

Secretary's Order No.: **2009-F-0006**

RE: Proposed Amendments to Delaware Tidal Finfish Regulation 3504:  
Striped Bass Possession and Size Limit

Date of Issuance: February 10, 2009

Effective Date of the Amendment: March 11, 2009

**I. Background:**

A public hearing was held on Monday, January 26, 2009, at 6:30 p.m. at the DNREC Richardson & Robbins Building Auditorium to receive comment on proposed amendments to Delaware Tidal Finfish Regulations 3504 concerning striped bass caught in tidal Delaware Estuary waterways by recreational anglers during a special two-month season. Delaware's current regulation requires a minimum size limit of 28 inches for striped bass caught by recreational anglers in all Delaware tidal waters.

The Department's Division of Fish and Wildlife received approval from the Atlantic States Marine Fisheries Commission to establish a special two-month slot limit season during the summer or early fall for tidal Delaware Estuary waterways. The Division established July and August as the special season for striped bass. The proposed amendment allows recreational anglers in tidal Delaware Estuary waters only (to wit: the Delaware Bay, Delaware River, and their tidal tributaries) to land two striped bass per day that are between 20 and 26 inches in total length during the July – August special season. During this two-month period, anglers in these areas are required to release any striped bass that are

below or above the 20 to 26-inch slot limit. The proposed amendment does not apply to striped bass caught in Delaware's Atlantic coastal waters, the Inland Bays and their tributaries, or in any waters located within New Jersey or Pennsylvania's jurisdiction.

The Department has the statutory basis and legal authority to act with regard to this promulgation, pursuant to 7 Del.C. 903(e)(2)a.(3). No other regulations are affected by this proposed regulatory change. A few members of the public attended this hearing on January 26, 2009, however, no one offered public comment on this proposed amendment at that time. Afterwards, the Hearing Officer prepared her report in the form of a Hearing Officer's Memorandum dated February 9, 2009. Proper notice of the hearing was provided as required by law.

## **II. Findings:**

The Department has provided sound reasoning with regard to the proposed regulatory amendment, as reflected in the Hearing Officer's Memorandum of February 9, 2009, which is attached and expressly incorporated into this Order. Moreover, the following findings and conclusions are entered at this time:

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 regulation requires a minimum size limit of 28 inches for striped bass caught by recreational anglers in all Delaware tidal waters;
7. The Department's Division of Fish and Wildlife received approval from the Atlantic States Marine Fisheries Commission to establish a special two-month slot limit season during the summer or early fall for tidal Delaware Estuary waterways;
8. The proposed amendment allows recreational anglers in tidal Delaware Estuary waters only (the Delaware Bay, Delaware River, and their tidal tributaries) to land two striped bass per day that are between 20 and 26 inches in total length during the July – August special season. During this two-month period, anglers in these areas are required to release any striped bass that are below or above the 20 to 26-inch slot limit;
9. The proposed amendment does not apply to striped bass caught in Delaware's Atlantic coastal waters, the Inland Bays and their

tributaries, or in any waters located within New Jersey or Pennsylvania's jurisdiction;

10. The Department has reviewed this proposed amendment 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;
11. The Department's proposed regulation, as published in the January 1, 2009 *Delaware Register of Regulations* and set forth in Attachment "A" hereto, is adequately supported, not arbitrary or capricious, and is consistent with the applicable laws and regulations. Consequently, it should be approved as a final regulation, which shall go into effect ten days after its publication in the next available issue of the *Delaware Register of Regulations*; and that
12. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary.

**III. Order:**

Based on the record developed, as reviewed in the Hearing Officer's Memorandum dated February 9, 2009 and expressly incorporated

herein, it is hereby ordered that the proposed amendment to Delaware Tidal Finfish Regulation 3504, Striped Bass Possession Size Limit, be promulgated in final form in the customary manner and established rule-making procedure required by law.

**IV. Reasons:**

The promulgation of this regulatory amendment will enable the State of Delaware to become more in sync with the other striped bass producer areas in the Mid-Atlantic region, and hopefully allow Delaware anglers to catch and keep more of the male striped bass population during the summer that would otherwise have to be released.

In developing this amendment to Delaware's regulation regarding its striped bass, the Department has balanced the environmental need for the State of Delaware to promulgate regulations concerning this matter with the important interests and public concerns surrounding the same, in furtherance of the policy, purposes, and authority of 7 Del.C. 903(e)(2)a.(3).

