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ENVIRONMENTAL PROTECTION

DIVISION OF FISH AND WILDLIFE

Fish and Game Council

2016-2017 Fish Code

Adopted Amendments: N.J.A.C. 7:25-6.1, 6.2, 6.3, 6.13, 6.15, 6.20, 6.22, and 6.26

Proposed: October 5, 2015, at 47 N.J.R. 2416(a).

Adopted: March 8, 2016, by the Fish and Game Council, David Burke, Acting Chair.

Filed: May 26, 2016, as R.2016 d.072, **with non-substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 13:1B-29 et seq., and 23:1-1 et seq.

DEP Docket Number: 07-15-09.

Effective Date: June 20, 2016.

Expiration Date: June 12, 2021.

The Fish and Game Council (Council) is adopting amendments to N.J.A.C. 7:25-6.1, 6.2, 6.3, 6.13, 6.15, 6.20, 6.22, and 6.26. The proposed amendments were published in the New Jersey Register on October 5, 2015, at 47 N.J.R. 2416(a). The 60-day comment period closed on December 4, 2015. Additional notice was achieved by e-mailing notification to all State House press offices and other newspapers and news media throughout the State. Notice was also posted on the Department of Environmental Protection's (Department) website and the Division of Fish and Wildlife's website, and e-mailing the Department's rulemaking LISTSERV and the Division's 10,000 freshwater LISTSERV members. Written notification of the rulemaking and

public hearing was also sent to private fish hatchery operators currently selling fish for stocking in New Jersey and commercial snapping turtle harvesters.

Summary of Hearing Officer's Recommendation and Agency Response:

A public hearing was conducted by the Council's Fish Committee on November 10, 2015, at the Division of Fish and Wildlife's Assunpink Conservation Center, Clarksville-Robbinsville Road in Robbinsville, New Jersey. Twenty-six members of the public attended and 17 provided comment. After reviewing the testimony given at the public hearing and written comments received during the comment period, the Fish Committee, a subcommittee of the Fish and Game Council that reviews regulatory changes governing freshwater fish species and provides recommendations to the Council, recommended that the Council adopt the proposed amendments with modifications in response to further information received from the Department as described in the Summary of Public Comments and Agency Responses below.

The Council held a public meeting on December 15, 2015, at the Division of Fish and Wildlife's Conservation Center at their Central Region Office, Clarksville-Robbinsville Road in Robbinsville, New Jersey. The Council, after having considered the testimony from the November 10, 2015 hearing, written comments received relevant to the proposed amendments, and the recommendation of the Fish Committee, adopted the amendments with modifications suggested by the Fish Committee. Based upon public comment during the 60-day public comment period and additional data provided by the Department, the Council is making three changes to proposed amendments not requiring additional public notice and comment as outlined

below. A copy of the hearing record may be obtained by contacting the New Jersey Division of Fish and Wildlife, PO Box 400, Trenton, New Jersey 08625-0400.

Summary of Public Comments and Agency Responses:

The following commenters submitted oral or written comments on the proposed amendments to N.J.A.C. 7:25-6.

1. Ayars, Charles
2. Cherry, Rich
3. Christen, Arthur, Warren County Rod and Gun Club
4. Cooper, Janice
5. DiFilippo, Jim, Warren County Rod and Gun Club
6. Ejk, Thomas, Warren County Rod and Gun Club
7. Fernandez, Richard, Jersey Shore Chapter Trout Unlimited
8. Fischer, Charles
9. Franchetta, Albert
10. Haaf, Charles Jr.
11. Holland, Jim, Shannons Fly Shop
12. Karg, Steve
13. Kronke, John, Trout Finatics
14. Lippincott, Greg
15. Makin, Ed, Knee Deep Club
16. Mancini, Vern
17. McCarthy, Ken

18. Messeroll, John
19. OReilly, Rory, WOW Gifts
20. Sachau, Barbara
21. Scaff, Harold
22. Space, Eric
23. Sterling, Newt, Snare One
24. Stull, Jeff, Raritan Trout Club
25. Tornusciolo, Joe, Warren County Rod and Gun Club
26. Venezia, Maribeth, Warren County Rod and Gun Club
27. Zander, John
28. Ziemi, Richard, Warren County Rod and Gun Club
29. The following 171 commenters submitted an identical form comment letter regarding establishing the Pequest Trout Hatchery as the only source of trout for the Pequest River Watershed and no longer allowing the use of trout as bait within the Pequest Watershed.

Abrams, Aaron

Abrams, Jeffry

Alfano, F.

Andreoli, Phillip

Andreoli, Phil Jr.

Anderson, David

Biagio, Michael

Bickel, Matthew

Bickel, William

Blum, Tim
Bogdan, Wilk
Bonacci, James
Caporaso, Donald
Carpinteri, Antonino
Casternovia, Samuel
Centamore, Robert
Chandonnet, Raymond
Cherry, Joseph
Cherry, Richard W.
Cherry, Sylvia
Christen, Arthur
Circelli, Frank
Cuifo, Christopher
Ciufu, Steven
Ciurczak, Edward J.
Clackworthy, William J.
Cloni, Douglas A.
Cocozza, Cataldo
Collins, Jody
Colucci, Joseph
Costanza, Louis
Coulson, Don mL.

