

# DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

## DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Sections 901(c) and (d) and 903(e)(2)a (7 Del.C. §§901(c) and (d) and 903(e)(2)a)

7 DE Admin. Code 3511

### PROPOSED

#### REGISTER NOTICE

SAN #2018-10

#### 3511 Summer Flounder Size Limits; Possession Limits; Season

**1. TITLE OF THE REGULATIONS:**

7 DE Admin. Code 3511 Summer Flounder Size Limits; Possession Limits; Season.

**2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:**

This action is to adopt a minimum recreational summer flounder size limit of 16.5 inches (formerly 17 inches), consistent with Addendum XXVIII to the Interstate Fishery Management Plan (FMP) for Summer Flounder, Scup, and Black Sea Bass. The Department previously amended 7 DE Admin. Code 3511 Summer Flounder Size Limits; Possession Limits; Season to accommodate this change through an emergency action (Secretary's Order 2018-F-0026) pursuant to 29 Del.C. §10119 and 7 Del.C. §903(h) to assure that Delaware's recreational summer flounder fishery resource avoided unnecessary hardship, benefited from a sustainable harvest liberalization and remained competitive with similar fishing resources in New Jersey, Maryland and Virginia.

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 coastwise 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 continues 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 was estimated to result in 16.4% harvest increase. This proposed management strategy was approved by the ASMFC's Management Board.

**3. POSSIBLE TERMS OF THE AGENCY ACTION:**

None

**4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:**

7 Del.C. §901 & §903 (a), (b) & (e)

**5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL:**

None

**6. NOTICE OF PUBLIC COMMENT:**

The hearing record on the proposed changes to 7 DE Admin. Code 3511 *Summer Flounder Size Limits; Possession Limits; Season* will open July 1, 2018. Individuals may submit written comments regarding the proposed changes via e-mail to [Lisa.Vest@state.de.us](mailto:Lisa.Vest@state.de.us) or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. A public hearing on the proposed amendment will be held in conjunction with a public hearing on proposed amendments to 7 DE Admin. Code 3507 *Black Sea Bass Size Limit; Trip Limits, Seasons; Quotas* on July 26, 2018 beginning at 6:00 PM in the DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901. Public comments will be received until close of business Friday, August 10, 2018.

**7. PREPARED BY:**

Stewart Michels

Email: [Stewart.Michels@state.de.us](mailto:Stewart.Michels@state.de.us)

Ph: 739-9914

### **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. 24 (07/01/18) (Prop.)