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ENVIRONMENTAL PROTECTION

DIVISION OF FISH AND WILDLIFE

Fish and Game Council

2008-2009 Fish Code

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

Authorized By: Fish and Game Council, Jeanette Vreeland, Acting Chairperson

Proposed: December 3, 2007 at 39 N.J.R. 4988(a)

Adopted: February 5, 2008 by the Fish and Game Council, Jeanette Vreeland, Acting Chair

Filed: , 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. 13:1B - 29 et seq. and 23:1-1 et seq.

DEP Docket Number: 24-07-10/647

Effective Date:

Expiration Date: July 13, 2012

The Fish and Game Council (Council) is adopting amendments to N.J.A.C. 7:25-6.1 through 6.6, 6.8, 6.9, 6.10, 6.11, 6.13, 6.14, 6.19, 6.20, and 6.22. The proposed amendments were published in the New Jersey Register on December 3, 2007 at 39 N.J.R. 4988(a). The sixty-day comment period closed on February 1, 2008. Additional notice was achieved by faxing notification to all State House press offices, postings on

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the Department of Environmental Protection's website and the Division of Fish and Wildlife's website, public notices in the Atlantic City Press and Newark Star Ledger and e-mailing the Division's 15,000 freshwater list serve members.

Summary of Hearing Officer's Recommendation and Agency Response:

A public hearing was conducted on January 8, 2008, at NJDEP Division of Fish and Wildlife - Central Regional Office, Assunpink Wildlife Management Area, East Branch - Eldridge Road, Robbinsville, New Jersey. The Fish and Game Council's Fish Committee conducted the hearing. Four members of the public provided oral comments. After reviewing the testimony given at the public hearing and written comments received during the comment period, the Fish Committee recommended that the Fish and Game Council adopt the proposed amendments and new rules with modifications to address concerns raised by the public as described in the Summary of Public Comments and Agency Responses below.

A public meeting of the New Jersey Fish and Game Council was held on February 5, 2008 at the Division of Fish and Wildlife's Central Region Office, Clarksville-Robbinsville Road in Robbinsville, New Jersey. The Council, after having considered the testimony from the January 8, 2008 hearing, the Fish Committee's recommendations and written comments received relevant to the proposed amendments, adopted the amendments with change. Based upon public comment during the 60-day public

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comment period the Council is making two substantive changes to proposed amendments and two technical changes 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, P.O. Box 400, Trenton, New Jersey 08625-0400.

Summary of Public Comments and Agency Responses.

Seventeen comments, four oral and thirteen written, were received during the comment period. The following commenters submitted oral or written comments on the proposed amendments to N.J.A.C. 7:25-6.

1. Angelo, Luis
2. Bretillon, Xavier
3. Bryant, Steve, American Carp Society
4. Bunnell, John, Pinelands Commission
5. Ege, Rick, Trout Unlimited
6. Holden, Lawrence, North American Carp Anglers
7. Lounds, Mark
8. Lucas, Mike, North American Native Fish Species
9. Luftglass, Manny
10. Montefusco, Nick
11. Purcell, Monique, Director, New Jersey Department of Agriculture (NJDA)
12. Ranaudo, Richard

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13. Rathjens, Peter, Paradise Fishing Club

14. Rogan, Sean

15. Rumfield, Richard

16. Seymour, Ken

17. Szabo, Ed, Paradise Fishing Club

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(f)

1. COMMENT: Seven commenters were opposed to a two-rod limit for shoreline angling. Commenters recommended a four-rod, or one pod limit be considered so as not to impact their carp angling activities. A pod is a device designed to hold a multiple number of fishing rods, typically three or four, within a limited amount of space, depending on the size and design of the unit. (1, 2, 3, 6, 7, 12, 16)

RESPONSE: Currently, there is no limit to the number of rods which may be used for shoreline fishing in New Jersey, except for the Delaware River which has a limit of two rods, for both boat and shoreline fishing. A rod limit is commonly used by states to prevent the shoreline of a lake from being monopolized by only a few anglers fishing with numerous rods. This is especially problematic on small ponds or lakes with limited shoreline access areas, particularly during active stocking programs such as trout season.