Crincoli, James
DeRiggi, Neil, Jr.
Dellautura, Thomas
DiFilippo, A.J.
Dobrowolski, Edward
Dobrowolski, Michael
Ejk, Thomas
Erdo, Paul
Erdo, Thomas
Faison, George
Feltovic, John
Finelli, Henry
Fiorello, Anthony
Fisher, Ken
Franklin, Phillip
Galletta, Phil
Gellner, Douglas
Gellner, Ryan
Geyer, Charles F.
Geyer, Charles K.
Geyer, Charles W.
Geyer, Landon
Giunta, Alice

Giunta, Joseph A.

Giunta, Joseph J.

Gloter, Charles?

Grimm, J.

Grippio, Michael J.

Grosch, David

Haden, Michael

Hall, Daniel

Hall, Spencer

Hart, Robert

Heebner, Gwen, Owls Nest Gun and Bow

Heebner, James C., Owls Nest Gun and Bow

Heebner, James Jr., Owls Nest Gun and Bow

Hess, George

Hook, Christopher

Hoppe, Michael

Houskeeper, Douglas

Hummel, Jeff Jr.

Ingenito, Paul

J., Wayne

Jewell, Gary

Kaminsky, Thomas F.

Karg, Steve

Kemash, Gerald
Kiser, Frank Jr.
Kiser, Frank Sr.
Kowal, Richard R. Jr
Koziatek, Brenda
Koziatek, Edward
Kroncke, Daniel
Kroncke, John Jr.
Kroncke, John Sr.
Kroncke, Robert
Kroon, Richard
Kylish, Frank
La Marca, Lance M.
Lange, Clifford
Latherow, Robert
Lukaszewski, Ronald
Levonaitis, Ken
Lombardi, Christopher
Long, James
Lorah, Timothy
Mabie, Wayne
Makowski, Francis
Mancini, Chase

Mancini, Jeff
Mancini, Vernon
Mantell, Tim
May, Ronald
McCarthy, Kenneth
Merseles, Steven
Meszaros, Robert
Milesnick, Tom
Monahan, Jeffrey R.
Moretti, Alan
Morse, Henry
Mullen, Jon T.
Nappa, Andrew
Needham, Kevin
ODonnell, James
Ollemar, Thomas
Olsen, William F.
Pachuta, Ken
Pagliaroli, Tom
Pepe, Dan
Petralia, Janice
Petralia, Vincent
Poggio, Anthony

Powell, Thomas
Preston, Charles
Rica, Theodore
Rica, Ted Jr.
Rocca, Matt
Rocca, Robert Jr.
Rocca, Scott
Russo, Barry
Russo, Vincent
Sacco, Angelo
Sacco, James P.
Sanislow, Robert H.
Santosusso, Ken
Scaff, Harold
Scharaldi, Scott
Scharaldi, Stephen
Schulaka, Danny
Sedlak, Charles
Serna, Stephen
Serra, Jody
Soldutke, Michael
Soltys, Michael
Sorokolit, Robert

Spresert, John
Stanek, Bronislaus
Stapleton, Thomas F.
Stolar, Richard
Taverner,
Tornusciolo, Joe
Tornusciolo, Thomas
True, Thomas
Venezia, Maribeth
Visceglia, John
Whitney, Frank Jr.
Whitney, Frank Sr.
Wilson, Robert
Wimer, Daniel
Winnicky, Charles
Wolkwitz, Gary
Wynn, Michael
Young, George
Younkers, Donald
Zawacki, Michael
Zeiss, Arthur
Ziemba, Richard
Zmuda, Matthew

Znyski, Joseph

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

N.J.A.C. 7:25-6

1. COMMENT: The proposed changes to the Fish Code are supported in their entirety. (18)

RESPONSE: The Council acknowledges the comment in support of the rule.

2. COMMENT: The entire Code and proposed amendments are opposed. (20)

RESPONSE: The Council acknowledges that persons philosophically opposed to hunting and fishing will oppose the Fish Code, while persons endorsing fishing for recreational and management reasons will support the Code.

3. COMMENT: Lake Audrey should be opened to tournament fishing to give clubs that helped revitalize the lake another place to fish and to reduce overcrowding on other waters. (9)

RESPONSE: To hold a fishing tournament on waterbodies located within a State-designated Wildlife Management Areas (WMA), a fishing club is required to obtain a WMA tournament permit. Rules pertaining to fishing tournament permits on Wildlife Management Areas are promulgated at N.J.A.C. 7:25-2.24 by the Department of Environmental Protection, and are not part of the State Fish Code adopted by the Council. N.J.A.C. 7:25-2.24 does not specify individual waterbody locations where tournaments may occur as access conditions, lake levels, and the status of the fishery can change. Rather, tournament applications are reviewed by the

Department's Division of Fish and Wildlife at the time of submittal and approved if current conditions can support a tournament. Lake Audrey (Cumberland County) is a 120-acre borrow pit. As indicated in prior rulemaking with reference to this lake (see 46 N.J.R. 281(b), 288), declining pH levels, initially stabilized by liming, are no longer conducive to supporting a reproducing Largemouth or Smallmouth Bass population. Electrofishing surveys conducted in 2014 indicate only a few remaining adult bass and a complete absence of sunfish that once provided the forage base to sustain the fishery. Due to the current status of the fishery, it is unlikely that a tournament application, if received, would be approved.

