



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.: 2015-F-0010**

**RE: Approving Final Regulations to Amend 7 DE Admin. Code §§3502-06, as follows, to wit: 7 DE Admin. Code 3502: *Striped Bass Spawning Season and Area Restrictions*; 7 DE Admin. Code 3503: *Striped Bass Recreational Fishing Seasons; Methods of Take; Creel Limit; Possession Limit*; 7 DE Admin. Code 3504: *Striped Bass Possession Size Limit; Exceptions*; 7 DE Admin. Code 3505: *Striped Bass Commercial Fishing Seasons; Quotas; Tagging and Reporting Requirements*; and 7 DE Admin. Code 3506: *Striped Bass Total Length Measurement***

**Date of Issuance: March 30, 2015**

**Effective Date of the Amendment: May 11, 2015**

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") pursuant to 7 *Del.C.* §§6006, 6010, the following findings of fact based on the record, reasons and conclusions are entered as an Order of the Secretary in the above-referenced regulatory proceeding.

**Background, Procedural History and Findings of Fact**

This Order relates to proposed regulation Amendments to 7 DE Admin. Code §§3502-06, as follows, to wit: 7 DE Admin. Code 3502: *Striped Bass Spawning Season and Area Restrictions*; 7 DE Admin. Code 3503: *Striped Bass Recreational Fishing Seasons; Methods of Take; Creel Limit; Possession Limit*; 7 DE Admin. Code 3504: *Striped Bass Possession Size Limit; Exceptions*; 7 DE Admin. Code 3505: *Striped Bass*

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*Commercial Fishing Seasons; Quotas; Tagging, and Reporting Requirements*; and 7 DE Admin. Code 3506: *Striped Bass Total Length Measurement* (hereinafter referred to as "*Striped Bass* regulations"). The Department's Division of Fish and Wildlife commenced the regulatory development process with Start Action Notice 2014-12 dated January 8, 2015. The Department published its initial proposed regulation Amendments in the February 1, 2015 *Delaware Register of Regulations*. The Department then held a public hearing on February 23, 2015. Consistent with 29 *Del.C.* §10118(a), the public hearing record remained open for public comment through March 10, 2015.

The purpose of this proposed regulatory promulgation is to adopt as final the aforementioned proposed Amendments to these *Striped Bass* regulations ("Amendments") consistent with Addendum IV to Amendment 6 of the Atlantic States Marine Fisheries Commission's ("ASMFC") Interstate Fishery Management Plan ("IFMP") for Atlantic Striped Bass. The proposed Amendments will accomplish a mandated 25% recreational fishery reduction by adopting the parameters of Option CE1 for the 2015 striped bass season (as summarized below), provide greater opportunities for anglers to retain fish while having the least impact on angling-dependent businesses, clarify existing regulatory language with regard to commercial tagging and reporting requirements for striped bass; and offer minor editorial changes to existing regulatory language, not intended to change meaning, but rather to provide a greater understanding of said regulatory language to this regulatory community.

Addendum IV adopted new biological reference points based on the results of the 2013 benchmark stock assessment. The assessment indicated that the 2012 spawning stock biomass ("SSB") was well below the target SSB, and was approaching the overfished

threshold. Projections show that SSB is likely to fall below the threshold in coming years. In response, Addendum IV requires states to reduce their striped bass harvest by 25%.

Delaware must comply with the ASMFC's changes to the Atlantic Striped Bass Fisheries Management Plan as approved in October 2014. While the striped bass stock is not currently overfished, the ASMFC requires a 25% reduction in fishing mortality in 2015 to avoid overfishing the declining spawning stock in the coming years.

The reduction of Delaware's striped bass harvest by 25% will be accomplished through a direct administrative adjustment to the annual commercial quota, and through adjustments, as necessary, to the season(s), minimum size and possession limit(s) for the recreational sector. Six management options, approved by ASMFC, were proposed by the Department in order to achieve the aforementioned required 25% reduction in Delaware's recreational harvest of this species.

While all six options are expected to achieve the required 25% reduction mandated by ASMFC, Option CE1 provides the most equitable access to the resource by anglers statewide, and has the least economic impact on the associated businesses (bait and tackle stores, for-hire vessels, etc.).” The summer slot season for the Delaware Bay, River and their tributaries, as provided for by Option CE1, targets resident male striped bass that are of minor importance to Delaware's spawning stock. In recent years, this harvest component has accounted for approximately one-third of Delaware's annual recreational striped bass landings, making it very important to Delaware River and Bay anglers and the associated businesses. Additionally, since Option CE1 was based on Delaware-specific data (as opposed to the other five options, which were developed using coastwide data), it provides greater opportunities for anglers to retain fish, while having

the least impact on angling-dependent businesses. It should also be noted that Option CE1 was supported by the preponderance of public comment received.

