

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 6010 (7 Del. C. §6010)
7 DE Admin. Code 3511

FINAL

Secretary's Order No. 2007-F-0015

A public hearing was held on Thursday, March 29, 2007, at 6:30 p.m. at the DNREC Richardson & Robbins Building Auditorium to receive comment on proposed amendments to the existing Delaware Tidal Finfish Regulations for Summer Flounder for 2007. The Summer Flounder Fishery Management Plan details the annual process that the Summer Flounder Fishery Management Board, the Mid-Atlantic Fishery Management Council and the National Marine Fisheries Service are to use for conservation equivalency in the recreational summer flounder fishery. These agencies agreed at their joint meeting on December 12, 2006 that the states would implement conservation equivalent measures rather than a coastwide management program for summer flounder in 2007. The total allowable harvest quota has been reduced for 2007 in order to comply with the rebuilding schedule as mandated in the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006. As such, all coastal states will be required to reduce the number of summer flounder harvested by recreational anglers in 2007.

Delaware's harvest cap will be 76,608 fish in 2007, which represents a thirty-four percent reduction from the 116,000 fish target in 2006 (due to a slower than projected rebuilding in the stock). As such, a number of management options were considered by the Department, designed to achieve this reduction of Delaware's recreational harvest of summer flounder for 2007. These options included, but were not limited to, a minimum size limit that ranged from 18 to 17.5 inches in conjunction with creel limits that ranged from 1 to 4 fish per angle. Additional options included a partial harvest season closure, designed to restrain the harvest in 2007 at or below the state's harvest limit.

Numerous members of the public attended this hearing on March 29, 2007, to voice their comments with regard to the Department's proposed changes to these regulations. Comments were received from the public, both at the actual hearing and during the post-hearing phase as well. Proper notice of the hearing was provided as required by law.

Subsequent to the public hearing of March 29, 2007, the Hearing Officer prepared her Report dated April 13, 2007, and that Report, including its attachments, is expressly incorporated herein to this Order.

Based on the record, including the public hearing record reviewed in the April 13, 2007 Hearing Officer's Report, the proposed regulation is adequately supported and is not arbitrary or capricious. The Report reviews and summarizes the record developed throughout this regulatory process, and recommends approval of the proposed regulation as a final regulation without modification. I agree with the Report and adopt it, along with its attachments, as part of this Order along with its reasons.

The proposed regulation is based upon sound scientific evidence, is consistent with State and Federal law, and is a reasoned regulation that will result in furthering the purposes of 7 Del.C. Ch. 60. In conclusion, the following findings and conclusions are entered:

1. The Department, acting through this Order of the Secretary, adopts the proposed regulation as a final regulation, as set forth in the Attachment "A" to the Hearing Officer's Report;
2. The regulation amendments that are approved by this Order were developed consistent with the applicable law and regulatory standards and are adequately supported by technical analysis;
3. The Department has jurisdiction under its statutory authority to make a determination in this proceeding;
4. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations;
5. The Department held a public hearing in a manner required by the law and regulations;
6. The Department considered all timely and relevant public comments in making its determination;

7. Promulgation of these proposed amendments would allow Delaware to fulfill its requirement to cap the summer flounder recreational harvest at 76,608 fish for 2007, amounting to an approximate reduction of 29% from last year;

8. Based upon overwhelming public opinion concerning the same, Delaware will implement proposed Option #10 for the management of the summer flounder harvest, to wit: a limit of 4 flounder at 18 inches, with no closure for the 2007 season;

9. The Department has reviewed this proposed amendment in the light of the Regulatory Flexibility Act, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally;

10. The Department's proposed regulation is adequately supported, not arbitrary or capricious, and is consistent with the applicable laws and regulations. Consequently, it should be approved as a final regulation, which shall go into effect ten days after its publication in the next available issue of the *Delaware Register of Regulations*; and that

11. The Department shall submit the proposed regulation as a final regulation to the *Delaware Register of Regulations* for publication in its next available issue, and shall provide written notice to the persons affected by the Order.

John A. Hughes, Secretary

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.

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

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

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 [~~seventeen (17)~~ **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.

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 (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. 1724 (05/01/07) (Final)