



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.: 2014-F-0007

**RE: Approving Final Regulations to Amend 7 DE Admin. Code 3507,
*Delaware Black Sea Bass: Size Limit, Trip Limits, Seasons, and Quotas***

Date of Issuance: April 15, 2014

Effective Date of the Amendment: May 11, 2014

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 3507, *Delaware Black Sea Bass: Size Limit, Trip Limits, Seasons, and Quotas*. The Department's Division of Fish and Wildlife commenced the regulatory development process with Start Action Notice 2014-01. The Department published its initial proposed regulation amendments in the March 1, 2014 *Delaware Register of Regulations*. The Department then held a public hearing on March 26, 2014. The public hearing record remained open at that time for public comment through April 10, 2014.

Delaware's Good Nature depends on you!

The purpose of the Department's proposed promulgation is to adopt provisions consistent with the proposed federal rules for the recreational black sea bass fishery and remain compliant with Addendum XXV to the Atlantic States Marine Fisheries Commission's ("ASMFC") Interstate Fishery Management Plan for Summer Flounder, Scup, and Black Sea Bass by amending Tidal Finfish Regulation 3507, Black Sea Bass Size Limit; Trip Limits; Seasons; Quotas (12.0 and 12.1).

Black sea bass are managed cooperatively by the ASMFC, the Mid-Atlantic Fishery Management Council ("MAFMC"), and the National Marine Fisheries Service ("NMFS") through the joint Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan. The ASMFC and MAFMC jointly approved a coastwide recreational black sea bass harvest limit for 2014 of 2.26 million pounds (1,189,474 fish) at their December 11, 2013 meeting. The ASMFC approved the continuation of ad hoc regional management measures under Addendum XXV at their February 4, 2014 meeting.

Addendum XXV to the Atlantic States Marine Fisheries Commission's Fishery Management Plan for Summer Flounder, Scup, and Black Sea Bass requires the southern region states (Delaware to North Carolina) to implement recreational fishery management measures for black sea bass consistent with those measures required for federal waters. The National Oceanic and Atmospheric Administration (NOAA) recommended federal recreational black sea bass measures for 2014 include a 12.5 inch minimum size limit, a 15 fish possession limit, and open seasons from May 19 through September 18, and October 18 through December 31. These measures, when combined with measures being implemented in the northern region (Massachusetts through New Jersey) will achieve the 2014 coastwide recreational harvest limit.

The proposed amendments were thoroughly vetted by the Department at the public hearing on March 26, 2014. Members of the public attended said hearing, however, no comment was received at that time. 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. No negative public 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 April 11, 2014 (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. As previously noted, members of the public did attend the hearing held on March 26, 2014, and no negative public comment was received by the Department from the public at any time during the course of this proposed promulgation.

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 remain in compliance with the ASMFC's Addendum XXV

to the Fishery Management Plan for Summer Flounder, Scup and Black Sea Bass, to wit: (1) a 12.5 inch minimum size limit; (2) a 15 fish possession limit; and (3) open seasons from May 19 through September 18, and then from October 18 through December 31.

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 March 26, 2014;

3.) The Department held a public hearing on March 26, 2014 in order to consider public comment before making any final decision;

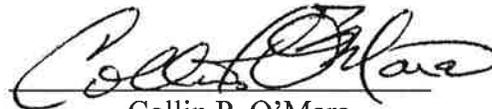
4.) The Department's Hearing Officer's Report, including its recommended record and the recommended amendments as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;

5.) The adoption of this Order will allow Delaware to remain in compliance with the ASMFC's Addendum XXV to the Fishery Management Plan for Summer Flounder, Scup and Black Sea Bass, to wit: (1) a 12.5 inch minimum size limit; (2) a 15 fish possession limit; and (3) open seasons from May 19 through September 18, and then from October 18 through December 31.

6.) The recommended amendments should be adopted as final regulation amendments because Delaware will be able to (1) mirror its black sea bass management measures with those of surrounding states, as well as those likely to be in place in federal

waters; (2) remain in compliance with the aforementioned Fishery Management Plan for this species, as implemented by both the NMFS and the ASMFC; 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.

A handwritten signature in black ink, appearing to read "Collin P. O'Mara". The signature is written in a cursive style with a horizontal line underneath it.

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 Regulations Amendments to 7 DE Admin. Code 3507,
*Delaware Black Sea Bass: Size Limit, Trip Limits, Seasons, and Quotas***

DATE: April 11, 2014

I. BACKGROUND AND PROCEDURAL HISTORY:

A public hearing was held on Wednesday, March 26, 2014, at 6:00 p.m. by the Department of Natural Resources and Environmental Control ("DNREC", "Department") at the Dover Public Library, 35 Lookerman Plaza, Dover, Delaware to receive comment on proposed amendments ("amendments") to 7 DE Admin. Code 3507, *Delaware Black Sea Bass: Size Limit, Trip Limits, Seasons, and Quotas*.

