



STATE OF DELAWARE  
DEPARTMENT OF NATURAL RESOURCES  
AND ENVIRONMENTAL CONTROL  
89 KINGS HIGHWAY  
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Office of the  
Secretary

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**SECRETARY'S ORDER NO: 2018-F- 0035**

**Pursuant to 29 Del.C. §10119 and 7 Del.C. §903(h)**

**AUTHORITY**

Pursuant to 29 Del.C. §10119, the Department of Natural Resources and Environmental Control is adopting amendments to Tidal Finfish Regulation 7 DE Admin. Code 3512: *Tautog; Size Limits, Creel Limits and Seasons*, without prior notice or public hearing to ensure that Delaware's Tautog fishing resource avoids unnecessary hardship, benefits from a sustainable harvest strategy, and remains competitive with similar fishing resources in Maryland and Virginia.

7 Del.C. §903(h) authorizes the Department to adopt emergency regulations when such regulations are necessary to deal with an actual or imminent danger to a fishing resource or habitat involving finfish. It should be noted that the emergency regulations are intended as interim measures, necessary to avoid the risk of harm to public health, safety, and welfare, pending the formal adoption of regulations pursuant to the Administrative Procedures Act.

**REASON FOR THE EMERGENCY ORDER**

The most recent Tautog stock assessment indicated that the Delaware, Maryland and Virginia (DelMarVa) component of the stock is overfished. In response, the Atlantic States Marine Fisheries Commission (ASMFC) approved Amendment 1 to the Interstate Fishery Management Plan (FMP) for Tautog. Amendment 1 requires that Delaware implement management measures consistent with the other states in the region. These measures include a 16-inch minimum size limit, a four fish possession limit and a closed season from May 16 through June 30.

The Division of Fish & Wildlife submitted draft SAN No. 2018-08 proposing to adopt the required size and possession limit and season, as well as other commercial fishery measures (not required until 2019), following the standard administrative procedures outlined in 29 Del.C. §§10115 – 10118. However, these procedures preclude timely implementation of the measures and jeopardize Delaware's Tautog fishing resource through the continuance of unnecessary

closures during the periods May 12 through July 16, and September 1 through September 28, which are periods of high fishing activity (including Independence Day and Labor Day). These unnecessary closures impact the recreational and commercial fisheries, as well as their dependent businesses (seafood retailers, bait and tackle stores, etc.), and puts the affected parties at a competitive disadvantage to neighboring states. The emergency provisions of 29 *Del.C.* §10119, as well as 7 *Del.C.* §903 (h), which authorizes the adoption of emergency regulations when such regulations are necessary to deal with an actual or imminent danger to a fishing resource, allow for the timely adoption of the required measures. Emergency action will ensure the Tautog fishing resource avoids unnecessary hardship, benefits from a sustainable harvest strategy, and remains competitive with similar fishing resources in Maryland and Virginia.

### **EFFECTIVE DATE OF ORDER**

This Emergency Order shall take effect July 1, 2018, and shall remain in effect for 120 days. At the expiration of 120 days, the Department may choose to renew this Emergency Order once for a period not exceeding 60 days, consistent with 29 *Del.C.* §10119(3). The Department intends to propose regulations that would supersede the emergency regulations upon formal approval, pursuant to the Administrative Procedures Act, and 29 *Del.C.* §10115.

### **PETITION FOR RECOMMENDATIONS**

The Department will receive, consider and respond to petitions by any interested person for recommendations or revisions of this Order. Petitions should be presented to the Fisheries Section, Division of Fish & Wildlife, 89 Kings Highway, Dover, DE 19901.

### **ORDER**

It is hereby ordered, the 28<sup>th</sup> day of June, 2018 that the above referenced amendments to 7 DE Admin. Code 3512: *Tautog; Size Limits, Creel Limits and Seasons*, a copy of which is hereby attached, are adopted pursuant to 29 *Del.C.* §10119 and 7 *Del.C.* §903(h), and are supported by the evidence contained herein.



Shawn M. Garvin  
Secretary