/s/ David S. Small  
David S. Small  
Acting Secretary

## **MEMORANDUM**

TO: David S. Small, Acting Secretary

FROM: Lisa A. Vest, Hearing Officer

RE: Proposed Amendments to Delaware Tidal Finfish Regulation  
3504: Striped Bass Possession and Size Limit

DATE: February 9, 2009

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### **I. Background:**

A public hearing was held on Monday, January 26, 2009, at 6:30 p.m. at the DNREC Richardson & Robbins Building Auditorium to receive comment on proposed amendments to Delaware Tidal Finfish Regulations 3504 concerning striped bass caught in tidal Delaware Estuary waterways by recreational anglers during a special two-month season. Delaware's current regulation requires a minimum size limit of 28 inches for striped bass caught by recreational anglers in all Delaware tidal waters.

The Department's Division of Fish and Wildlife received approval from the Atlantic States Marine Fisheries Commission to establish a special two-month slot limit season during the summer or early fall for tidal Delaware Estuary waterways. The Division established July and August as the special season for striped bass. The proposed amendment allows recreational anglers in tidal Delaware Estuary waters only (to wit: the Delaware Bay, Delaware River, and their tidal tributaries) to land two striped bass per day that are between 20 and 26 inches in total length

during the July – August special season. During this two-month period, anglers in these areas are required to release any striped bass that are below or above the 20 to 26-inch slot limit. The proposed amendment does not apply to striped bass caught in Delaware’s Atlantic coastal waters, the Inland Bays and their tributaries, or in any waters located within New Jersey or Pennsylvania’s jurisdiction.

The Department has the statutory basis and legal authority to act with regard to this promulgation, pursuant to 7 Del.C. 903(e)(2)a.(3). No other regulations are affected by this proposed regulatory change. A few members of the public attended this hearing on January 26, 2009, and the public comment received by the Department will be discussed below. Proper notice of the hearing was provided as required by law.

## **II. Summary of Hearing Record:**

### **A. Department Presentation at Hearing:**

At the time of the hearing on January 26, 2009, Craig Shirey, Program Manager with the Department’s Division of Fish and Wildlife, submitted the Department’s seven (7) exhibits pertaining to these proposed regulations to this Hearing Officer, and offered a brief explanation with regard to the salient points of the proposed amendments to these regulations.

Mr. Shirey began the Department’s presentation by explaining that, at the present time, Delaware’s regulation makes it unlawful for any recreational fisherman to take and possess any striped bass measuring less than 28 inches in total length. This proposed regulation would modify that rule, and allow recreational hook and line fisherman to take

two striped bass (per day), measuring between 20 – 26 inches in length, from the Delaware River, Delaware Bay or its tributaries, during the months of July and August. This change would not apply in the Indian River Inlet, the coastal bays, along the Delaware coast, or in the Nanticoke River. During all other months of the year, and in all other areas, the size would revert back to the 28 inch length and two fish (per day) limit currently in place in Delaware. This proposed modification to the current regulation also mirrors other regional areas that produce striped bass, such as in the Chesapeake Bay (which has an 18-inch minimum size limit throughout a large portion of the year) and in the Hudson River (which has a smaller size limit within its estuary).

Mr. Shirey noted that, each year, the Department's Division of Fish and Wildlife does an intensive monitoring program in the Delaware River spawning grounds. Since 1991, the Department has been electro-fishing up on the spawning grounds, and has been required to do an age, size, and sex composition of the Delaware River stock. Over the past three seasons (2006-2008), pursuant to that monitoring program, the Department has collected fish in the Delaware River ranging from 7 to 49 inches in length. In the smaller size range of 7 to 9 inches in length, there are not many fish which are mature, and most of them do not travel up to the spawning grounds. As the size range increases to those fish in the 15 to 17 inch group, the population becomes very abundant. That group is approximately 3 to 7 years in age, and is made up almost entirely of males which mature early in life. The relatively small proportion of the entire Delaware River stock that is 28 inches or greater is composed primarily of females, while the majority of the stock is less than 28 inches in total length and composed of mature males. It is also important to note that there are very few mature females that are less than 28 inches in size. This is

because the female striped bass mature at an older age and a larger size, and, in general, do not show up on the spawning grounds if they are immature.

