

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Sections 901(c) and (d); 903(e)(2)a.1 (7 Del.C. §§901(c) & (d) & 903(e)(2)a.1)

7 DE Admin. Code 3502 & 3503

FINAL

Secretary's Order No.: 2020-F-0038

RE: Approving Final Regulation, pursuant to 7 Del. C. § 903(e)(2)a.1, to Amend 7 DE Admin. Code 3502: *Striped Bass Spawning Season and Area Restrictions* and 7 DE Admin. Code 3503: *Striped Bass Recreational Fishing Seasons; Methods of Take; Creel Limit; Possession Limit*

Date of Issuance: December 23, 2020

Effective Date of the Amendment: January 1, 2021

3502 Striped Bass Spawning Season and Area Restrictions 3503 Striped Bass Recreational Fishing Seasons; Methods of Take; Creel Limit; Possession Limit

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC"), pursuant to 7 Del. C. § 903(e)(2)a.1, and all other relevant statutory authority, the following findings of fact based on the reasons and conclusions are entered as an order of the Secretary in the above-referenced regulatory amendment.

Notwithstanding 29 Del. C. Ch. 101 (which sets forth the standardized procedures whereby a state agency shall promulgate regulations), the Department also has the statutory authority under 7 Del. C. § 903(e)(2)a.1 to promulgate certain regulations in order to adopt a specified management measure for finfish, subject to 7 Del. C. Ch. 9, *Finfishing in Tidal Waters*, by the issuance of a Secretary's Order. The Department is allowed to follow this abbreviated regulatory promulgation process only in instances where the management measures are specified by, and ensures compliance or maintains consistency with, a fisheries management plan or rule established by the Atlantic States Marine Fisheries Commission, the Atlantic Coastal Fisheries Cooperative Management Act, the Mid-Atlantic Fishery Management Council, or the National Marine Fisheries Service.

Whenever the Department promulgates a regulation pursuant to 7 Del. C. § 903(e)(2)a.1, it shall also (1) publish on its website a public notice with a copy of the Secretary's Order and final regulation that implements the specific management measure; and (2) file the Secretary's Order and regulation that implements the specified management measure in the next available issue of the *Delaware Register of Regulations*.

Background, Procedural History and Findings of Fact

This order amends 7 DE Admin. Code 3502: *Striped Bass Spawning Season and Area Restrictions* and 7 DE Admin. Code 3503: *Striped Bass Recreational Fishing Seasons; Methods of Take; Creel Limit; Possession Limit* as part of an effort to reduce Striped Bass catch and release mortality in the recreational fishery by adopting a specified management measure approved and mandated by the Atlantic States Marine Fisheries Commission's ("ASMFC") Atlantic Striped Bass Management Board. Specifically, this order mandates the use of non-offset circle hooks when fishing with bait for the recreational Striped Bass fishery beginning on January 1, 2021. This order is required for Delaware to remain compliant with Addendum VI to Amendment 6 to the Interstate Fishery Management Plan for Atlantic Striped Bass.

The 2018 benchmark Striped Bass stock assessment and peer review conducted by the Northeast Regional Stock Assessment Workshop found that Striped Bass are overfished and overfishing is occurring. Approximately 90% of Striped Bass removals were attributed to the recreational fishery and recreational removals attributed to catch and release mortality were estimated to be as high as 50% of total recreational removals in recent years. Non-offset circle hooks have been shown to reduce release mortality of recreationally caught Striped Bass.

The Department has the statutory basis and legal authority to act with regard to promulgation of the proposed amendments to 7 DE Admin. Code 3502: *Striped Bass Spawning Season and Area Restrictions* and 7 DE Admin. Code

3503: *Striped Bass Recreational Fishing Seasons; Methods of Take; Creel Limit; Possession Limit*, pursuant to 7 Del. C. §§ 901(c) & (d) and 903(e)(2)a.1. This specific management measure is required to be implemented by January 1, 2021, pursuant to ASMFC Atlantic Striped Bass Management Board action.

ORDER

In accordance with 7 Del. C. § 903(e)(2)a.2, it is hereby ordered, this 23rd day of December, 2020, that the above referenced amendments to 7 DE Admin. Code 3502: *Striped Bass Spawning Season and Area Restrictions* and 7 DE Admin. Code 3503: *Striped Bass Recreational Fishing Seasons; Methods of Take; Creel Limit; Possession Limit*, a copy of which is hereby attached, are supported by the evidence contained herein and are hereby adopted. The above referenced amendments shall take effect January 1, 2021.

Shawn M. Garvin
Secretary

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 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 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 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 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 is unlawful for any person to fish any fixed gill net in the Delaware River north of a line beginning at the southern shore of Appoquinimink River at latitude 39°26'51.00"N and longitude 75°34'46.00"W and continuing due east to the boundary with New Jersey during January, February, March, April or May.
- 6.0 ~~It 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 a non-offset circle hook when said hook measures greater than three eighths (3/8) inches as measured from the point of the hook to the shank of the hook.~~

8 DE Reg. 1169 (02/01/05)

18 DE Reg. 889 (05/01/15)

23 DE Reg. 1040 (06/01/20)

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

(Penalty Section 7 Del.C. §936(b)(2))

1.0 Definitions

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

"Circle hook" means a hook where the point is pointed perpendicularly back towards the shank.

"Non-offset" means the hook point and barb being in the same plane as the hook shank.

- ~~4.02.0~~ It 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.
- ~~2.03.0~~ It 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.
- ~~3.04.0~~ Unless otherwise authorized, it is unlawful for any recreational fisherman to take and reduce to possession more than one 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.

~~4.05.0~~ Unless otherwise authorized, it is unlawful for any recreational fisherman to have in possession more than one 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.

~~5.06.0~~ Notwithstanding 7 **Del.C.** §943, which only relates to commercial fishermen, it is lawful for a recreational fisherman to possess striped bass that have not been tagged, unless otherwise prohibited.

7.0 It is unlawful for any recreational fisherman to fish for striped bass with natural bait using any hook other than a non-offset circle hook.

7 DE Reg. 1205 (03/01/04)

18 DE Reg. 889 (05/01/15)

20 DE Reg. 467 (12/01/16)

24 DE Reg. 175 (08/01/20)

24 DE Reg. 803 (02/01/21) (Final)