



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

OFFICE OF THE
SECRETARY

89 KINGS HIGHWAY
DOVER, DELAWARE 19901

PHONE: (302) 739-9000
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Secretary's Order No.: 2017-F-0019

**RE: Approving Final Regulations to Amend 7 DE Admin. Code 3511:
 *Summer Flounder Size Limits; Possession Limits; Seasons***

Date of Issuance: August 10, 2017

Effective Date of the Amendment: September 11, 2017

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") pursuant to 7 *Del.C.* §§6006 and 6010, and 7 *Del.C.* §§901(c & d) and 903(e)(2), the following findings of fact based on the record, reasons and conclusions are entered as an Order of the Secretary in the above-referenced regulatory proceeding.

Background, Procedural History and Findings of Fact

This Order relates to proposed regulatory Amendments to 7 DE Admin. Code 3511: *Summer Flounder Size Limits; Possession Limits; Seasons* ("Amendments"). On February 2, 2017, the Atlantic States Marine Fisheries Commission's ("ASMFC") Summer Flounder, Scup and Black Sea Bass Management Board approved Addendum XXVIII to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan ("FMP"), thus maintaining regional management for the 2017 recreational Summer Flounder fishery. Addendum XXVIII requires each region to increase their Summer

Delaware's Good Nature depends on you!

Flounder minimum size limit by one inch and adopt a no more than four fish possession limit to stay within the 2017 recreational harvest limit. This action only affects Delaware's existing 16-inch minimum size limit, as Delaware's existing recreational Summer Flounder possession limit is four fish.

Subsequent to the ASMFC's approval of Addendum XXVIII as referenced above, the Department consulted with the other states (Maryland and Virginia) within Delaware's ASMFC-defined region, and both states committed at that time to adopt a 17-inch minimum size limit and a four fish possession limit by April 1, 2017. This deadline necessitated that the Department adopt an Emergency Regulation with regard to this matter, in order to (1) meet the implementation target date; (2) remain compliant with the FMP; and (3) protect the Summer Flounder resource from overfishing. Additionally, the adoption of such Emergency Regulation provided for the welfare of those individuals (and of Delaware's businesses) dependent upon the Summer Flounder recreational fishery. Failure to adopt such measures in a timely fashion would have risked a federal closure of the fishery, in accordance with the Atlantic Coastal Fisheries Cooperative Management Act.

Pursuant to 29 *Del.C.* §10119 and 7 *Del.C.* §903(h), the Department adopted such Emergency Regulation, as referenced above, without prior notice or public hearing, to amend 7 DE Admin. Code 3511: *Summer Flounder Size Limits; Possession Limits; Seasons* with the issuance of Emergency Secretary's Order (No. 2017-F-0012). Said Order became effective at 12:01 a.m. on April 1, 2017, and was published in the *State of Delaware Register of Regulations* on that same date. 29 *Del.C.* §10119 authorizes Emergency Regulations when an agency determines that an imminent peril to the public health, safety or welfare requires the amendment of a regulation with less than the notice

required by 29 *Del.C.* §10115. Additionally, 7 *Del.C.* §903(h) authorizes the Department to adopt Emergency Regulations when such regulations are necessary to deal with an actual or imminent public health threat or danger to a fishing resource or habitat involving finfish. It should be noted that the aforementioned Emergency Secretary's Order was effective for ninety (90) days from its date of issuance on April 1, 2017.

While concurrently adopting the above-referenced Emergency Regulation, DNREC began its internal regulatory development process to formally amend 7 DE Admin. Code 3511. Thus, the Department's Division of Fish and Wildlife commenced said process with Start Action Notice ("SAN") #2017-05, signed by me on April 17, 2017. The Department subsequently published its initial proposed regulation Amendments in the June 1, 2017 *Delaware Register of Regulations*, and scheduled its public hearing to be held on June 29, 2017.

Since it would not be possible to complete DNREC's internal regulatory development process prior to the expiration of the initial Emergency Regulation Order referenced above, on June 2, 2017, Emergency Secretary's Order No. 2017-F-0016 was issued, which, pursuant to 7 *Del.C.* §903(h), provides for a one-time renewal of an Emergency Regulation when such regulation is necessary to deal with an actual or imminent public health threat or danger to a fishing resource or habitat involving finfish. Said Order (which formally extended the aforementioned Emergency Regulation for an additional ninety [90] days) became effective at 12:01 a.m. on June 30, 2017, and was published in the *State of Delaware Register of Regulations* on July 1, 2017.