The aforementioned proposed Amendments, along with the six management options approved by ASMFC, were presented and thoroughly vetted by the Department at the public hearing on January 23, 2015. Members of the public attended the February 23, 2015 hearing, and comment was received by the Department with regard to the six management options referenced above. It should also be noted that all proper notification and noticing requirements concerning this matter 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 March 24, 2015 ("Report"). The Report documents the proper completion of the required regulatory amendment process, establishes the record, and recommends the adoption of the proposed Amendments as attached to the Report as Appendix "B".

### **Reasons and Conclusions**

Based on the record developed by the Department's experts and established by the Hearing Officer's Report, I find that the proposed regulatory Amendments to 7 DE Admin. Code §§3502-06: *Striped Bass* are well-supported. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed regulatory Amendments be promulgated as final.

I find that the Department's experts in the Division of Fish and Wildlife fully developed the record to support adoption of these regulatory Amendments. The adoption of these regulatory Amendments will allow Delaware to (1) adopt provisions

consistent with Addendum IV to Amendment 6 of the ASMFC's IFMP for Atlantic Striped Bass, which require states to reduce their coastal striped bass harvest by 25%; (2) accomplish said 25% recreational fishery reduction by adopting the parameters of Option CE1 for the 2015 striped bass season; (3) provide greater opportunities for anglers to retain fish while having the least impact on angling-dependent businesses; (4) clarify existing regulatory language with regard to commercial tagging and reporting requirements for striped bass; and (5) provide minor editorial changes to existing regulatory language, not intended to change meaning, but rather to provide a greater understanding of said regulatory language to this regulatory community;

In conclusion, the following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to the proposed Amendments to 7 DE Admin. Code §§3502-06, pursuant to 7 Delaware Code, Sections 901 (c) & (d), 903(e)(2)a, and 903(e)(3);

2. The Department has jurisdiction under its statutory authority, pursuant to 7 *Del.C.* Ch. 60, to issue an Order adopting these proposed regulatory Amendments as final;

3. The Department provided adequate public notice of the proposed regulatory Amendments and all proceedings in a manner required by the law and regulations, provided the public with an adequate opportunity to comment on said Amendments, including at the time of the public hearing held on February 23, 2015, and held the record open through close of business on March 10, 2015, consistent with 29 *Del.C.* §10118(a), in order to consider public comment on these proposed regulatory Amendments before making any final decision;

4. The Department's Hearing Officer's Report, including its established record and the recommended proposed regulatory Amendments as set forth in Appendix "B", are hereby adopted to provide additional reasons and findings for this Order;

5. The adoption of these proposed regulatory Amendments will allow Delaware to (1) adopt provisions consistent with Addendum IV to Amendment 6 of the ASMFC's IFMP for Atlantic Striped Bass, which require states to reduce their coastal striped bass harvest by 25%; (2) accomplish said 25% recreational fishery reduction by adopting the parameters of Option CE1 for the 2015 striped bass season, as follows, to wit: ~~anglers shall have the opportunity to harvest up to two striped bass per day in any combination~~ that measure 28-37 inches or greater than 44 inches (excluding the Delaware Bay, River and its tributaries from July 1 through August 31). The same limits shall apply ~~in the Delaware Bay, River and its tributaries, except during the period July 1 through August 31, during which time anglers may only take up to two striped bass from 20 – 25 inches.~~ No harvest shall be permitted from the spawning grounds during the period of April 1 through May 31; (3) provide greater opportunities for anglers to retain fish while having the least impact on angling-dependent businesses; (4) clarify existing regulatory language with regard to commercial tagging and reporting requirements for striped bass; and (5) provide minor editorial changes to existing regulatory language, not intended to change meaning, but rather to provide a greater understanding of said regulatory language to this regulatory community;

6. The Department has reviewed these proposed regulatory Amendments in the light of the Regulatory Flexibility Act, consistent with 29 *Del.C.* Ch. 104, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;

7. The Department's proposed regulatory Amendments, as published in the February 1, 2015 *Delaware Register of Regulations*, and as set forth in Appendix "B" hereto, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they are 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

8. The Department shall submit this Order approving as final the proposed Amendments to 7 DE Admin. Code §§3502-06: *Striped Bass* regulations 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.



