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**ENVIRONMENTAL PROTECTION
DIVISION OF FISH AND WILDLIFE**

Marine Fisheries

Sharks and Smooth Dogfish

Adopted Amendments: N.J.A.C. 7:25-18.1 and 18.12

Proposed: April 5, 2010 at 42 N.J.R. 700(a).
Adopted: June 23, 2010 by Bob Martin, Commissioner
Department of Environmental Protection
Filed: June 24, 2010 as R.2010 d.155, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3)
Authority: N.J.S.A. 23:2B-6 and 23:2B-14
DEP Docket Number: 01-10-03/747
Effective Date: July 19, 2010
Expiration Date: July 13, 2012

The Department is adopting amendments to the rules regarding Marine Fisheries at N.J.A.C. 7:25-18 which are part of the Division of Fish and Wildlife Rules, N.J.A.C. 7:25. The adopted amendments relate to fisheries for Atlantic coastal sharks and smooth dogfish. The adopted amendments regarding recreational and commercial fisheries for Atlantic coastal sharks reflect the management measures mandated under the Atlantic States Marine Fisheries Commission (ASMFC) Interstate Fishery Management Plan for Atlantic Coastal Sharks, which contains an implementation date of January 1, 2010. Smooth dogfish is also included in the ASMFC Interstate Fishery Management Plan for Atlantic Coastal Sharks.

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This rule adoption can be viewed or downloaded from the Department's web site at <http://www.state.nj.us/dep>.

Summary of Hearing Officer's Recommendation and Agency Response:

The Department held a public hearing on the proposed amendments on May 13, 2010 at the Galloway Township Library in Absecon, New Jersey. No one from the regulated community or the general public attended the hearing. The comment period for the proposal closed on June 4, 2010. The comments received by the Department are summarized and addressed below. The hearing officer for the May 13, 2010 hearing, Tom McCloy, Administrator, Marine Fisheries Administration recommended that the Department adopt the amendments with the changes described in the Summary of Agency Initiated Changes below. The hearing record is available for inspection in accordance with applicable law by contacting:

Department of Environmental Protection
Office of Legal Affairs
Attn: DEP Docket No. 01-10-03/747
401 East State Street, 4th Floor
P.O. Box 402
Trenton, New Jersey 08625-0402

Summary of Public Comments and Agency Responses:

The Department accepted comments on the April 5, 2010 proposal through June 4, 2010. The following persons submitted written comments.

1. Jack Fullmer, New Jersey Council of Diving Clubs

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2. Adam Nowalsky, Recreational Fishing Alliance, New Jersey Chapter

A summary of the comments received and the Department's responses follows. The number(s) in parentheses after each comment identifies the respective commenter(s) listed above.

1. COMMENT: The proposed amendments are consistent with the Atlantic States Marine Fisheries Commission Interstate Fishery Management Plan for Atlantic Coastal Sharks and implementation of the amendments would prevent a Federally imposed moratorium of all shark species. (2)

RESPONSE: The Department acknowledges the comments in support of the purpose of the proposed amendments.

2. COMMENT: The Department, the Division of Fish and Wildlife, and the Bureau of Marine Fisheries failed to implement these amendments in a timely manner and the regulatory review process needs to change in order to expedite proposed amendments. (2)

RESPONSE: The Department strives to accomplish its various responsibilities in as expeditious a manner as possible. In this case, working cooperatively with the Federal agencies involved, the Department is adopting the amendments necessary to maintain

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compliance with the applicable fisheries management plan on a time frame which assures that operation of the fishery continues without interruption.

3. COMMENT: The proposed regulations are discriminatory to the sport diver fishery.

(1)

RESPONSE: The Atlantic State Marine Fisheries Commission (ASMFC) Interstate Fishery Management Plan for Atlantic Coastal Sharks only allows for the recreational use of hand line or rod and reel gear to harvest coastal sharks. Spear gun is a prohibited recreational gear within the ASMFC Interstate Fishery Management Plan for Atlantic Coastal Sharks. Failure to implement all measures contained in the plan would lead to a finding of non-compliance with the plan and a Federally imposed moratorium could be imposed on New Jersey's recreational and commercial shark fisheries.

4. COMMENT: Dogfish should not be considered under the shark regulations and recreational spear fishermen should be able to harvest dogfish. (1)

RESPONSE: Smooth dogfish are included in the ASMFC Interstate Fishery Management Plan for Atlantic Coastal Sharks, but they are not considered sharks and have separate regulations within the plan. Spear gun is an acceptable gear for the harvest of smooth dogfish under the plan. Regulation changes for the recreational spiny dogfish

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fishery were not proposed. This species is managed separately within the ASMFC

Interstate Fishery Management Plan for Spiny Dogfish.

Summary of Agency Initiated Changes

The Department is making two changes to the rules on adoption. These modifications do not alter the intent of the rules and are necessary to maintain consistency with the ASMFC Interstate Fishery Management Plan for Atlantic Coastal Sharks.

At N.J.A.C. 7:25-18.12(d)4i the Department is correcting a typographical error. N.J.A.C. 7:25-18.12(d)4 specifies the conditions that must be met to possess Large Coastal sharks caught in Federal waters in State waters during the May 15 through July 15 time period when the harvest of these sharks is prohibited in State waters. These conditions are intended to assure that such possession is only of Large Coastal sharks harvested in Federal waters which are being transported to port. The Department is correcting N.J.A.C. 7:25-18.12(d)4i to replace the word “processing” with “possessing” consistent with the rest of the requirements of this paragraph and the language of the ASMFC Interstate Fishery Management Plan for Atlantic Coastal Sharks.