It should be noted that the issuance of the subsequent Emergency Secretary's Order dated June 2, 2017, provided for seamless regulatory coverage for Delaware's Summer Flounder resource, from the date of issuance of the initial Emergency Secretary's Order No. 2017-F-0012 (dated April 1, 2017), through the expiration of the subsequent Emergency Secretary's Order No. 2017-F-0016 (which will be September 30, 2017). Thus, the Department maintained continuous compliance with ASMFC's approved Addendum XXVIII to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan, and was enabled to prevent overfishing the Summer Flounder resource.

As noted above, the Department held a public hearing regarding this proposed promulgation on June 29, 2017. Consistent with 29 *Del.C.* §10118(a), the public hearing record remained open for public comment through July 14, 2017. Members of the public attended the June 29, 2017 public hearing; however, no opposition to this proposed promulgation was received by the Department at that time, nor at any subsequent time prior to the hearing record closing with regard to public comment on July 14, 2017. All proper notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

Hearing Officer Lisa A. Vest prepared a Hearing Officer's Report dated July 24, 2017 ("Report"). The Report documents the proper completion of the required regulatory amendment process, establishes the record, and recommends the adoption of the proposed Amendments, attached to the Report as Appendix "A".

Reasons and Conclusions

Based on the record developed by the Department's experts and established by the Hearing Officer's Report, I find that the proposed regulatory Amendments to 7 DE Admin. Code 3511, *Summer Flounder Size Limits; Possession Limits; Seasons*, are well-supported. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed regulatory Amendments be promulgated as final.

I find that the Department's experts in the Division of Fish and Wildlife fully developed the record to support adoption of these regulatory Amendments. The adoption of the above will enable Delaware to comply with the ASMFC's approved Addendum XXVIII to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan, thus maintaining consistent regional management for the 2017 recreational Summer Flounder fishery, and protecting the Summer Flounder resource from overfishing.

In conclusion, the following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to the proposed amendments to 7 DE Admin. Code 3511, *Summer Flounder Size Limits; Possession Limits; Seasons*, pursuant to 7 *Del.C.*, Ch. 60, and 7 *Del.C.* §§901(c & d) and 903(e)(2);
2. The Department has jurisdiction under its statutory authority, pursuant to 7 *Del.C.*, Ch. 60, and 7 *Del.C.* §§901(c & d) and 903(e)(2), to issue an Order adopting these proposed regulatory amendments as final;
3. The Department provided adequate public notice of the proposed regulatory amendments to 7 DE Admin. Code 3511, *Summer Flounder Size Limits; Possession Limits; Seasons*, and all proceedings associated with the same, in a manner

required by the law and regulations, provided the public with an adequate opportunity to comment on the proposed regulatory amendments, including at the time of the public hearing held on June 29, 2017, and held the record open through close of business on July 14, 2017, consistent with 29 *Del.C.* §10118(a), in order to consider public comment on the same before making any final decision;

4. Promulgation of the proposed regulatory amendments to 7 DE Admin. Code 3511, *Summer Flounder Size Limits; Possession Limits; Seasons*, will enable the Department to comply with the ASMFC's approved Addendum XXVIII to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan, thus maintaining regional management for the 2017 recreational Summer Flounder fishery, and to protect the Summer Flounder resource from overfishing;

5. The Department's Hearing Officer's Report, including its established record and the recommended proposed regulatory Amendments as set forth in Appendix "A" thereto, are hereby adopted to provide additional reasons and findings for this Order;

6. The Department has reviewed these proposed regulatory Amendments in the light of the Regulatory Flexibility Act, consistent with 29 *Del.C.* Ch. 104 (version applicable to all regulations initially published on or after January 1, 2016), and has selected Exemption "B" regarding same, as this proposed regulation is not substantially likely to impose additional costs or burdens upon individuals and/or small businesses;

7. The Department's proposed regulatory Amendments, as published in the June 1, 2017 *Delaware Register of Regulations*, and as fully vetted at the public hearing of June 29, 2017 as noted above, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they are

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

8. The Department shall submit this Order approving as final the proposed amendments to 7 DE Admin. Code 3511, *Summer Flounder Size Limits; Possession Limits; Seasons* 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.