David S. Small  
Secretary



## HEARING OFFICER'S REPORT

**TO:** The Honorable David S. Small  
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 Regulation Amendments to 7 DE Admin. Code §§3502-06, as follows, to wit: 7 DE Admin. Code 3502: *Striped Bass Spawning Season and Area Restrictions*; 7 DE Admin. Code 3503: *Striped Bass Recreational Fishing Seasons; Methods of Take; Creel Limit; Possession Limit*; 7 DE Admin. Code 3504: *Striped Bass Possession Size Limit; Exceptions*; 7 DE Admin. Code 3505: *Striped Bass Commercial Fishing Seasons; Quotas; Tagging and Reporting Requirements*; and 7 DE Admin. Code 3506: *Striped Bass Total Length Measurement***

**DATE:** March 24, 2015

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

A public hearing was held on Monday, February 23, 2015, 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 amendments (“Amendments”) to 7 DE Admin. Code §§3502-06, as follows, to wit: 7 DE Admin. Code 3502: *Striped Bass Spawning Season and Area Restrictions*; 7 DE Admin. Code 3503: *Striped Bass Recreational Fishing Seasons; Methods of Take; Creel Limit; Possession Limit*; 7 DE Admin. Code 3504: *Striped Bass Possession Size Limit; Exceptions*; 7 DE Admin. Code 3505: *Striped Bass Commercial Fishing Seasons; Quotas; Tagging and Reporting Requirements*; and 7 DE Admin. Code 3506: *Striped Bass Total Length Measurement* (hereinafter referred to as “*Striped Bass regulations*”). Consistent with Addendum IV to Amendment 6 of the Atlantic States Marine Fisheries Commission’s (“ASMFC”) Interstate Fishery Management Plan (“IFMP”) for Atlantic

Striped Bass, this proposed regulatory promulgation seeks to reduce Delaware's striped bass harvest by 25%, which will be accomplished through a direct administrative adjustment to the annual commercial quota, and through adjustments, as necessary, to the season(s), minimum size and possession limit(s) for the recreational sector. Six management options, approved by ASMFC, have been proposed by the Department in order to achieve the aforementioned required 25% reduction in Delaware's recreational harvest of this species. Additionally, this proposed regulatory promulgation seeks to clarify the commercial tagging and reporting requirements for striped bass, and also proposes minor editorial changes to the language contained within the existing regulation, not intended to change meaning, but rather to provide a greater understanding to the regulated community.

The Department has the statutory basis and legal authority to act with regard to the proposed amendments to 7 DE Admin. Code §§3502-06, pursuant to 7 Delaware Code, Sections 901 (c) & (d), 903(e)(2)a, and 903(e)(3). Members of the public attended the February 23, 2015 hearing, and comment was received by the Department with regard to the six management options referenced above. It should also be noted that all proper notification and noticing requirements concerning this matter were met by the Department. 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; (2) sixteen documents introduced by responsible Department staff at the public hearing held on February 23, 2015, and marked by this Hearing Officer accordingly as Department Exhibits 1-16; (3) fifty comments received via both U.S. Mail and e-mail representing comment on the proposed regulatory promulgation; and (4) Technical Response Memorandum ("TRM") from

Stewart Michels, Program Manager, DNREC Division of Fish & Wildlife, dated March 17, 2015. The Department's person primarily responsible for the drafting and overall promulgation of these proposed Amendments, Stewart Michels, developed the record with the relevant documents in the Department's files.

The purpose of this proposed regulatory promulgation is to adopt provisions consistent with Addendum IV to Amendment 6 of the ASMFC's IFMP for Atlantic Striped Bass. Addendum IV adopted new biological reference points based on the results of the 2013 benchmark stock assessment. The assessment indicated that the 2012 spawning stock biomass ("SSB") was well below the target SSB, and was approaching the overfished threshold. Projections show that SSB is likely to fall below the threshold in coming years. In response, Addendum IV requires states to reduce their coastal striped bass harvest by 25%.

Delaware must comply with the ASMFC's changes to the Atlantic Striped Bass Fisheries Management Plan as approved in October 2014. While the striped bass stock is not currently overfished, the ASMFC requires a 25% reduction in fishing mortality in 2015 to avoid overfishing the declining spawning stock in the coming years.

The specified 25% commercial fishery reduction will be accomplished by Delaware through a direct administrative adjustment to the annual commercial quota. The 25% recreational fishery reduction will be achieved through a specific combination of lengths, seasons and possession limits which have been approved by ASMFC, as follows, to wit:

<b><u>OPTION:</u></b>	<b><u>SIZE LIMIT(S):</u></b>	<b><u>POSSESS. LIMIT:</u></b>	<b><u>OPEN SEASON/AREAS:</u></b>
B5	≥ 33 inches	2	All yr. & waters, except catch & release on spawning grounds, April 1 – May 31
B6	28 – 34 inches	2	(same as above)
B7	<u>28 – 34 inches</u> ≥ 36 inches	<u>1</u> 1	(same as above)
B8	<u>28 – 36 inches</u> ≥ 38 inches	<u>1</u> 1	(same as above)
B9	<u>28 – 37 inches</u> ≥ 40 inches	<u>1</u> 1	(same as above)
CE1	28 – 37 inches; ≥ 44 inches	2	All yr. & waters, except catch & release on spawning grounds, April 1–May 31, & summer slot (*)
(*) – Summer slot: 20-25 inches		2	DE Bay, River & tidal tributaries July 1 – August 31

