

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 903(h) and 29 Delaware Code, Section 10119
(7 **Del.C.** §903(h) and 29 **Del.C.** §10119)
7 **DE Admin. Code** 3511

EMERGENCY

Secretary's Order No. 2017-F-0012

3511 Summer Flounder Size Limits; Possession Limits; Season

AUTHORITY:

Pursuant to 29 **Del.C.** §10119 and 7 **Del.C.** §903(h), the Department of Natural Resources and Environmental Control is adopting amendments without prior notice or public hearing to 7 **DE Admin. Code** 3511: *Summer Flounder Size Limits; Possession Limits; Seasons*. 29 **Del.C.** §10119 authorizes emergency regulations where an agency determines that an imminent peril to the public health, safety or welfare requires the amendment of a regulation with less than the notice required by 29 **Del.C.** §10115. 7 **Del.C.** §903(h) authorizes the Department to adopt emergency regulations when such regulations are necessary to deal with an actual or imminent public health threat or danger to a fishing resource or habitat involving finfish. It is the determination of the agency that this amendment is immediately necessary to ensure compliance with Addendum XXVIII to the Summer Flounder, Scup, [and] Black Sea Bass Fishery Management Plan to prevent overfishing of the Summer Flounder resource and to provide for the welfare of those individuals and businesses dependent on the Summer Flounder recreational fishery.

REASON FOR THE EMERGENCY ORDER:

The Atlantic States Marine Fisheries Commission's (ASMFC) Summer Flounder, Scup and Black Sea Bass Management Board approved Addendum XXVIII to the Summer Flounder, Scup, [and] Black Sea Bass Fishery Management Plan (FMP) on February 2, 2017, maintaining regional management for the 2017 recreational Summer Flounder fishery. Addendum XXVIII requires each region to increase their Summer Flounder minimum size limit by one inch and adopt a no more than four fish possession limit to stay within the 2017 recreational harvest limit (RHL). This action will only affect Delaware's existing 16-inch minimum size limit, as Delaware's existing recreational Summer Flounder possession limit is four fish. The Department has consulted with the other states (Maryland & Virginia) within our ASMFC-defined region and both states have committed to adopting a 17-inch minimum size limit and a four fish possession limit by April 1, 2017. An Emergency Regulation is necessary to meet the implementation target date, remain compliant with the FMP and to protect the Summer Flounder Resource from overfishing. Furthermore, such action will allow sufficient time for Delaware's fishing-dependent businesses and their clients/customers to plan for this important fishery. Failure to adopt these measures in a timely fashion may result in a federal closure of the fishery in accordance with the Atlantic Coastal Fisheries Cooperative Management Act.

EFFECTIVE DATE OF ORDER

This Emergency Order shall take effect at 12:01 a.m. on April 1, 2017, and shall remain in effect for 90 days.

PETITION FOR RECOMMENDATIONS

The Department will receive, consider and respond to petitions by any interested person for recommendations or revisions of this Order. Petitions should be presented to the Fisheries Section, Division of Fish & Wildlife, 89 Kings Highway, Dover, DE 19901.

ORDER

It is hereby ordered, this 13th day of March, 2017 that the above referenced amendment to 7 **DE Admin. Code** 3511: *Summer Flounder Size Limits; Possession Limits; Season*, a copy of which is hereby attached, is adopted pursuant to 29 **Del.C.** §10119 and 7 **Del.C.** §903(h) and supported by the evidence contained herein.

David S. Small, Secretary

3511 Summer Flounder Size Limits; Possession Limits; Season

(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) 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.
- 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 ~~sixteen (16)~~ seventeen (17) inches between the tip of the snout and the furthest tip of the tail.

7 DE Reg. 1575 (05/01/04)
12 DE Reg. 1430 (05/01/09)
13 DE Reg. 1468 (05/01/10)
14 DE Reg. 1235 (05/01/11)
16 DE Reg. 1283 (06/01/13)
17 DE Reg. 1091 (05/01/14)

- 3.0 It shall be unlawful for any person, to have in possession any part of a summer flounder that measures less than ~~sixteen (16)~~ seventeen (17) 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.

13 DE Reg. 1468 (05/01/10)
14 DE Reg. 1235 (05/01/11)
16 DE Reg. 1283 (06/01/13)
17 DE Reg. 1091 (05/01/14)

- 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.

- 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.

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

- 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.

1 DE Reg. 1767 (05/01/98)
2 DE Reg. 1900 (04/01/99)
3 DE Reg. 1088 (02/01/00)
4 DE Reg. 1552 (03/01/01)
5 DE Reg. 462 (08/01/01)
5 DE Reg. 2142 (05/01/02)
6 DE Reg. 1358 (04/01/03)
7 DE Reg. 1575 (05/01/04)
8 DE Reg. 1488 (04/01/05)
9 DE Reg. 1759 (05/01/06)

10 DE Reg. 1722 (05/01/07)
11 DE Reg. 1493 (05/01/08)
12 DE Reg. 1430 (05/01/09)
13 DE Reg. 1468 (05/01/10)
14 DE Reg. 1235 (05/01/11)
16 DE Reg. 1283 (06/01/13)
20 DE Reg. 749 (04/01/17) (Emer.)