



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL
89 KINGS HIGHWAY
DOVER, DELAWARE 19901

Office of the
Secretary

Phone: (302) 739-9000
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Secretary's Order No.: 2018-F-0047

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

Date of Issuance: August 27, 2018

Effective Date of the Amendment: September 11, 2018

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 and 6010, and any other relevant statutory authority, 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 ("Amendments") to 7 DE Admin. Code 3507: *Black Sea Bass Size Limit; Trip Limits, Seasons; Quota*. This action is being taken by the Department to adopt provisions consistent with federal measures proposed for the recreational Black Sea Bass fishery in compliance with Addendum XXX to the Atlantic States Marine Fisheries Commission's ("ASMFC") Interstate Fishery Management Plan for Summer Flounder, Scup and Black Sea Bass. Specifically, the proposed action will eliminate Delaware's September 22 through October 21 closure, and set the open season from May 15 through December 31 for the recreational Black Sea Bass fishery.

Black Sea Bass are cooperatively managed by the ASMFC and the Mid-Atlantic Fishery Management Council (“MAFMC”) through the joint Flounder, Scup and Black Sea Bass Fishery Management Plan. The ASMFC and MAFMC jointly approved a coastwise 2018 recreational harvest limit for Black Sea Bass of 3.66 million pounds. Addendum XXX uses a combination of exploitable biomass information from the latest stock assessment and historical harvest to allocate the coastwise recreational harvest limit between three regions. The ASMFC’s Black Sea Bass Management Board approved measures that require 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 MAFMC’s recommended federal measures for the recreational fishery include a fifteen (15) fish possession limit, a twelve and one-half (12.5) inch minimum size limit, and an open season from May 15 through December 31. These measures, when combined with measures being implemented in the other regions (Massachusetts through New York and New Jersey), are predicted to constrain recreational Black Sea Bass landings at or below the 2018 coastwise 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: *Black Sea Bass Size Limit; Trip Limits, Seasons; Quota*, pursuant to 7 Del. C. §901 and §903(a), (b), and (e). The Department’s Division of Fish and Wildlife commenced this regulatory development process with Start Action Notice #2018-09, dated May 15, 2018. The Department published its initial proposed regulation Amendments in the July 1, 2018 *Delaware Register of Regulations*. Thereafter, the public hearing regarding this matter was held on July 26, 2018. No members of the public attended that public hearing. Pursuant to Delaware law, the record remained open for fifteen (15) additional days subsequent to the date of the public hearing for receipt of public comment. The hearing record formally closed with regard to public comment at close of business on August 10, 2018, with no comment having been received by the Department during any phase of this proposed regulatory promulgation. It should be noted that all notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

Hearing Officer Vest prepared a Hearing Officer's Report dated August 24, 2018 ("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 "A."

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 3507: *Black Sea Bass Size Limit; Trip Limits, Seasons; Quota* 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 further find that the Department's experts in the Division of Fish and Wildlife fully developed the record to support adoption of these revised regulatory Amendments.

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 3507: *Black Sea Bass Size Limit; Trip Limits, Seasons; Quota*, pursuant to 7 Del.C. §901 and §903(a), (b), and (e);
2. The Department has jurisdiction under its statutory authority, pursuant to 7 Del.C. Ch. 60, to issue an Order adopting these revised proposed Amendments as final;
3. The Department provided adequate public notice of the initial proposed Amendments and all proceedings in a manner required by the law and regulations, and provided the public with an adequate opportunity to comment on the same, including at the time of the public hearing held on July 26, 2018, and during the 15 days subsequent to the hearing (through August 10, 2018), before making any final decision;

4. Promulgation of the revised proposed Amendments to 7 DE Admin. Code 3507: *Black Sea Bass Size Limit; Trip Limits, Seasons; Quota* will enable the Department to bring Delaware's existing Black Sea Bass Regulations into compliance with current federal measures proposed for the recreational Black Sea Bass fishery, consistent with Addendum XXX to the ASMFC's Interstate Fishery Management Plan for Summer Flounder, Scup and Black Sea Bass, specifically, by eliminating Delaware's September 22 through October 21 closure, and setting the open season from May 15 through December 31 for the recreational Black Sea Bass fishery;
5. The Department has reviewed the proposed Amendments in the light of the Regulatory Flexibility Act, consistent with 29 *Del.C.* Ch. 104, and has selected Exemption "B1" regarding same, as this promulgation is not substantially likely to impose additional costs or burdens upon individuals and/or small businesses;
6. The Department's Hearing Officer's Report, including its established record and the recommended proposed Amendments as set forth in Appendix "A", are hereby adopted to provide additional reasons and findings for this Order;
7. The Department's proposed regulatory Amendments, as initially published in the July 1, 2018 *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 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 3507: *Black Sea Bass Size Limit; Trip Limits, Seasons; Quota* 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.