From the time that the proposed regulatory amendments were published in the Register of Regulations on February 1, 2015, the Department’s Division of Fish & Wildlife encouraged recreational anglers to submit comment for inclusion into the hearing record generated in this matter, stating their preference for *one* of the above options. It should be noted that Options B5 through B9 have been approved for use by all states, whereas Option CE1 was developed by DNREC’s Division of Fish & Wildlife utilizing Delaware-specific data (as opposed to coastwide data, which was used in the development of the other options), in order to allow Delaware to continue its summer slot striped bass fishery as part of the year round recreational fishery. ASMFC

has agreed that Option CE1 will reduce Delaware's recreational striped bass harvest by at least 25%.

Additionally, this proposed regulatory promulgation seeks to clarify the existing regulatory language regarding commercial tagging and reporting requirements for this species. Lastly, these Amendments propose editorial and clerical changes to improve readability and to enhance the public's understanding of this existing regulation, without changing the intent of the same.

The proposed Amendments to Delaware's existing *Striped Bass Regulations* were presented and thoroughly vetted by the Department at the public hearing on February 23, 2015. As noted previously, members of the public attended said public hearing, and offered comment with regard to this proposed regulatory promulgation. 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, all proper notification and noticing requirements concerning this proposed promulgation were met by the Department in this matter.

The hearing record formally closed with regard to public comment at close of business on Tuesday, March 10, 2015. In all, fifty comments had been received by members of the public, each offering an opinion as to which of the six management options discussed at the public hearing was best for Delaware's management of striped bass. At that time, the comments were thoroughly reviewed by responsible Department staff and, at the request of this Hearing Officer, a formal TRM was prepared by Stewart Michels in response to the same. This TRM, dated March 17, 2015, set forth the Department's official endorsement of Option CE1 as it pertains to the proposed Amendments to Delaware's Striped Bass Regulations, and provided the Department's reasoning regarding same. Mr. Michels' TRM does an excellent job of identifying all of the relevant issues surrounding the Department's striped bass management options, and

discussing the same in a thorough and balanced manner which accurately reflects the information in the hearing record. Thus, this TRM is expressly incorporated into this Report, and attached hereto for that purpose as Appendix “A”.

In his TRM, Mr. Michels notes that, while all options are expected to achieve the required 25% reduction mandated by ASMFC, Option CE1 “...provides the most equitable access to the resource by anglers statewide and has the least economic impact on the associated businesses (bait and tackle stores, for-hire vessels, etc.)” The TRM further notes that the summer slot season for the Delaware Bay, River and their tributaries, as provided for by Option CE1, targets resident male striped bass that are of “minor importance” to Delaware’s spawning stock. In recent years, this harvest component has accounted for approximately one-third of Delaware’s annual recreational striped bass landings, making it very important to Delaware River and Bay anglers and the associated businesses. Additionally, Mr. Michels notes that, since Option CE1 was based on Delaware-specific data (as opposed to the other options, which were developed using coastwide data), it provides greater opportunities for anglers to retain fish, while having the least impact on angling-dependent businesses. It should also be noted that Option CE1 was supported by the preponderance of public comment received.

The aforementioned TRM states that the Division of Fish & Wildlife appreciates those comments that “...give deference to measures perceived to be more restrictive...”, and believes the same to have merit; however, they “...appear largely predicated on an overfished stock condition. It must be noted that the most recent stock assessment for Atlantic striped bass indicates that the population is not overfished and overfishing is not occurring.” Mr. Michels concluded this TRM by noting that the 25% mandated reduction is being taken due to the fact that “...projections suggest that spawning stock biomass will decrease below the threshold under

current fishing conditions, before rebounding as the 2011 year-class recruits to the spawning stock.”

### **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 §§3502-06: *Striped Bass Regulations*, as noted above. Accordingly, I recommend promulgation of these proposed regulatory amendments in the customary manner provided by law.

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

1. The Department has the statutory basis and legal authority to act with regard to the proposed amendments to 7 DE Admin. Code §§3502-06, pursuant to 7 Delaware Code, Sections 901 (c) & (d), 903(e)(2)a, and 903(e)(3);
2. The Department has jurisdiction under its statutory authority, pursuant to 7 *Del.C.* Ch. 60, to issue an Order adopting these proposed regulatory amendments as final;
3. The Department provided adequate public notice of the proposed regulatory amendments and all proceedings in a manner required by the law and regulations, provided the public with an adequate opportunity to comment on the proposed regulatory amendments, including at the time of the public hearing held on February-23, 2015, and held the record open through close of business on March 10, 2015, consistent with 29 *Del.C.* §10118(a), in order to consider public comment on these proposed regulatory amendments before making any final decision;
4. Promulgation of the proposed regulatory amendments to 7 DE Admin. Code §§3502-06: *Striped Bass Regulations*, will allow Delaware to (1) adopt provisions consistent with Addendum IV to Amendment 6 of the ASMFC’s IFMP for Atlantic Striped Bass, which require