4. COMMENT: All Trout Conservation Areas (TCAs) should be catch and release only including seasonal TCAs. This will improve the fishing and help local economies as fishing improves. (7)

RESPONSE: The Council has proposed no changes to Trout Conservation Area rules for the 2016–2017 Fish Code. The Council and the Division of Fish and Wildlife manage the State's fishery resources for a variety of angler interests. In general, strict Year Round Catch and Release Only Areas appeal to very conservative anglers who prefer fishing for wild trout and do not desire to harvest fish. Year Round Trout Conservation Areas are somewhat less restrictive and appeal to more experienced anglers who still like the opportunity to occasionally harvest trout, with a daily creel limit of one trout, measuring 15 inches or more in length. Neither Year Round Catch and Release Only Areas, nor Year Round Trout Conservation Areas allow the use of bait at any time. Seasonal Trout Conservation Areas (STCA) provide an angler more fishing opportunities at the State's more protected trout waters by allowing an angler to harvest six trout per day in April and May, during the height of trout fishing activity, but then restrict an angler's

harvest to one trout per day, 15 inches or more in length, during the remainder of the year.

During the first two months of the season, STCAs also allow the use of bait, as well as artificial lures and flies; after May and through March, only artificial lures and flies may be used. The Council is satisfied with the balance of fishing opportunities and protections that these various rules provide and is not seeking to regulate any more of the State's trout waters as Year Round Catch and Release Only at this time.

5. COMMENT: Only single hooks should be allowed on all fly and spinning gear in Trout Conservation Areas (TCA) including seasonal TCA's. The mortality rate is said to be 10 percent with a single barbless hook. With trebles, hooked fish are less likely to be lost as they are reeled in, increasing angler success. As treble hooks result in more fish caught, delayed hooking mortality with their use results in an increase in overall mortality. (7)

RESPONSE: The Council has proposed no changes to Trout Conservation Area rules for the 2016–2017 Fish Code. There is a considerable amount of data on delayed hooking mortality. The extent of mortality is affected by numerous variables including, but not limited to, species of fish, water temperature, hook size, artificial versus live bait, handling time, and hook location. The many variables affecting survival provide for a wide range of results in the literature. Typical study results document mortalities ranging from zero percent to 15 percent.

The Council does agree that barbless single hooks may reduce handling time. However, as it is one of several factors determining the extent of delayed hooking mortality, the Council prefers to address the issue through education rather than regulation at this time. Furthermore, special regulation areas typically attract more experienced anglers who are well versed in proper angling and handling techniques. Proper angling and handling techniques are essential to the

safe release of any fish caught, regardless of the type of hook used. As such, the risk of injury or delayed mortality with the use of treble hooks—when fished properly—is anticipated to be no greater than with other hook types. The Council can amend rules in the future if further information becomes available that demonstrates that such an amendment is warranted.

6. COMMENT: Recreational clamming should be allowed on Sundays as most people only have two days off each week and one is Sunday. (14)

RESPONSE: The State Fish Code establishes season, size, and creel limits for freshwater fish species, and rules on migratory fish species while those species are in fresh waters of the State, not marine fish species or shellfish, or marine waters. Changes to recreational clamming rules would require a marine fisheries regulatory change promulgated by the Department in conjunction with the Marine Fisheries Council and are beyond the scope of this rulemaking and the authority of the Fish and Game Council.

7. COMMENT: The existing water rules should be protected, but this administration is targeting regional planning and current laws in place to benefit developers and polluters. (4)

RESPONSE: The State Fish Code establishes season, size, and creel limits for freshwater fish species. Rules governing water quality and regional planning initiatives are beyond the scope of this rulemaking and the authority of the Fish and Game Council.

8. COMMENT: The location of the public hearing was too far north. One should be held further south. (1)

RESPONSE: The State Fish Code encompasses rules for the State's freshwater fisheries resources for the entire State. The Fish and Game Council selected the Division's Central

Region Office, located in Monmouth County, for the public hearing as it is centrally located and as such provides a greater opportunity for anglers from all across the State to participate.

Comments may also be submitted electronically or by mail providing anglers an alternative to attending the public hearing.

9. COMMENT: The Department of Environmental Protection is doing a great job. Keep up the good work. (19)

RESPONSE: The Council acknowledges the support for the Department's efforts.

10. COMMENT: Any fish quotas set for next year should be cut by 50 percent from last year's quotas. (20)

RESPONSE: The Council is uncertain of the intent of the comment. The term "quota" typically references limits set for commercial fisherman on marine waters. To the extent the commenter is referring to quotas in that context, as the Fish Code sets rules for fresh waters of the State and not the marine waters, the comment is beyond the scope of this rulemaking. If the commenter is referring to creel limits for freshwater fish, daily creel limits in conjunction with minimum size limits are established to allow some harvest while protecting the overall fishery. The removal of a limited number of larger fish can also benefit the size structure of the population. However, as catch and release has become much more prevalent among anglers, size and creel limits become a less effective tool for balancing fish populations. As a result, continually reducing creel limits would have little to no benefit to the State's fisheries resources. For species such as Channel Catfish that are still valued table fare, the amendments adopted at this time reduce the previous unlimited daily harvest to five per day, and only fish over 12 inches may be harvested. As this is considerably more than a 50 percent reduction to the previous unlimited daily limit, the comment

would appear to be supportive of this change. If the comment is referencing the number of fish reared at the two State-operated fish hatcheries, the comment is beyond the scope of this rulemaking.

