

**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

PROPOSED

**REGISTER NOTICE
SAN# 2008-01**

3511 Summer Flounder Size Limits; Possession Limits; (Formerly Tidal Finfish Reg. 4)

1. Title of the Regulations:

Tidal Finfish Regulations

2. Brief Synopsis of the Subject, Substance and Issues:

The Summer Flounder Fishery Management Plan (FMP) details the annual process that the Atlantic States Marine Fisheries Commission's Summer Flounder Fishery Management Board, the Mid-Atlantic Fisheries Management Council and the National Marine Fisheries Service are to use for establishing conservation equivalency for the recreational summer flounder fishery. These agencies agreed that the states would implement conservationally equivalent measures rather than a coastwide management program for summer flounder in 2008. Delaware is obligated to cap the summer flounder recreational harvest at 64,000 fish for 2008. The harvest cap has been adjusted downward from the previous year's level of 76,608 fish because of slower than projected rebuilding in the stock. Although Delaware and all the coastal states in the management regime must adjust their harvest cap downward, estimates of Delaware's 2007 harvest (109,696 fish) indicated that landings of summer flounder exceeded the harvest cap imposed for 2007. As such, it is anticipated that management measures for summer flounder in 2008 will need to achieve a 41.3 percent harvest reduction from the estimated harvest in 2007. It is proposed that a suite of management options will be developed that take into consideration measures that have been successfully employed in the past to achieve reductions in harvest while attempting to meet the needs of the fishing public. These options will include potential minimum size limits ranging between 18.5 and 19.5 inches in combination with various creel limits that can range from 1 to 4 fish per day and also incorporate seasonal closures. Five management options for Delaware have been reviewed by the ASMFC Summer Flounder Technical Committee to determine if the correct data sets and analyses were used to project landings under the various options. All five options were deemed technically valid by the ASMFC Summer Flounder technical committee and were also approved by the ASMFC Summer Flounder Board on February 7, 2008. These approved options will be presented at a public hearing on March 27, 2008 in order to receive input from the fishing community on the various management strategies.

3. Possible Terms of the Agency Action

Delaware is required to comply with specific Fishery Management Plans approved by the Atlantic States Marine Fisheries Commission. Failure to do so could result in complete closure of a specific fishery in Delaware

4. Statutory Basis or Legal Authority to Act:

7 **Del. C.** §903, (e)(2)(a)

5. Other Regulations That May Be Affected by the Proposal:

None

6. Notice of Public Comment:

Individuals may present their comments or request additional information by contacting the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, DE 19901, (302) 739-9914. A public hearing on these proposed amendments will be held on March 27, 2008 at 7:00 P.M. in the DNREC Auditorium, 89 Kings

Highway, Dover, DE 19901. The record will remain open for written comments until 4:30 PM, April 2, 2008.

7. Prepared By:

Richard Cole, (302) 739-4782, February 6, 2008.

3511 Summer Flounder Size Limits; Possession Limits; (Formerly Tidal Finfish Reg. 4)
(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. (Note: creel limit to be determined in combination with seasonal closure and size limit.)

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 (18)~~ inches between the tip of the snout and the furthest tip of the tail.

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 (18)~~ 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: size limit to be determined in combination with seasonal closure and creel limit.)

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. (Note: creel limit to be determined in combination with seasonal closure and size limit.)

Note: Proposed options for seasonal closures associated with creel limits and minimum size limits to restrict the recreational summer flounder harvest in Delaware during 2008.

<u>Option</u>	<u>Season Closure</u>	<u>Number of Open Days</u>	<u>Bag Limit</u>	<u>Minimum Size</u>
<u>1</u>	<u>May 11 - June 23</u>	<u>322</u>	<u>2</u>	<u>18.5</u>
<u>2</u>	<u>none</u>	<u>365</u>	<u>1</u>	<u>19.0</u>
<u>3</u>	<u>May 11 - June 1</u>	<u>343</u>	<u>4</u>	<u>19.0</u>
<u>4</u>	<u>Aug 24 - Dec. 31</u>	<u>235</u>	<u>4</u>	<u>19.0</u>

5

none

365

4

19.5

1 DE Reg. 1767 (5/1/98)

2 DE Reg. 1900 (4/1/99)

3 DE Reg. 1088 (2/1/00)

4 DE Reg. 1552 (3/1/01)

5 DE Reg. 462 (8/1/01)

5 DE Reg. 2142 (5/1/02)

6 DE Reg. 1358 (4/1/03)

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

8 DE Reg. 1488 (4/1/05)

9 DE Reg. 1759 (5/1/06)

10 DE Reg. 1722 (5/1/07)

11 DE Reg. 1207 (03/01/08) (Prop.)