to the Delaware Non-Tidal Finfish Regulation No. 3304 regarding largemouth bass (Amendments). The Department’s Division of Fish and Wildlife commenced the regulatory development process with Start Action Notice 2009-29. The Department published the proposed regulatory amendments in the December 1, 2009 *Delaware Register of Regulation* and held a public hearing on December 29, 2009. The Department’s presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer’s Report dated February 29, 2010 (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 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 a result of the informal regulatory development process, the Department received several public comments, the overwhelming majority of which voiced full support of this proposed promulgation, as set forth in the Report.

I find that the Department's experts in the Division of Fish and Wildlife fully developed the record to support adoption of these Amendments. With the adoption of the Regulation Amendments to Delaware Non-Tidal Finfish Regulation No. 3304 as final, the specialized size regulations for largemouth bass in the freshwater state-owned impoundments of Andrews Lake (Frederica), Derby Pond (Camden) and Hearn's Pond (Seaford) would be eliminated, and the statewide size limit of twelve (12) inches would be reinstated. In the future, should DNREC discover the need in a pond for adjustment of its fish community, the Department would go in and physically remove the overabundance of smaller fish (or larger fish, if that were the problem) from that pond and transport them to other Delaware ponds that could benefit from having those additional fish moved into that community.

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 the proposed Amendments, including at a public hearing;

3.) The Department held a public hearing on the proposed Amendments in order to consider public comments before making any final decision, and has considered all relevant and timely public comments it received;

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 recommended Amendments do not reflect any substantive changes from the proposed regulation Amendments as published in the December 1, 2009, *Delaware Register of Regulations*;

6.) The recommended Amendments should be adopted as final regulation Amendments because (1) they are consistent with Department's recent findings that the bass population now shows a more normal size distribution; (2) the previously promulgated specialized regulations are no longer necessary; (3) the elimination of the existing slot limits for largemouth bass will enable these state-owned impoundments to once again attract bass fishing tournaments by reinstating the statewide size limit of twelve (12) inches for anglers that visit said ponds; and (4) they are well supported by documents in the record; and that

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.

/s/ Collin P. O'Mara  
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:** **Approving Final Delaware Regulation Amendments:  
7 DE Admin. Code 3304: Largemouth Bass - Creel Limits and Seasons**

**DATE:** February 29, 2010

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

A public hearing was held on Tuesday, December 29, 2009, at 5:00 p.m. at the Department of Natural Resources and Environmental Control ("DNREC", "Department"), 89 Kings Highway, Dover, Delaware to receive comment on proposed amendments to the Delaware Non-Tidal Finfish Regulation No. 3304 regarding largemouth bass. The Department is proposing to modify existing Delaware regulations concerning size limits for largemouth bass in selected freshwater state-owned impoundments. If approved, this action would eliminate the specialized size regulations for Andrews Lake, Derby Pond, and Hearn's Pond, and reinstate the statewide size limit of twelve (12) inches.

The Department promulgated these specialized largemouth bass size regulations in May 1990 to address an unbalanced bass population within three of Delaware's state-managed impoundments, to wit: Andrews Lake, Derby Pond, and Hearn's Pond. The specialized regulations were designed to allow harvest of smaller bass in order to allow

better growth of the remaining larger fish in the aforementioned impoundments. Unfortunately, however, the high incidence of catch and release fishing by Delaware anglers did not achieve the hoped-for result. These regulations, as they currently exist, have occasionally had a negative effect on scheduled fishing tournaments in these ponds by not allowing the weigh-in of bass within the protected slot-size. Recent surveys of the bass populations have shown a more normal size distribution, and thus the Department believes that these specialized regulations are no longer necessary.

The Department has the statutory basis and legal authority to act with regard to the proposed regulatory amendments concerning Delaware Non-Tidal Finfish Regulation No. 3304, pursuant to 7 Del.C. §103 and 7 Del.C. §1104. This promulgation, if approved by the Secretary, would eliminate (in their entirety) Subsections 2.3 (Andrews Lake) and 2.4 (Derby Pond and Hearn's Pond) of Regulation No. 3304, Section 2.0 Bass. No other Delaware regulations are affected by these proposals.

Comments were received by the Department from the public regarding the proposed amendments to Delaware Non-Tidal Finfish Regulation No. 3304, the overwhelming majority of which were in full support of the same. Proper notice of the hearing was provided as required by law.