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A two-rod limit was proposed as the Council seeks to provide consistency among the State's fishing regulations when feasible. As stated previously, a two-rod limit is already in effect for the Delaware River, and in the neighboring States of New York and Pennsylvania.

The Council acknowledges that specifically designed multiple rod holding devices, known as a pod, may allow for several rods to be used within a small confined area. These devices, however, come in a vast array of shapes, sizes, and rod holding capabilities. Accordingly, the Council does not believe that it would be practical or appropriate to attempt to implement a limit based upon the number of pods which may be utilized.

While the Council continues to believe that it is necessary and appropriate to prevent shoreline monopolization from occurring, the Council believes it can achieve its goal, and protect the interest of anglers throughout the State, including carp anglers, by implementing a three-rod limit. Accordingly, N.J.A.C. 7:25-6.1(f) is being amended on adoption to reflect this change. Neither the proposed rule nor the adopted rule limits the ability of an angler to utilize a pod provided the three rod limit is satisfied. The Council will monitor the impacts of a three-rod limit on specific user groups to determine if future consideration of a four-rod limit is warranted.

2. COMMENT: One commenter supports the two-rod limit. (15)

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

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N.J.A.C. 7:25-6.3

3. COMMENT: One commenter supports the increased size limit for trout.
(5)

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

4. COMMENT: One commenter states that increasing the minimum size will result in trout that are more costly to raise and purchase for stocking in put-and-take fisheries. (11)

RESPONSE: The Council concurs that nine-inch trout are more expensive to raise and purchase than seven-inch trout. However, no impact is anticipated as a result of the change since the majority of fish stocking requests for put-and-take fisheries are for trout considerably larger than the proposed nine-inch size limit.

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

5. COMMENT: One commenter recommended that the possession of trout less than nine inches, when purchased for use as bait, should be restricted to rainbow and brown trout. Excluding brook trout from this regulation would prevent anglers from illegally harvesting wild brook trout less than nine inches and later claiming they were purchased for bait. (10, 11)

RESPONSE: The intent of the proposed amendment to N.J.A.C. 7:25-6.3(c) was to allow anglers targeting muskellunge to purchase and utilize small trout (less than the nine inch minimum size) as bait. Since wild brook trout typically inhabit small streams

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and seldom grow much larger than nine inches, the harvest of the largest, sexually mature individuals for use as bait could negatively impact the long-term viability of these wild populations. Recent studies have shown that brook trout, New Jersey's only native trout species, survive in less than half their original range in New Jersey. Furthermore, it has been found that New Jersey's existing wild brook trout populations have unique identities and that ancestral ("heritage") brook trout populations still exist. In light of this information, the Council concurs that the use of trout for bait should be restricted to rainbow and brown trout. Accordingly, N.J.A.C. 7:25-6.3(c) is amended on adoption to exclude brook trout. This change is not anticipated to impact anglers fishing for muskellunge since rainbow trout not brook trout are typically purchased for this purpose.

6. COMMENT: One commenter is in favor of allowing the possession of trout less than nine inches, when purchased for bait, and recommends that the size limit exemption should be expanded to include private fee fishing operations and private pay lakes. The commenter also recommends for clarification purposes that aquaculture facilities should be included in the possession exemption. (11)

RESPONSE: The Council acknowledges the comment in support of the rule. The Council also acknowledges the recommendation to expand the exemption of undersized trout to include private fee fishing operations. Prior to considering the expansion of the regulation, the Council plans to assess impacts of the changes being adopted at this time to determine if any unforeseen enforcement issues occur as a result. In response to exempting aquaculture facilities for clarification purposes, regulations pertaining to season, size, and possession limits

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are for the protection of the State's wild fish populations and have never been applied to operations that rear or maintain fish such as aquaculture facilities or tackle shops that sell baitfish.

