

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Sections 901 (c & d) and 903(e)(2)a.1 (7 Del.C. §§901(c & d) & 903(e)(2)a.1)

7 DE Admin. Code 3511

FINAL

Secretary's Order No.: 2022-F-0006

RE: Approving Final Regulation, pursuant to 7 Del. C. §903(e)(2)a.1, to Amend 7 DE Admin. Code 3511: *Summer Flounder Size Limits; Possession Limits; Season*

Date of Issuance: April 29, 2022

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

3511 Summer Flounder Size Limits; Possession Limits; Season

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 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 3511: *Summer Flounder Size Limits; Possession Limits; Season* as part of an effort to allow increased harvest in the Summer Flounder recreational fishery by adopting specified management measures approved by the ASMFC's Summer Flounder, Scup, and Black Sea Bass Board ("Board") at its March 24, 2022 meeting. Specifically, this amendment decreases the recreational minimum size limit for Summer Flounder by one half inch, from 16.5 to 16 inches.

The estimated 2021 recreational Summer Flounder harvest was 16% below the Recreational Harvest Limit (RHL), thus the Board took action to allow a modest increase in the 2022 recreational Summer Flounder harvest while still constraining harvest to the 2022 RHL. The Board allowed all regions in the management unit to develop management measures that may increase 2022 recreational harvest by up to 16% in their region and still constrain harvest to the RHL for the management unit. The Delmarva Summer Flounder Management Region, to which Delaware belongs, proposed and had approved by the Board, the measure decreasing the minimum size.

The Department has the statutory basis and legal authority to act with regard to promulgation of the proposed amendments to 7 DE Admin. Code 3511: *Summer Flounder Size Limits; Possession Limits; Season* 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 to keep Delaware compliant with the ASMFC Addendum XXXII to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan: Summer Flounder and Black Sea Bass Recreational Management.

ORDER

In accordance with 7 Del. C. §903(e)(2)a.1, it is hereby ordered, this 29th day of April, 2022 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 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

3511 Summer Flounder Size Limits; Possession Limits; Season

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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 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 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)

22 DE Reg. 304 (10/01/18)

- 3.0 It shall be unlawful for any person, to have in possession any part of a summer flounder that measures less than 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)

22 DE Reg. 304 (10/01/18)

- 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. 304 (10/01/18)

25 DE Reg. 1147 (06/01/22) (Final)