

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 29 Delaware Code, Section 10119 and 7 Delaware Code, Section 903(h)
(29 **Del.C.** §10119 & 7 **Del.C.** §903(h))
7 **DE Admin. Code** 3531

EMERGENCY

SECRETARY'S ORDER NO: 2018-F-0035

3531 Tautog; Size Limits, Creel Limits and Seasons

Pursuant to 29 **Del.C.** §10119, the Department of Natural Resources and Environmental Control is adopting amendments to Tidal Finfish Regulation 7 **DE Admin. Code** 3512: Tautog; Size Limits, Creel Limits and Seasons, without prior notice or public hearing to ensure that Delaware's Tautog fishing resource avoids unnecessary hardship, benefits from a sustainable harvest strategy, and remains competitive with similar fishing resources in Maryland and Virginia.

7 **Del.C.** §903(h) authorizes the Department to adopt 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 most recent Tautog stock assessment indicated that the Delaware, Maryland and Virginia (DelMarVa) component of the stock is overfished. In response, the Atlantic States Marine Fisheries Commission (ASMFC) approved Amendment 1 to the Interstate Fishery Management Plan (FMP) for Tautog. Amendment 1 requires that Delaware implement management measures consistent with the other states in the region. These measures include a 16-inch minimum size limit, a four fish possession limit and a closed season from May 16 through June 30.

The Division of Fish & Wildlife submitted draft SAN No. 2018-08 proposing to adopt the required size and possession limit and season, as well as other commercial fishery measures (not required until 2019), following the standard administrative procedures outlined in 29 **Del.C.** §§10115-10118. However, these procedures preclude timely implementation of the measures and jeopardize Delaware's Tautog fishing resource through the continuance of unnecessary closures during the periods May 12 through July 16, and September 1 through September 28, which are periods of high fishing activity (including Independence Day and Labor Day). These unnecessary closures impact the recreational and commercial fisheries, as well as their dependent businesses (seafood retailers, bait and tackle stores, etc.), and puts the affected parties at a competitive disadvantage to neighboring states. The emergency provisions of 29 **Del.C.** §10119, as well as 7 **Del.C.** §903(h), which authorizes the adoption of emergency regulations when such regulations are necessary to deal with an actual or imminent danger to a fishing resource, allow for the timely adoption of the required measures. Emergency action will ensure the Tautog fishing resource avoids unnecessary hardship, benefits from a sustainable harvest strategy, and remains competitive with similar fishing resources in Maryland and Virginia.

EFFECTIVE DATE OF ORDER

This Emergency Order shall take effect July 1, 2018, and shall remain in effect for 120 days. At the expiration of 120 days, the Department may choose to renew this Emergency Order once for a period not exceeding 60 days, consistent with 29 **Del.C.** §10119(3). The Department intends to propose regulations that would supersede the emergency 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 28th day of June, 2018 that the above referenced amendments to 7 **DE Admin. Code** 3512: *Tautog; Size Limits, Creel Limits and Seasons*, a copy of which is hereby attached, are 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

Amendment to Secretary's Order No.: 2018-F-0035

***Please Note:** The Secretary's Order that adopted emergency regulatory amendments to 7 **DE Admin. Code** 3531, *Tautog: Size Limits, Creel Limits and Seasons*, to be published in the August 1, 2018 issue of the Delaware *Register of Regulations* by the State Registrar's Office, inadvertently contained clerical errors. All references to "Tidal Finfish Regulation 7 **DE Admin. Code** 3512" have been corrected to reflect the accurate citation for this regulation, which is "Tidal Finfish Regulation 7 **DE Admin. Code** 3531."

July 11, 2018
Shawn M. Garvin
Secretary

3531 Tautog; ~~Size Limits, Creel Limits and Seasons~~

1.0 Recreational and Commercial Size Limits

4.01.1 Notwithstanding the provisions of 7 **Del.C.** §§~~929~~ and 939, it ~~shall be~~ is unlawful for any person to possess any tautog, *Tautoga onitis*, less than ~~fifteen (15)~~ sixteen (16) inches in total length.

2.0 Recreational and Commercial Possession Limits and Seasons

2.1 Notwithstanding the provisions of 7 **Del.C.** §§938, and 939, it ~~shall be~~ is unlawful for any person to ~~possess~~ take and reduce to possession more than ~~five (5)~~ four (4) tautog per day during the period beginning at 12:00 a.m. on January 1 and ending at 11:59 p.m. on ~~March 31~~ May 15, and during the period beginning at 12:00 a.m. on July 17 and ending at 11:59 p.m. on ~~August~~ December 31, ~~and during the period beginning at 12:00 a.m. on September 29 and ending at 11:59 p.m. on December 31,~~ at or between the place where said tautog were caught and said person's personal abode, ~~or~~ temporary or transient place of lodging or, for a licensed commercial foodfisherman, point of sale.

3.0 ~~Notwithstanding the provisions of 7 **Del.C.** §§938, 939, it shall be unlawful for any person to possess more than three (3) tautog during the period beginning at 12:00 a.m. on April 1 and ending at 11:59 p.m. on May 11, at or between the place where said tautog were caught and said person's personal abode or temporary or transient place of lodging.~~

4.02.2 Notwithstanding the provisions of ~~subsections 1.0, 2.0 and 3.0 of this regulation~~ 7 **Del.C.** §§938 and 939, it ~~shall be~~ is unlawful for any person to ~~possess~~ take and reduce to possession any tautog during the period beginning at 12:00 a.m. on May ~~12~~ 16 and ending at 11:59 p.m. on July ~~16~~ and during the period beginning at 12:00 a.m. on September 1 and ending at 11:59 p.m. on September 28, except in said person's personal abode or temporary or transient place of lodging June 30.

1 DE Reg. 1771 (05/01/98)

6 DE Reg. 1360 (04/01/03)

11 DE Reg. 1257 (03/01/08)

15 DE Reg. 1177 (02/01/12)

16 DE Reg. 216 (08/01/12)

22 DE Reg. 103 (08/01/18) (Emer.)