



STATE OF DELAWARE  
**DEPARTMENT OF NATURAL RESOURCES  
AND ENVIRONMENTAL CONTROL**

OFFICE OF THE  
SECRETARY

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**Secretary's Order No.: 2013-F-0049**

**RE:            Approving Final Regulations to Amend 7 DE Admin. Code 3518:  
              *Black Drum Size Limit; Possession Limit; Landing Limit; Dealer Limit***

**Date of Issuance: November 13, 2013**

**Effective Date of the Amendment: December 11, 2013**

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 regulations to amend 7 DE Admin. Code 3518: *Black Drum Size Limit; Possession Limit; Landing Limit; Dealer Limit*. The Department's Division of Fish and Wildlife commenced the regulatory development process with Start Action Notice 2013-22. The Department published its initial proposed regulation amendments in the September 1, 2013 *Delaware Register of Regulations*. The Department then held a public hearing on September 30, 2013. The public hearing record remained open at that time for public comment through October 15, 2013.

*Delaware's Good Nature depends on you!*

The Atlantic States Marine Fisheries Commission (“ASMFC”) approved an Interstate Fishery Management Plan (“IFMP”) for Black Drum in May 2013. The plan was initiated to address a significant increase in harvest in the commercial and recreational fisheries. The IFMP requires all states to maintain current regulations for black drum and ultimately adopt a coastwide minimum size limit of at least 14 inches by January 1, 2016. Delaware’s current regulations include a 16-inch minimum size limit and a 3 fish recreational size limit. However, these measures, as well as Delaware’s commercial fishery management measures, only apply to the Delaware River and Delaware Bay. Therefore, in support of the spirit of the IFMP, the present action seeks to expand the applicability of Delaware’s current restrictions statewide (to include all tidal waters of state). Such action will ensure compliance with the new IFMP until modified through amendment or addendum.

It should be noted that, prior to the adoption of an Interstate Fishery Management Plan for Black Drum, Delaware and New Jersey developed a Bi-State Management Plan (“Plan”). Under this Plan, Delaware adopted commercial and recreational measures consistent with New Jersey’s regulations at that time. Unfortunately, however, the regulatory provisions of that Plan were only applicable to the Delaware Bay and River, so they did not apply to the Inland Bays or State waters along the Atlantic Coast.

Through the present proposed regulation amendments, the Department seeks to extend Delaware’s existing Black Drum regulations to make them effective statewide by striking references specific to the Delaware Estuary. This will result in a statewide minimum size limit of 16 inches in total length and a statewide recreational possession limit of three black drum per day. The commercial daily landing and dealer possession

limits shall remain at 10,000 pounds, and the annual commercial quota shall remain at 65,000 pounds. It should be noted that the size limit is more conservative than that specified in the ASMFC's IFMP, but it is consistent with those measures previously adopted by Delaware under the aforementioned Bi-State Plan, and will contribute to the conservation of Black Drum in Delaware by affording better protection to juvenile recruits. With the adoption of the proposed changes, Delaware will be in compliance with the ASMFC's plan at least through January of 2016, or until such time as the plan is modified through amendment or addendum.

The proposed amendments were thoroughly vetted by the Department at the public hearing on September 30, 2013. No negative comment was received by the Department from the public at any time during the course of this proposed promulgation. It should also be noted that all proper notification and noticing requirements concerning this proposed promulgation 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 October 31, 2013 (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 I adopt the Report to the extent it is consistent with this Order. The Department's experts developed the record and drafted the proposed amendments.

I find that the Department's experts in the Division of Fish and Wildlife fully developed the record to support adoption of these amendments. The adoption of this Order will allow Delaware to (1) expand the applicability of Delaware's current Black Drum restrictions statewide (to include all tidal waters of state); and (2) ensure compliance with the ASMFC's IFMP at least through January of 2016, or until such time as the plan is modified through amendment or addendum.

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 both the initial proposed amendments, as well as the proposed amendments, including at the public hearing held on September 30, 2013;

3.) The Department held a public hearing on September 30, 2013 in order to consider public comment before making any final decision;

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 adoption of this Order will allow Delaware to (1) expand the applicability of Delaware's current Black Drum restrictions statewide (to include all tidal waters of state); and (2) ensure compliance with the ASMFC's IFMP at least through January of 2016, or until such time as the plan is modified through amendment or addendum;

6.) The recommended amendments should be adopted as final regulation amendments because Delaware will be able to (1) remain consistent with those measures previously adopted by Delaware under the Bi-State Plan with New Jersey while maintaining compliance with the new IFMP; (2) contribute to the conservation of Black Drum in Delaware by affording better protection to juvenile recruits; and lastly, because (3) the amendments are well supported by documents in the record;

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.



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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:** **Proposed Regulation Amendments to 7 DE Admin. Code 3518: *Black Drum Size Limit; Possession Limit; Landing Limit; Dealer Limit***

**DATE:** October 31, 2013

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

A public hearing was held on Monday, September 30, 2013, 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 3518: *Black Drum Size Limit; Possession Limit; Landing Limit; Dealer Limit*.

The Atlantic States Marine Fisheries Commission ("ASMFC") approved an Interstate Fishery Management Plan ("IFMP") for Black Drum in May 2013. The plan was initiated to address a significant increase in harvest in the commercial and recreational fisheries. The IFMP requires all states to maintain current regulations for black drum and ultimately adopt a coastwide minimum size limit of at least 14 inches by January 1, 2016. Delaware's current regulations include a 16-inch minimum size limit and a 3 fish recreational size limit. However, these measures, as well as Delaware's commercial fishery management measures, only apply to the Delaware River and Delaware Bay. Therefore, in support of the spirit of the IFMP, the present action seeks to expand the applicability of Delaware's current restrictions statewide (to include all tidal waters of state).