N.J.A.C. 7:25-6.3(c)

11. COMMENT: No longer allowing the use of trout as bait within the Pequest River drainage is opposed, as it will establish as regulatory law that stocking and live baitfish are a material threat to the bio-security of New Jersey waters. Commenters are concerned once incorporated into law an anti-fishing group will argue in litigation that since all fish used as live bait are potential carriers of the bacteria and foraging and migratory range of fish eating birds is extensive, that live bait fishing should be banned in all waters. (29)

RESPONSE: Prohibiting the use of trout as bait coupled with other adopted fish health regulatory changes will reduce the risk of potential disease transfer into the Division's Pequest Trout Hatchery as the hatchery will become the only source for trout stocked within the Pequest River drainage. The restriction will eliminate the common practice of local anglers keeping unused bait trout obtained from outside the Pequest River drainage area in submerged cages between fishing trips or releasing them directly into the lakes. This practice can result in a transfer of disease from a private fish culture facility into waters within the Pequest drainage where the State trout hatchery is located. Birds of prey feeding between these waters and the hatchery's nearby raceways can transfer these pathogens into the facility.

Stocking of any species of fish within the Pequest Wildlife Management Area and within Trout Brook (Hackettstown) has been restricted to only the two State-operated hatcheries, Pequest and Hackettstown, since 2008. These restrictions have not lead to any broad ban of the

use of live bait or fish stocking in New Jersey. The Council is unaware of any state where a total ban on the stocking of fish or use of live bait has been instituted. The Council maintains authority over the rules governing the State's freshwater fisheries resources and is protective of the recreation provided by both public and private fish culture facilities.

N.J.A.C. 7:25-6.15(a)

12. COMMENT: People with disabilities should be allowed to use a crossbow, but for those in good physical condition, it is too easy. More people would be shooting fish, with higher catch rates, making species such as carp more wary, and harder for anglers using other methods. Bow anglers also tend to waste the fish they kill. (8)

RESPONSE: In 2009, crossbows, which were previously restricted for use by only handicapped hunters, were permitted for use by all bow hunters in New Jersey. Their use has become popular among some bow hunters within New Jersey. However, other hunters still choose to use more traditional long and compound bows. For consistency with opportunities afforded to hunters, the Council is extending similar opportunities to bow anglers. The Council anticipates that, similar to bow hunting, some bow anglers will prefer crossbows when fishing, while others will continue to use the more traditional long and compound bows. Concerns that crossbow users will be so much more successful that they will adversely affect the success of anglers using traditional angling methods remains to be seen and mirrors the age old debate of fly versus spin fishing. Each method has its advantages and disadvantages depending on a wide array of environmental conditions. However, ultimately it is the angler's skill level that determines success. In response to concerns that bow anglers tend to waste their catch, as wanton waste rules (see N.J.A.C. 7:25-

6.18) require anglers to "remove" their catch, the statement that bow anglers are more likely not to utilize their catch compared to anglers using other methods, is speculative.

13. COMMENT: Crossbows should not be allowed for bowfishing anywhere as they are deadly and unnecessary. (20)

RESPONSE: Persons philosophically opposed to hunting and fishing will oppose proposed rules that increase opportunities for hunters and anglers.

N.J.A.C. 7:25-6.22

14. COMMENT: The Council and the Division are applauded for the proposed changes to snapping turtle regulations. (10 and 18) Although supportive of the changes, one commenter thought the harvest of females should have been prohibited as part of the proposed rules (10).

RESPONSE: The Council acknowledges the comments in support of the rule. The Council concurs that for a species such as snapping turtles that have low hatching success, very high mortality in juveniles, and delayed sexual maturity, it is important to protect females. The carapace length on adult female snapping turtles ranges from 9.5 inches to 14.5 inches while males are considerable larger reaching over 19 inches. Although the harvest of females was not explicitly prohibited, as explained more fully in the Response to Comment 16, institution of the 12-inch carapace minimum size is anticipated to protect 90 percent of the female turtle population.

15. COMMENT: Establishing a 12-inch minimum carapace length for snapping turtles recreationally or commercially harvested is supported. (22 and 27) One commenter indicates it

is the single most effective regulation change for protecting the resource and will protect 90 percent of the females. (27)

RESPONSE: The Council acknowledges these comments in support of the rule.