The purpose of the Department's proposed promulgation is to adopt provisions consistent with the proposed federal rules for the recreational black sea bass fishery and remain compliant with Addendum XXV to the Atlantic States Marine Fisheries Commission's ("ASMFC") Interstate Fishery Management Plan for Summer Flounder, Scup, and Black Sea Bass by amending Tidal Finfish Regulation 3507, Black Sea Bass Size Limit; Trip Limits; Seasons; Quotas (12.0 and 12.1).

Black sea bass are managed cooperatively by the ASMFC, the Mid-Atlantic Fishery Management Council ("MAFMC"), and the National Marine Fisheries Service ("NMFS") through the joint Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan. The

ASMFC and MAFMC jointly approved a coastwide recreational black sea bass harvest limit for 2014 of 2.26 million pounds (1,189,474 fish) at their December 11, 2013 meeting. The ASMFC approved the continuation of ad hoc regional management measures under Addendum XXV at their February 4, 2014 meeting.

Addendum XXV to the Atlantic States Marine Fisheries Commission's Fishery Management Plan for Summer Flounder, Scup, and Black Sea Bass requires the southern region states (Delaware to North Carolina) to implement recreational fishery management measures for black sea bass consistent with those measures required for federal waters. The National Oceanic and Atmospheric Administration (NOAA) recommended federal recreational black sea bass measures for 2014 include a 12.5 inch minimum size limit, a 15 fish possession limit, and open seasons from May 19 through September 18, and October 18 through December 31. These measures, when combined with measures being implemented in the northern region (Massachusetts through New Jersey) will achieve the 2014 coastwide recreational harvest limit.

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) and 903(e)(2)a.3.

Members of the public attended the hearing held by the Department in this matter on March 26, 2014; 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) thirteen documents introduced at the public hearing held on March 26, 2014, and marked by this Hearing Officer accordingly as Department Exhibits 1-13. The Department's persons

primarily responsible for the drafting and overall promulgation of these proposed amendments, Stewart Michels and John Clark, 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 (see Section I of this report for the same).

As previously noted, members of the public attended the hearing held on March 26, 2014, but no comment was received at that time. 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. The public hearing record remained open for public comment through April 10, 2014.

Again, no negative public 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.

For the Secretary's review, Delaware's proposed regulatory amendments concerning black sea bass are expressly incorporated into this report and attached hereto as Appendix "A" for that purpose. It should be noted that the Department has reviewed these proposed 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.

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:

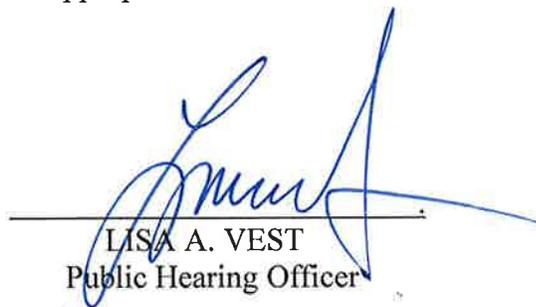
Based on the record developed, I find and conclude that the Department has provided appropriate reasoning regarding the need for the proposed amendments to 7 DE Admin. Code 3507, *Delaware Black Sea Bass: Size Limit, Trip Limits, Seasons, and Quotas*, as noted above. Accordingly, I recommend promulgation 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 3507, *Delaware Black Sea Bass: Size Limit, Trip Limits, Seasons, and Quotas*, will allow Delaware to remain in compliance with the ASMFC's Addendum XXV to the Fishery Management Plan for Summer Flounder, Scup and Black Sea Bass, to wit: (1) a 12.5 inch minimum size limit; (2) a 15 fish possession limit; and (3) open seasons from May 19 through September 18, and October 18 through December 31;
6. The recommended amendments should be adopted as final regulation amendments because Delaware will be able to (1) mirror its black sea bass management measures with those of surrounding states, as well as those likely to be in place in federal

waters; (2) remain in compliance with the aforementioned Fishery Management Plan for this species, as implemented by the ASMFC; 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 *Delaware Tidal Finfish Regulation 3507*, as published in the March 1, 2014 *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”

3507 Black Sea Bass Size Limit; Trip Limits, Seasons; Quotas

(Penalty Section 7 **Del.C.** §936(b)(2))

1.0 It shall be unlawful for any commercial person to have in possession any black sea bass (*Centropristis striata*) that measures less than eleven (11) inches, total length excluding any caudal filament.

2.0 It shall be unlawful for any recreational person to have in possession any black sea bass that measures less than twelve and one-half (12.5) inches total length excluding any caudal filament.