At N.J.A.C. 7:25-18.12(d)6, the word “first” was inadvertently omitted in the proposed amendments. As indicated in the summary of the proposed amendments to this paragraph,, from July through February, commercial fishermen in the smooth dogfish fishery may completely remove the head, tail, pectoral fins, pelvic (ventral) fins, anal fin,

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and second dorsal fin, but must keep the first dorsal fin attached naturally to the carcass through landing (see 42 N.J.R. 702).

Federal Standards Analysis

Executive Order No. 24 (1994) and N.J.S.A. 52:14B-1 et seq. require State agencies which adopt, readopt or amend State regulations that exceed Federal standards or requirements to include in the rulemaking document a comparison with Federal law.

Except as noted below, the adopted amendments are not more stringent than Federal requirements as the requirements are either identical to Federal standards or the Federal government does not have standards applicable to the waters of the State.

The majority of the adopted amendments to N.J.A.C. 7:25-18.1(a), (b), (c) and (d) to modify existing minimum size, possession and season limits for Atlantic coastal sharks are not more stringent than Federal regulations. In fact, they were developed through the ASMFC Interstate Fishery Management Plan for Atlantic Coastal Sharks to be consistent with existing Federal regulations already in effect outside states' waters. Only the seasonal closure from May 15 to July 15 in State waters is more restrictive than Federal management measures for Atlantic coastal sharks. The area closure for shark pupping and nursery habitat does not exist in Federal waters because shark pupping and nursery habitat only occur within states' marine waters out to three nautical miles from shore. A mechanism is adopted to allow legally caught sharks in Federal waters to transit closed

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State waters for dockside landing.

The adopted amendments to N.J.A.C. 7:25-18.12(d) dealing with the commercial shark fishery are not more stringent than Federal regulations on minimum size limits, possession limits, permitting requirements for fishermen, and reporting requirements for Federally permitted shark dealers, to whom all commercially caught sharks must be sold. The closed season from May 15 through July 15 in State marine waters is more stringent than Federal regulations, but as previously stated, these nursery and pupping grounds that exist within states' marine waters from Virginia through New Jersey do not exist in Federal waters. Adopted amendments to N.J.A.C. 7:25-18.12(d)5 include the following gear types that may be used for commercial shark harvest: gill nets, trawl nets, and pound nets. Some additional gear types are allowed in the commercial shark fishery in Federal waters, but will not be allowed in the State's commercial shark fishery. Pelagic and bottom longline gear allowed in Federal waters are not currently allowed in State waters. Use of such gear in nearshore waters could spatially interfere with other fishing activities occurring in these waters. Further, the ASMFC Interstate Fishery Management Plan for Atlantic Coastal Sharks prohibits use of this gear in these waters. Because noncompliance with the management plan could result in the imposition of a moratorium on the harvest of sharks and smooth dogfish by all methods, not allowing Pelagic and bottom longline gear in the State's waters will have a positive impact by assuring that appropriate limitations are in place to manage this resource in nearshore waters and that appropriate harvest continues to be allowed utilizing other forms of gear. The State is not allowing

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the use of rod and reel or handlines in the commercial shark fishery. Fishing by rod and reel or handlines is predominantly a means of harvest used by recreational fishermen as it is not an efficient method for the commercial fishery. In order to establish a program that could effectively monitor the harvest by that gear and assure compliance with the applicable rules necessary to manage the resource to assure overfishing does not occur, legislative changes would be necessary to authorize fees for a new State permit for such gear. The Department believes that any impact from not providing such a permit in State waters is minimal and is outweighed by the ability to assure that overall harvest from all forms of permitted gear is not threatening the resource.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*):

SUBCHAPTER 18. MARINE FISHERIES

7:25-18.12 Commercial fishing seasons, quotas and trip limits

(a) – (c) (No change from proposal)

(d) The following provisions are applicable to the commercial harvest of sharks and smooth dogfish:

1. – 3. (No change from proposal)

4. The commercial fishing season for shark and smooth dogfish shall be from January 1 through December 31, except the harvest of Large Coastal sharks shall be prohibited from May 15 through July 15. A fisherman legally harvesting any of the Large Coastal

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sharks in Federal waters from three to 200 nautical miles offshore during the May 15 through July 15 time period may transport his or her catch through the State marine waters of New Jersey provided that the fisherman notifies the Department by calling 609-748-2050 prior to entering the State's marine waters and provided:

i. That the vessel does not engage in fishing within the closed area while ***possessing*** ***[processing]*** the above species;

ii. – iii. (No change from proposal)

5. (No change from proposal)

6. All sharks harvested by commercial fishermen shall have tails and fins attached naturally through dockside landing. Commercial fishermen may completely remove the fins of smooth dogfish from March through June each year. If the fins are removed, the total wet weight of the fins shall not exceed five percent of the total dressed weight of smooth dogfish carcasses landed or found on board a vessel. From July through February, for the smooth dogfish fishery only, commercial fishermen may completely remove the head, tail, pectoral fins, pelvic (ventral) fins, anal fin, and second dorsal fin, but shall keep the ***first*** dorsal fin attached naturally to the carcass through landing. If fins are removed, the total wet weight of the smooth dogfish fins shall not exceed five percent of the total dressed weight of smooth dogfish carcasses landed or found on board a vessel.

7. (No change from proposal)

(e) – (s) (No change from proposal)