

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

3511 Summer Flounder Size Limits; Possession Limits

Secretary's Order No.: 2008-F-0015

I. Background:

A public hearing was held on Thursday, March 27, 2008, at 7:00 p.m. at the DNREC Richardson & Robbins Building Auditorium to receive comment on proposed amendments to the existing Delaware Tidal Finfish Regulation for Summer Flounder concerning size limits, creel limits, and seasons. The Summer Flounder Fishery Management Plan details the annual process that the Atlantic States Marine Fisheries Commission's 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 11, 2007 that the states would implement conservation equivalent measures rather than a coastwide management program for summer flounder in 2008. The total allowable harvest quota has been reduced for 2008 in order to comply with the rebuilding scheduled 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 2008.

Delaware's harvest cap for summer flounder will be 64,338 fish in 2008, which represents a 41.3 percent reduction from the estimated 109,696 fish harvested in 2007. As such, a number of management options designed to reduce the recreational harvest of summer flounder for 2008 were presented by the Department at the public hearing on March 27, 2008. These proposed options included minimum size limits ranging from 18.5 to 19.5 inches, in conjunction with creel limits ranging from 1 to 4 fish per angler per day. Additional management options included a partial harvest season closure designed to restrain the harvest in 2008 at or below the state's harvest limit.

Recreational fishermen, bait and tackle dealers will be affected by the option ultimately chosen by the Secretary to manage the summer flounder harvest for 2008. The Department has the statutory basis and legal authority to act with regard to this promulgation pursuant to 7 Del.C. §903(e)(2)(a). No other Delaware regulations are affected by this proposal.

After listening to the public comment received during all phases of this promulgation process, and performing an exhaustive review and consideration of all components of the fishery, economic impacts and conservation of the resource, the Department believes "Option 5" best accomplishes the mandated 41.3% reduction with no closure period.

Numerous members of the public attended this hearing on March 27, 2008 to voice their concerns with regard to the Department's proposed changes to these regulations, and the same were taken into consideration during the Division's review of this proposed regulatory amendment. Afterwards, the Hearing Officer prepared her report regarding this matter and submitted the same to the Secretary for review and consideration. Proper notice of the hearing was provided as required by law.

II. Findings:

The Department has provided a reasoned analysis and a sound conclusion with regard to the response given to each such comment, as reflected in the Hearing Officer's Report of March 27, 2008, which is attached and expressly incorporated into this Order. Moreover, the following findings and conclusions are entered at this time:

1. Proper notice of the hearing was provided as required by law.
2. The Department has jurisdiction under its statutory authority to make a determination in this proceeding;
3. The Department provided adequate public notice of the proceeding and the public hearing in a

manner required by the law and regulations;

4. The Department held a public hearing in a manner required by the law and regulations;

5. The Department considered all timely and relevant public comments in making its determination; Promulgation of these proposed amendments would bring Delaware into compliance with federal guidelines for the management of summer flounder, since summer flounder come under both federal and state jurisdiction;

6. Promulgation of these proposed amendments would bring Delaware into compliance with federal guidelines for the management of summer flounder, since summer flounder come under both federal and state jurisdiction;

7. Option 5 will set the summer flounder restrictions at a 19.5" size limit and a 4-fish daily bag limit, with no seasonal closure. This was the option most supported by the public, based upon comments received by the Department during the public comment phase of this promulgation;

8. Option 5 will reduce the 2008 summer flounder harvest in Delaware by a minimum of 41.3%, as required by the ASMFC's Summer Flounder Fishery Management Board, the Mid-Atlantic Fishery Management Council and the National Marine Fisheries Service, and in order to comply with the rebuilding scheduled as mandated in the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006;

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 amendments to Tidal Finfish Regulation for Summer Flounder for 2008 are adequately supported, not arbitrary or capricious, and are 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 has an adequate record for its decision, and no further public hearing is appropriate or necessary.

III. Order:

Based on the record developed, as reviewed in the Hearing Officer's Report dated April 14, 2008 and expressly incorporated herein, it is hereby ordered that the proposed amendments to State of Delaware Tidal Finfish Regulation for Summer Flounder for 2008 be promulgated in final form in the customary manner and established rule-making procedure required by law.

IV. Reasons:

The promulgation of State of Delaware Tidal Finfish Regulations for Summer Flounder for 2008 will bring Delaware into compliance with federal guidelines for the management of summer flounder, since summer flounder come under both federal and state jurisdiction with regard to the harvest management of this species. This action, which incorporates Option 5 as Delaware's management plan for summer flounder, will reduce the harvest of summer flounder by a minimum of 41.3%. It is incumbent upon Delaware to be in compliance with the Commission's plan, not only to avoid federal sanctions against Delaware and its fishery, but to protect this species with these conservation measures to ensure that summer flounder will continue to be found in Delaware waters in the future.

In developing this regulation, the Department has balanced the absolute environmental need for the State of Delaware to promulgate regulations concerning this matter with the important interests and public concerns surrounding the same, in furtherance of the policy, purposes, and authority of 7 Del.C. §903(e)(2)(a).

David S. Small, in his official capacity as Acting 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)~~ **[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)~~ **[nineteen and one half (19.5)]** inches between the tip of the snout and the furthest tip of the tail. **[(Note: creel limit to be determined in combination with seasonal closure and size limit.)]**

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)~~ **[nineteen and one half (19.5)]** 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. **[(Note: creel limit to be determined in combination with seasonal closure and size 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)~~ **[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>
<u>5</u>	<u>none</u>	<u>365</u>	<u>4</u>	<u>19.5</u>

- 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)
11 DE Reg. 1493 (05/01/08) (Final)