N.J.A.C. 7:25-6.3(i)(10)

7. COMMENT: Two commenters support the addition of Manny's Pond and Mountain Farm Pond, both located in Hunterdon County, to the Division's trout stocking program. (9, 14)

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

N.J.A.C. 7:25-6.9(a)1

8. COMMENT: Two commenters expressed concern over potential changes to the trout management program at Swartswood Lake. The commenters were opposed to the reduction in the number of trout stocked and the change in the trout species stocked, which would occur as a result of the lake no longer being regulated as a holdover trout lake. The commenters requested that larger trout be stocked, a creel survey be conducted, and re-evaluation of the regulation occur after a reasonable amount of time. (13, 17)

RESPONSE: Due to diminishing trout supporting capabilities at Swartswood Lake, specifically as related to temperature and dissolved oxygen, the holdover trout regulations are no longer suitable for this lake. The Fish and Game Council acknowledges that some stocked trout may find areas of refuge during the harsh summer

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months, and “hold-over” to the following spring, but the lake no longer provides the habitat for the consistent holdover of trout from one year to the next. As a result of this change, trout stocking will continue at the lake but will be modified to provide a more appropriate seasonal, rather than a year round, trout fishery. The number of trout stocked in the lake will be reduced, and brook and rainbow trout will be stocked in addition to brown trout. The lake will also receive, as a result of this change, large broodstock trout.

The number, species and size of trout stocked into a particular waterbody is determined by a formula which incorporates physical, biological and social parameters, such as population, available access, and proximity to other trout stocked waters. The trout stocking formula and the specific criteria associated with the formula and stocking program are established in the Coldwater Fisheries Management Plan, not in the Administrative Code. Copies of the plan are available upon request from the Division’s Lebanon Field Office, PO Box 394, Lebanon, NJ 08833.

N.J.A.C. 7:25-6.13(u)

9. COMMENT: Two commenters were opposed to the ban on the possession of mud sunfish, blackbanded sunfish, bluespotted sunfish, and banded sunfish.

(4, 8)

RESPONSE: As stated previously within the proposal, the Council concurs that angling is typically not problematic for these specific sunfish species (see 39 N.J.R. 4990 – 4991). However, over time, due to a multitude of anthropogenic stressors, the geographic range of mud sunfish, blackbanded sunfish, bluespotted sunfish, and banded

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sunfish has been restricted, primarily to the Pinelands region of New Jersey. The Council disagrees that limiting these species to 20 % of the State is acceptable, and the Council maintains that protective measures for these unique species are justified. Currently, these native species are not protected by any size or possession limits in New Jersey.

Concern for these species extends well beyond New Jersey's borders as neighboring states designate some or all of these species a status of endangered, threatened, or species of special concern. Although not typically encountered using rod and line as the manner and means for angling, their colorful markings have made them recent targets for hobbyists and aquarium suppliers that may use alternative collection instruments such as seines and minnow traps. In addition, the consolidation of these species to particular areas within the Pinelands makes them vulnerable to collection. The Council believes its concern for these unique species is justified, increases awareness for their protection, and is consistent with the Council's interest in protecting the State's aquatic resources.

Collection and possession of these species for scientific and educational purposes can still be provided for, in limited quantities, through the issuance of Scientific Collecting permits.

N.J.A.C. 7:25-6.26

10. COMMENT: One commenter believes aquaculture facilities should continued to be exempt from obtaining a stocking permit since aquaculture facilities are licensed by

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the New Jersey Department of Agriculture under the Aquatic Farmer License program.

(11)

RESPONSE: Fish culture facilities are not required to obtain stocking permits. It is the responsibility of the purchaser (the person, organization or agency, desiring to introduce fish or their eggs into the environment) to obtain a permit.

N.J.A.C. 7:25-6.2(b)

11. COMMENT: One commenter is concerned with the effectiveness of the evaluation procedure in developing a list of approved fish culture facilities for fish stocking permits due to the retirement of the Division's fish pathologist. The commenter recommends the New Jersey Department of Agriculture's Office of the State Veterinarian be used for this purpose in place of the Division. (11)

RESPONSE: The Division's Lebanon Field Office houses four of the five State fisheries biologists who average over 20 years of experience in managing and protecting the State's aquatic resources. This office also issues all eleven of the Division's permits pertaining to the State's freshwater fisheries resources. The services of the State's recently retired pathologist are maintained on an as needed basis through contract, including his review and comment on the draft fish health components of the stocking permits. The Fish and Game Council continues to be hopeful that the services of a full time pathologist will be restored sometime in the near future.

