

# DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

## DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 903(e)(2)a.1 (7 Del.C. §903(e)(2)a.1)  
7 DE Admin. Code 3526

### FINAL

Secretary's Order No.: 2023-F-0009

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

Date of Issuance: April 28, 2023

Effective Date of the Amendment: 48 hours following publication of this Secretary's Order and regulation on the Department's website

#### 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 record, 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 ("ASMFC"), 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* as part of an effort to reduce Scup mortality in the recreational fishery by adopting specified management measures approved by the ASMFC's Summer Flounder, Scup, and Black Sea Bass Board ("Board") at its March 2, 2023 meeting. Specifically, this amendment decreases the recreational daily possession limit from 50 Scup to 40 Scup. 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 estimated 2022 recreational Scup harvest exceeded the 2022 Recreational Harvest Limit ("RHL"), the Board was then required to take action to constrain the 2023 recreational Scup harvest to the 2023 RHL by using the percent reduction method under the Harvest Control Rule. To that, the Board has required all regions in the management unit to develop management measures that are expected to reduce 2023 recreational harvest by 10% coastwide, based on projections generated by the Recreational Demand Model and thus constrain harvest to the RHL for the management unit. The Southern Scup Region, to which Delaware belongs, proposed and had approved by the Board, the previously stated measure that reduces the 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* 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 March 2, 2023.

### ORDER

In accordance with 7 Del. C. §903(e)(2)a.1, it is hereby ordered, this 28th day of April, 2023 that the above referenced

amendments to 7 DE Admin. Code 3526: *Scup*, a copy of which is hereby attached, are supported by the evidence contained herein 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.

Shawn M. Garvin  
Secretary

### **3526 Scup Size Limit**

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(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 ~~50~~ 40 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) (Final)**