states to reduce their coastal striped bass harvest by 25%; (2) accomplish said 25% recreational fishery reduction by adopting the parameters of Option CE1 for the 2015 striped bass season, as follows, to wit: anglers shall have the opportunity to harvest up to two striped bass per day *in any combination* that measure 28-37 inches or greater than 44 inches (excluding the Delaware Bay, River and its tributaries from July 1 through August 31). The same limits shall apply in the Delaware Bay, River and its tributaries, except during the period July 1 through August 31, during which time anglers may only take up to two striped bass from 20 – 25 inches. No harvest shall be permitted from the spawning grounds during the period of April 1 through May 31; (3) provide greater opportunities for anglers to retain fish while having the least impact on angling-dependent businesses; (4) clarify existing regulatory language with regard to commercial tagging and reporting requirements for striped bass; and (5) provide minor editorial changes to existing regulatory language, not intended to change meaning, but rather to provide a greater understanding of said regulatory language to this regulatory community;

5. The Department has reviewed these proposed regulatory amendments in the light of the Regulatory Flexibility Act, consistent with 29 *Del.C.* Ch. 104, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;

6. The Department's proposed regulatory amendments, as published in the February 1, 2015 *Delaware Register of Regulations*, and as set forth in Appendix "B" 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

7. The Department shall submit the proposed regulatory amendments as final regulatory amendments to 7 DE Admin. Code §§3502-06: *Striped Bass* regulations 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.



LISA A. VEST  
Public Hearing Officer

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Attachments/Appendix:

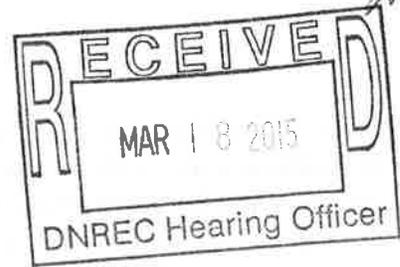
Appendix A: Div. of Fish & Wildlife TRM (3/17/15)

Appendix B: Proposed Reg. Amendments



# **APPENDIX “A”**





STATE OF DELAWARE  
DEPARTMENT OF NATURAL RESOURCES  
& ENVIRONMENTAL CONTROL  
DIVISION OF FISH & WILDLIFE  
89 Kings Highway  
Dover, Delaware 19901

OFFICE OF THE  
DIRECTOR

Phone: (302) 739-9910  
Fax: (302) 739-6157

### Memorandum

**To:** Lisa Vest, Hearing Officer

**From:** Stewart Michels, Program Mgr. *SM*

**Through:** John Clark, Fisheries Administrator *Juc*

**Date:** March 17, 2015

**Subject:** Fisheries Section Position on Proposed Modifications to 7 DE Admin. Code 3502 – 06

In consideration of the public comment received and the present status of the Atlantic striped bass resource, the Division of Fish and Wildlife's Fisheries Section endorses the adoption of option CE1 as it pertains to proposed amendments to 7 DE Admin Code 3502, et al. Although all options provided are expected to achieve the required 25% reduction mandated by Addendum IV to Amendment 6 to the Atlantic States Marine Fisheries Commission's Interstate Fishery Management Plan for Atlantic Striped Bass, option CE1 provides the most equitable access to the resource by anglers statewide and has the least economic impact on the associated businesses (bait and tackle stores, for-hire vessels, etc.).

The summer slot season for the Delaware Bay, River and their tributaries, provided by option CE 1, targets resident male striped bass that are of minor importance to the Delaware spawning stock. In recent years, this harvest component has accounted for about a third of Delaware's annual recreational striped bass landings, making it very important to Delaware River and Bay anglers and the associated businesses. During this summer slot season, larger "coastal" striped bass are largely unavailable to anglers in the Delaware Bay and River. Additionally, option CE1 was based on Delaware-specific data and allows for a broader slot limit in waters outside of the summer slot season/area than those options developed using coastwide data ("B" options). This, once again, provides greater opportunities for anglers to retain fish and has the least impact on angling-dependent businesses. Finally, option CE1 was supported by the preponderance of public comment received.

The Division appreciates the comments from that segment of the fishing public that prefers to be as risk-averse as practical and that give deference to measures perceived to be more restrictive. Although these comments are not without merit, they appear largely predicated on an overfished stock condition. It must be noted that the most recent stock assessment for Atlantic

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striped bass indicates that the population is not overfished and overfishing is not occurring. The 25% mandated reduction is being taken because projections suggest that spawning stock biomass will decrease below the threshold under current fishing conditions, before rebounding as the 2011 year-class recruits to the spawning stock.