6 DE Reg. 1230 (3/1/03)

6 DE Reg. 1360 (4/1/03)

12 DE Reg. 1430 (05/01/09)

14 DE Reg. 1382 (06/01/11)

3.0 It shall be unlawful for any commercial fisherman to land, to sell, trade and or barter any black sea bass in Delaware unless authorized by a black sea bass landing permit issued by the Department. The black sea bass landing permit shall be presumed to transfer with the vessel whenever it is bought, sold, or otherwise transferred to an eligible transferee as defined in 7 **Del.C.** §2903, unless there is a written agreement, signed by the transferor/seller and transferee/buyer, or other credible written evidence, verifying that the transferor/seller is retaining the vessel's fishing and permit history for purposes of replacing the vessel.

17 DE Reg. 542 (11/01/13)

4.0 The black sea bass pot fishery and the black sea bass commercial hook and line fishery shall be considered separate black sea bass fisheries. The total pounds allocated to each fishery by the Department shall be as follows: 96 percent of the State's commercial quota, as determined by the ASMFC, for the pot fishery; 4 percent for the commercial hook and line fishery.

5.0 The Department may only issue a black sea bass landing permit for the pot fishery to a person who is the owner of a vessel permitted by the National Marine Fisheries Service in accordance with 50 CFR §§ 648.4 pertaining to black sea bass and was either issued a black sea bass landing permit by the Department in 2013 or was the transferee of black sea bass landing permit issued by the Department as per 3507 (3.0). The number of black sea bass landings permits issued by the Department for the pot fishery in any year will not exceed six.

17 DE Reg. 542 (11/01/13)

6.0 The Department may only issue a black sea bass landing permit for the commercial hook and line fishery to a person who has applied for and secured from the Department a commercial food fishing license and a fishing equipment permit for hook and line and was either issued a black sea bass landing permit by the Department in 2013 or was the transferee of black sea bass landing permit issued by the Department as per 3507 (3.0). The number of black sea bass landings permits issued by the Department for the commercial hook and line fishery in any year will not exceed thirteen.

1 DE Reg.1767 (5/1/98)

2 DE Reg. 1900 (4/1/99)

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

4 DE Reg. 1665 (4/1/01)

4 DE Reg. 1859 (5/1/01)

5 DE Reg. 2142 (5/1/02)

6 DE Reg. 348 (9/1/02)

6 DE Reg. 1230 (3/1/03)

17 DE Reg. 542 (11/01/13)

7.0 Any overage of the State's commercial quota will be subtracted by the Atlantic States Marine Fisheries Commission from the next year's commercial quota.

Any overage of an individual's allocation will be subtracted from that individual's allocation the next year and distributed to those individuals in the appropriate fishery that did not exceed their quota.

8.0 Each participant in a black sea bass fishery shall be assigned a equal share of the total pounds of black sea bass allotted by the Department for that particular fishery. A share shall be determined by dividing the number of pre-registered participants in one of the two recognized fisheries into the total pounds of black sea bass allotted to the fishery by the Department. In order to pre-register an individual must indicate their intent in writing to participate in this fishery.

9.0 Individual shares of the pot fishery quota may be transferred to another participant in the pot fishery. Any transfer of black sea bass individual pot quota shall be limited by the following conditions:

9.1 A maximum of one transfer per year per person.

9.2 No transfer of shares of the black sea bass pot fishery quota shall be authorized unless such transfer is documented on a form provided by the Department and approved by the Secretary in advance of the actual transfer.

10.0 Individual shares of the commercial hook and line fishery quota may be transferred to another participant in the commercial hook and line fishery. Any transfer of black sea bass individual commercial hook and line quota shall be limited by the following conditions:

10.1 A maximum of one transfer per year per person.

10.2 No transfer of shares of the black sea bass commercial hook and line quota shall be authorized unless such transfer is documented on a form provided by the Department and approved by the Secretary in advance of the transfer.

11.0 Each commercial food fisherman participating in a black sea bass fishery shall report to the Department, via the interactive voice phone reporting system operated by the Department, each days landings in pounds at least one hour after packing out their harvest.

12.0 It shall be unlawful for any recreational fisherman to take and reduce to possession or to land any black sea bass beginning at 12:01 a.m. January 1, and ending midnight May 18, and beginning at 12:01 a.m. ~~October 15~~ September 19 and ending mid-night ~~October 31~~17.

12.1 It shall be unlawful for any recreational fisherman to have in possession more than ~~2015~~ black sea bass at or between the place where said black sea bass were caught and said recreational fisherman's personal abode or temporary or transient place of lodging during the period May 19 through ~~October 14~~September 18 and during the period ~~November 1~~October 18 through December 31.

7 DE Reg. 1575 (5/1/04)

6 DE Reg. 1230 (3/1/03)

8 DE Reg. 1488 (4/1/05)

9 DE Reg. 1759 (5/1/06)

11 DE Reg. 1662 (06/01/08)

14 DE Reg. 113 (08/01/10)

16 DE Reg. 431 (10/01/12)

17 DE Reg. 543 (11/01/13)