Shawn M. Garvin
Secretary

HEARING OFFICER'S REPORT

TO: The Honorable Shawn M. Garvin
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: Proposed Regulation Amendments to 7 DE Admin. Code 3511: *Summer Flounder Size Limits; Possession Limits; Seasons*

DATE: July 24, 2017

I. BACKGROUND AND PROCEDURAL HISTORY:

A public hearing was held on Thursday, June 29, 2017, 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 7 DE Admin. Code 3511, *Summer Flounder Size Limits; Possession Limits; Seasons*. On February 2, 2017, the Atlantic States Marine Fisheries Commission’s (“ASMFC”) Summer Flounder, Scup and Black Sea Bass Management Board approved Addendum XXVIII to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (“FMP”), thus maintaining regional management for the 2017 recreational Summer Flounder fishery. Addendum XXVIII requires each region to increase their Summer Flounder minimum size limit by one inch and adopt a no more than four fish possession limit to stay within the 2017 recreational harvest limit. This action only affects Delaware’s existing 16-inch minimum size limit, as Delaware’s existing recreational Summer Flounder possession limit is four fish.

Subsequent to the ASMFC's approval of Addendum XXVIII as referenced above, the Department consulted with the other states (Maryland and Virginia) within Delaware's ASMFC-defined region, and both states committed at that time to adopt a 17-inch minimum size limit and a four fish possession limit by April 1, 2017. This deadline necessitated that the Department adopt an Emergency Regulation with regard to this matter, in order to (1) meet the implementation target date; (2) remain compliant with the FMP; and (3) protect the Summer Flounder resource from overfishing. Additionally, the adoption of such Emergency Regulation provided for the welfare of those individuals (and of Delaware's businesses) dependent upon the Summer Flounder recreational fishery. Failure to adopt such measures in a timely fashion would have risked a federal closure of the fishery, in accordance with the Atlantic Coastal Fisheries Cooperative Management Act.

Pursuant to 29 *Del.C.* §10119 and 7 *Del.C.* §903(h), the Department adopted such Emergency Regulation, as referenced above, without prior notice or public hearing, to amend 7 DE Admin. Code 3511: *Summer Flounder Size Limits; Possession Limits; Seasons* with the issuance of Emergency Secretary's Order (No. 2017-F-0012). Said Order became effective at 12:01 a.m. on April 1, 2017, and was published in the *State of Delaware Register of Regulations* on that same date¹. 29 *Del.C.* §10119 authorizes Emergency Regulations when an agency determines that an imminent peril to the public health, safety or welfare requires the amendment of a regulation with less than the notice required by 29 *Del.C.* §10115. Additionally, 7 *Del.C.* §903(h) authorizes the Department to adopt Emergency Regulations when such regulations are necessary to deal with an actual or imminent public health threat or danger to a fishing resource or habitat involving finfish.

¹ Emergency Secretary's Order No. 2017-F-0112 was effective for 90 days from its date of issuance of April 1, 2017, pursuant to 7 *Del.C.* §903(h).

While concurrently adopting the above-referenced Emergency Regulation, DNREC also began its internal regulatory development process to formally amend 7 DE Admin. Code 3511, as noted above. Thus, the Department's Division of Fish and Wildlife commenced said process with Start Action Notice ("SAN") #2017-05, signed by Secretary Garvin on April 17, 2017. The Department subsequently published its initial proposed regulation Amendments in the June 1, 2017 *Delaware Register of Regulations*, and scheduled its public hearing to be held on June 29, 2017.

Since it would not be possible to complete DNREC's internal regulatory development process prior to the expiration of the initial Emergency Regulation Order referenced above, on June 2, 2017, Secretary Garvin proactively issued Emergency Secretary's Order No. 2017-F-0016, extending the provisions of the initial Emergency Secretary's Order for an additional ninety (90) days, as 7 *Del.C.* §903(h) provides for a one-time renewal of an Emergency Regulation. Said Order became effective at 12:01 a.m. on June 30, 2017, and was published in the *State of Delaware Register of Regulations* on July 1, 2017².

