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DEPARTMENT OF NATURAL RESOURCES
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Secretary

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Secretary's Order No.: 2024-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: February 28, 2024

Effective Date of the Amendment: 48 hours following publication of this Secretary's Order and regulation on the Department's website: <https://de.gov/dnrecorders>

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, 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 reduce Summer Flounder mortality in the recreational fishery by adopting specified management measures approved by the Atlantic States Marine Fisheries Commission's ("ASMFC") Summer Flounder, Scup, and Black Sea Bass Board ("Board") at its February 14, 2024, meeting. Specifically, this amendment sets the recreational open season as January 1 through May 31 with a 16" minimum size and four fish daily possession limit, and June 1 through December 31 with a 17.5" minimum size and four fish daily possession limit. This order is necessary to keep Delaware compliant with the ASMFC Addendum XXXIV to the *Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan: Harvest Control Rule for Recreational Management of Summer Flounder, Scup, Black Sea Bass, and Bluefish*.

The Board was required to take action to constrain the 2024 and 2025 recreational Summer Flounder harvest because the harvest is otherwise anticipated to exceed the Recreational Harvest Limit ("RHL") in both years. Using the percent reduction method under the Harvest Control Rule, the Board is requiring all regions in the Summer Flounder management unit to reduce recreational harvest by 28% for 2024 and 2025 recreational Summer Flounder. Measures will be restricted to achieve the full 28% reduction in 2024 and then will remain unchanged in 2025 unless new information suggests a major change in the expected impacts of those measures on the stock or the fishery. The Board has required all regions in the management unit to develop management measures that are expected to meet the required reduction in their region based on projections generated by the Recreational Demand Model and thus constrain harvest to the RHL for the entire management unit. The Delmarva Summer Flounder Region, to which Delaware belongs, proposed and had approved by the Board the previously stated measure that reduces harvest by 28%.

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 action taken on February 14, 2024.

ORDER

In accordance with 7 *Del. C.* §903(e)(2)a.1, it is hereby ordered, this 28th day of February, 2024 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 necessitated to ensure Delaware's compliance with the ASMFC Addendum XXXIV 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.



For Shawn M. Garvin
Secretary