16. COMMENT: Establishing a 12-inch minimum carapace length for snapping turtles recreationally or commercially harvested is opposed. The 11-inch minimum carapace size, used by other states such as Delaware and Maryland, should have been used. (1)

RESPONSE: Snapping turtles have an annual natural survivorship (proportion of individuals surviving to each age) ranging from .88 to .97 (see Congdon, J. D., Dunham, A. E., & Sels, R. V. L. (1994). Demographics of common snapping turtles (*Chelydra serpentina*): implications for conservation and management of long-lived organisms. *American Zoologist*, 34(3), 397-408.). It is estimated that an increase in mortality of even .01 could cause snapping turtle populations to decrease by 50 percent over a 20-year period (Congdon et al., 1994). Thus, any amount of harvest can severely affect populations. In order to maintain healthy populations, it is essential to maintain survivorship as comparable as possible to their natural rate, between .88 and .97. Models concerning harvest pressure suggest harvest rates should be less than 2.3 percent to maintain a stable snapping turtle population (See Zimmer-Shaffer, S. A., Briggler, J. T., & Millsbaugh, J. J. (2014). Modeling the Effects of Commercial Harvest on Population Growth of River Turtles. *Chelonian Conservation & Biology*, 13(2), 227-236.). An 11-inch size limit protects 63 percent of females and 37 percent of males, resulting in protection of 44 percent of the overall population (see Cain, P. (2010). The cost of soup: an assessment of the commercial harvest of snapping turtles (*Chelydra serpentina*) in Maryland. Master Thesis.). After factoring in their natural survivorship rate, an 11-inch size limit would only be protective of 50 percent or

less of the population. The 12-inch proposed minimum size limit protects 90 percent of females and 59 percent of males protecting 67 percent of the overall population (Cain, 2008). Even with the increased protection provided by the 12-inch minimum size limit, the Council will continue to monitor harvest to ensure that further limitations are not necessary.

17. COMMENT: The harvest of turtles or frogs both recreationally and commercially, is opposed; they should be protected and not trapped at any time. (20)

RESPONSE: The Council acknowledges that some individuals are philosophically opposed to fishing and hunting of any animals and will oppose any rules pertaining to their harvest. In regard to turtles and frogs, only species commonly found throughout the State, such as snapping turtles and green frogs and bull frogs, may be harvested. Most other turtle and frog species are non-game and may not be harvested.

N.J.A.C. 7:25-6.22(a)

18. COMMENT: Prohibiting the use of traps by recreational anglers to harvest snapping turtles is opposed. (22, 23, and 27) Two of the three commenters indicated non-targeted, smaller turtle species have a better chance of survival in a trap than when caught by hook and line. (22 and 23) One commenter agrees with the Council that traps are inconsistent with recreational angling methods. However, the commenter notes, like baitfish, the subject species is a turtle not a finfish and thus the method of capture must be matched to the quarry. (27)

RESPONSE: After review of public comment and concerns that disallowing traps by recreational anglers may result in higher mortality of smaller, non-targeted turtle species as eliminating traps may lead to more turtles being caught with hook and line, the Council has decided to withdraw the proposed change. As current literature is inconclusive on the impacts of

hook and line on smaller non-targeted turtle species, the Council will continue to allow the use of traps by recreational anglers until such time additional information becomes available.

N.J.A.C. 7:25-6.22(b)

19. COMMENT: Reducing the daily recreational limit for snapping turtles from three to one is supported as one large male snapping turtle yields an adequate amount of table fare for an individual. (27)

RESPONSE: The Council acknowledges the comment in support of the rule.

20. COMMENT: Reducing the daily recreational limit for snapping turtles from three to one is opposed. (20, 22, and 23) One commenter indicated that the premise that a recreational licensee will catch 90 snappers a month has no merit as a reason to change the daily limit and a change should only be based on population data. (22) One commenter indicated that the use of hooks should be banned instead of reducing the daily limit. (23) One commenter is opposed to the harvest of any turtles at any time. (20)

RESPONSE: The existing three per day limit for those harvesting these species under a recreational fishing license allows an angler to take as many as 90 turtles per month, an amount which can rival commercial harvesters. Assuming an average of eight pounds of meat per turtle, the harvest limit prior to adoption of these amendments equates to over 700 pounds of meat each month. Reducing the limit better aligns recreational harvest with personal use since turtles taken under a fishing license cannot be sold. As the basis for this change is to better align the recreational limit with personal use, population data was not necessary.

N.J.A.C. 7:25-6.22(c)

21. COMMENT: Establishing a winter hibernating season closure from October 31 to April 1 during which no snapping turtles may be harvested is supported. (22)

RESPONSE: The Council acknowledges the comment in support of the rule.

22. COMMENT: Extending the spring nesting season closure from May 1 to June 15, to May 15 to July 15, for the harvest of snapping turtles is opposed. Commenters indicated that the existing nesting season is consistent with when turtles are laying their eggs. (1, 22, 23, and 27) Two commenters indicated that nesting timing is determined by daylight, not temperature. Therefore, extending the closure into July is not warranted. (22 and 23) One commenter indicated the 12-inch minimum size will protect females and, as such, the extension of the nesting season closure is redundant. (27) Two commenters indicated extending the nesting season closure is just another way of shortening the harvest season, leaving commercial harvesters with only about six weeks of the prime season to trap. (22 and 27)

RESPONSE: In response to concerns from commercial harvesters, and additional anecdotal information on nesting observances provided, the Fish and Game Council requested an expanded literature review on the nesting timeframes for snapping turtles, particularly for New Jersey. According to Steyermark (Steyermark, A.C., Finkler, M.C. and Brooks, R.J. (eds). 2008. Biology of the Snapping Turtle (*Chelydra serpentina*). John Hopkins Press, Baltimore), June 21 is the latest nesting date documented for snapping turtles in New Jersey. Based upon this new information, the Fish and Game Council is changing the proposed nesting season closure of May 15 to July 15, to May 15 to June 30 upon adoption. This provides protection to snapping turtles during their critical nesting season and shortens the proposed closure by two weeks.