Shawn M. Garvin
Secretary

MEMORANDUM

TO: The Honorable Shawn M. Garvin
Cabinet Secretary, Dept. 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 3507:**
Black Sea Bass Size Limit; Trip Limits, Seasons; Quota

DATE: August 24, 2018

I. Background:

A public hearing was held on Thursday, July 26, 2018, 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 3507: *Black Sea Bass Size Limit; Trip Limits, Seasons; Quota*. This action is being taken by the Department at this time to adopt provisions consistent with federal measures proposed for the recreational Black Sea Bass fishery in compliance with Addendum XXX to the Atlantic States Marine Fisheries Commission’s (“ASMFC”) Interstate Fishery Management Plan for Summer Flounder, Scup and Black Sea Bass. Specifically, the proposed action will eliminate Delaware’s September 22 through October 21 closure, and set the open season from May 15 through December 31 for the recreational Black Sea Bass fishery.

Black Sea Bass are cooperatively managed by the ASMFC and the Mid-Atlantic Fishery Management Council (“MAFMC”) through the joint Flounder, Scup and Black Sea Bass Fishery Management Plan. The ASMFC and MAFMC jointly approved a coastwise 2018 recreational harvest limit for Black Sea Bass of 3.66 million pounds. Addendum XXX uses a combination of exploitable biomass information from the latest stock assessment and historical harvest to allocate the coastwise recreational harvest limit between three regions. The ASMFC’s Black Sea Bass Management Board approved measures that require 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 MAFMC’s recommended federal measures for the recreational fishery include a fifteen (15) fish possession limit, a twelve and one-half (12.5) inch minimum size limit, and an open season from May 15 through December 31. These measures, when combined with measures being implemented in the other regions (Massachusetts through New York and New Jersey), are predicted to constrain recreational Black Sea Bass landings at or below the 2018 coastwise 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, *Black Sea Bass Size Limit; Trip Limits, Seasons; Quota*, pursuant to 7 Del. C. §901 and §903(a), (b), and (e). The Department’s Division of Fish and Wildlife commenced the regulatory development process with Start Action Notice #2018-09, signed by DNREC Secretary Shawn M. Garvin on May 15, 2018. The Department published its initial proposed regulation Amendments in the July 1, 2018 *Delaware Register of Regulations*. Thereafter, the public

hearing regarding this matter was held on July 26, 2018. No members of the public attended that public hearing. Pursuant to Delaware law, the record remained open for fifteen (15) additional days subsequent to the date of the public hearing for receipt of public comment. The hearing record formally closed with regard to public comment at close of business on August 10, 2018, with no comment having been received by the Department during any phase of this proposed regulatory promulgation.

It should be noted that all 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; and (2) thirteen (13) documents introduced by Department staff at the public hearing held on July 26, 2018, and marked by this Hearing Officer accordingly as Department Exhibits 1-13. The Department's person primarily responsible for the drafting and overall promulgation of these proposed Amendments, Stewart Michels, Program Manager II, developed the record with the relevant documents in the Department's files.

As stated previously, no members of the public attended the aforementioned July 26, 2018 hearing, nor was any comment received by the Department at any time during the course of this regulatory promulgation. Accordingly, the Department's proposed Amendments are attached hereto as Appendix "A" for the Secretary's review.

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: *Black Sea Bass Size Limit; Trip Limits, Seasons; Quota*, as noted above. Accordingly, I recommend promulgation of the same, 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 3507: *Black Sea Bass Size Limit; Trip Limits, Seasons; Quota*, pursuant to 7 *Del.C.* §901 and §903(a), (b), and (e);
2. The Department has jurisdiction under its statutory authority, pursuant to 7 *Del.C.* Chapter 60, to issue an Order adopting these proposed Amendments as final;
3. The Department provided adequate public notice of the initial proposed Amendments and all proceedings in a manner required by the law and regulations, and provided the public with an adequate opportunity to comment on the same, including at the time of the public hearing held on July 26, 2018, and during the 15 days subsequent to the hearing (through August 10, 2018), before making any final decision;
4. Promulgation of the proposed Amendments to 7 DE Admin. Code 3507: *Black Sea Bass Size Limit; Trip Limits, Seasons; Quota*, will enable the Department to bring Delaware's existing Black Sea Bass Regulations into compliance with current federal measures proposed for the recreational Black Sea Bass fishery, consistent with Addendum XXX to the ASMFC's Interstate Fishery Management Plan for Summer Flounder, Scup and Black Sea Bass, specifically, by eliminating Delaware's September