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

The public hearing record consists of a verbatim transcript and eight documents introduced at the public hearing and marked by this Hearing Officer accordingly as Department Exhibits 1-8. The Department's person primarily responsible for the drafting and overall promulgation of these proposed regulatory amendments, Craig Shirey, developed the record with the relevant documents in the Department's files. Following

the submission of the aforementioned exhibits into the public hearing record, the Department offered a brief explanation with regard to the salient points of the proposed amendments to these regulations.

The Division of Fish and Wildlife of DNREC conducts annual surveys of the bass and panfish populations in all of the State-managed ponds, and through these surveys the Department determines the size, structure, relative abundance, growth rates, and other community structure indices of the fish populations in said ponds. Normally, the existing size and creel limits are sufficient to maintain these fisheries and populations within acceptable bounds for a mixed species fishery. They also allow for natural reproduction and recruitment to achieve these desired levels.

In the late 1980's, it was determined through these surveys that there were ponds that were candidates for special largemouth bass regulations. Derby Pond, in particular, was out of balance with an overabundance of small bass, and few bass in the larger, more desirable size. Specialized protected slot limits were developed at that time to allow the harvesting of overabundant sized classes, while simultaneously protecting and enhancing the population of the larger, more desirable fish. If successful, the bass growth rates would be improved, and the size structure of the population would return to a more normal level. Thus, in 1990, the Department promulgated slot limit regulations for Hearn's Pond in Seaford, Derby Pond near Camden, and Andrews Lake near Frederica.

As noted previously, the current slot limit regulations have occasionally had a negative effect on scheduled fishing tournaments in these ponds by not allowing the weigh-in of bass within the protected slot-size. Additionally, the regulations in their

present form have caused confusion among Delaware anglers (i.e., whether an angler would technically be in violation of Delaware law while competing in a tournament by temporarily keeping caught fish in their live well until the end of the day, etc.). As a result, numerous tournaments were cancelled or completely moved away from these ponds, simply to avoid these slot limit regulations.

Recent surveys of the bass populations have shown a more normal size distribution, and thus the Department believes that these specialized regulations are no longer necessary. In the future, should DNREC discover the need in a pond for adjustment of its fish community, the Department would go in and physically remove the overabundance of smaller fish (or larger fish, if that were the problem) and transport them to other Delaware ponds that could benefit from having those additional fish moved into that community.

There were several public comments received by the Department with regard to this proposed action. With the exception of one individual Delaware angler who voiced concern that larger fish may become scarce in these ponds in the absence of slot limits, all public comments were in full support of the Department's proposed actions in this matter. Numerous bass fishing groups also voiced agreement with this proposal, including the Blue Rock Bass Club, the Delaware Bass Stalkers, the Eastern Shore Bassmasters, and the Delaware B.A.S.S. Federation Nation. It should 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 Delaware Non-Tidal Finfish Regulation No. 3304, and has thoroughly addressed any public questions and/or comments provided to the Department during the development of the record in this matter. 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 the proceeding and the public hearing in a manner required by the law and regulations;
4. The Department held a public hearing in a manner required by the law and regulations;
5. The Department considered all timely and relevant public comments in making its determination;
6. Delaware's current slot limit regulations with regard to largemouth bass have previously had a negative effect on scheduled fishing tournaments in affected ponds by not allowing the weigh-in of bass within the protected slot-size, and have caused confusion in general among Delaware anglers, resulting in the

cancelation and/or removal of tournaments from these ponds, simply to avoid the current regulations;

7. Recent surveys of the bass populations have shown a more normal size distribution, and thus the Department believes that the current specialized regulations with regard to largemouth bass are no longer necessary;
8. Promulgation of the proposed amendments to Delaware Non-Tidal Finfish Regulation No. 3304 would eliminate the specialized size regulations for largemouth bass in the freshwater state-owned impoundments of Andrews Lake, Derby Pond, and Hearn's Pond, and reinstate the statewide size limit of twelve (12) inches.;
9. 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;
10. The Department's aforementioned proposed amendments to Delaware's existing Regulations concerning specialized size limits for largemouth bass in the freshwater state-owned impoundments of Andrews Lake, Derby Pond, and Hearn's Pond, as published in the December 1, 2009 *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

11. 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 .

/s/ Lisa A. Vest  
LISA A. VEST  
Public Hearing Officer

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