The Fisheries Section also supports the additional proposed changes not associated with the recreational management options.

## **APPENDIX "B"**

**Division of Fish and Wildlife**

**3500 Tidal Finfish**

**Bass (Striped Bass; Black Sea Bass)**

**3502 Striped Bass Spawning Season and Area Restrictions.**

(Penalty Section 7 Del.C. §936(b)(2))

1.0 The spawning season for striped bass (*Morone saxatilis*) in Delaware shall begin at 12:01 A.M. on April 1 and continue through midnight on May 31 of each calendar year.

2.0 It ~~shall be~~ is unlawful for any person to take and retain any striped bass during the striped bass spawning season from the Nanticoke River or its tributaries, the Delaware River and its tributaries to the north of a line extending due east beginning at and including the south jetty at the mouth of the C & D Canal, or the C & D Canal or its tributaries.

3.0 It ~~shall be~~ is unlawful for any person to fish a fixed gill net in the Nanticoke River or its tributaries or the C & D Canal or its tributaries during the striped bass spawning season.

4.0 It ~~shall be~~ is unlawful for any person to fish during the striped bass spawning season in the Nanticoke River or its tributaries or the C & D Canal or its tributaries with a ~~draft~~ drift gill net of multi- or mono-filament twine larger than 0.28 millimeters in diameter (size #69) or a stretched mesh size larger than five and one-half (5 1/2) inches.

5.0 It ~~shall be~~ is unlawful for any person to fish any fixed gill net in the Delaware River north of a line beginning at Liston Point (River Mile 48.06) and continuing due east to the boundary with New Jersey during January, February, March, April or May.

6.0 It ~~shall be~~ is unlawful for any person to fish during the striped bass spawning season defined in 3502 section 1.0 and in the areas defined in 3502 section 2.0 with natural bait using any hook other than ~~3504~~ a non-offset circle hook when said hook measures greater than three-eighths (3/8s) inches as measured from the point of the hook to the shank of the hook.

**8 DE Reg. 1169 (2/1/05)**

**3503 Striped Bass Recreational Fishing Seasons; Methods of Take; Creel Limit; Possession Limit.**

(Penalty Section 7 Del.C. §936(b)(2))

1.0 It ~~shall be~~ is lawful for any person to take and reduce to possession striped bass from the tidal waters of this State at any time except as otherwise set forth in this regulation or in Tidal Finfish Regulations 3502 and 3504.

2.0 It ~~shall be~~ is unlawful for any recreational fisherman to take or attempt to take any striped bass from the tidal waters of this State with any fishing equipment other than a hook and line or a spear while said recreational fisherman using the spear is underwater. Recreational gill net permittees are not authorized to take and reduce to possession any striped bass in gill nets.

3.0 Unless otherwise authorized, it ~~shall be~~ is unlawful for any recreational fisherman to take and reduce to possession ~~more than two (2)~~ more than two (2) striped bass per day (**a day being 24 hours**) from the tidal waters of this State. Any striped bass taken from the tidal waters of this State that is not immediately returned, without unnecessary injury, to the same waters from which it was taken, is deemed taken and reduced to possession for purposes of this subsection.

4.0 Unless otherwise authorized, it ~~shall be~~ is unlawful for any recreational fisherman to have in possession more than ~~two (2)~~ two (2) striped bass at or between the place said striped bass was taken and said fisherman's personal abode or temporary or transient place of lodging.

**7 DE Reg. 1205 (3/1/04)**

**3504 Striped Bass Possession Size Limit; Exceptions.**

(Penalty Section 7 Del.C. §936(b)(2))

1.0 Notwithstanding, the provisions of 7 Del.C. §929(b)(1), it ~~shall be~~ is unlawful for any recreational fisherman to take and reduce to possession any striped bass that ~~measures less than twenty-eight (28) inches in total length, except that recreational hook and line fisherman may take two (2) striped bass measuring not less than 20 inches and not greater than 26 inches from the Delaware River, Delaware Bay, or their tributaries during the months of July and August that measures less than twenty-eight (28) inches in total length or any striped bass that measures greater than thirty-seven (37) inches but less than forty-four (44) inches in total length, except that recreational hook and line fisherman may take two (2) striped bass measuring not less than twenty (20) inches and not greater than twenty-five (25) inches from the Delaware River, Delaware Bay, or their tributaries during the months of July and August.~~

2.0 Notwithstanding, the provisions of 7 Del.C. §929(b)(1), it ~~shall be~~ is unlawful for any commercial food fisherman to take and reduce to possession any striped bass that

measure less than twenty-eight (28) inches in total length from the tidal waters of this State except that commercial gill net fishermen may take striped bass measuring no less than twenty (20) inches in total length from the tidal waters of the Delaware River and Delaware Bay or their tributaries during the period from February 15 through May 31 or from the tidal waters of the Nanticoke River or its tributaries during the period from February 15 through the month of March.