The Department has the statutory basis and legal authority to act with regard to this proposed regulatory promulgation, pursuant to 7 *Del.C.* Ch. 60, and 7 *Del.C.* §§901(c & d) and 903(e)(2). The aforementioned proposed Amendments were presented and thoroughly vetted by the Department at the public hearing on June 29, 2017. Members of the public attended that public hearing; however, no opposition to this proposed promulgation was received by the Department at that time, nor at any time prior to the hearing record closing on July 14, 2017.

² The issuance of Emergency Secretary's Order No. 2017-F-0016 provided for seamless regulatory coverage with regard to the Summer Flounder resource for Delaware, from the effective date of the original Emergency Order on April 1, 2017, through September 30, 2017, thereby allowing continuous compliance with the FMP for this fishery, as well as protection of Delaware's Summer Flounder resource from overfishing.

It should also be noted that all proper notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

II. SUMMARY OF THE PUBLIC HEARING RECORD:

The public hearing record consists of the following documents: (1) a verbatim transcript; and (2) sixteen documents introduced by responsible Department staff at the public hearing held on June 29, 2017, and marked by this Hearing Officer accordingly as “Department Exhibits 1-16”. The Department’s person primarily responsible for the drafting and overall promulgation of these proposed Amendments, Stewart Michels, Environmental Program Manager II for the Department’s Division of Fish and Wildlife, developed the record with the relevant documents in the Department’s files.

As noted previously, the aforementioned proposed Amendments were presented and thoroughly vetted by the Department at the public hearing on June 29, 2017. Members of the public attended that public hearing; however, no negative comment was received by the Department 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 regarding this proposed promulgation, but none was received by the Department during that time. The hearing record formally closed with regard to public comment on July 14, 2017.

For the Secretary’s review, a copy of the Department’s proposed Amendments as published in the June 1, 2017 *Delaware Register of Regulations* is attached hereto as Appendix “A”. Again, all proper notification and noticing requirements concerning this proposed promulgation were met by the Department in this matter.

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 Amendments to 7 DE Admin. Code 3511, *Summer Flounder Size Limits; Possession Limits; Seasons*. Accordingly, I recommend promulgation of the same in the customary manner provided by law.

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

1. The Department has the statutory basis and legal authority to act with regard to the proposed amendments to 7 DE Admin. Code 3511, *Summer Flounder Size Limits; Possession Limits; Seasons*, pursuant to 7 *Del.C.*, Ch. 60, and 7 *Del.C.* §§901(c & d) and 903(e)(2);

2. The Department has jurisdiction under its statutory authority, pursuant to 7 *Del.C.*, Ch. 60, and 7 *Del.C.* §§901(c & d) and 903(e)(2), to issue an Order adopting these proposed regulatory amendments as final;

3. The Department provided adequate public notice of the proposed regulatory amendments to 7 DE Admin. Code 3511, *Summer Flounder Size Limits; Possession Limits; Seasons*, and all proceedings associated with the same, in a manner required by the law and regulations, provided the public with an adequate opportunity to comment on the proposed regulatory amendments, including at the time of the public hearing held on June 29, 2017, and held the record open through close of business on July 14, 2017, consistent with 29 *Del.C.* §10118(a), in order to consider public comment on the same before making any final decision;

4. Promulgation of the proposed regulatory amendments to 7 DE Admin. Code 3511, *Summer Flounder Size Limits; Possession Limits; Seasons*, will enable the Department to comply with the ASMFC's approved Addendum XXVIII to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan, thus maintaining regional management for the 2017 recreational Summer Flounder fishery, and to protect Delaware's Summer Flounder resource from overfishing;

5. The Department has reviewed these proposed regulatory Amendments in the light of the Regulatory Flexibility Act, consistent with 29 *Del.C.* Ch. 104 (version applicable to all regulations initially published on or after January 1, 2016), and has selected Exemption "B" regarding same, as this proposed regulation is not substantially likely to impose additional costs or burdens upon individuals and/or small businesses;

6. The Department's proposed regulatory Amendments, as initially published in the June 1, 2017 *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

7. The Department shall submit the proposed regulatory amendments as final regulatory amendments to 7 DE Admin. Code 3511, *Summer Flounder Size Limits; Possession Limits; Seasons* 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.



