

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Sections 901 and 903(a), (b), (e), (f) and (i) (7 Del.C. §§901 & 903(a), (b), (e), (f) and (i))
7 DE Admin. Code 3505

PROPOSED

REGISTER NOTICE #2018-13

3505 Striped Bass Commercial Fishing Seasons; Quotas; Tagging and Reporting Requirements

1. TITLE OF THE REGULATIONS:

7 DE Admin. Code 3505 Striped Bass Commercial Fishing Seasons; Quotas; Tagging and Reporting Requirements.

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

Delaware's commercial striped bass fishery is allocated through an annual quota in accordance with the Atlantic States Marine Fisheries Commission's (ASMFC) Interstate Fishery Management Plan for Atlantic Striped Bass. Delaware's annual commercial striped bass quota allocation is apportioned by regulation to two gear types - commercial gill net (GN) and commercial hook and line (HL). These are managed as separate fisheries, with different size limits, seasons and allocations in an effort to maximize fishing opportunities for each fishery, minimize dead discards and prevent growth overfishing. Eligible participants in each fishery are provided with an allotment of tags based on the number of participants, predicted size of the fish and annual quota. Tags are used to assist the Department with quota tracking and accountability. During the period 1990 - 96, 90% of Delaware's quota was allocated to the GN fishery and 10% was allocated to the HL fishery. In 1997, to better ensure full use of Delaware's quota, the striped bass allocation to the GN fishery was increased to 95%, but the less efficient commercial HL fishery was kept at 10% to maintain individual H&L quotas. This over-allocation improved quota attainment as the GN fishery routinely landed its 95% while the HL fishery, for various reasons, never landed more than 3% of the quota. Despite the over-allocation, Delaware did not have any quota overages during 1997 through 2017 because quota could not be transferred between the GN and HL fisheries.

The recent adoption of 7 Del.C. §903A provides for the transfer of striped bass quota (tags) between the GN and HL fisheries. This resulted in improved landing efficiency and, ultimately, a commercial quota overage in 2018. To prevent subsequent overages, the Department is ending over-allocation of the quota and is proposing two alternative allocation strategies. Option 1 would allocate 90% of Delaware's striped bass commercial quota to the gill net fishery and 10% to the H&L fishery. This option would match the proportions used prior to 1997. Historically, this option resulted in an underutilization of the quota. Option 2 would allocate 95% of Delaware's striped bass commercial quota to the gill net fishery and 5% to the H&L fishery. Option 2 is the allocation strategy recommended by the Advisory Council on Tidal Fin Fisheries as a way to better ensure full use of Delaware's quota.

In addition, the Department proposes to adjust the required registration date to participate in the commercial HL fishery from March 15 to February 1 to align with the commercial GN fishery and better accommodate tag transfers.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Del.C. §901 & §903(a), (b), (e), (f) & (i)

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

None.

6. NOTICE OF PUBLIC COMMENT:

The hearing record on the proposed changes to 7 DE Admin. Code 3505 Striped Bass Commercial Fishing Seasons; Quotas; Tagging and Reporting Requirements will open October 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. A public hearing on the proposed amendment will be held on Wednesday, October 31, 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 Thursday, November 15, 2018.

7. PREPARED BY:

Stewart Michels

3505 Striped Bass Commercial Fishing Seasons; Quotas; Tagging and Reporting Requirements.

(Penalty Section 7 Del.C. §936(b)(2))

