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**ENVIRONMENTAL PROTECTION
DIVISION OF FISH AND WILDLIFE**

Marine Fisheries

Crab and Lobster Management: Marine Fisheries; Fishery Management in New Jersey

Proposed Amendments: N.J.A.C. 7:25-14.2, 14.4, 14.16, 14.19, 14.20, 18.1, 18.5, 18.12, 18.13, 18.14, and 22.3

Authorized by: Lisa P. Jackson, Commissioner
Department of Environmental Protection

Authority: N.J.S.A. 23:2B-6 and 23:2B-14

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

DEP Docket Number: 26-06-12/622

Proposed Number: PRN 2006 –

A public hearing concerning this proposal will be held on March 1, 2007, starting 7:00 PM at:

Atlantic County Library/ Galloway Township
306 East Jimmie Leeds Road
Galloway, NJ 08205

Submit written comments by March 17, 2007 to:
Gary J. Brower, Esq.
Attn: DEP Docket Number: 26-06-12/622
Office of Legal Affairs
Department of Environmental Protection
401 East State Street
P.O. Box 402
Trenton, NJ 08625-0402

The Department of Environmental Protection (Department) requests that commenters submit comments on disk or CDs as well as on paper. Submission of a disk or CD is not a requirement. The Department prefers Microsoft Word 6.0 or above. MacIntosh formats should not be used. Each comment should be identified by the

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applicable N.J.A.C. citation, with the commenter's name and affiliation following the comment.

The agency proposal follows:

Summary

The Division of Fish and Wildlife rules (rules), N.J.A.C. 7:25, establish limits and other controls to manage fish and wildlife in New Jersey. The Department is proposing to amend portions of the rules regarding Crab and Lobster Management, N.J.A.C. 7:25-14; Marine Fisheries, N.J.A.C. 7:25-18; and Fishery Management in New Jersey, N.J.A.C. 7:25-22. As the Department has provided a 60-day comment period on this notice of proposal, this notice is exempted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

The proposed amendments concern fisheries for blue crab, lobster, dolphin, shad, hybrid striped bass, striped bass and summer flounder, as well as fisheries utilizing fillet permits, miniature fyke nets and fisheries that may be controlled by quotas or affected by Federal fisheries management plans.

As discussed more fully below, these proposed amendments have been developed at the request of the participants of the fishery involved after the Department determined that the requested changes were consistent with sound management of the resources, to improve enforcement of existing regulations, to comply with Atlantic States Marine Fisheries Commission fishery management plans, and to correct, clarify or simplify existing regulations.

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A description of the proposed amendments follows:

N.J.A.C. 7:25-14.2 Use of crab pots and trot lines

The Department is proposing to amend N.J.A.C. 7:25-14.2(b) to clarify that the current prohibition against tampering with crab pots and trot lines includes a prohibition against removal of fish, crabs or other organisms from any crab pot and pulling up any crab pot which the person does not own or is not authorized to tend. The purpose of this modification is to eliminate any possible misconception about such acts and strengthen the enforceability of regulations pertaining to illegal tampering with crab pots.

The Department is also proposing to amend N.J.A.C. 7:25-14.2(e) to establish a two tier commercial crab pot/trot line licensing system. Tier 1 license holders will retain the ability to fish no more than 600 crab pots in Delaware Bay and no more than 400 crab pots in all other waters. Tier 2 license holders will be permitted to fish no more than 300 crab pots in Delaware Bay and no more than 200 crab pots in all other waters. The purpose of the two tier licensing system and the reduced crab pot limit for Tier 2 license holders is to reduce the probability of a significant increase in fishing effort associated with increased license transferability proposed at N.J.A.C. 7:25-14.4(a)7.

During the six year period from 1999 to 2004, 42 percent of commercial crab pot license holders were not active in the fishery. Once commercial crab pot licenses become transferable, the Department believes that many inactive crabbers may transfer the right to the license to individuals who will become active in the fishery. This could result in an increase in the number of pots being fished and increase the possibility that the crab resource will be overfished. As discussed below in the summary of proposed

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amendments to N.J.A.C. 7:25-14.4, individuals receiving the right to a license through a transfer from someone other than an immediate family member will be eligible for a Tier 2 license only, thereby reducing the potential increase in fishing effort and negative impacts on the crab resource. In accordance with proposed amendments to N.J.A.C. 7:25-14.4(a)7, inactive crabbers must also become active in the fishery before the license can be transferred. The Department realizes that requiring inactive crabbers to become active in the fishery before being eligible to transfer the license will likely result in a temporary short term increase in the number of pots being fished. However, it is unlikely that inactive crabbers will immediately begin to fish the maximum number of pots allowed in order to become eligible to transfer the license. The Department believes that the immediate increase in pots being fished will be less under a delayed eligibility transfer program for inactive crabbers than it would be if all inactive crabbers were immediately eligible to transfer the license to individuals intending to fully participate in the fishery.

