

**Secretary's Order No.: 2010-F-0010**

**Approving Final Delaware New Regulation 7 DE Admin. Code 33518:  
Black Drum Size Limit; Possession Limit; Landing Limit; Dealer Limit**

**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 new regulation Delaware Tidal Finfish Regulation No. 3518 regarding Black Drum. The Department's Division of Fish and Wildlife commenced the regulatory development process with Start Action Notice 2009-27. The Department published the proposed regulatory amendments in the January 1, 2010 *Delaware Register of Regulations* and held a public hearing on January 21, 2010. 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 new regulation as attached to the Report as Appendix A.

#### **Findings and Discussion**

I find that the proposed new regulation is 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 in the Division of Fish and Wildlife developed the record and

drafted the proposed regulation. As a result of the regulatory development process, the Department received only one public comment, which supported this proposed regulation, as set forth in the Report.

With the adoption of this new Regulation, Delaware Tidal Finfish Regulation No. 3518, as final, Delaware will be able to enter into a joint Fisheries Management Plan with the State of New Jersey, and mirror the current regulations in New Jersey to manage Black Drum in Delaware, to wit: (1) a 16-inch minimum size limit for both recreational and commercial anglers; (2) a recreational creel limit of three (3) drum per day, per angler; (3) an annual commercial landing quota of 65,000 pounds, with a 10,000 pound daily limit for commercial fishermen, and such commercial .limits are per vessel or per individual, for both the vessel or the dealers receiving those fish.

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 new regulation, and provided the public with an adequate opportunity to comment on the proposed new regulation, including at a public hearing;
- 3.) The Department held a public hearing on the proposed new regulation in order to consider public comments before making any final decision, and has considered all relevant and timely public comment received;
- 4.) The Department's Hearing Officer's Report, including its recommended record and the recommended new regulation, as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;

5.) The recommended new regulation does not reflect any change from the proposed regulation as published in the December 1, 2009, *Delaware Register of Regulations*;

6.) The recommended regulation should be adopted as a final new regulation because (1) the Department will be better enabled to conserve Black Drum here in Delaware until a broader Fisheries Management Plan is enacted; (2) the long-term viability of this species will be better ensured, for the benefit of both current and future generations of the fishing public; (3); the Black Drum's continued role within the Delaware Estuary's ecosystem will be better preserved; and (4) the new regulation is 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 New Regulation 7 DE Admin. Code 3518:  
Black Drum Size Limit; Possession Limit; Landing Limit; Dealer  
Limit**

**DATE:** February 29, 2010

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

A public hearing was held on Thursday, January 21, 2010, at 6:00 p.m. at the Department of Natural Resources and Environmental Control ("DNREC", "Department"), 89 Kings Highway, Dover, Delaware to receive comment on proposed new regulations for the management of Black Drum, i.e., Delaware Tidal Finfish Regulation No. 3518. The Department's proposed regulations would establish both recreational and commercial size limits, a recreational daily creel limit, and an annual commercial quota for Black Drum.

Adoption of these new regulations will ensure the long-term viability of the Black Drum, so this resource may continue to be enjoyed by current and future generations of the fishing public, and so that this species may continue its role in the Delaware Estuary's ecosystem. In the absence of a coastwide interstate management plan, DNREC proposes

to adopt regulations through a bi-state fishery management plan between Delaware and New Jersey for the Black Drum species in the Delaware River and Delaware Bay<sup>1</sup>.

There has been concern with regard to the recent increase in Black Drum fishing here in Delaware. The Department believes the increased fishing effort to be occurring as a result of (1) a collapsed weakfish stock, which has forced both commercial and recreational fishermen in the springtime to target other species such as the black drum; (2) better fishing technology (such as GPS units and “fishfinders”), which makes night fishing for species like the Black Drum much easier and less hazardous; and (3) the large size of the Black Drum, which makes them very popular with fishermen<sup>2</sup>. With the promulgation of these new regulations, the Department will be enabled to conserve Black Drum in Delaware until a broader Fisheries Management Plan is enacted.

The Department has the statutory basis and legal authority to act with regard to the proposed new regulations concerning Black Drum, i.e., Delaware Tidal Finfish Regulation No. 3518, pursuant to 7 Del.C. §§903(b) and 903(e)(2)(b). Section 903 states, in relevant part, that:

The Department may develop a management plan with New Jersey DEP and promulgate interim regulations within the Delaware Bay and River, provided New Jersey adopts substantially similar interim regulations.