3.0 It ~~shall be~~ is unlawful for any person to possess a striped bass that measures ~~less than 28 inches~~ less than 28 inches in total length or a striped bass that measures greater than thirty-seven (37) inches but less than forty-four (44) inches, total length, unless said striped bass is in one or more of the following categories:

3.1 It has affixed, a valid strap tag issued by the Department to a commercial gill net fisherman and was legally taken and tagged by said commercial gill net fisherman from the tidal waters of the Delaware River and Delaware Bay or their tributaries during the period from February 15 through May 31; or from the tidal waters of the Nanticoke River or its tributaries during the period from February 15 through the month of March; or

3.2 It was legally landed in another state for commercial purposes and has affixed a valid tag issued by said state's marine fishery authority; or

3.3 It entered Delaware packed or contained for shipment, either fresh or frozen, and accompanied by a bill-of-lading with a destination to a state other than Delaware; or

3.4 It was legally landed in another state for non-commercial purposes by the person in possession of said striped bass and there is affixed to either the striped bass or the container in which the striped bass is contained a tag that depicts the name and address of the person landing said striped bass and the date, location, and state in which said striped bass was landed; or

3.5 It is the product of a legal aquaculture operation and the person in possession has a written bill of sale or receipt for said striped bass.

4.0 It ~~shall be~~ **is** unlawful for any commercial finfisherman to possess any striped bass for which the total length has been altered in any way prior to selling, trading or bartering said striped bass.

5.0 The words "land" and "landed" shall mean to put or cause to go on shore from a vessel.

6.0 It ~~shall be~~ is unlawful for any person to land any striped bass that measures ~~less than twenty-eight (28) inches in total length at any time~~ less than twenty-eight (28) inches in total length or a striped bass that measures greater than thirty-seven (37) inches but less than forty-four (44) inches, total length at any time, except those striped bass caught in a commercial gill net legally fished in the waters of Delaware River or

Delaware Bay or their tributaries during the period from February 15 through May 31 or from a commercial gill net legally fished in the tidal waters of the Nanticoke River or its tributaries during the period from February 15 through the month of March.

7.0 It ~~shall be~~ is unlawful for a commercial finfisherman authorized to fish during Delaware's commercial striped bass fishery to land any striped bass that measures less than twenty (20) inches in total length.

**3 DE Reg. 1088 (2/1/00)**

**4 DE Reg. 230 (7/1/00)**

**4 DE Reg. 1552 (3/1/01)**

**6 DE Reg. 1512 (5/1/01)**

**7 DE Reg. 1205 (3/1/04)**

**8 DE Reg. 1718 (6/1/05)**

**12 DE Reg. 1228 (03/01/09)**

### **3505 Striped Bass Commercial Fishing Seasons; Quotas; Tagging and Reporting Requirements.**

(Penalty Section 7 Del.C. §936(b)(2))

1.0 It ~~shall be~~ is unlawful for any commercial food fisherman using a gill net to take and reduce to possession any striped bass at any time except when said commercial food fisherman is authorized by the Department to participate in a commercial gill net fishery for striped bass established herein. A commercial food fisherman may use a gill net to take and reduce to possession striped bass during the period beginning at 12:01 A.M. on February 15 and ending at 4:00 P.M. on May 31 next ensuing. It ~~shall be~~ is unlawful to use any gill net having a stretched-mesh size greater than four (4) inches to take striped bass during the period February 15 until and including the last day in February unless the net is drifted. A commercial food fisherman may use a gill net to take and reduce to possession striped bass during the period beginning at 12:01 A.M. on November 15 and ending at 4:00 P.M. on December 31 next ensuing provided at least two (2) percent of the commercial allocation of striped bass for the gill net fishery, as determined by the Department, was not landed in the February - May gill net fishery. In order for a commercial food fisherman to be authorized by the Department to participate in a commercial gill net fishery, said commercial food fisherman shall have a valid food fishing equipment permit for a gill net and shall register in writing with the Department to participate in said fishery by February 1 for the February 15 - May 31 gill net fishery and by November 1 for the December gill net fishery.

2.0 It shall be ~~is~~ unlawful for any commercial food fisherman using a hook and line to take and reduce to possession any striped bass at any time except when said commercial food fisherman is authorized by the Department to participate in a commercial hook and line fishery for striped bass established herein. A commercial food fisherman may use a hook and line to take and reduce to possession striped bass during the period beginning at 12:01 A.M. on April 1 and ending at 4:00 P.M. on December 31 next ensuing. In order for a commercial food fisherman to be authorized to participate in the commercial hook and line fishery, said commercial food fisherman shall register in writing with the Department to participate in said fishery by March 15.

