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ENVIRONMENTAL PROTECTION

FISH AND WILDLIFE

Marine Fisheries

Adopted Amendment: N.J.A.C. 7:25-18.1(p)

Proposed: August 1, 2022, at 54 N.J.R. 1461(a).

Adopted: XXX X, 2022, by Shawn M. LaTourette, Commissioner, Department of Environmental Protection.

Filed: XXX X, 2022, as R.XXXX d.XXX, (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 23:2B-1 et seq., 23:3-1 et seq., and 23:3-51 et seq.

DEP Docket Number: 05-22-06.

Effective Date: XXX XX, 2022, at 54 N.J.R. XXXX(X).

Expiration Date: May 11, 2028.

The Department of Environmental Protection (Department) is adopting amendments at N.J.A.C. 7:25-18.1(p) to allow the Commissioner of the Department (Commissioner), with the approval of the New Jersey Marine Fisheries Council (Council), to modify management measures by notice to maintain compliance with any fishery management plan approved by the Atlantic State Marine Fisheries Commission (ASMFC). Specifically, the Department is adopting said amendments to add gear types and gear restrictions to the existing management measures that can be changed by notice. As a fishery management plan could mandate a gear type or gear restriction in a given fishery with an implementation date that requires immediate action, it is necessary for the Commissioner to have the ability, provided through the Notice of Administrative Change

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(NOAC) process, to expeditiously make amendments to the applicable gear rules.

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

Summary of Public Comments and Agency Responses:

The following individuals timely submitted comments on the proposal:

1. Alan Leach
2. Joseph Lowid
3. William Marshall
4. Robert Ribeiro
5. Leonard Strouse
6. Andrew Turner

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

1. COMMENT: The proposed amendment to add gear types and gear restrictions to the existing management measures that can be changed by notice are supported. (1)

RESPONSE: The Department acknowledges the comment in support of the proposed amendment. The State must maintain compliance with any fishery management plan approved by the Atlantic State Marine Fisheries Commission (ASMFC) or maintain consistency with any plan approved by the Mid-Atlantic Fishery Management Council (MAFMC), the New England Fishery Management Council, the South Atlantic Fishery Management Council, or the National Marine Fisheries Service. As indicated above, the adopted amendment will allow the Department to act expeditiously to continue to achieve compliance with the applicable plans.

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2. COMMENT: The proposed amendment to add gear types and gear restrictions to the existing management measures that can be changed by notice are not supported. (2, 3, 6)

RESPONSE: In accordance with N.J.A.C. 7:25-18.1(p), the Commissioner of the Department, with the approval of the New Jersey Marine Fisheries Council, is currently authorized to modify fishing seasons, size limits, and possession limits by notice to maintain compliance with a fishery management plan approved by the Atlantic State Marine Fisheries Commission (ASMFC) or to maintain consistency with any plan approved by the Mid-Atlantic Fishery Management Council (MAFMC), the New England Fishery Management Council, the South Atlantic Fishery Management Council, or the National Marine Fisheries Service. The proposed amendment to add gear types and gear restrictions to these existing management measures will allow the Commissioner to expeditiously modify respective rules through NOAC to ensure compliance with ASMFC's recently approved gear restrictions.

3. COMMENT: No one person should have the authority to implement policy or regulatory changes of this nature. This is an abuse of power and authorizing such power to unelected bureaucrats is a mistake and anti-American. (3, 4, 6)

RESPONSE: In accordance with N.J.A.C. 7:25-18.1(p), the Commissioner of the Department, with the approval of the New Jersey Marine Fisheries Council, is currently authorized to modify fishing seasons, size limits, and possession limits by notice to maintain compliance with a fishery management plan approved by the Atlantic State Marine Fisheries Commission (ASMFC) or to maintain consistency with any plan approved by the Mid-Atlantic Fishery Management Council (MAFMC), the New England Fishery Management Council, the South Atlantic Fishery

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Management Council, or the National Marine Fisheries Service. The proposed amendment to add gear types and gear restrictions to these existing management measures will allow the Commissioner to expeditiously modify respective rules through NOAC to ensure compliance with ASMFC's approved gear restrictions within the implementation timeframe.