N.J.A.C. 7:24-14.4 Commercial licenses for crab pot/trot lines and crab dredges

The Department is proposing to amend N.J.A.C. 7:25-14.4(a) to establish a two tier commercial crab pot/trot line licensing system as discussed above in the summary of proposed amendments to N.J.A.C. 7:25-14.2. Under the proposed licensing system, all holders of a valid license on the effective date of these amendments will be eligible for a Tier 1 license on renewal. The Tier 1 license will continue the limits applicable to the licensee's expiring, unclassified license.

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Under the proposed amendments, Tier 2 licenses would be created in one of two ways; either through a lottery conducted pursuant to N.J.A.C. 7:25-14.4(a)2 or as a result of certain expanded license transfers that would be allowed pursuant to proposed N.J.A.C. 7:25-14.4(a)7.

In 1993, the Department set a goal of reducing the numbers of licenses issued to the number issued in 1991 (312 licenses). Since that time, the number of licenses issued has decreased from 506 in 1994 to 319 in 2005. This decrease has occurred both because of the implementation of a prohibition against issuance of any additional crab pot licenses until the total number of licenses decreased below 312 and through attrition due to the limited transferability of licenses.

The prohibition against issuance of additional licenses is codified at N.J.A.C. 7:25-14.4(a)2. Pursuant to N.J.A.C. 7:25-14.4(a)2, once the total number of licenses decreases below 312, additional licenses will be issued to unsuccessful applicants from the previous lottery. As part of the current proposal, the Department is proposing to require that, in order to retain the right to any license not renewed, individuals on an existing lottery list must notify the Department annually that the individual wishes to remain on the list. The current lottery list was established in 1994, and the Department believes that some of the individuals on the list may no longer be interested in obtaining a license. Annual notification will keep the lottery list current to include only those individuals still interested in obtaining a license. Any individual receiving the right to a license via lottery will be eligible for a Tier 2 license.

Limitations on transferability of licenses are codified at N.J.A.C. 7:25-14.4(a)7. The rules currently provide that licenses may only be transferred to specified family

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members upon application to the Department. Under the proposed amendments, transferability to specified family members would continue to be allowed at any time, with the family member receiving the same license limits applicable to the current license holder. However, license holders would additionally be able to transfer the license to non-family members once the total number of commercial crab pot licenses issued decreases to 312 or below.

As indicated above, since 1994 the Department has been able to reduce the number of licenses to a more appropriate level through both a prohibition against the issuance of additional licenses and through attrition due to the limited transferability of licenses. The Department believes that, once the goal of 312 issued licenses is reached, limited transferability will no longer be necessary. The Department is concerned, however, that allowing full transferability will lead to increased fishing effort due to inactive licenses being transferred and becoming active. To avoid an immediate significant increase in the number of pots being fished, the Department is proposing to require that a crabber must be active in the fishery as evidenced by landing a minimum of 50 bushels of hard crabs or 500 shedder crabs in each of any three years during the previous five year period before a license can be transferred to someone outside of their immediate family.

Any individual receiving the right to a license through a transfer from someone other than an immediate family member will be eligible for a Tier 2 license only.

While the holders of a Tier 2 license established under either proposed N.J.A.C. 7:25-14.4(a)2 or 7 will only be allowed to fish half as many pots as holders of Tier 1 licenses, under proposed N.J.A.C. 7:25-14.4(a)1, Tier 2 license holders will be eligible to

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obtain the right to a Tier 1 license after holding a Tier 2 license for at least one year and providing proof that greater than 50 percent of their earned income from the previous year was received from commercial fishing. The purpose of this proposed amendment is to allow full-time fishermen that derive a significant portion of their income from commercial fishing to participate in the fishery without a reduction in the number of pots that would be allowed to be fished under a Tier 2 license. The Department does not anticipate that a large number of Tier 2 license holders will be eligible to upgrade to a Tier 1 license, but does believe that it is appropriate to allow those that truly rely upon commercial fishing for a significant portion of their livelihood to fish at the higher level. Additionally, even if all licenses are eventually held by those who meet this criteria, since the limits of the Tier 1 license are the same as the current unclassified license and the number of licenses will continue to be capped at the number of licenses issued in 1991, the fishery will continue to be adequately protected. Proof of income shall include a copy of the applicant's Federal income tax return and a notarized Federal IRS Form 4506-T providing the Department the authority to verify the applicant's income.