LISA A. VEST
Public Hearing Officer

\ahear\ SUMMER FLOUNDER 2017

Attachments/Appendix:

Appendix A: Proposed Reg. Amendments

APPENDIX “A”

Jesse Cooper Building
417 Federal St.
Dover, DE 19901
Email: jamie.mack@state.de.us
Fax: 302-739-3984

***Please Note:**

(1) The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del.C. Ch. 104, is available at:

[http://regulations.delaware.gov/register/june2017/proposed/20 DE Reg 951RFA 06-01-17.pdf](http://regulations.delaware.gov/register/june2017/proposed/20%20DE%20Reg%20951RFA%2006-01-17.pdf)

(2) Due to the size of the proposed regulation, it is not being published here. A copy of the regulation is available at:

4465 Delaware Radiation Control Regulations

**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL
CONTROL**

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Sections 901(c) and (d) and 903(e)(2)a (7 Del.C. §§901(c) and (d) and 903(e)(2)a)
7 DE Admin. Code 3511

**REGISTER NOTICE
SAN #2017-05**

3511 Summer Flounder Size Limits; Possession Limits; Season

1. TITLE OF THE REGULATIONS:

Amend 7 DE Admin. Code 3511 Summer Flounder Size Limits; Possession Limits; Seasons

2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

The Atlantic States Marine Fisheries Commission's (ASMFC) Summer Flounder, Scup and Black Sea Bass Management Board approved Addendum XXVIII to the Summer Flounder, Scup, [and] Black Sea Bass Fishery Management Plan (FMP) on February 2, 2017, maintaining regional management for the 2017 recreational Summer Flounder fishery. Addendum XXVIII required that each region increase their Summer Flounder minimum size limit by one inch and adopt a no more than four fish possession limit to stay within the 2017 recreational harvest limit (RHL). The Department consulted with the other states within our ASMFC-defined region (Maryland and Virginia) and committed to adopting the regional measures by April 1, 2017. The Department increased its minimum recreational size limit from 16 inches to 17 inches through emergency action (Secretary's Order No. 2017-F-0012) to meet the agreed timeline, remain compliant with the FMP, prevent overfishing of the Summer Flounder resource and provide sufficient time for Delaware's fishing-dependent businesses and their clients/customers to plan for this important fishery. The present action is necessary to adopt the required minimum Summer Flounder recreational size limit through the normal regulatory process. Failure to adopt these measures may result in a federal closure of the fishery in accordance with the Atlantic Coastal Fisheries Cooperative Management Act. No change to Delaware's existing four fish possession limit or 365 day season is required.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Del.C. §901(c & d) and §903(e)(2)a

5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL:

None

6. NOTICE OF PUBLIC COMMENT:

The hearing record on the proposed changes to 7 DE Admin. Code 3511 Summer Flounder Size Limits; Possession Limits; Seasons will open June 1, 2017. 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 June 29, 2017 beginning at 6:00 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

***Please Note: The Regulatory Flexibility Analysis and Impact Statement for this regulation, as required by 29 Del.C. Ch. 104, is available at:**

<http://regulations.delaware.gov/register/june2017/proposed/20 DE Reg 952RFA 06-01-17.pdf>

**3511 Summer Flounder Size Limits; Possession Limits; Season
(Break in Continuity of Sections)**

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 ~~sixteen (16)~~ seventeen (17) inches between the tip of the snout and the furthest tip of the tail.

3.0 It shall be unlawful for any person, to have in possession any part of a summer flounder that measures less than ~~sixteen (16)~~ seventeen (17) 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.

(Break in Continuity of Sections)

***Please Note: As the rest of the sections were not amended, they are not being published. A copy of the regulation is available at:**

3511 Summer Flounder Size Limits; Possession Limits; Season

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
1700 BOARD OF MEDICAL LICENSURE AND DISCIPLINE
Statutory Authority: 24 Delaware Code, Sections 1713(a)(12) and 1769D (24 Del.C.
§§1713(a)(12) & 1769D)
24 DE Admin. Code 1700

PUBLIC NOTICE

1700 Board of Medical Licensure and Discipline

The Delaware Board of Medical Licensure and Discipline, pursuant to 24 Del.C. §§1713(a)(12) & 1769D, proposes to revise its regulations adding a new regulation clarifying the language in the Medical Practice Act pertaining to telemedicine and telehealth. Written comments should be sent to Devashree Brittingham, Executive