In accordance with N.J.S.A 23:2B-7, the Commissioner is responsible for administering and enforcing the laws, rules and regulations relating to fisheries resources. The Commissioner's authority to address in those rules gear types is included in the State's statutes at N.J.S.A. 23:2B-6 .

The amendments adopted at this time are consistent with duties assigned to the Commissioner and Council by the Act and with achievement of the goals specified in the Act.

4. COMMENT: The Department's proposed amendments will not address concerns regarding fisheries within the Delaware Bay. (5)

RESPONSE: The Department has proposed an amendment at N.J.A.C. 7:25-18.1(p) to add gear types and gear restrictions to the existing management measures that can be changed by notice to maintain compliance with any fishery management plan. The State is responsible for the effective management of its fishery resources located in all State marine waters, including those in the Delaware Bay. The proposed amendment pertains specifically to authorizing the Commissioner of the Department to modify gear types and gear restrictions through a NOAC to maintain compliance with any FMP approved by the ASMFC or to maintain consistency with any regional management council's plan adopted by the NMFS or any plan implemented by NMFS.

5. COMMENT: The Department should not have authority to change regulations without public

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comment and NJ Marine Fisheries Council approval. The proposal should be amended to require the Council to vote on confirming the Director's decision within thirty days of the Director's decision. If the Director's decision is not confirmed by the Council within thirty days, it should be automatically rescinded. (3, 4, 5, and 6)

RESPONSE: In accordance with N.J.A.C. 7:25-18.1(p), the Commissioner of the Department, with the approval of the New Jersey Marine Fisheries Council, is authorized to modify fishing seasons, size limits, possession limits and the list of shark species contained within any of the shark groups by notice to maintain compliance with any fishery management plan approved by the Atlantic State Marine Fisheries Commission (ASMFC) or to maintain consistency with any plan approved by the Mid-Atlantic Fishery Management Council (MAFMC), the New England Fishery Management Council, the South Atlantic Fishery Management Council, or the National Marine Fisheries Service.

The amendment adopted at this time that adds gear types and gear restrictions to the previously existing management measures will allow the Commissioner to expeditiously modify respective rules through NOAC to ensure compliance with any federally or regionally approved fishery management plan. Public comment is actively solicited throughout the process of the development of and amendments to a fishery management plan approved by a regional management body or the National Marine Fisheries Service. The processes followed by the bodies establishing the management plans that the State must maintain compliance with include additional opportunities to comment at public hearings.

Additionally, in accordance with N.J.A.S. 23:2B-5, the Council has authority to disapprove any rule or amendment proposed by the Commissioner. The proposed amendments

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were presented to the Council at their April 7, 2022, meeting. Further, in accordance with the Open Public Meetings Act at N.J.S.A. 10:4-12, all Council meetings are open to the public, and the Council solicits comments at these meetings and through their various committees prior to voting on the proposed amendments.

6. COMMENT: The proposed amendment seems to be an attempt to have the ability to restrict citizen sportsmen and women from being able to harvest fish for personal consumption. (6)

RESPONSE: The proposed amendment in no way restricts fishing for personal consumption. Gear restrictions are developed to protect fish species by reducing inadvertent mortality. The proposed amendment pertains specifically to authorizing the Commissioner of the Department to modify gear types and gear restrictions through NOAC to maintain compliance with any fishery management plan approved by a governing federal or regional management body.

Federal Standards Statement

N.J.S.A. 52:14B-1 et seq. requires a State agency which adopts, readopts, or amends State regulations that exceed any Federal standards or requirements to include in the rulemaking document a Federal standards analysis. 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. Therefore, no analysis is required.