

**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL
CONTROL**

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 903(e)(2)a.(3) (7 **Del.C.** §903(e)(2)a.(3))
7 **DE Admin. Code** 3504

PROPOSED

REGISTER NOTICE

SAN #2008-28

1. Title of the Regulation:

Amend Tidal Finfish Regulation No. **3504 Striped Bass Possession Size Limit; Exceptions**

2. Brief Synopsis of the Subject, Substance and Issues:

The current minimum size limit for striped bass (*Morone saxatilis*) taken in Delaware waters by recreational fishermen is 28-inches (TL) throughout the year. Large striped bass in excess of 28 inches tend to be females and most leave the Bay and River after spawning in the spring and often undergo extensive coastal migrations throughout the summer months. Large striped bass return in the late fall and winter. Male striped bass mature at an earlier age and often do not reach the current large minimum size limit. Tagging studies indicate male striped bass are also less migratory and often remain within the estuaries throughout the summer.

The Delaware Division of Fish and Wildlife has received approval from the Atlantic States Marine Fisheries Commission to establish a two-month season during the summer that would allow recreational anglers in Delaware Bay, Delaware River and its tributaries to land two striped bass per day between 20 and 26-inches. During this two-month period, anglers fishing within the designated areas of the River and Bay would be required to release any striped bass that were below or above the 20 to 26-inch slot limit. The slot-limit would not occur in coastal areas of Delaware. This regulation change will greatly increase the opportunity for anglers in the River and Bay to target male striped bass and keep a very desirable food fish.

3. Possible Terms of the Agency Action:

These changes would go into effect March, 2009 and remain in effect indefinitely unless changed.

4. Statutory Basis or Legal Authority to Act:

7 **Delaware Code** §903(e)(2)a.(3)

5. Other Regulations that may be Affected by the Proposal:

This would represent an amendment to the existing Tidal Finfish Regulation (No.3504). No other regulations are affected.

6. Notice of Public Comment:

Individuals may address questions to the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, DE 19901 or phone (302)-739-9914. A public hearing on these proposed regulations will be held in the Department of Natural Resources and Environmental Control auditorium at 6:30 PM on Monday, January 26, 2009. Individuals may present their opinions and evidence either at the hearing or in writing to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901, or via email to Lisa.Vest@state.de.us. The hearing record will remain open for written or email comments until 4:30 PM January 31, 2009.

7. Prepared By:

Regulatory Flexibility Act Compliance Form

Background: The Regulatory Flexibility Act (29 Del. C. Chapter 104) states that prior to the issuance of any rule or regulation an agency shall consider whether it is lawful, feasible and desirable for the agency to exempt individuals and small businesses from the effect of the rule or regulation or whether the agency may and should promulgate a rule or regulation which sets less stringent standards for compliance by individuals and/or small businesses.

Please explain your considerations for each of the following factors (attach additional pages or documents as needed):

1. the nature of any reports and the estimated cost of their preparation by individuals and/or small business which would be required to comply with the new rule:

No additional costs to the private sector is anticipated with this proposed regulation amendment.

2. The nature and estimated costs of other measures or investments that would be required by individuals and/or small businesses in complying with the rule:

If approved, this regulation change may stimulate sales of fishing equipment by local bait and tackle shops, sporting goods stores, and boat/motor dealerships. However, no additional costs or investments are expected or anticipated.

3. The nature and estimated cost of any legal, consulting and accounting services which individuals and/or small businesses would incur in complying with the rule:

No additional legal, consulting, or accounting services are expected or likely to occur as a result of this regulatory change.

4. The ability of individuals and/or small businesses to absorb the costs estimated under questions 1, 2 and 3 of this form without suffering economic harm and without adversely affecting competition in the marketplace:

No negative monetary effect on individuals or small business associated with this regulation change is expected.

5. The additional cost, if any, to the agency of administering or enforcing a rule which exempts or sets lesser standards for compliance by individuals and/or small business:

Because no one will be exempted from the proposed rule, there will be no additional cost to this agency from administering or enforcing the exemptions of individuals or small business.

6. The impact on the public interest of exempting or setting lesser standards of compliance for individuals and/or small businesses.

None

7. What accommodations, if any, have been made in the regulations to address individual or small business concerns identified above?

There have been no individual or small business concerns, as identified above, associated with the development of this regulation change.

3504 Striped Bass Possession Size Limit; Exceptions

(Penalty Section 7 Del.C. §936(b)(2))

- 1.0 Notwithstanding, the provisions of 7 **Del.C.** §929(b)(1), it shall be unlawful for any recreational fisherman to take and reduce to possession any striped bass that measures less than twenty-eight (28) inches in total length, except that recreational hook and line fisherman may take two (2) striped bass measuring not less than 20-inches and not greater than 26- inches from the Delaware River, Delaware bay, or their tributaries during the months of July and August.
- 2.0 Notwithstanding, the provisions of 7 **Del.C.** §929(b)(1), it shall be unlawful for any commercial food fisherman to take and reduce to possession any striped bass that measure less than twenty-eight (28) inches in total length from the tidal waters of this State except that commercial gill net fishermen may take striped bass measuring no less than twenty (20) inches in total length from the tidal waters of the Delaware River and Delaware Bay or their tributaries during the period from February 15 through May 31 or from the tidal waters of the Nanticoke River or its tributaries during the period from February 15 through the month of March.
- 3.0 It shall be unlawful for any person to possess a striped bass that measures less than 28 inches, total length, unless said striped bass is in one or more of the following categories:
 - 3.1 It has affixed, a valid strap tag issued by the Department to a commercial gill net fisherman and was legally taken and tagged by said commercial gill net fisherman from the tidal waters of the Delaware River and Delaware Bay or their tributaries during the period from February 15 through May 31; or from the tidal waters of the Nanticoke River or its tributaries during the period from February 15 through the month of March; or
 - 3.2 It was legally landed in another state for commercial purposes and has affixed a valid tag issued by said state's marine fishery authority; or
 - 3.3 It entered Delaware packed or contained for shipment, either fresh or frozen, and accompanied by a bill-of-lading with a destination to a state other than Delaware; or
 - 3.4 It was legally landed in another state for non commercial purposes by the person in possession of said striped bass and there is affixed to either the striped bass or the container in which the striped bass is contained a tag that depicts the name and address of the person landing said striped bass and the date, location, and state in which said striped bass was landed; or
 - 3.5 It is the product of a legal aquaculture operation and the person in possession has a written bill of sale or receipt for said striped bass.
- 4.0 It shall be unlawful for any commercial finfisherman to possess any striped bass for which the total length has been altered in any way prior to selling, trading or bartering said striped bass.
- 5.0 The words "land" and "landed" shall mean to put or cause to go on shore from a vessel.
- 6.0 It shall be unlawful for any person to land any striped bass that measures less than twenty-eight (28) inches in total length at any time, except those striped bass caught in a commercial gill net legally fished in the waters of Delaware River or Delaware Bay or their tributaries during the period from February 15 through May 31 or from a commercial gill net legally fished in the tidal waters of the Nanticoke River or its tributaries during the period from February 15 through the month of March.
- 7.0 It shall be unlawful for a commercial finfisherman authorized to fish during Delaware's commercial striped bass fishery to land any striped bass that measures less than twenty (20) inches in total length.

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

4 DE Reg. 230 (7/1/00)

4 DE Reg. 1552 (3/1/01)

6 DE Reg. 1512 (5/1/01)

7 DE Reg. 1205 (3/1/04)

8 DE Reg. 1718 (6/1/05)

12 DE Reg. 922 (01/01/09) (Prop.)