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

12. COMMENT: One commenter recommends that the prohibition of the stocking of carp, including koi, and goldfish be clarified to prohibit the stocking of these species in public waters, waters with inlets or outlets, and other waters where escape is possible. This prohibition should not apply to ornamental backyard ponds. (11)

RESPONSE: The introduction of carp is prohibited under N.J.S.A. 23:5-30. In addition, N.J.S.A 23:4-63.3 prohibits the introduction of exotic species, which pose a risk to the environment. These regulations apply to all fresh waters of the State, public and private, and regardless of the existence of an inlet or outlet structure. As a matter of policy, the Division of Fish and Wildlife has not prevented, nor permitted, the practice of stocking carp, including koi, or goldfish in small ornamental backyard ponds and water features and it is not the intention of this Fish and Game Council to change this policy at this time.

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

13. COMMENT: One commenter recommends that import permit and testing protocols developed by the New Jersey Department of Agriculture should be adopted in place of the proposed fish health requirements. In addition, the commenter suggests that duplicative reporting requirements be avoided by the New Jersey Department of Agriculture providing information already supplied by aquaculture facility operators as part of the New Jersey Department of Agriculture Aquatic Farmer License program. (11)

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RESPONSE: The Department of Environmental Protection, and the Fish and Game Council are authorized under N.J.S.A 23:4-63.3 to issue permits regulating the possession, release, liberation or distribution of fish and other animals into the environment. The incorporation of current fish stocking permitting procedures into the Administrative Code is consistent with these statutory provisions. In addition, while there is some common ground between New Jersey Department of Agriculture (NJDA) import permits, and fish stocking permits, there are considerable differences between the two. The NJDA import permit is directed towards the facility raising the fish, while a stocking permit is directed towards the individual purchasing the fish. An import permit is directed towards fish health concerns within the immediate facility, with no oversight of the eventual distribution of the fish, while the stocking permit not only encompasses fish health, but also addresses the Fish and Game Council's concerns regarding the ecological implications and/or interactions that may result with the intended introduction. The Division of Fish and Wildlife reviews the species, quantity, and size of the fish proposed for stocking to determine whether the introduction is beneficial to the specific waterbody, is consistent with Division management and stocking programs, and does not pose a risk to the freshwater resources of the State.

In addition, the proposed fish stocking provisions require fish culture facilities to provide annual fish health information, disease history information, as well as updates as to the source of fish. In light of recent disease outbreaks in surrounding states, this information is paramount to the continued protection of the State's aquatic resources. This information is not

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required, nor provided to the Division under current NJDA import procedures or the Aquatic Farmer License program.

The Fish and Game Council commends NJDA for their advancements in their laboratory testing facilities. The Fish and Game Council acknowledges that the future holds a variety of opportunities for the Division of Fish and Wildlife and NJDA to collaborate in the realm of fish health inspections. Currently, the US Fish and Wildlife Service's Lamar Laboratory has met the testing needs of the Division, free of charge, but there is no guarantee of their ability to provide such services for the long term.

N.J.A.C. 7:25-6.26(1)(5)

14. COMMENT: One commenter supports the proposal that trout stocked in the Musconetcong and Pequest Rivers should meet the proposed additional fish health inspection requirements to protect both State and privately operated fish culture facilities located in these areas. For clarification purposes, the commenter recommends that the term "drainages" be included so that the rule is not misinterpreted to include only the mainstems of the two rivers. (11)

RESPONSE: The term drainages is incorporated into the rule as proposed and adopted.

Beyond the scope:

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15. COMMENT: One commenter seeks clarification as to whether or not the prohibitions on the sale of smallmouth bass and largemouth bass, except for stocking, are still in effect. (11)

RESPONSE: The prohibition on the sale of smallmouth and largemouth bass is a statutory provision in N.J.S.A. 23:5-25 which remains in effect.

