



STATE OF DELAWARE
**DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL**

OFFICE OF THE
SECRETARY

89 KINGS HIGHWAY
DOVER, DELAWARE 19901

PHONE: (302) 739-9000
FAX: (302) 739-6242

Secretary's Order No.: 2014-F-0006

**Approving Final Regulation Amendments to 7 DE Admin. Code 3511:
Summer Flounder Size Limits; Possession Limit; Seasons**

Date of Issuance: April 15, 2014

Effective Date of the Amendment: May 11, 2014

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") the following findings, reasons and conclusions are entered as an Order of the Secretary in the above-referenced rulemaking proceeding.

Background and Procedural History

This Order considers proposed regulatory amendments to Delaware Tidal Finfish Regulation No. 3511 regarding Summer Flounder. The Department's Division of Fish and Wildlife commenced the regulatory development process with Start Action Notice 2014-02. The Department published the proposed amendments in the March 1, 2014 *Delaware Register of Regulations* and held a public hearing on March 26, 2014. The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated April 11, 2014 (Report). The Report recommends certain findings and the adoption of the proposed regulation amendment as attached to the Report as Appendix A.

Delaware's Good Nature depends on you!

Findings and Discussion

I find that the proposed new regulation is well-supported by the record developed by the Department, and adopt the Report to the extent it is consistent with this Order. The Department's experts in the Division of Fish and Wildlife developed the record and drafted the proposed regulation. As a result of the regulatory development process, the Department received public comments supporting this proposed regulation, as thoroughly discussed in the Report.

Summer flounder are managed cooperatively by the Atlantic States Marine Fisheries Commission (ASMFC), the Mid-Atlantic Fishery Management Council ("MAFMC"), and the National Marine Fisheries Service ("NMFS") through Amendment 13 to the joint Summer Flounder, Scup and Black Sea Bass Fishery Management Plan and its subsequent addenda. The ASMFC and MAFMC jointly approved a coastwide recreational summer flounder harvest limit for 2014 of 7.01 million pounds (2,421,720 fish) at their December 11, 2013 meeting. The ASMFC approved a regional management approach for states under Addendum XXV at its February 4, 2014 meeting.

Under the regional management approach, states within a region are required to establish the same size and possession limits. Delaware is in a region with Maryland and Virginia. Delaware is required to change its existing recreational 17-inch minimum size limit to a 16-inch recreational minimal size limit. Further, there will be no change in Delaware's present four fish recreational possession limit or year-round recreational summer flounder season.

With the adoption of these regulatory amendments to Delaware Tidal Finfish Regulation No. 3511 as final, Delaware will be able to remain in compliance with the federal guidelines for the management of summer flounder, to wit: (1) establish the size limit at 16.0 inches; (2) maintain the current creel limit at four (i.e., four fish per day); and (3) maintain a no-closure season for 2014.

In conclusion, the following findings and conclusions are entered:

1.) The Department has jurisdiction under its statutory authority to issue an Order adopting these proposed Amendments as final;

2.) The Department provided adequate public notice of the proposed regulatory amendments to this regulation, and provided the public with an adequate opportunity to comment on the proposed amendments, including at a public hearing;


3.) The Department held a public hearing on March 26, 2014 on the proposed amendments to this regulation in order to consider public comments before making any final decision, and has considered all relevant and timely public comment received;

4) The Department's Hearing Officer's Report, including its recommended record and the recommended amendments to this regulation, as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;

5.) The recommended amendments to this regulation satisfy the aforementioned federal mandates with regard to Delaware's management of summer flounder, and are not changed from the proposed amendments as originally published in the March 1, 2014, *Delaware Register of Regulations*;

6.) The recommended amendments should be adopted as final because Delaware will be enabled to remain in compliance with the federal guidelines for the management of summer flounder, as set forth cooperatively by the Atlantic States Marine Fisheries Commission (ASMFC), the Mid-Atlantic Fishery Management Council (MAFMC), and the National Marine Fisheries Service through Amendment 13 to the Summer Flounder, Scup and Black Sea Bass Fishery Management Plan and its subsequent addenda. Furthermore, it will not deprive fishermen of the enjoyment of summer flounder, nor will it cause Delaware to suffer a marked decrease in tourism (and potential correlating economic downturn) as a result of any fishery closure in 2014; and

7.) The Department shall submit this Order approving the final amendments to this regulation to the *Delaware Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.


Collin P. O'Mara
Secretary

HEARING OFFICER'S REPORT

TO: The Honorable Collin P. O'Mara
Cabinet Secretary, Department of Natural Resources and Environmental Control

FROM: Lisa A. Vest *LAV*
Public Hearing Officer, Office of the Secretary
Department of Natural Resources and Environmental Control

RE: **Approving Final Delaware Regulatory Amendments to
7 DE Admin. Code 3511: Summer Flounder Size Limits; Possession Limit;
Seasons**

DATE: April 11, 2014

I. BACKGROUND AND PROCEDURAL HISTORY:

A public hearing was held on Wednesday, March 26, 2014, at 6:00 p.m. by the Department of Natural Resources and Environmental Control ("DNREC", "Department"), at the Dover Public Library, 35 Loockerman Plaza, Dover, Delaware to receive comment on proposed regulatory amendments ("amendments") to Delaware Tidal Finfish Regulation No. 3511 regarding the management of summer flounder. The purpose of this proposed action is to consider amending Delaware's existing summer flounder (*Paralichthys dentatus*) regulation for consistency with Addendum XXV to the Atlantic States Marine Fisheries Commission's Interstate Fishery Management Plan for Summer Flounder, Scup, and Black Sea Bass. It is anticipated that the amendment will include a liberalization of the recreational minimum size limit.