23. COMMENT: Prohibiting the taking of turtles from land and the taking of their eggs is supported. (22 and 27)

RESPONSE: The Council acknowledges the comments in support of these amendments.

N.J.A.C. 7:25-6.22(d)

24. COMMENT: Limiting entry to only commercial snapping turtle harvesters who have been issued a permit from January 1, 2010 to December 31, 2014, and have submitted harvest reports prior to January 1, 2015, indicating the harvest of at least one turtle is supported. Although currently prices are down, the regulation will prevent overharvest in the event a future spike in demand occurs. (27)

RESPONSE: The Council acknowledges this comment in support of the rule.

25. COMMENT: Limiting entry to only commercial snapping turtle harvesters who have been issued a permit from January 1, 2010 to December 31, 2014, and have submitted harvest reports prior to January 1, 2015, indicating the harvest of at least one turtle is opposed. (22 and 23) One commenter indicated commercial harvest participation is driven by meat prices, as prices go up harvest will increase. Currently, prices are way down and overharvest is not a threat. (22) One harvester had concerns that the rule would prevent family members from assisting with trap setting and handling of equipment and turtles. (22)

RESPONSE: The Council acknowledges harvest is driven by market demand. Significant increases in meat prices led to a drastic increase in permitted harvesters from a long-term average of 20 harvesters to over 140 permits issued in 2013, with over 4,000 turtles reported to

be harvested. The impact of this increased harvest on the State's turtle population is yet unknown. As market prices can change quickly, limiting entry to current harvesters will prevent such increases in the future until the impacts of the harvest can be more fully understood on a species that has low hatching success, high mortality in juveniles, and delayed sexual maturity. Assistance with trapping by family members is not prohibited, provided they are accompanied by the licensed trapper.

N.J.A.C. 7:25-6.22(d)3iv

26. COMMENT: Limiting the number of commercial traps to harvest snapping turtles to no more than 30 per day is supported. (22)

RESPONSE: The Council acknowledges the comment in support of the rule.

27. COMMENT: Limiting the number of commercial traps to harvest snapping turtles to no more than 30 per day is opposed. (20 and 27) One commenter acknowledges that few existing harvesters set in excess of 30 traps each day, but contends the solution to unattended traps is to prosecute the offenders instead of limiting law abiding harvesters. (27) One commenter opposes the use of any traps to harvest snapping turtles. (20)

RESPONSE: Previously, harvesters were allowed to set an unlimited number of traps, but were required to check their traps every 24 hours in order to assure the survival of non-targeted turtle species. Determining if a trap has been properly attended within a 24-hour period requires a considerable investment of law enforcement personnel time as they must remain on-site and observe the trap for an entire 24-hour period. Establishing a maximum number of traps reduces the likelihood of a harvester setting more traps than can be properly tended within 24 hours,

reduces law enforcement personnel time, while providing a more clear-cut method of enforcement. The Council acknowledges that those individuals philosophically opposed to hunting and fishing will be opposed to the trapping of snapping turtles for their meat.

N.J.A.C. 7:25-6.22(e)

28. COMMENT: Requiring turtle harvesters to report sightings of State endangered or threatened species of turtles is supported for commercial harvesters but opposed for recreational anglers, as they will not be able to properly identify turtle species. (18 and 27)

RESPONSE: The Council acknowledges the comment in support of the rule for commercial harvesters and agrees with public comment concerning the ability for untrained laymen, such as anglers, to properly distinguish between the various species of turtles. As this can lead to false reporting and incur considerable staff resources in investigating these reports, the Council, upon adoption, is withdrawing the proposed sighting reporting requirement for turtles taken by recreational anglers.

29. COMMENT: Requiring harvesters to report sightings of State endangered or threatened species of turtles, for both recreational and commercial harvesters, is opposed as private landowners may no longer allow trapping on their property as documenting the presence of endangered or threatened turtle species may limit a landowner's ability to what he can do on his property. (22)

RESPONSE: As part of their monthly reporting requirements, Commercial Harvest Permit holders are already required to identify and list non-targeted turtle species that are released from their traps. The adopted rule change simply strengthens the reporting requirement by requiring a

Division Sighting Report Form to be completed when any State endangered or threatened species are encountered.