3.0 It shall be ~~is~~ unlawful for any commercial food fisherman using a hook and line, during the striped bass hook and line fishery established for subsection 2.0 herein, to take striped bass by means of a gill net or to have any gill net on board or to otherwise have in possession on or near his person any gill net.

4.0 The striped bass gill net fishery in February - May, the striped bass gill net fishery in November - December and the striped bass hook and line fishery in April - December shall be considered separate striped bass fisheries. Each participant in a striped bass fishery shall be assigned an equal share of the total pounds of striped bass allotted by the Department to that fishery. A share shall be determined by dividing the number of pre-registered participants in that fishery into the total pounds of striped bass allotted to that fishery by the Department. The total pounds of striped bass allotted to each fishery by the Department shall be as follows: 95% of the State's commercial quota, as determined by the ASMFC, for the February 15 - May 31 gill net fishery, 10% of the State's commercial quota for the April - December hook and line fishery and, provided that in excess of two (2) % of the February 15 - May 31 gill net fishery allocation was not landed, said remainder for the November - December gill net fishery. Any overage of the State's commercial quota will be subtracted from the next year's commercial quota proportionally to the appropriate fishery.

5.0 It shall be ~~is~~ unlawful for any commercial food fisherman to land, during a striped bass fishing season, more than the total pounds assigned by the Department to said individual commercial food fisherman.

6.0 It shall be ~~is~~ unlawful for any commercial food fisherman to possess any striped bass that does not have locked into place through the mouth and gill (operculum) opening a striped bass harvest tag issued to said commercial fisherman by the Department. Said tag shall be locked into place immediately after taking said striped bass if said striped bass is taken by hook and line. Said tag shall be locked into place immediately upon completing fishing each gill net or gill net series if said striped bass is taken by anchor gill net or immediately after retrieving each gill net into the boat at the conclusion of each drift if said striped bass is taken by drift gill net.

7.0 The Department shall ~~may~~ issue tags to commercial food fishermen who register in writing with the Department to participate in a striped bass fishery. Each participant shall initially be issued a quantity of striped bass harvest tags that is to be

determined by the Department by dividing said participants assigned share in pounds by the estimated weight of a striped bass expected to be landed. If a commercial food fisherman needs additional tags to fulfill his or her assigned share, the Department shall issue additional tags after verifying the balance of the share from reports submitted by an official weigh station to the Department.

8.0 It ~~shall be~~ is lawful for a commercial food fisherman who is authorized to be issued striped bass harvest tags by the Department to transfer said tags to another commercial food fisherman, authorized to participate in the same striped bass fishery, provided said transfer is made prior to said tags being issued by the Department.

9.0 It ~~shall be~~ is unlawful for any commercial food fisherman to apply a tag to a striped bass unless said tag had been issued or legally transferred to said commercial food fisherman by the Department.

10.0 It ~~shall be~~ is unlawful for ~~any commercial food fisherman~~ to apply any striped bass tag issued by the Department to a striped bass if said tag had previously been applied to another striped bass.

11.0 It ~~shall be~~ is unlawful for any commercial food fisherman to sell, barter or trade any striped bass, to attempt to sell, barter or trade any striped bass or to transport, to have transported or to attempt to have transported any striped bass out of the state unless said striped bass has been weighed and tagged by an official weigh station.

12.0 The Department ~~shall~~ may appoint individuals and their agents as official weigh stations to weigh and tag all striped bass landed in a commercial striped bass fishery. Official weigh stations shall be compensated by the Department for each striped bass weighed and tagged. An official weigh station shall enter into an agreement with the Department to maintain records and report on a regular basis each commercial food fisherman's daily landings of striped bass weighed and tagged at said station. The Department shall provide official weigh stations with tags to be applied to each striped bass weighed.

13.0 Each commercial food fisherman participating in a striped bass fishery shall file an ~~acceptable~~ a complete and accurate report with the Department on forms provided by the Department on all striped bass landed during said fishery. Each report shall be filed with the Department within 30 days after the end date of each fishery. All unused tags issued or legally transferred to a commercial food fisherman shall be returned to the Department with said report. Failure to file an ~~acceptable~~ a complete and accurate report or failure to return all unused tags may disqualify the commercial food fishermen from future striped bass fisheries.

**1 DE Reg 270 (9/1/97)**

**4 DE Reg 1552 (3/1/01)**

**8 DE Reg 1169 (2/1/05)**

**3506 Striped Bass; Total Length Measurement.**

(Penalty Section 7 Del.C. §936(b)(2))

1.0 Unless otherwise authorized, it ~~shall be~~ is unlawful for any commercial ~~fisherman~~ to possess any striped bass for which the total length has been altered in any way ~~prior to selling, trading or bartering said~~ for the purpose of retaining said striped bass in accordance with §3504.