

**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL
DIVISION OF FISH AND WILDLIFE**

Statutory Authority: 7 Delaware Code, Section 6010 (7 Del.C. §6010)

FINAL

**3507 Black Sea Bass Size Limit; Landing Permits; Qualifying Criteria; Seasons; Quotas
(Formerly Tidal Finfish Reg. 23), and
3511 Summer Flounder Size Limits; Possession Limits; (Formerly Tidal Finfish Reg. 4)**

Order No. 2005-F-0018

Summary of Evidence and Information

Pursuant to due notice 8, issue 8 **DE REG** page 1080, (2/1/05), The Department of Natural Resources and Environmental Control proposes to amend Tidal Finfish Regulation Nos. 3511 and 3507 pertaining to summer flounder and black sea bass respectively. For summer flounder eight options were proposed to restrain the recreational harvest to conform to the harvest cap of 150,000 fish imposed on Delaware for the 2005 fishing season by the Atlantic States Marine Fisheries Commission's (ASMFC) regional fisheries management plan. The proposed regulation for black sea bass would eliminate the current season closure and permit the fishery to remain open throughout the year.

The options presented for summer flounder and the changes associated with the black sea bass regulation are necessary for Delaware to remain in compliance with the Atlantic States Marine Fisheries Commission fishery management plan provisions for these species and all of the options presented have been pre-judged to be in compliance with the mandatory provisions of these fishery management plans.

A public hearing was held on the proposed amendments to Regulations 3511 and 3507 on March 8, 2005. Comments were taken on the eight options for summer flounder and the proposed elimination of a seasonal component for management of black sea bass. Written testimony was received and included into the record.

Findings of Fact

- There was no opposition to the proposed elimination of the season for black sea bass. The nine people that attended the public hearing all supported this change in the regulation.
- Among the nine people who spoke on the record at the public hearing seven supported summer flounder option 7 or status quo. The justification for their support of option 7 focused on concerns that by adding additional fish to the creel limit or reducing the minimum size requirement the harvest cap could be exceeded thus requiring more stringent management measures in 2006. The majority of the speakers were opposed to any closed season and they wanted to try and avoid an overage in 2005 that may require a closed season in 2006 as part of a more restrictive approach to restrain the recreational harvest of summer flounder.
- Four written comments were received that pertained to the options for summer flounder. One person supported the status quo (option 7), while one person favored option 3 with a 17 inch minimum size limit and two people supported option 2 with a 16.5 inch minimum size.
- Two people endorsed option 8 which included an additional two fish bag limit. These individuals commented that most anglers only catch one fish per trip so consequently these two additional fish will not cause an overage in the harvest cap. It would provide additional incentive for people to go fishing if a larger bag limit were available.
- Those individuals supporting option 7, status quo, indicated that this basic approach has been successful during the last four years in restraining Delaware's recreational summer flounder landings within the harvest cap. As such, they support a continuation of this program for the 2005 recreational fishery.

Conclusions

I have reached the following conclusions:

- Delaware and the surrounding states are required to restrain the recreational harvest of summer flounder to a harvest cap level that is calculated individually for each state. This cap is predicated on state landings of

recreationally caught summer flounder in 1998 and consequently all states have different caps. The individual state harvest cap is a compliance requirement in the ASMFC summer flounder FMP. In order to avoid any action by ASMFC, which under a worse case scenario could result in a Federal moratorium on fishing for summer flounder in Delaware, it will be necessary to require management measurers in 2005 that have in the past proven to restrain the harvest.

- Information presented at the public hearing by the Department indicates that in 2001 under a restrictive management program of 17.5 inch minimum size and 4 fish creel limit the estimated harvest was 143,000 fish. This estimated harvest is just slightly below the 150,000 fish harvest cap in place for 2005 and consequently suggests that even these measures may not be restrictive enough to restrain the fishery in 2005 if fish are available in substantial numbers in Delaware waters and fishing effort increases.

- The overwhelming majority of people who attended the public hearing and commented on the record supported option 7 which is more restrictive than option 8 and theoretically should prove more effective in restraining the harvest.

- Delaware's minimum size limit for summer flounder should remain at 17.5 inches and the creel limit should remain at 4 fish for the 2005 fishing season.

- The current regulation for black sea bass should be amended to permit harvesting during the entire year. This change in regulations will insure that Delaware's management program is consistent with the majority of coastal states from Massachusetts to North Carolina.

ORDER

It is hereby ordered this 14th day in March in the year 2005 that an amendment to Tidal Finfish Regulation No. 3507, copies of which are attached hereto, is adopted pursuant to 7 **Del.C.** § 903(e)(2)(a) and is supported by the Departments findings of evidence and testimony received. This Order shall become effective on April 11, 2005.

John A. Hughes, Secretary
Department of Natural Resources and Environmental Control

3507 Black Sea Bass Size Limit; Landing Permits; Qualifying Criteria; Seasons; Quotas (Formerly Tidal Finfish Reg. 23)

(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.

2.0 It shall be unlawful for any recreational person to have in possession any black sea bass that measures less than twelve (12) inches total length.

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

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

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, 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.

6 DE Reg. 1358 (4/1/03)

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.

