

Secretary's Order No. 2011-F-0030

Re: Withdrawal of Proposed Amendments to 7 DE Admin Code 3507: Black Sea Bass Size Limit; Trip Limit; Seasons; Quotas, as Published in the March 2011 *Delaware Register of Regulations*

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 associated 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.

/s/ Collin P. O'Mara
Collin P. O'Mara
Secretary