

# DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

## DIVISION OF FISH AND WILDLIFE

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

7 DE Admin. Code 3511

### FINAL

Secretary's Order No.: 2024-F-0006

**RE: Approving Final Regulation, pursuant to 7 Del. C. §903(e)(2)a.1, to Amend 7 DE Admin. Code 3511 *Summer Flounder Size Limits; Possession Limits; Season***

**Date of Issuance: February 28, 2024**

**Effective Date of the Amendment:** 48 hours following publication of this Secretary's Order and regulation on the Department's website: <https://de.gov/dnrecorders>

#### **3511 Summer Flounder Size Limits; Possession Limits; Season**

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*. The final regulation becomes effective 48 hours after the Department has published the aforementioned public notice on its website, as mandated by 7 Del. C. §903(e)(2)a.2.

#### **Background, Procedural History and Findings of Fact**

This order amends 7 DE Admin. Code 3511 *Summer Flounder Size Limits; Possession Limits; Season* as part of an effort to reduce Summer Flounder mortality in the recreational fishery by adopting specified management measures approved by the Atlantic States Marine Fisheries Commission's ("ASMFC") Summer Flounder, Scup, and Black Sea Bass Board ("Board") at its February 14, 2024, meeting. Specifically, this amendment sets the recreational open season as January 1 through May 31 with a 16" minimum size and four fish daily possession limit, and June 1 through December 31 with a 17.5" minimum size and four fish daily possession limit. This order is necessary to keep Delaware compliant with the ASMFC Addendum XXXIV to the *Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan: Harvest Control Rule for Recreational Management of Summer Flounder, Scup, Black Sea Bass, and Bluefish*.

The Board was required to take action to constrain the 2024 and 2025 recreational Summer Flounder harvest because the harvest is otherwise anticipated to exceed the Recreational Harvest Limit ("RHL") in both years. Using the percent reduction method under the Harvest Control Rule, the Board is requiring all regions in the Summer Flounder management unit to reduce recreational harvest by 28% for 2024 and 2025 recreational Summer Flounder. Measures will be restricted to achieve the full 28% reduction in 2024 and then will remain unchanged in 2025 unless new information suggests a major change in the expected impacts of those measures on the stock or the fishery. The Board has required all regions in the management unit to develop management measures that are expected to meet the required reduction in their region based on projections generated by the Recreational Demand Model and thus constrain harvest to the RHL for the entire

management unit. The Delmarva Summer Flounder Region, to which Delaware belongs, proposed and had approved by the Board the previously stated measure that reduces harvest by 28%.

The Department has the statutory basis and legal authority to act with regard to promulgation of the proposed amendments to 7 DE Admin. Code 3511 *Summer Flounder Size Limits; Possession Limits; Season* pursuant to 7 Del. C. §§901 (c & d) and 903(e)(2)a.1. This specific management measure is required by the ASMFC Summer Flounder, Scup, and Black Sea Bass Board action taken on February 14, 2024.

## ORDER

In accordance with 7 Del. C. §903(e)(2)a.1, it is hereby ordered, this 28th day of February, 2024 that the above referenced amendments to 7 DE Admin. Code 3511 *Summer Flounder Size Limits; Possession Limits; Season*, a copy of which is hereby attached, are necessitated to ensure Delaware's compliance with the ASMFC Addendum XXXIV and are hereby adopted. The above referenced amendment shall take effect 48 hours following publication of this Secretary's Order and regulation on the Department's website in accordance with 7 Del. C. §903(e)(2)a.2.

Lisa Borin Ogden  
For Shawn M. Garvin  
Secretary

### 3511 Summer Flounder Size Limits; Possession Limits; Season

#### 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 inches between the tip of the snout and the furthest tip of the tail from January 1 through May 31 and less than seventeen and a half inches from June 1 through December 31.

**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)**  
**21 DE Reg. 239 (09/01/17)**  
**22 DE Reg. 304 (10/01/18)**  
**25 DE Reg. 1147 (06/01/22)**

- 3.0 It shall be unlawful for any person, to have in possession any part of a summer flounder that measures less than sixteen inches from January 1 through May 31 and less than seventeen and a half inches from June 1 through December 31 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)**  
**21 DE Reg. 239 (09/01/17)**  
**22 DE Reg. 304 (10/01/18)**  
**25 DE Reg. 1147 (06/01/22)**

- 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 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.

**25 DE Reg. 1147 (06/01/22)**

- 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 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)**

**17 DE Reg. 1091 (05/01/14)**

**21 DE Reg. 239 (09/01/17)**

**22 DE Reg. 304 (10/01/18)**

**25 DE Reg. 1147 (06/01/22)**

**27 DE Reg. 772 (04/01/24) (Final)**