N.J.A.C. 7:25-6.26(i)

30. COMMENT: Establishing the State-operated Pequest Trout Hatchery as the only source of trout for the Pequest River drainage is opposed. (2, 3, 5, 6, 11, 12, 13, 15, 16, 17, 20, 21, 24, 26, 28, and 29) One commenter is concerned the regulation will lay the groundwork for a total ban on stocking and use of live bait throughout the State. (29) Four commenters are concerned the regulation will be expanded to other watersheds such as the Musconetcong River. (15, 24, 26, and 29) Two of the commenters (2 and 3) are unaware of any disease being introduced from private hatcheries into State waters and find no basis for the regulation. Two commenters contend the Division approved the stocking of uncertified fish on two separate occasions. (3 and 16) Five of the 16 commenters contend that the regulation harms the private clubs currently stocking within the Pequest River drainage. (6, 11, 13, 21, and 29) Seven of the 16 commenters indicated that private hatcheries that had no disease outbreaks and have up-to-date health certifications should not be penalized when it was the State hatchery that had disease issues. (2, 3, 5, 12, 15, 28, and 29) Three of the 16 commenters see the rule as ineffective as birds travel considerable distances to feed and from more than one watershed. (3, 15, and 29) One of the 16 commenters indicates blaming birds is just another attempt to blame nature for man's greed and stupidity. (20) Five of the 16 commenters contend the outbreak at Pequest was handled poorly and resulted from poor hatchery conditions. (2, 5, 12, 26, and 29) One of the 16 commenters questions what is being done to protect the raceways at Pequest. (17) Exclusive rearing of Rainbow Trout means a much lower risk of renewed infection and the change is unnecessary.

(11) Two of the 16 commenters indicate that the regulation will be rendered unnecessary in two years when the hatchery raceways are covered. (11 and 29)

RESPONSE: Stocking of any species of fish within the Pequest Wildlife Management Area and within Trout Brook (Hackettstown) has been restricted to the two State-operated hatcheries, Pequest and Hackettstown, since 2008. These restrictions are to reduce the risk of potential introduction of pathogens to the multi-million dollar fish stock at the two State-operated hatcheries. These restrictions have not lead to any broad ban against the use of live bait or fish stocking in New Jersey. Both of these previous restrictions and the one adopted at this time are specific to the location of the two State-operated culture facilities; there is no plan to expand these restrictions to other watersheds.

The proposal to include the Pequest River drainage, and not just the Wildlife Management Area, as the area subject to the stocking restriction is in response not only to concerns related to furunculosis, but to all diseases listed of concern by the World Organization for Animal Health. This includes infectious pancreatic necrosis virus (IPNI) which was documented in a Brook Trout of hatchery origin within the Pequest River outside the borders of the Wildlife Management Area. A furunculosis positive Brown Trout, also of hatchery origin, was documented in the Ken Lockwood Gorge section of the South Branch of the Raritan River in 2014. The Division last stocked the South Branch above Lake Solitude in Fall 2013 and then only with Rainbow Trout. Both the Brook Trout from the Pequest River, and the Brown Trout from the South Branch of the Raritan were from hatchery sources other than the State-operated Pequest hatchery. Ensuring that the Pequest Hatchery is the only source of trout for the drainage area will reduce the risk of disease transmission from sources outside the State's control.

The Division reviews and approves over 125 fish stocking permits each year and is supportive of these private stocking operations and the recreational opportunities they provide for New Jersey anglers, on both public and private waters. All permitted stocking of fish is in accordance with established fish health rules. Fish health rules prior to the amendments adopted at this time required more stringent health testing only for trout stocked in waters with reproducing trout populations and in designated Holdover and Trophy Trout waters. The adopted amendments for 2016-2017 will require increased testing for all trout regardless of where stocked.

There are two private clubs that stocked trout, 300 trout each, within the Pequest River drainage prior to adoption of these amendments. To maintain these existing private stocking programs, and the related recreation they provide, as long as the two organizations exist they will be provided trout from the Pequest surplus at fair market value.

In order to stock in New Jersey, private hatcheries are required to meet basic Fish Health Testing requirements each year. Meeting annual fish health testing requirements does not mean facilities are disease free as disease outbreaks can occur at any time over the course of the 12 months following testing. Furunculosis at Pequest was not discovered during annual fish health testing, but instead was discovered by hatchery staff investigating mortality that was occurring among brood stock. Disease outbreaks within private culture facilities are only documented if the hatchery owner voluntarily arranges and submits moribund fish for testing to document the specific disease. As demonstrated by the disease outbreak at the State-operated Pequest hatchery, disease status of a facility can change quickly. As such, the close monitoring and investigation of fish mortalities is paramount to addressing disease issues. Unlike private culture

operations, the Division has a full-time fish pathologist on staff that allows for the immediate investigation of mortalities.

The bacterium causing the 2013-2014 furunculosis outbreak at the Pequest Trout Hatchery is believed to have been introduced from birds preying on infected trout dwelling outside the confines of the hatchery and then feeding on trout within the hatchery's raceways, thus introducing the infection to the hatchery stock. It is acknowledged that birds of prey typically travel and feed across considerable distances. The rule, however, does take a reasonable approach to protecting multi-million dollar hatchery stock as each fall the hatchery raceways at Pequest attract and harbor 20 to 30 birds of prey each day. In addition, pathogens including viruses could enter the hatchery ground water supply from the Pequest River through underground caverns entering the groundwater supply.

