

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: 2018-F-0041
(Renewal of Secretary's Order 2018-F-0026)

3511 Summer Flounder Size Limits; Possession Limits; Season

AUTHORITY

Pursuant to 29 **Del.C.** §10119, the Department of Natural Resources and Environmental Control is renewing amendments to Tidal Finfish Regulation 7 **DE Admin. Code** 3511, *Summer Flounder Size Limits; Possession Limits; Season*, adopted through Secretary's Order 2018-F- 0026, without prior notice or public hearing to ensure that Delaware's recreational Summer Flounder fishery resource avoids unnecessary hardship, benefits from a sustainable harvest liberalization, and remains competitive with similar fishing resources in New Jersey, Maryland and Virginia.

7 **Del.C.** §903(h) authorizes the Department to adopt and renew emergency regulations when such regulations are necessary to deal with an actual or imminent danger to a fishing resource or habitat involving finfish. It should be noted that the emergency regulations are 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.

REASON FOR THE EMERGENCY ORDER

The Atlantic States Marine Fisheries Commission (ASMFC) and Mid Atlantic Fisheries Management Council extended the regional approach to recreational Summer Flounder management outlined in Addendum XXVIII to the Interstate Fishery Management Plan (FMP) for Summer Flounder, Scup, and Black Sea Bass through 2018. Addendum XXVIII allows states or regions to develop measures that will achieve the coast wide recreational harvest limit (RHL) of 4.42 M pounds. Based on Summer Flounder stock status, states or regions may liberalize their 2017 recreational Summer Flounder regulations to allow for up to a 17% harvest increase in 2018.

By extending the provisions of Addendum XXVIII, Delaware continued to be grouped in a region (DelMarVa) with Maryland and Virginia. The DelMarVa region submitted an analysis to the ASMFC Summer Flounder Technical Committee for a four (4) fish possession limit, a 365-day season and a 16.5-inch minimum size limit that is estimated to result in a 16.4% harvest increase. This proposed management strategy was approved by the ASMFC's Management Board in February 2018 and allowed Delaware to reduce its Summer Flounder minimum size limit by a half inch.

As the Summer Flounder recreational fishery typically begins in April, the requirements of 29 **Del.C.** §§10115 - 10118 did not afford sufficient time to accommodate adoption of a 16.5- inch minimum size limit before the Summer Flounder recreational fishery began. Therefore, the emergency provisions of 29 **Del.C.** §10119, as well as 7 **Del.C.** §903(h), which authorize the adoption of emergency regulations when such regulations are necessary to deal with an actual or imminent danger to a fishing resource, were used to implement the necessary regulatory change.

As the emergency regulation is set to expire, renewal of the emergency regulation, as provided by 29 **Del.C.** §10119(3), is necessary to allow sufficient time to amend the Summer Flounder regulation through the full provisions of the Administrative Procedures Act and 29 **Del.C.** §10115. Renewal of this emergency regulation will continue to ensure Delaware's recreational fishing resources avoid unnecessary hardship, benefit from the sustainable harvest liberalization, and remain competitive with similar fisheries in New Jersey, Maryland and Virginia.

EFFECTIVE DATE OF ORDER

This order and the corresponding emergency regulation shall take effect at 12:01 a.m. on August 11, 2018 and shall remain in effect for no longer than 60 days, consistent with 29 **Del.C.** §10119(3). The Department has proposed regulations that would supersede the interim regulations upon formal approval pursuant to the Administrative Procedures Act and 29 **Del.C.** §10115.

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, the 18th day of July, 2018 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 renewed and adopted pursuant to 29 **Del.C.** §10119 and 7 **Del.C.** §903(h), and are supported by the evidence contained herein.

Shawn M. Garvin, Secretary
Department of Natural Resources and Environmental Control
7/18/18

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 ~~seventeen (17)~~ sixteen and one half (16.5) 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)

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

3.0 It shall be unlawful for any person, to have in possession any part of a summer flounder that measures less than ~~seventeen (17)~~ sixteen and one half (16.5) 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)

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

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)

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

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

22 DE Reg. 101 (08/01/18) (Emer.)