Such action will ensure compliance with the new IFMP until modified through amendment or addendum.

The Department has the statutory basis and legal authority to act with regard to the proposed amendments to 7 DE Admin. Code 3507, pursuant to 7 Del. C. §§901 (c) & (d), 903(e)(2)a. No negative public comment was received by the Department at any time during this proposed promulgation. 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; and (2) eleven documents introduced at the public hearing held on September 30, 2013, and marked by this Hearing Officer accordingly as Department Exhibits 1-11. 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. Following the submission of the Department's exhibits into the record at the aforementioned public hearing, Mr. Michels proceeded to offer a brief summary as to the Department's proposed actions in this matter.

Prior to the adoption of an Interstate Fishery Management Plan for Black Drum, Delaware and New Jersey developed a Bi-State Management Plan ("Plan"). Under this Plan, Delaware adopted commercial and recreational measures consistent with New Jersey's regulations at that time. Unfortunately, however, the regulatory provisions of that Plan were only applicable to the Delaware Bay and River, so they did not apply to the Inland Bays or State waters along the Atlantic Coast.

Through the present proposed regulation amendments, the Department seeks to extend Delaware's existing Black Drum regulations to make them effective statewide by striking

references specific to the Delaware Estuary. This will result in a statewide minimum size limit of 16 inches in total length and a statewide recreational possession limit of three black drum per day. The commercial daily landing and dealer possession limits will remain at 10,000 pounds, and the annual commercial quota will remain at 65,000 pounds. It should be noted that the size limit is more conservative than that specified in the ASMFC's IFMP, but it is consistent with those measures previously adopted by Delaware under the aforementioned Bi-State Plan, and will contribute to the conservation of Black Drum in Delaware by affording better protection to juvenile recruits. With the adoption of the proposed changes, Delaware will be in compliance with the ASMFC's plan at least through January of 2016, or until such time as the plan is modified through amendment or addendum.

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. Although the public hearing record remained open for public comment through October 15, 2013, only one public comment was received by the Department at any time during the course of this proposed promulgation. Roy Miller provided comment on October 1, 2013, which voiced support for the extension of existing Black Drum regulations to the rest of Delaware's tidal waters. It should also 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 7 DE Admin. Code 3518: *Black Drum Size Limit; Possession Limit; Landing Limit; Dealer Limit*, as noted above. 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 all proceedings in a manner required by the law and regulations;
4. The Department held its public hearing in a manner required by the law and regulations;
5. Promulgation of the proposed regulatory amendments to 7 DE Admin. Code 3518: *Black Drum Size Limit; Possession Limit; Landing Limit; Dealer Limit*, will allow Delaware to (1) expand the applicability of Delaware's current Black Drum restrictions statewide (to include all tidal waters of state); and (2) ensure compliance with the ASMFC's IFMP at least through January of 2016, or until such time as the plan is modified through amendment or addendum;
6. The recommended amendments should be adopted as final regulation amendments because Delaware will be able to (1) remain consistent with those measures previously adopted by Delaware under the Bi-State Plan with New Jersey while maintaining compliance with the new IFMP; (2) contribute to the conservation of Black Drum in Delaware by affording better protection to juvenile recruits; and lastly, because (3) the amendments are well supported by documents in the record;

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 regulatory amendments concerning 7 DE Admin. Code 3518: *Black Drum Size Limit; Possession Limit; Landing Limit; Dealer Limit*, as published in the September 1, 2013 *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.



LISA A. VEST  
Public Hearing Officer



# **APPENDIX "A"**



# Title 7 Natural Resources and Environmental Control

## 3500 Tidal Finfish

### 3000 Division of Fish and Wildlife

#### 3500 Tidal Finfish

### **Black Drum Size Limit; Possession Limit; Landing Limit; Dealer Limit**

#### **3518 Black Drum Size Limit; Possession Limit; Landing Limit; Dealer Limit**

(Penalty Section 7 Del.C. §936(b)(2))

#### ~~1.0 Definition~~

~~The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:~~

~~"Delaware Estuary" means all those tidal waters located within an area to the north of a straight line drawn between Cape May Point, New Jersey and Cape Henlopen, Delaware, but not including the tributaries of the Delaware River and Delaware Bay.~~

#### ~~2.01.0 Size limit~~

~~It shall be unlawful for a person to possess a black drum (*Pogonias cromis*) taken from the Delaware Estuary that measures less than (sixteen (16) inches, total length.~~

#### ~~3.02.0 Possession Limits~~

~~3.12.1 It shall be unlawful for a recreational fisherman to take and reduce to possession more than three (3) black drum per day (a day being 24 hours) from the Delaware Estuary.~~

~~3.22.2 It shall be unlawful for a commercial fisherman or a vessel, regardless of the number of licensed commercial fishermen onboard that vessel, to possess or land more than 10,000 pounds of black drum taken from the Delaware Estuary in any one (1) day.~~

#### ~~4.03.0 Landing Limit~~

~~It shall be unlawful for a commercial fisherman to sell, trade or barter or attempt to sell, trade or barter black drum or parts of black drum that are landed from the Delaware Estuary in this State after a date when the Department has determined or~~

projected that 65,000 pounds of black drum have been or will be landed in this State from the ~~Delaware Estuary~~ by the commercial fishery in a calendar year.

5.04.0 Dealer limit

It shall be unlawful for a food fish dealer to accept from a commercial fisherman or a vessel more than 10,000 pounds of black drum ~~harvested from the Delaware Estuary~~ in any one (1) day.

**13 DE Reg. 1352 (04/01/10)**