Summer flounder are managed cooperatively by the Atlantic States Marine Fisheries Commission (ASMFC), the Mid-Atlantic Fishery Management Council ("MAFMC"), and the National Marine Fisheries Service ("NMFS") through Amendment 13 to the joint Summer Flounder, Scup and Black Sea Bass Fishery Management Plan and its subsequent addenda. The

ASMFC and MAFMC jointly approved a coastwide recreational summer flounder harvest limit for 2014 of 7.01 million pounds (2,421,720 fish) at their December 11, 2013 meeting. The ASMFC approved a regional management approach for states under Addendum XXV at its February 4, 2014 meeting.

Under the regional management approach, states within a region are required to establish the same size and possession limits. Delaware is in a region with Maryland and Virginia. It is anticipated that Delaware will be required to change its existing recreational 17-inch minimum size limit to a 16-inch recreational minimal size limit. Further, it is anticipated that there will be no change in Delaware's present four fish recreational possession limit or year-round recreational summer flounder season. Although unlikely, it should be noted that these proposed measures are subject to change pending the release of additional recreational landings data.

The Department has the statutory basis and legal authority to act with regard to the proposed regulatory amendments to Delaware Tidal Finfish Regulation No. 3511, pursuant to 7 Del.C. §§901 (c & d), 903(e)(2)(a). No other Delaware regulations are affected by these proposals. Members of the public attended the hearing held by the Department in this matter on March 26, 2014; no negative public comment was received by the Department at any time during this proposed promulgation. Proper notice of the hearing was provided as required by law.

II. SUMMARY OF THE PUBLIC HEARING RECORD:

The public hearing record consists of a verbatim transcript and fifteen exhibits introduced at the public hearing and marked by this Hearing Officer accordingly as Department Exhibits 1-15. The Department's persons primarily responsible for the drafting and overall promulgation of these proposed regulatory amendments, John Clark and Stewart Michels, developed the record with the relevant documents in the Department's files. Following the submission of the

Department's exhibits into the record, Mr. Michels proceeded to offer a brief summary as to the Department's proposed actions in this matter (see Section I of this report for the same).

As previously noted, members of the public attended the hearing held on March 26, 2014, but no comment was received at that time. Pursuant to Delaware law, the record remained open for fifteen (15) additional days subsequent to the date of the public hearing, for the purpose of receiving additional public comment. The public hearing record remained open for public comment through April 10, 2014. Again, no negative public comment was received by the Department from the public at any time during the course of this proposed promulgation. It should also be noted that all proper notification and noticing requirements concerning this proposed promulgation were met by the Department.

For the Secretary's review, Delaware's proposed regulatory amendments concerning summer flounder are expressly incorporated into this report and attached hereto as Appendix "A" for that purpose. It should be noted that the Department has reviewed these proposed amendments 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.

It should also be noted that all proper notification and noticing requirements concerning this proposed promulgation were met by the Department.

III. RECOMMENDED FINDINGS AND CONCLUSIONS:

Based on the record developed, I find and conclude that the Department has provided appropriate reasoning regarding the need for the proposed regulatory amendments to Delaware Tidal Finfish Regulation No. 3511, concerning the management of summer flounder.

Accordingly, I recommend promulgation of these proposed amendments in the customary manner provided by law.

Further, I recommend the Secretary adopt the following findings and conclusions:

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 on March 26, 2014 in a manner required by the law and regulations;
5. The Department considered all timely and relevant public comments in making its determination;
6. Promulgation of the proposed regulatory amendments to Delaware Tidal Finfish Regulation No. 3511 would enable Delaware to remain in compliance with the federal guidelines for the management of summer flounder, as set forth cooperatively by the Atlantic States Marine Fisheries Commission (ASMFC), the Mid-Atlantic Fishery Management Council (MAFMC), and the National Marine Fisheries Service through Amendment 13 to the Summer Flounder, Scup and Black Sea Bass Fishery Management Plan and its subsequent addenda;
7. With regard to the proposed amendments to Delaware's regulations concerning summer flounder, the summer flounder restrictions for 2014 will be established at (1) minimum size limit at 16.0 inches; (2) creel limit at four (i.e., four fish per day); and (3) no closed season for 2014;

8. The Department has reviewed these proposed regulatory amendments 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;
9. The Department's aforementioned proposed regulatory amendments concerning the management of summer flounder, as published in the March 1, 2014 *Delaware Register of Regulations*, and as set forth in Appendix "A" hereto, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they should be approved as final regulatory amendments, which shall go into effect ten days after their publication in the next available issue of the *Delaware Register of Regulations*; and
10. The Department shall submit the proposed regulation amendments as final amendments to the *Delaware Register of Regulations* for publication in its next available issue, and shall provide such other notice as the law and regulations require, and as the Department determines is appropriate.



LISA A. VEST
Public Hearing Officer

APPENDIX “A”

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

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

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)

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 (16) 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)

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. 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)

