



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.: 2013-F-0016**

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

**Date of Issuance: May 14, 2013**

**Effective Date of the Amendment: June 11, 2013**

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 2013-02. The Department published the proposed amendments in the March 1, 2013 *Delaware Register of Regulations* and held a public hearing on March 21, 2013. The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated May 3, 2013 (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 through Amendment 13 to the Summer Flounder, Scup and Black Sea Bass Fishery Management Plan and its subsequent addenda. The ASMFC and MAFMC approved a coastwide recreational summer flounder harvest limit for 2013, resulting in recreational summer flounder allocation of 78,512 fish to Delaware. Although this was a reduction from the 2012 allocation (87,536 fish), the 2013 quota represents a 104% increase relative to Delaware's 2012 recreational harvest (38,470 fish). As such, Delaware has an opportunity at this time to liberalize its management measures for the 2013 recreational summer flounder fishery, provided the management measures are approved by the ASMFC's Summer Flounder, Scup and Black Sea Bass Management Board following established criteria.

As discussed in the aforementioned Report, four options were developed and subsequently approved by the ASMFC's Summer Flounder, Scup and Black Sea Bass Technical Committee at their January 2013 meeting. These options, ranging from a proposed minimum size of 16.5 inches to 18.0 inches, served as the basis for the

Department's proposed regulatory change. With the exception of the 18.0 inch option (which included with it a closed season from Oct. 24<sup>th</sup> through Dec. 31<sup>st</sup> and a zero percent estimated increase in harvest), the options presented by the Department for public comment called for a possession limit of 4 fish per day, no closed season, and an estimated increase in harvest from the prior year. It is appropriately noted that, as the estimated harvest for each option increases, the risk of exceeding the allowable catch so increases, and exceeding the allowable catch will result in a corresponding reduction in the following year's allowable catch.

While each of the options considered by the Department is predicted to achieve the management target under conditions similar to 2012, the Department remains somewhat concerned that the 2012 recreational landings data reflect an atypical shift in summer flounder distribution, due to the unusually warm weather that presented itself in 2012. This shift appears to have increased stock availability farther north, and reduced availability in Delaware and to the south. Should stock distribution return to a more typical pattern in 2013, the risk of exceeding our total allowable catch may substantially increase. Further exacerbating uncertainty in this matter is a shift to a new recreational sampling methodology that may change summer flounder landings estimates for 2013.

In addition to the concerns noted above, there was a significant amount of public comment received with regard to the four options presented by the Department at the public hearing of March 21, 2013. These comments were given a thorough and exhaustive review by the Division of Fish & Wildlife, and were considered within the context of which of the approved options offered the most reasonable, risk-averse measure to manage Delaware's summer flounder fishery. While it is true that there are

several ways to categorize the comment received in this matter, the fact remains that the two most favored options voiced by the public were for Option #3 (minimum size of 17.0 inches and an estimated increase in harvest of 40%) and Option #4 (minimum size of 16.5 inches, and an estimated increase in harvest of 81.8%). Both of these options call for a creel limit of 4, and no closed season, so those factors are not at issue in this particular deliberation. However, when comparing the estimated increase in harvest for each of these options, Option #4 is more than double the projected increase of Option #3. Given the concerns of Delaware potentially exceeding its total allowable catch (which, in turn, may result in a corresponding reduction in the following year's allowable catch), I hereby agree with the Department's recommendation offered for consideration, and believe the most appropriate and reasonable path forward for Delaware in this matter is to (1) liberalize the minimum size for 2013 by one inch, thus setting the summer flounder minimum size for 2013 at 17.0 inches; and (2) allowing the fishery to operate without a seasonal closure.

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 17.0 inches; (2) establish the creel limit at four (i.e., four fish per day); and (3) establish a no-closure season for 2013. In support of the selection of this option, the size limit reduction should lead to more chances for anglers to catch a keeper-sized summer flounder, and should also provide some relief for shore-based anglers who do not have access to larger flounder that are often found in deeper water habitats. Additionally, this option provides for a no-closure season for 2013, which will provide additional

opportunity for anglers to harvest summer flounder in Delaware waters, yet permit the Department to manage this fishery in a reasonable, risk-averse manner.

