

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 903(e)(2)(a) (7 **Del.C.** §903(e)(2)(a))
7 **DE Admin. Code** 3511

FINAL

Secretary's Order No.: 2010-F-0013
3511 Summer Flounder Size Limits; Possession Limit; Seasons

Date of Issuance: April 15, 2010
Effective Date of the Amendment: May 11, 2010

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") the following findings, reasons and conclusions are entered as an Order of the Secretary in the above-referenced rulemaking proceeding.

Background and Procedural History

This Order considers proposed regulatory amendments to Delaware Tidal Finfish Regulation No. 3511 regarding Summer Flounder. The Department's Division of Fish and Wildlife commenced the regulatory development process with Start Action Notice 2010-01. The Department published the proposed amendments in the March 1, 2010 *Delaware Register of Regulations* and held a public hearing on March 23, 2010. The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated April 6, 2010 (Report). The Report recommends certain findings and the adoption of the proposed new regulation as attached to the Report as Appendix A.

Findings and Discussion

I find that the proposed new regulation is well-supported by the record developed by the Department, and adopt the Report to the extent it is consistent with this Order. The Department's experts in the Division of Fish and Wildlife developed the record and drafted the proposed regulation. As a result of the regulatory development process, the Department received public comments supporting this proposed regulation, as discussed in the Report.

With the adoption of these regulatory amendments to Delaware Tidal Finfish Regulation No. 3511 as final, Delaware will be able to remain in compliance with the federal guidelines for the management of summer flounder, as set forth jointly by both the ASMFC and NOAA, to wit: (1) establish the size limit at 18.5 inches; (2) establish the creel limit at four (i.e., four fish per day); and (3) establish an eighty-day closure of the 2010 season from October 13th through December 31st. This management plan sets the minimum size limit at 18.5 inches, which is the more preferable size limit for this species (given the higher hook-related discard mortality associated with larger size limits for summer flounder). Additionally, the incorporation of a relatively short closed season within this management plan may help to instill and strengthen fishing ethics here in Delaware by encouraging/teaching the next generation of anglers to practice "catch and release" and promote the practice of "letting the big ones go every once and awhile", thereby helping to fortify and rebuild the State's summer flounder stock.

In conclusion, the following findings and conclusions are entered:

- 1.) The Department has jurisdiction under its statutory authority to issue an Order adopting these proposed Amendments as final;
- 2.) The Department provided adequate public notice of the proposed regulatory amendments to this regulation, and provided the public with an adequate opportunity to comment on the proposed amendments, including at a public hearing;
- 3.) The Department held a public hearing on the proposed amendments to this regulation in order to consider

public comments before making any final decision, and has considered all relevant and timely public comment received;

4) The Department's Hearing Officer's Report, including its recommended record and the recommended amendments to this regulation, as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;

5.) The recommended amendments to this regulation (as revised to reflect the 18.5" minimum size limit, 4 fish per day, and 80-day closure from October 13th through December 31st) satisfy the aforementioned federal mandates with regard to Delaware's management of summer flounder, and do not result in any substantive change from the proposed amendments as originally published in the March 1, 2010, *Delaware Register of Regulations*;

6.) The recommended amendments should be adopted as final because Delaware will be enabled to remain in compliance with the federal guidelines for the management of summer flounder, as set forth jointly by both the ASMFC and NOAA, to wit: (1) establish the size limit at 18.5 inches; (2) establish the creel limit at four (i.e., four fish per day); and establish an eighty-day closure of the 2010 season from October 13th through December 31st. This management option will not deprive fishermen of the enjoyment of summer flounder during the typical peak of the season, nor will it cause Delaware to suffer a marked decrease in tourism, as a result of the 80-day closure occurring from October 13th through December 31st. Moreover, this management option will help to fortify and rebuild the summer flounder stock while simultaneously helping to encourage and teach sound fishing ethics to the next generation of anglers in Delaware.

7.) The Department shall submit this Order approving the final amendments to this regulation to the *Delaware Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

Collin P. O'Mara, Secretary

3500 Tidal Finfish

3511 Summer Flounder Size Limits; Possession Limits

(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)~~ **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. ~~[(Note: creel limit to be determined in combination with size limit and season.)]~~
- 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 ~~eighteen and one half (18.5)~~ **eighteen and one half (18 1/2)** inches between the tip of the snout and the furthest tip of the tail. ~~[(Note: creel limit to be determined in combination with size limit and season.)]~~

7 DE Reg. 1575 (5/1/04)

12 DE Reg. 1430 (05/01/09)

- 3.0 It shall be unlawful for any person while on board a vessel, to have in possession any part of a summer flounder that measures less than ~~eighteen and one half (18.5)~~ **eighteen and one half (18 1/2)** 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. ~~[(Note: creel limit to be determined in combination with size limit and season.)]~~
- 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)~~ **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. **[(Note: creel limit to be determined in combination with size limit and season.)]**
- 8.0 **Notwithstanding section 4.0 of this regulation, it shall be unlawful for any recreational or commercial hook and line fisherman to take and reduce to possession or to land any summer flounder during the closed season beginning 12:01 a.m. October 13 and ending 12:00 p.m. December 31 next ensuing.**

Note: Proposed options for creel limits and minimum size limits and seasons to restrict the recreational summer flounder harvest in Delaware during 2010.

| Option | Season Closure | Number of Open Days | Bag Limit | Minimum Size inches |
|---------------|-----------------------------------|----------------------------|------------------|----------------------------|
| 1 | Oct 13 - Dec 31 | 285 | 4 | 18.5 |
| 2 | Oct 26 - Dec 31 | 298 | 3 | 18.5 |
| 3 | | 365 | 2 | 18.5 |
| 4 | | 365 | 4 | 19.0 |

- 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)