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

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 and who had applied for and secured from the Department a commercial food fishing license and has a reported landing history in either the federal or state reporting systems of landing by pot at least 10,000 pounds of black sea bass during the period 1994 through 2001. Those individuals that have landing history only in the federal data base must have possessed a state commercial food fishing license for at least one year during the time from 1994 through 2001.

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

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 submitted landings reports in either the federal or state landing report systems for black sea bass harvested by hook and line during at least one year between 1994 and 2001.

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)

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.

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

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 by 4:30 PM on a date no later than 15 days after this regulation is signed by the Secretary of the Department.

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

9.0 It shall be unlawful for a commercial food fisherman to transfer quota allocation shares of black sea bass to another commercial food fishermen.

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

10.0 Each commercial food fishermen 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.

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

11.0 It shall be unlawful for any recreational fisherman to have in possession more than 25 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.

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

12.0 ~~It shall be unlawful for any recreational fisherman to take and reduce to possession or to land black sea bass during the periods beginning at 12:01 AM on September 8, 2004 and ending at midnight on September 21, 2004 and beginning at 12:01 AM on December 1, 2004 and ending at midnight on December 31, 2004.~~

~~[(Note: Seasonal measures were eliminated by SASMFC for the 2005 season)]~~

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

3511 Summer Flounder Size Limits; Possession Limits; (Formerly Tidal Finfish Reg. 4)

(Penalty Section 7 Del.C. §936(b)(2))

1.0 It shall be unlawful for any recreational fisherman to have in possession more than ~~four (4)~~ **[four (4)]** summer flounder at or between the place where said summer flounder were caught and said recreational fisherman's personal abode or temporary or transient place of lodging.

~~[(Note: creel limit to be determined in combination with seasonal closure and size limit.)]~~

6 DE Reg. 1358 (4/1/03)

2.0 It shall be unlawful for any person, other than qualified persons as set forth in section 4.0 of this regulation, to possess any summer flounder that measure less than ~~seventeen and one-half (17.5)~~ **[seventeen and one-half (17.5)]** inches between the tip of the snout and the furthest tip of the tail.

~~[(Note: size limit to be determined in combination with seasonal closure and creel limit.)]~~

6 DE Reg. 1358 (4/1/03)

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

3.0 It shall be unlawful for any person while on board a vessel, to have in possession any part of a summer flounder that measures less than ~~seventeen and one-half (17.5)~~ **[seventeen and one-half (17.5)]** inches between said part's two most distant points unless said person also has in possession the head, backbone and tail intact from which said part was removed.

~~[(Note: size limit to be determined in combination with seasonal closure and creel limit.)]~~

6 DE Reg. 1358 (4/1/03)

4.0 Notwithstanding the size limits and possession limits in this regulation, a person may possess a summer flounder that measures no less than fourteen (14) inches between the tip of the snout and the furthest tip of the tail and a quantity of summer flounder in excess of the possession limit set forth in this regulation, provided said person has one of the following:

4.1 A valid bill-of-sale or receipt indicating the date said summer flounder were received, the amount of said summer flounder received and the name, address and signature of the person who had landed said summer flounder;

4.2 A receipt from a licensed or permitted fish dealer who obtained said summer flounder; or

4.3 A bill of lading while transporting fresh or frozen summer flounder.

4.4 A valid commercial food fishing license and a food fishing equipment permit for gill nets.

6 DE Reg. 1358 (4/1/03)

5.0 It shall be unlawful for any commercial finfisherman to sell, trade and or barter or attempt to sell, trade and or barter any summer flounder or part thereof that is landed in this State by said commercial fisherman after a date when the de minimis amount of commercial landings of summer flounder is determined to have been landed in this State by the Department. The de minimis amount of summer flounder shall be 0.1% of the coast wide commercial quota as set forth in the Summer Flounder Fishery Management Plan approved by the Atlantic States Marine Fisheries Commission.

6 DE Reg. 1358 (4/1/03)

6.0 It shall be unlawful for any vessel to land more than 200 pounds of summer flounder in any one day in this State.

6 DE Reg. 1358 (4/1/03)

7.0 It shall be unlawful for any person, who has been issued a commercial food fishing license and fishes for summer flounder with any food fishing equipment other than a gill net, to have in possession more than ~~four (4)~~ summer flounder at or between the place where said summer flounder were caught and said person's personal abode or temporary or transient place of lodging.

~~[(Note: Creel limit to be determined in combination with seasonal closure and size limit.)]~~

1 DE Reg 1767 (5/1/98)

2 DE Reg 1900 (4/1/99)

3 DE Reg 1088 (2/1/00)

4 DE Reg 1552 (3/1/01)

5 DE Reg 462 (8/1/01)

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

6 DE Reg. 1358 (4/1/03)

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

~~[Note: Proposed options for seasonal closures associated with creel limits and minimum size limits to restrict the recreational summer flounder harvest in Delaware in 2004-2005.~~

Opening Option	Final Day	Number of Day	Bag Open Days	Minimum Limit	Size
1	01-Jan	08-Sep	220	7	16"
2	01-Jan	14-Aug	226	5	16.5"
3	01-Jan	6-Sep	249	5	17"
4	25-May	10-Aug	78	7	16"
5	25-May	18-Aug	86	5	16.5"
6	01-Jan	31-Dec	365	4	17.5"
8	01-Jan	31-Dec	365	6	17.5"

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