Maintaining a quality rearing environment is vital to fish health in a hatchery setting. At Pequest, water temperature of the groundwater fed raceways is a consistent 52 degrees Fahrenheit. The location of the facility was selected for the aquifer and its ability to provide a consistent supply of cold, high quality groundwater. Dissolved oxygen levels (range between six and 10 mg/l) and water quality through the raceways is maintained through a consistent water flow of nine million gallons a day. Trout are sorted by size and the number of trout per hatchery pool are reset twice during the 18-month growing cycle to assure proper growing densities and to reduce competition. The hatchery follows strict bio-security measures; no fish have been introduced into the facility since production began in 1982, restricted access to only hatchery personnel, and no outside equipment (including boots, gloves, raingear, and even vehicles). Certain natural stressors, such as sexual maturity and spawning stress exist in both wild and hatchery settings even under the best environmental conditions. These stressors can leave fish

more vulnerable to disease. Unlike wild populations, the close proximity of fish reared in a hatchery setting results in disease spreading quickly through the system.

The Division's handling of the furunculosis outbreak at the Pequest Trout Hatchery was well-vetted through the Great Lakes Fish Health Committee. The Committee is comprised of state representatives in fisheries from throughout the Great Lakes region, as well as a representative from the U.S. Fish and Wildlife Service. Antibiotic treatments utilized at the facility were conducted under the guidance of an independent veterinarian as the antibiotic is under veterinary directive. The angling public was kept informed of the status, treatment, and use of trout affected by furunculosis at Pequest through press releases, the Division website, and a public meeting.

In response to the outbreak at Pequest, the Division reviewed and updated the hatchery's bio-security plan, through a Blue Ribbon panel. Brook and Brown Trout have been temporarily removed from the hatchery's production cycle to reduce the potential of future outbreaks as the bacteria may still be present. Although the hatchery's Rainbow Trout proved to be resilient to furunculosis, despite being exposed to the causative bacteria, they are susceptible to other fish pathogens, including whirling disease, which is specific to Rainbow Trout. The Division is also working towards covering the raceways at the Pequest Hatchery in order to protect valuable hatchery stock from predation and diseases it may introduce. However, covering a mile and a half of raceways is a large-scale project. While the project is anticipated to take two years, the exact timeline of the project and its completion is uncertain. While covering the raceways will reduce the risk of the introduction of disease from predators, covers over the raceways do not protect against pathogens entering the groundwater.

Federal Standards Analysis

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq., require State agencies which adopt, readopt, or amend State rules that exceed any Federal standards or requirements to include in the rulemaking document a Federal standards analysis.

The United States Fish and Wildlife Service regulates the harvesting of freshwater fish in National Wildlife Refuge Areas in New Jersey pursuant to the National Wildlife Refuge System Administration Act, 16 U.S.C. § 668dd (1966), and regulations (50 CFR 32.49). In all other areas of the State, where there are no Federal regulations pertaining to the harvest of freshwater fish, the State's Fish Code applies.

The adopted amendments to the Fish Code do not contain any standards or requirements that exceed Federal regulations involving the National Wildlife Refuge Areas. Accordingly, Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq., do not require further analysis.

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

7:25-6.22 Snapping turtles, bull frogs and green frogs

(a) Any person who has a fishing license or is under the age of 16 or over 70 years of age, may in the waters of the State, take snapping turtles, bull frogs, and green frogs by means of spears, angling with hook and line, dip nets not more than 24 inches in diameter, ***traps,*** or by hand. Except under commercial harvest permits specified in (d) below, turtles may not be sold. Turtles may not be taken with a gun or bow and arrow. The use of set lines is prohibited.

(b) (No change from proposal.)

(c) A person shall not take, attempt to take, kill*,* or have in possession snapping turtles from

May 15 to *[July 15]* ***June 30***, or from October 31 to April 1. A person shall not take, attempt to take, kill, or have in possession bull frogs and green frogs from April 1 to June 30.

Turtle eggs may not be taken at any time. Turtles may not be taken from land at any time.

(d) Snapping turtles, bull frogs and green frogs may be taken in numbers greater than the daily limit under special permit issued by the Division, for the purposes of sale, at its discretion.

Permits for snapping turtles will only be issued to permittees who have received a permit(s) from January 1, 2010 to December 31, 2014, and have submitted a harvest report(s) prior to January 1, 2015, indicating the harvest of at least one turtle during that time period. In addition to any other Federal, State, or local requirements that may be applicable to any sale authorized under this section, any sale must comply with Department of Health rule N.J.A.C. 8:23-2.1.

1. - 2. (No change from proposal)

3. The permittee shall agree to:

i.-x. (No change from proposal.)

xi. Only harvest snapping turtles with a minimum carapace length of 12 inches;

[and]

xii. Submit a written explanation for the failure to trap or harvest snapping turtles within approved permit timeframe***[.]**; and***

***xiii. Report sightings of any State endangered or threatened species of turtle by completing and submitting a Division Sighting Report Form; available at**

<http://www.state.nj.us/dep/fgw/ensp/pdf/rptform.pdf>.*

(e) Those species of frogs and turtles listed as State endangered or threatened may not be pursued, taken, killed, or possessed. *[Sightings of any State endangered or threatened species of turtle must be reported by completing and submitting a Division Sighting Report Form;

available at <http://www.state.nj.us/dep/fgw/ensp/pdf/rptform.pdf>.]* The possession of other species of frogs and turtles not regulated in this Code is regulated under N.J.S.A. 23:2A-6.