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 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;

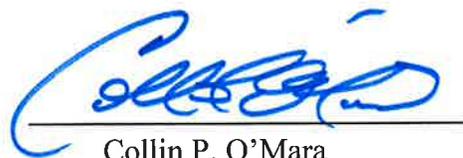
4.) The Department's Hearing Officer's Report, including its recommended record and the recommended amendments to this regulation, as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;

5.) The recommended amendments to this regulation (as revised to reflect the aforementioned 17.0 inch minimum size limit, 4 fish per day, and no closed season for 2013) satisfy the aforementioned federal mandates with regard to Delaware's management of summer flounder, and do not result in any substantive change from the proposed amendments as originally published in the March 1, 2013, *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. 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 2013. Moreover, this management option will also help to fortify and continue to rebuild the summer flounder stock while simultaneously helping to encourage and teach sound fishing ethics to the next generation of anglers in Delaware.

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   
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:** May 3, 2013

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### **I. BACKGROUND AND PROCEDURAL HISTORY:**

A public hearing was held on Thursday, March 21, 2013, at 6:00 p.m. at the Department of Natural Resources and Environmental Control ("DNREC", "Department"), 89 Kings Highway, Dover, Delaware to receive comment on proposed regulatory amendments ("amendments") to Delaware Tidal Finfish Regulation No. 3511 regarding the management of Summer Flounder. 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 through Amendment 13 to the Summer Flounder, Scup and Black Sea Bass Fishery Management Plan and its subsequent addenda.

The ASMFC and MAFMC approved a coastwide recreational summer flounder harvest limit for 2013, resulting in recreational summer flounder allocation of 78,512 fish to Delaware. Although this was a reduction from the 2012 allocation (87,536 fish), the 2013 quota represents a 104% increase relative to Delaware's 2012 recreational harvest (38,470 fish). As such, Delaware has an opportunity at this time to liberalize its management measures for the 2013 recreational

summer flounder fishery, provided the management measures are approved by the ASMFC's Summer Flounder, Scup and Black Sea Bass Management Board following established criteria.

Four options were developed and subsequently approved by the ASMFC's Summer Flounder, Scup and Black Sea Bass Technical Committee at their January 22, 2013 meeting. These options, which will be discussed in detail herein, serve as the basis for this proposed regulatory action.

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.

Public comment was received by the Department regarding this proposed promulgation during all phases of the public hearing process. After an exhaustive review of the public comment received concerning the aforementioned summer flounder management options, and after consideration of all components of the fishery, economic impacts and conservation of the resource, the Department believes the option of 17.0 inches minimum size limit, 4 fish per day, and no closed season best accomplishes the mandated summer flounder quota of 78,512 harvested fish (or less) for 2013. An analysis of the Department's recommended management option for summer flounder, along with discussion of the public comment received concerning the same, will be further discussed below. 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 thirteen exhibits introduced at the public hearing and marked by this Hearing Officer accordingly as Department

Exhibits 1-13. 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, Richard Wong, Biometrician with the Department's Division of Fish and Wildlife, offered a brief explanation with regard to the salient points of the proposed amendments to these regulations. Mr. Wong began the Department's presentation by explaining that summer flounder management for 2013 has been able to be liberalized with respect to the options approved by ASMFC, given the recreational summer flounder allocation of 78,512 fish to Delaware. The following were the options presented for consideration at the public hearing on March 21, 2013:

<u>Option</u>	<u>Minimum Size</u>	<u>Possession Limit</u>	<u>Closed Season</u>	<u>Est. Harvest Increase</u>
1	18.0 inches	4	10/24 – 12/31	0 (status quo)
2	17.5 inches	4	NONE	10.1%
3	17.0 inches	4	NONE	40.1%
4	16.5 inches	4	NONE	81.8%

It should be noted that all four of the above options were developed and subsequently approved by the ASMFC's Summer Flounder, Black Sea Bass and Scup Technical Committee at its January 22, 2013 meeting. In concluding his presentation at the hearing, Mr. Wong advised the public in attendance to bear in mind that, as the estimated harvest for each option increases, the risk of exceeding the allowable catch increases as well, and exceeding the allowable catch may very well result in a corresponding reduction in the following year's allowable catch.

Following the Department's presentation, the public hearing was opened up for public comment. Many persons attending the hearing that night offered their comments and concerns to the Department regarding what each believed to be the best option for summer flounder management here in Delaware. Common concerns voiced during this portion of the hearing were, as always, the reliability of the landings estimates, the economics of Delaware's fishing licensing, the mortality rates of discarded fish, and, most importantly, the ability of the Department to enforce whatever option ultimately chosen by the Secretary to manage the conservation of this species. Captain Brian Wazlavek raised concerns pertaining to (1) Addendum 24 to the federal Fishery Management Plan proposed for this year; and (2) methodological changes with respect to how the intercept survey will be conducted. After much discussion with regard to states' quotas and survey methodology, Capt. Wazlavek commented that he would support Option #4, with a minimum size of 16.5 inches, and ended by encouraging those in attendance to tell ASMFC to vote against Addendum 24, as he believes that it has the potential to set a precedent that could result in a permanent reduction of Delaware's harvest limits in this matter.

