

# 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 3526

### FINAL

Secretary's Order No.: 2024-F-0005

**RE: Approving Final Regulation, pursuant to 7 Del. C. §903(e)(2)a.1, to Amend  
7 DE Admin. Code 3526 Scup Size Limit**

**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>

### 3526 Scup Size Limit

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 3526 *Scup Size Limit* as part of an effort to reduce Scup 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 reduces the daily possession limit for Scup from 40 to 30. 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 Scup harvest because the harvest is that ("RHL") in both years. Using the percent reduction method under the Harvest Control Rule, the Board is requiring all regions in the Scup management unit to reduce recreational harvest by 10% for 2024 and 2025. Measures will be restricted to achieve the full 10% 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. The Southern Scup Region, to which Delaware belongs, proposed and had approved by the Board the previously stated measure that reduces harvest by 10%.

The Department has the statutory basis and legal authority to act with regard to promulgation of the proposed amendments to 7 DE Admin. Code 3526 *Scup Size Limit* 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 3526 *Scup Size Limit*, 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

## Scup

### 3526 Scup Size Limit.

(Penalty Section 7 Del.C. §936(b)(2))

- 1.0 It shall be unlawful for any recreational fisherman to have in possession any scup, *Stenotomus chrysops*, that measures less than nine inches, total length.

### 25 DE Reg. 1150 (06/01/22)

- 2.0 It shall be unlawful for any person who has been issued a commercial food fishing license by the Department to possess any scup that measures less than nine inches, total length.
- 3.0 It shall be unlawful for any commercial finfisherman to sell, trade or barter or attempt to sell, trade or barter any scup or part thereof that is landed in this State by said commercial finfisherman after a date when the de minimis amount of commercial landings of scup is determined to have been landed in this State by the Department. The de minimis amount of scup shall be 0.1% of the coastwide commercial quota as set forth in the Scup Fishery Management Plan approved by the Atlantic State Marine Fisheries Commission.
- 4.0 It shall be unlawful for any recreational fisherman to have in possession more than ~~40~~ 30 scup at or between the place where said scup were caught and said recreational fisherman's personal abode or temporary or transient place of lodging.

4 DE Reg. 1859 (05/01/01)

25 DE Reg. 1150 (06/01/22)

26 DE Reg. 1075 (06/01/23)

27 DE Reg. 774 (04/01/24) (Final)