Summary of Agency-Initiated Changes

In addition to the changes to N.J.A.C. 7:25-6.1(f), related to the number of rods, lines or hand lines that may be used from the shore, and to N.J.A.C. 7:25-6.3(c), excluding undersized brook trout from potential use as bait with a receipt, made in response to comments as explained above, the Fish and Game Council is modifying the following provisions on adoption:

N.J.A.C. 7:25-6.3(h)(5)

The designation in N.J.A.C. 7:25-6.6(a)33 of the Wanaque River, from the Wanaque Reservoir dam downstream to the Wanaque Avenue bridge, as a wild trout stream, means this section of the river will not be stocked with trout. As a result of this change, this section of the Wanaque should have been removed from N.J.A.C. 7:25-6.3(h)(5), which identifies waters with in-season stocking closures. This change will eliminate potential confusion created by the continued inclusion of this section of the Wanaque River as subject to in-season stocking closures. Wild Trout Streams are exempt from in-season

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stocking closures in N.J.A.C. 7:25-6.3(h). The reference to Lake Inez is also removed since the lake no longer exists.

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

The Council is amending this subsection on adoption to correct typographical errors to website listings for the American Fisheries Society and the World Organization for Animal Health.

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 regulations 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). However, in all other areas of the State, where there are no Federal regulations pertaining to the harvest of freshwater fish, the State's Code applies.

Therefore, the Fish and Game Council has determined that the adopted amendments to the Fish Code do not contain any standards or requirements that exceed any standards or requirements imposed by Federal law. Accordingly, Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq do not require further analysis.

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

2008-2009 FISH CODE

7:25-6.1 General Provisions

(a)-(e) (No change from proposal.)

(f) Except as provided in N.J.A.C. 7:25-6.20, or when fishing from a boat, canoe, kayak or similar vessel, the number of rods, and lines or hand lines shall not exceed *[two] * * **three** * per person.

7:25-6.3 Trout season and angling in trout stocked waters

(a)-(b) (No change from proposal.)

(c) There shall be a nine-inch minimum size for brook trout, brown trout, rainbow trout or hybrids thereof except as designated in N.J.A.C. 7:25-6.5 to 6.9. Purchased ***brown and rainbow*** trout less than the nine-inch minimum size limit may

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be possessed, strictly for use as bait, provided a receipt of purchase, dated within 14 days, and indicating the place of purchase is in possession and provided upon request.

(d)-(g) (No change from proposal.)

(h) Except as provided in N.J.A.C. 7:25-6.6 to 6.9, in trout-stocked waters for which in-season closures will be in force, waters will be closed from 5:00 A.M. to 5:00 P.M. for stocking on the dates and at the locations indicated below, provided that in the event of emergent conditions, the Division may suspend stocking of any or all of the waters listed below:

1.- 4. (No change from proposal.)

5. Each Friday during the in-season stocking period.

i.-iii. (No change for proposal.)

iv. Wanaque River - Greenwood Lake Dam to *[Jct. with Pequannock River, excluding Wanaque Reservoir, Monksville Reservoir and Lake Inez] * ***to Wanaque Reservoir Dam and section from Wanaque Avenue Bridge, Pompton Lakes to Jct. with Pequannock River, excluding Wanaque Reservoir and Monksville Reservoir.***

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7:25-6.26 Fish stocking; fish culture facilities

(a) – (k) No person may release any live indigenous or exotic fish, or their eggs, into the aquatic environment without a permit. For the purposes of this subchapter, indigenous and exotic fish shall include all fish species, their subspecies and hybrids.

(l) To be approved, fish culture facilities must:

1. - 5. (No change from proposal)

6. perform any inspections required by this subsection using sample sizes and methods recommended by the American Fisheries Society Fish Health Section, located in Juneau, Alaska , or The World Organization for Animal Health (also known as Office International des Epizooties), located in Paris, France, or generally accepted methods published in peer-reviewed journals. Additional information provide***d*** at the American Fisheries Society website at *[<http://web.fisheries.org/units/fhs/>]*
<http://www.fisheries.org/units/fhs/>, or the website of the World Organization for Animal Health at *[www.oie.int/eng/en_index.html]*
***http://www.oie.int/eng/en_index.htm**.*

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7. - 9. (No change from proposal.)

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