



STATE OF DELAWARE
**DEPARTMENT OF NATURAL RESOURCES AND
ENVIRONMENTAL CONTROL**

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OFFICE OF THE
SECRETARY

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Secretary's Order No: 2024-F-0007

RE: Approving Final Amendments to 7 DE Admin. Code 3505 - *Striped Bass Commercial Fishing Seasons; Quotas; Tagging and Reporting Requirements*

Date of Issuance: March 05, 2024

Effective Date: April 11, 2024

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 all 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 7 DE Admin. Code 3505 - *Striped Bass Commercial Fishing Seasons; Quotas; Tagging and Reporting Requirements* ("Regulation"). The Department proposes revisions to the Regulation that will enable the Department to modify the anchor gill net season to better synchronize the season with the availability and market for striped bass, as recommended by the Advisory Council on Tidal Finfisheries ("Council").

The Department has the authority, under to 7 *Del. C.* §903, to implement management measures to enhance the conservation and management of coastal finfisheries. Striped bass have been coming into Delaware Bay and River earlier in the year as the waters warm up, and the market for striped bass has been increasing earlier in the season. The striped bass gill net season is open from February 15 through May 31. There are two main types of gillnetting techniques, drift gillnetting and anchor gillnetting. Currently, the drift gill net season is open for the duration of the striped bass gillnet season (February 15-May 31) and the anchor gill net season is only open from March 1 through May 10.

In accordance with 7 *Del. C.* §923, the Department limits the anchor gill net season. The anchor netting technique is more efficient than the drift netting technique however, it is also more destructive. While anchor gill netting accounts for 90% of striped bass gill net landings, the discard mortality rate associated with the anchor gill netting technique has a higher mortality rate of 41% compared to 8% for drift netting. Additionally, anchor gillnetting has also been linked to the mortality of other species including the Endangered Species Act-listed Atlantic Sturgeon and waterbirds, which have been discovered deceased in anchor gillnets.

On September 19, 2023, the Council unanimously approved a motion to recommend a modification to the anchor gill net season by adding two weeks in February and to eliminate two weeks between the end of April and beginning of May from the anchor gill netting season. This recommendation stems from the early arrival of striped bass into Delaware Bay and River as temperatures rise, and the increased market demand for striped bass earlier in the season. With the consideration of maintaining a 10-week duration and aligning the season with the availability and market demand for striped bass during the spring season, the Department proposed Amendments to modify the anchor gill netting season to begin on February 15th and conclude on April 26th.

To that, as set forth in 29 *Del.C.* §10119, the Department implemented Secretary Order # 2023-F-0031 ("EO") on December 1, 2023. The EO adopted amendments to the Regulations, effective February 15, 2024, and revised the 2024 anchor gill net season from the current dates of March 1 through May 10 to February 15 through April 26. The emergency regulations, as contained in the EO, were intended as interim measures, necessary to avoid the risk of harm to public health, safety, and welfare, pending the formal adoption of regulations pursuant to the *Administrative Procedures Act*.

Pursuant to 29 *Del C.* Ch. 101 and 7 *Del. C.* §903, the Department published its proposed regulation Amendments in the January 1, 2024, Delaware Register of Regulations. Subsequent to publishing the proposed Amendments, the Council met on January 17, 2024, to further discuss the concerns raised by the late-season netters regarding the reduction of the anchor gill net season between the end of April and beginning of May. The Department proposed a compromise to adjust the dates of the season to include a couple of days into the month of May without extending its duration.

The Department *revised* proposed Amendments to commence the anchor gillnet season on February 19 after 4 pm, allowing anglers to deploy their anchor gill nets the night before the commencement of anchor gillnet season on February 20. This season would then extend through May 2. This slight adjustment maintains the 10-week duration for anchor gillnetting, while considering late-season netters, optimizing the spring anchor gill net season, and the market demand for striped bass.

The Department has the statutory basis and legal authority to act with regard to the formal promulgation of these *revised* proposed Amendments, pursuant to 7 *Del. C.* §903. As previously noted, the Department published its initial proposed regulation Amendments in the January 1, 2024, *Delaware Register of Regulations*. Thereafter, the public hearing regarding this matter was held on January 30, 2024. There were ten (10) members of the public in attendance. The Department presented the *revised* proposed Amendments at its public hearing that was held on January 30, 2024. The revisions, as set forth in the *revised* proposed Amendments, were properly vetted by the Department at the time of the virtual hearing and do not constitute a significant alteration to what was initially proposed. Therefore, no further public notification is required by the Department.

Pursuant to 29 *Del.C.* §10118(a), the hearing record (“Record”) remained open for receipt of written comment for 15 days following the public hearing. The Record formally closed for comment in this matter at close of business on February 14, 2024, with ten (10) comments received by the Department for the formal 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.

Subsequent to the close of the Record, and at the request of presiding Hearing Officer Theresa Smith, the Department’s Division of Fish and Wildlife staff prepared a Technical Response Memorandum (“TRM”). The TRM responds to the comments received by the Department in this matter and provides a thorough discussion in response to the suggestions and questions provided by the public.

Following receipt of the Department’s TRM as noted above, the Hearing Officer prepared her Hearing Officer’s Report dated February 15, 2024 (“Report”), which expressly incorporated both the Department’s proposed Amendments and the TRM into the Record generated in this matter. 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 in the Division of Fish and Wildlife, and established by the Hearing Officer’s Report, I find that the *revised* proposed regulatory Amendments to 7 DE Admin. 3505 - *Striped Bass Commercial Fishing Seasons; Quotas; Tagging and Reporting Requirements*, are well supported. I further find that the Department’s experts fully developed the record to support adoption of these *revised* Amendments. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the *revised* proposed Amendments be promulgated as final.

The following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to this proposed regulatory promulgation, pursuant to 7 *Del. C.* §903;
2. The Department has jurisdiction under its statutory authority, pursuant to 7 *Del.C.* Chapter 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 subsequently the *revised proposed* Amendments, 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 January 30, 2024, and during the 15 days subsequent to the hearing (through February 14, 2024), before making any final decision;
4. Promulgation of the *revised proposed* Amendments to 7 DE Admin. 3505 - *Striped Bass Commercial Fishing Seasons; Quotas; Tagging and Reporting Requirements* will enable the Department to modify the anchor gill net season to better synchronize the season with the availability and market for Striped Bass;
5. The Department has reviewed the *revised proposed* Amendments in light of the Regulatory Flexibility Act, consistent with 29 *Del.C.* Ch. 104, and has selected Exemption “B1,” as this regulation is not substantially likely to impose additional cost or burdens upon individuals and/or small businesses;
6. The Department has reviewed this *revised proposed* regulatory promulgation in the light of 7 *Del.C.* §10003 and 29 *Del.C.* §10118(b)(3), and has determined that conducting such an assessment regarding the impact of this regulation on the achievement of the State of Delaware's greenhouse gas emissions reduction targets is not practical;
7. The Department’s proposed regulatory Amendments, as initially published in the January 1, 2024, *Delaware Register of Regulations*, and subsequently revised, 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*;

8. The Department shall submit the *revised* proposed Amendments as final regulatory amendments to the *Delaware Register of Regulations* for publication on April 1, 2024, and provide such other notice as the law and regulation require, and the Department determines is appropriate; and
9. The Department's emergency regulations implemented by Emergency Order # 2023-F-0031 will expire on April 11, 2024, when the final regulations become effective.

A handwritten signature in black ink, appearing to read 'Shawn M. Garvin', with a long horizontal flourish extending to the right.

for Shawn M. Garvin
Secretary