In 2001, the State of New Jersey adopted management measures in reference to the Black Drum, citing the number of small, or “puppy” drum and the desire to limit any expansion of their commercial fishery, which had the potential to be quite substantial

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<sup>1</sup> Black drum is not currently covered by any regulations or management plans through the Atlantic States Marine Fisheries Commission (ASMFC), however, it is probable this species will be covered by such plan(s) within the next few years, as ASMFC is currently conducting preliminary research on black drum biology, landings, etc.

<sup>2</sup> The current All-Tackle state record in Delaware for black drum is 113 pounds, caught in Lewes, Delaware.

over the years. It should be noted that, in developing such Fisheries Management Plans jointly with New Jersey, Delaware's regulations will only apply to the Delaware Estuary.

The Black Drum species is distributed widely from Nova Scotia to Argentina, and they undergo long migrations. Many of the fish that are seen spawning in the Delaware Bay come from Florida and off the Carolinas' coast. The species is fast-growing, attaining eighty percent of their growth over 20 percent of their lifespan. Thus, juvenile fish hatched in the springtime in the Delaware Bay will grow to typically 10-12 inches by the time they leave the Delaware Estuary later that same summer. This species grows to be very large, and they attain a maximum age of 59 years, so they are a long-lived species as well. The Black Drum mature at approximately age 5, and the egg production has been estimated to be from 5.5 million to 45 million eggs per female.

As noted above, with regard to the development of this Joint Management Plan with the State of New Jersey for management of the Black Drum, the State of Delaware can only adopt regulations consistent with New Jersey's regulations. Thus, this promulgation, if approved by the Secretary, would establish new Delaware regulations that mirror the current management of Black Drum in New Jersey, to wit: (1) a 16-inch minimum size limit for both recreational and commercial anglers; (2) a recreational creel limit of three (3) drum per day, per angler; (3) an annual commercial landing quota of 65,000 pounds, with a 10,000 pound daily limit for commercial fishermen, and such commercial limits are per vessel or per individual, for both the vessel or the dealers receiving those fish.

Comment was received by the Department at the time of the public hearing held on January 21, 2010 regarding the proposed new regulation, i.e., Delaware Tidal Finfish

Regulation No. 3518, and the same will be discussed below. 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 seven documents introduced at the public hearing and marked by this Hearing Officer accordingly as Department Exhibits 1-7. 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.

The Department received only one public comment with regard to this proposed action from Mr. Jay Little, who attended said hearing as a private citizen, but noted for the record that he is the Kent County representative for Recreational Fishermen on the Tidal Finfish Advisory Council, as well as the co-owner of [www.saltfish.net](http://www.saltfish.net), an educational, conservation-oriented, internet-based group of concerned anglers. Mr. Little commented that he is in full support of the Department's proposed actions in this matter, as the Tidal Finfish Advisory Council had previously voted in favor of having these regulations developed by the Department. Mr. Little further commented that it will be a good thing to have the same regulations for both Delaware and New Jersey for the Delaware Bay, and applauded the states' joint collaboration and development of this Fisheries Management Plan. Although Mr. Little noted that he could not speak for the Advisory Council at large, he did wish to relay to the Department that he had heard no negative comments or any form of opposition from council members regarding this proposed promulgation.

No other comments were received by the Department regarding this matter, either during the hearing or during the post-hearing phase of this promulgation. 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 new regulations for Black Drum in Delaware, i.e., Delaware Tidal Finfish Regulation No. 3518. 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. Promulgation of the proposed new regulation, i.e., Delaware Tidal Finfish Regulation No. 3518, would enable Delaware to enter into a joint Fisheries Management Plan with the State of New Jersey, and mirror the current

regulations in New Jersey to manage Black Drum in Delaware, to wit: (1) a 16-inch minimum size limit for both recreational and commercial anglers; (2) a recreational creel limit of three (3) drum per day, per angler; (3) an annual commercial landing quota of 65,000 pounds, with a 10,000 pound daily limit for commercial anglers, and such limits are per vessel or per individual, for both the vessel or the dealers receiving those fish.

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 new regulations concerning the management of Black Drum, 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
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 .

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

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