Following Capt. Wazlavek's comments, others provided comments for inclusion in the record developed in this matter as well, such as Toby Miller and George LaRock, both of whom voiced support for Option #3, with a minimum size of 17.0 inches. Others also voicing support for Option #3 were George Mood (on behalf of the Delaware Mobile Surf Fishermen, or, DMS, Inc.), Harry Akin, Brenice Hobbs, and Bob Trowbridge. Roy Miller (previously of the Department's Fish & Wildlife Division) offered comment at the hearing as well, not as an Atlantic States Marine Fisheries Commissioner, but rather as an individual recreational flounder fisherman. From that standpoint, Mr. Miller favored either Option #2 or Option #3. He noted

that Option #4 concerned him, based on Delaware's fishing history, that "...there will be an opportunity to go over our targeted catch if we liberalized Option 4." Also offering comment at the time of the hearing were Herbert Drummond and David Russell, both in support of Option #4. Lastly, Mike Bailey (of Rick's Bait and Tackle) offered support for Option #2, commenting that "...Option #4 is going to leave us open to, in the future, some pretty stiff regulations and a shortened season." Mr. Bailey went on to state that, in his opinion, people are not "...looking to the future very far with Option #4 in regard to what can happen down the road with the flounder regulations".

Following the conclusion of the hearing on March 21, 2013, the record remained open for additional public comment through close of business on Friday, April 5, 2013. During that time, there was a great deal of additional comment received by the Department concerning the possible management options vetted to the public at the hearing. Once the record formally closed with respect to public comment, the Department's Division of Fish & Wildlife then began an exhaustive review of all comment that had been received, in order to provide a complete analysis of the same and formal recommendation to the Secretary with respect to which of the four options vetted to the public was best supported by the record developed in this matter.

As the Department notes in its review of this matter, the majority of comments received simply expressed a preference for a particular option. Those that provided justification for their comments demonstrated an appreciation for the risk associated with exceeding the allowable catch. Some commenters who opted for Option 4 alluded negatively to the (federal) draft Addendum 24, which, if approved, would allow other states to apply "uncommitted" quota to their own management programs.

While it is true that there are several ways to categorize the comment received in this matter, the fact remains that the *two most favored options* voiced by the public were for Option #3 (minimum size of 17.0 inches and an estimated increase in harvest of 40%) and Option #4 (minimum size of 16.5 inches, and an estimated increase in harvest of 81.8%). Both of these options call for a creel limit of 4, and no closed season, so those factors are not at issue in this particular deliberation. However, when comparing the estimated increase in harvest for each of these options, Option #4 is more than double the projected increase of Option #3 (40.1% estimated increase in harvest with Option #3, as opposed to 81.8% associated with Option #4).

Each of the four options presented at the aforementioned public hearing is predicted to achieve the management target under conditions similar to 2012. The Department remains somewhat concerned, however, that the 2012 recreational landings data reflect an atypical shift in summer flounder distribution, due to the unusually warm weather in 2012. This shift appears to have increased stock availability farther north, and reduced availability in Delaware and to the south. The Department believes that, should stock distribution return to a more typical pattern in 2013, the risk of exceeding Delaware's total allowable catch may substantially increase. Further exacerbating uncertainty is a shift to a new recreational sampling methodology that may change summer flounder landings estimates for 2013.

Based on *all* of the above considerations, and given the concerns of Delaware potentially exceeding its total allowable catch (which, in turn, may result in a corresponding reduction in the following year's allowable catch), it is the recommendation of the Department's Division of Fish and Wildlife that the preferred management option for the 2013 summer flounder season (as well as the most appropriate and reasonable path forward for Delaware in this matter) is to (1)

liberalize the minimum size for 2013 by one inch, thus setting the summer flounder minimum size for 2013 at 17.0 inches; and (2) allowing the fishery to operate without a seasonal closure.