- 1.0 It is unlawful for any commercial food fisherman using a gill net to take and reduce to possession any striped bass at any time except when said commercial food fisherman is authorized by the Department to participate in a commercial gill net fishery for striped bass established herein. A commercial food fisherman may use a gill net to take and reduce to possession striped bass during the period beginning at 12:01 A.M. on February 15 and ending at 4:00 P.M. on May 31 next ensuing. It is unlawful to use any gill net having a stretched-mesh size greater than four (4) inches to take striped bass during the period February 15 until and including the last day in February unless the net is drifted. A commercial food fisherman may use a gill net to take and reduce to possession striped bass during the period beginning at 12:01 A.M. on November 15 and ending at 4:00 P.M. on December 31 next ensuing provided at least two (2) percent of the commercial allocation of striped bass for the gill net fishery, as determined by the Department, was not landed in the February - May gill net fishery. In order for a commercial food fisherman to be authorized by the Department to participate in a commercial gill net fishery, said commercial food fisherman shall have a valid food fishing equipment permit for a gill net and shall register in writing with the Department to participate in said fishery by February 1 for the February 15 - May 31 gill net fishery and by November 1 for the December gill net fishery.
- 2.0 It is unlawful for any commercial food fisherman using a hook and line to take and reduce to possession any striped bass at any time except when said commercial food fisherman is authorized by the Department to participate in a commercial hook and line fishery for striped bass established herein. Except as otherwise provided, a commercial food fisherman may use a hook and line to take and reduce to possession striped bass during the period beginning at 12:01 A.M. on April 1 and ending at 4:00 P.M. on December 31 next ensuing. In order for a commercial food fisherman to be authorized to participate in the commercial hook and line fishery, said commercial food fisherman shall register in writing with the Department to participate in said fishery by ~~March 15~~ February 1.
- 3.0 ~~It is unlawful for any commercial food fisherman using a hook and line, during the striped bass hook and line fishery established for subsection 2.0 herein, to land striped bass by means of a gill net or to have any gill net on board or to otherwise have in possession on or near his person any gill net.~~
- 4.03.0 The striped bass gill net fishery in February - May, the striped bass gill net fishery in November - December and the striped bass hook and line fishery in April - December shall be considered separate striped bass fisheries. Each participant in a striped bass fishery shall be assigned an equal share of the total pounds of striped bass allotted by the Department to that fishery. A share shall be determined by dividing the number of pre-registered participants in that fishery into the total pounds of striped bass allotted to that fishery by the Department. The total pounds of the State's ASMFC commercial striped bass quota will be allotted to each fishery by the Department as follows: ~~95~~[TBD from Table]% for the February 15 - May 31 gill net fishery, ~~40~~[TBD from Table]% for the April - December hook and line fishery and, provided that in excess of two (2)% of the February 15 - May 31 gill net fishery allocation was not landed, said remainder for the November - December gill net fishery. Any overage of the State's commercial quota will be subtracted from the next year's commercial quota proportionally to the appropriate fishery.

Table. Annual quota allocation options for the commercial striped bass fishery pertaining to proposed amendments to 7 DE Admin. Code 3505 (3.0).

<u>Option</u>	<u>Commercial Gill Net Allocation</u>	<u>Commercial Hook & Line Allocation</u>
<u>1</u>	<u>90%</u>	<u>10%</u>
<u>2</u>	<u>95%</u>	<u>5%</u>

- 5.04.0 It is unlawful for any commercial food fisherman to land, during a striped bass fishing season, more than the total pounds assigned by the Department to said individual commercial food fisherman.
- 6.05.0 It is unlawful for any commercial food fisherman to possess any landed striped bass that does not have locked into place through the mouth and gill (operculum) opening a striped bass harvest tag issued to said commercial fisherman by the Department.
- 7.06.0 The Department may issue tags to commercial food fishermen who register in writing with the Department to participate in a striped bass fishery. Each participant shall initially be issued a quantity of striped bass harvest tags that is to be determined by the Department by dividing said participant's assigned share in pounds by the estimated weight of a striped bass expected to be landed. If a commercial food fisherman needs additional

tags to fulfill his or her assigned share, the Department shall issue additional tags after verifying the balance of the share from reports submitted by an official weigh station to the Department.

~~8.07.0~~ It is lawful for a commercial food fisherman who is authorized to be issued striped bass harvest tags by the Department to transfer said tags to another commercial food fisherman, ~~authorized to participate in the same striped bass fishery~~, provided said transfer is made prior to said tags being issued by the Department.

~~9.08.0~~ It is unlawful for any commercial food fisherman to apply a tag to a striped bass unless said tag had been issued or legally transferred to said commercial food fisherman by the Department.

~~10.09.0~~ It is unlawful to apply any striped bass tag issued by the Department to a striped bass if said tag had previously been applied to another striped bass.

~~11.10.0~~ It is unlawful for any commercial food fisherman to sell, barter or trade any striped bass, to attempt to sell, barter or trade any striped bass or to transport, to have transported or to attempt to have transported any striped bass out of the State unless said striped bass has been weighed and tagged at an official weigh station.

~~12.011.0~~ The Department may appoint individuals and their agents as official weigh stations to weigh and tag all striped bass landed in a commercial striped bass fishery. Official weigh stations, if requested, shall be compensated by the Department for each striped bass weighed and tagged. An official weigh station shall enter into an agreement with the Department to maintain records and report on a regular basis each commercial food fisherman's daily landings of striped bass weighed and tagged at said station. The Department shall provide official weigh stations with tags to be applied to each striped bass weighed.

~~13.012.0~~ Each commercial food fisherman participating in a striped bass fishery shall file a complete and accurate report with the Department on forms provided by the Department on all striped bass landed during said fishery. Each report shall be filed with the Department within 30 days after the end date of each fishery. All unused tags issued or legally transferred to a commercial food fisherman shall be returned to the Department with said report. Failure to file a complete and accurate report or failure to return all unused tags may disqualify the commercial food fishermen from future striped bass fisheries.

1 DE Reg 270 (09/01/97)

4 DE Reg 1552 (03/01/01)

8 DE Reg 1169 (02/01/05)

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

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

22 DE Reg. 267 (10/01/18) (Prop.)