22 through October 21 closure, and setting the open season from May 15 through December 31 for the recreational Black Sea Bass fishery;

5. The Department has reviewed the proposed Amendments in the light of the Regulatory Flexibility Act, consistent with 29 *Del.C.* Ch. 104, and has selected Exemption “B1” regarding same, as they are not substantially likely to impose additional costs or burdens upon individuals and/or small businesses;

6. The Department’s proposed regulatory Amendments, as initially published in the July 1, 2018 *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

7. The Department shall submit the proposed Amendments as final regulatory amendments to 7 DE Admin. Code 3507: *Black Sea Bass Size Limit; Trip Limits, Seasons; Quota*, 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.

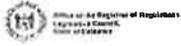


LISA A. VEST
Public Hearing Officer

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Attachments/Appendix:
Appendix A: Proposed Reg. Amendments

APPENDIX "A"



DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Sections 901(c & d), 903(e)(3) & 903(h) (7 Del.C. §§901(c & d), 903(e)(3) & 903(h))

7 DE Admin. Code 3507

PROPOSED

REGISTER NOTICE #2018-09

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

1. TITLE OF THE REGULATIONS:

7 DE Admin. Code 3507 Black Sea Bass Size Limit; Trip Limits, Seasons; Quotas.

2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

This action is to adopt provisions consistent with the federal measures proposed for the recreational Black Sea Bass fishery in compliance with Addendum XXX to the Atlantic States Marine Fisheries Commission's (ASMFC) Interstate Fishery Management Plan for Summer Flounder, Scup [and] Black Sea Bass. Specifically, the proposed action will eliminate Delaware's September 22 through October 21 closure and set the open season from May 15 through December 31 for the recreational Black Sea Bass fishery.

Black Sea Bass are cooperatively managed by the ASMFC and the Mid-Atlantic Fishery Management Council (MAFMC) through the joint Summer Flounder, Scup and Black Sea Bass Fishery Management Plan. The ASMFC and MAFMC jointly approved a coastwide 2018 recreational harvest limit (RHL) for Black Sea Bass of 3.66 million pounds. Addendum XXX uses a combination of exploitable biomass information from the latest stock assessment and historical harvest to allocate the coastwide RHL between three regions. The ASMFC's Black Sea Bass Management Board approved measures that require 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 MAFMC's recommended federal measures for the recreational fishery include a 15-fish possession limit, a 12.5-inch minimum size limit and an open season from May 15 through December 31. These measures, when combined with measures being implemented in the other regions (Massachusetts through New York and New Jersey), are predicted to constrain recreational Black Sea Bass landings at or below the 2018 coastwide RHL.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Del.C. §901 & §903(a), (b) & (e)

5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL:

None

6. NOTICE OF PUBLIC COMMENT:

The hearing record on the proposed amendments to 7 DE Admin. Code 3507 *Black Sea Bass Size Limit; Trip Limits, Seasons; Quotas* will open July 1, 2018. Individuals may submit written comments regarding the proposed changes via e-mail to Lisa.Vest@state.de.us or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. A public hearing on the proposed amendments will be held in conjunction with a public hearing on proposed amendments to 7 DE Admin. Code 3511 *Summer Flounder Size Limits; Possession Limits; Season* on July 26, 2018 beginning at 6:00 PM in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901. Public comments will be received until close of business Friday, August 10, 2018.

7. PREPARED BY:

Stewart Michels

Email: Stewart.Michels@state.de.us

Ph: 739-9914

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 (03/01/03)

6 DE Reg. 1360 (04/01/03)

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 (05/01/98)

2 DE Reg. 1900 (04/01/99)

3 DE Reg. 1088 (02/01/00)

4 DE Reg. 1665 (04/01/01)

4 DE Reg. 1859 (05/01/01)

5 DE Reg. 2142 (05/01/02)

6 DE Reg. 348 (09/01/02)

6 DE Reg. 1230 (03/01/03)

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 an 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 14, ~~and beginning at 12:01 a.m. September 22 and ending mid-night October 21.~~
- 12.1 It shall be unlawful for any recreational fisherman to have in possession more than 15 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 15 through ~~September 21 and during the period October 22 through~~ December 31.

- 7 DE Reg. 1575 (05/01/04)
- 6 DE Reg. 1230 (03/01/03)
- 8 DE Reg. 1488 (04/01/05)
- 9 DE Reg. 1759 (05/01/06)
- 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)
- 17 DE Reg. 1090 (05/01/14)
- 19 DE Reg. 313 (10/01/15)
- 22 DE Reg. 21 (07/01/18) (Prop.)