In most reproducing stocks, Mr. Shirey notes that male fish are considered “excess”. The females are the important, or, one of the primary components, of the stock. The Department’s monitoring program not only determines the age, size and sex of the fish, but also tags every fish that is in excess of 15 inches in length, so that DNREC is able to determine where these fish go, how fast they grow, and where they are caught and/or released. For fish over 28 inches in size, in the months of July and August, only about 8% of the tag returns come from the Delaware River and Delaware Bay. After spawning in the Delaware River in April and May, these fish travel very quickly down the Bay, where they spend a little time, and then move out and up the Delaware Bay and along the Atlantic coast. There are large numbers of Delaware River large fish found in New England in the vicinity of Cape Cod and Long Island sound. Thus, when fishermen see a lot of small fish in their catch in the summertime, those are not any of the mature female striped bass, as they have already left our waters and traveled north up the Atlantic Coast. What remains are primarily the smaller mature males, which have already had the opportunity to spawn, some several times. These fish would be the primary target of the summer slot-limit fishery.

In addition to the small number of large striped bass caught in the Delaware Bay, only approximately 7% come from the Chesapeake Bay, and then 6% from Virginia, Maryland, and the coastal shore of Virginia and Maryland. However, of the fish less than 28 inches, all of which are males, 25% of our tag returns come from the Chesapeake. And, if they are in excess of the minimum size (which is 18 inches in the summer

months), they are generally kept. Thus, the Chesapeake Bay has been able to keep more of Delaware's striped bass than Delaware itself. The Department hopes to, with the promulgation of this amendment, put Delaware more in sync with these other producer areas in the Mid-Atlantic region that have a smaller minimum size during at least a portion of the year.

For the Secretary's review, a copy of the Department's PowerPoint presentation given at the public hearing on January 26, 2009, along with a copy of the actual proposed regulatory amendment, is expressly incorporated into this report, and is attached hereto as Attachment "A" for this purpose. It should also be noted that the Department has reviewed this proposed amendment 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.

**B. Public Comment:**

Several people attended the public hearing on January 26, 2009, however, no comments were offered to the Department concerning this proposed amendment at that time. There were, however, several comments received by the Department prior to this public hearing, and the majority of those comments voiced support for this promulgation. The record remained open for additional public comment subsequent to the date of the public hearing through January 30, 2009, however, no additional comments or concerns were received by the Department during that time.

### **III. Conclusions and Recommendations:**

Based on the above discussion, I conclude that the Department has provided appropriate reasoning regarding the need for this proposed amendment to Delaware's Tidal Finfish Regulation 3504 concerning striped bass, and has thoroughly addressed any public questions and/or comments provided during the various phases of the record developed in this matter. Accordingly, I recommend promulgation of these proposed amendments in the customary manner provided by law.

Further, I recommend the following findings:

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 regulation requires a minimum size limit of 28 inches for striped bass caught by recreational anglers in all Delaware tidal waters;

7. The Department's Division of Fish and Wildlife received approval from the Atlantic States Marine Fisheries Commission to establish a special two-month slot limit season during the summer or early fall for tidal Delaware Estuary waterways;
8. The proposed amendment allows recreational anglers in tidal Delaware Estuary waters only (the Delaware Bay, Delaware River, and their tidal tributaries) to land two striped bass per day that are between 20 and 26 inches in total length during the July – August special season. During this two-month period, anglers in these areas are required to release any striped bass that are below or above the 20 to 26-inch slot limit;
9. The proposed amendment does not apply to striped bass caught in Delaware's Atlantic coastal waters, the Inland Bays and their tributaries, or in any waters located within New Jersey or Pennsylvania's jurisdiction;
10. The Department has reviewed this proposed amendment 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;
11. The Department's proposed amendment to this regulation, as published in the January 1, 2009 *Delaware Register of Regulations* and set forth in Attachment "A" hereto, is

adequately supported, not arbitrary or capricious, and is consistent with the applicable laws and regulations. Consequently, it should be approved as a final regulation, which shall go into effect ten days after its publication in the next available issue of the *Delaware Register of Regulations*; and that

12. The Department shall submit the proposed regulation as a final regulation to the Delaware Register of Regulation for publication in its next available issue, and shall provide written notice to the persons affected by the Order.

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