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 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 2013 will be established at (1) minimum size limit at 17.0 inches; (2) creel limit at four (i.e., four fish per day); and (3) no closed season for 2013;
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, 2013 *Delaware Register of Regulations* (and as revised to reflect the preferred management option of 17.0 inch minimum size limit, 4 fish per day, and no closed season for 2013) 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.



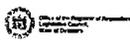
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LISA A. VEST  
Public Hearing Officer



## **APPENDIX “A”**





# DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

## DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 901(c & d) (7 Del.C. §901(c & d))  
7 DE Admin. Code 3511

### PROPOSED

#### 3511 Summer Flounder Size Limits; Possession Limits

#### REGISTER NOTICE #2013 - 02

**1. TITLE OF THE REGULATION:**

3511 Summer Flounder Size Limits; Possession Limits

**2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUE:**

This action is to consider amending the summer flounder (*Paralichthys dentatus*) regulation, with possible changes to the season and 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 through Amendment 13 to the Summer Flounder, Scup and Black Sea Bass Fishery Management Plan and its subsequent addenda. The ASMFC and MAFMC approved a coastwide recreational summer flounder harvest limit for 2013 resulting in recreational summer flounder allocation of 78,512 fish to Delaware. Although this is a reduction from the 2012 allocation (87,536 fish), the 2013 quota represents a 104% increase relative to Delaware's 2012 recreational harvest (38,470 fish). As such, Delaware may liberalize its management measures for the 2013 summer flounder fishery, provided the management measures are approved by the ASMFC's Summer Flounder, Scup and Black Sea Bass Management Board following established criteria.

Four options were developed and subsequently approved by the ASMFC's Summer Flounder, Black Sea Bass and Scup Technical Committee at their January 22, 2013 meeting (Table). These options will serve as the basis for the proposed regulatory change.

**Table.** Approved management options for proposed changes to 7 DE Admin. Code §3511 (Summer Flounder Size Limits; Possession Limits).

Option	Minimum Size	Possession Limit	Closed Season	Estimated Increase in Harvest
1	18.0 inches	4	Oct. 24 - Dec 31	0 ( <i>status quo</i> )
2	17.5 inches	4	None	10.1%
3	17.0 inches	4	None	40.1%
4	16.5 inches	4	None	81.8%

It should be noted that as the estimated harvest for each option increases, the risk of exceeding the allowable catch increases. Exceeding allowable catch will result in a corresponding reduction in the following year's allowable catch.

**3. POSSIBLE TERMS OF THE AGENCY ACTION:**

None.

**4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:**

7 Delaware Code, Section 901(c & d) and Section 903(e)(2)a

**5. LIST OF OTHER REGULATIONS THAT MAY BE IMPACTED OR AFFECTED BY THE PROPOSAL:**

N/A

**6. NOTICE OF PUBLIC COMMENT:**

The hearing record on the proposed changes to §3511 Summer Flounder Size Limits; Possession Limits will be open March 1, 2013. Individuals may submit written comments regarding the proposed changes via e-mail to Lisa.Vest@state.de.us or via the USPS to Lisa Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901 (302) 739-9042. A public hearing on the proposed amendment will be held on March 21, 2013 beginning at 6:30 pm in the



DNREC Auditorium, located at the Richardson & Robbins Building, 89 Kings Highway, Dover, DE 19901.

**7. PREPARED BY:**

Stewart Michels    Stewart.Michels@state.de.us    (302) 739-9914

David E. Saveikis, Director

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

Note: Size to be determined in combination with closed season, but is limited to options one through four listed in the below "Table of Management Options"

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)

- 3.0 It shall be unlawful for any person, 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 to be determined in combination with closed season, but is limited to options one through four listed in the below "Table of Management Options"

13 DE Reg. 1468 (05/01/10)

14 DE Reg. 1235 (05/01/11)

- 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.



8.0 Notwithstanding section 4.0 of this regulation, it shall be unlawful for any recreational or commercial hook and line fisherman to take and reduce to possession or to land any summer flounder during the closed season beginning 12:01 a.m. October 24 and ending 12:00 p.m. December 31 next ensuing.

Note: Closed season to be determined in combination with minimum size, but it is limited to options one through four listed in the below "Table of Management Options"

- 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. 929 (03/01/13 (Prop.))

**Table of Management Options**

<u>Option</u>	<u>Minimum Size</u>	<u>Possession Limit</u>	<u>Closed Season</u>
1	18.0 inches	4	Oct. 24 - Dec 31 (69 days)
2	17.5 inches	4	None
3	17.0 inches	4	None
4	16.5 inches	4	None