The Department is proposing to amend N.J.A.C. 7:25-14.4(a)8 which contains the license fees applicable to commercial crab pot/trot line, crab pot dredge and crab dredge licenses. The current license fee for a commercial crab pot license is \$100.00. Under the proposed amendments, a two tier fee system is established to reflect the proposed two tier license system for commercial crab pot/trot line licenses. The proposed fees are \$200.00 for a Tier 1 license and \$100.00 for a Tier 2 license. Under the proposed amendments, Tier 1 license holders will be permitted to fish twice as many pots as Tier 2 license holders; therefore the Department believes that a two tier license

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fee is appropriate for a two tier licensing system. Additional revenue generated from the license fee increase is necessary to cover the administrative costs of license transfers and will also be used for resource monitoring and enforcement of these regulations.

The Department is also proposing at N.J.A.C. 7:25-14.4(a)4, to reduce the number of Atlantic Coast commercial crab dredge licenses available to fishermen from 338 licenses to 250 licenses. The Department established a maximum of 338 licenses in 1994, but the Department has not issued over 250 licenses since 1998 due to a lack of interest from the fishing community. In 2005, only 232 licenses were issued. The Department believes that a cap of 250 licenses is a more appropriate number of licenses to issue based on the needs of the fishery and will prevent a large influx of participants in the fishery, thereby reducing the possibility that the resource will be overfished.

N.J.A.C. 7:25-14.16 Eligibility for lobster pot permit and pot allocation

The Department is proposing to amend N.J.A.C. 7:25-14.16(a) and (a)1iv to eliminate the Type D Recreational Pot permit for the recreational harvest of lobsters by lobster pots. Presently, individuals recreationally harvesting lobsters by lobster pots are required to obtain a Type D Recreational Pot Permit pursuant to N.J.A.C. 7:25-14.16(a) and a fish and lobster pot license pursuant to N.J.A.C. 7:25-18.5(g)11. The Department believes that it is unnecessary for individuals intending to recreationally harvest lobster by lobster pots to possess both a lobster pot permit and a fish and lobster pot license. The Department is proposing that only a fish and lobster pot license will be required as proposed at N.J.A.C. 7:25-18.5(g)11i(4).

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The Department is also proposing to correct a cross-reference at N.J.A.C. 7:25-14.16(a)8iv dealing with lobster pot permit transfers. Current language indicates that no permit shall be transferred without the prior approval of the Department, based upon satisfaction of (a)7i through iii above. The correct citation is (a)8i through iii above.

N.J.A.C. 7:25-14.19 Administrative Notice

The Department is proposing to amend N.J.A.C. 7:25-14.19 in several ways.

This section currently provides that the Commissioner, with the approval of the New Jersey Marine Fisheries Council, may modify size limits, pot and trap limits, trip limits and possession limits by notice in order to maintain compliance with any fishery management plan approved by the Atlantic States Marine Fisheries Commission.

The Department is proposing to amend N.J.A.C. 7:25-14.19 to provide that the Commissioner, with the approval of the New Jersey Marine Fisheries Council, may modify minimum or maximum size limits, pot and trap limits, trip limits, quotas and possession limits in this subchapter by notice in order to maintain compliance with any fishery management plan approved by the Atlantic States Marine Fisheries Commission pursuant to 16 U.S.C. § 5104(b) or to maintain consistency with any Mid-Atlantic Fishery Management Council plan adopted by the National Marine Fisheries Service. The Commissioner, with the approval of the New Jersey Marine Fisheries Council may modify minimum or maximum size limits, pot and trap limits, trip limits and possession limits in this subchapter by notice in order to provide for the optimal utilization of any quotas specified in this subchapter. The Commissioner will review the catch rate for a particular species in relation to the season quota and if harvest data indicate that upward

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adjustments in harvest control measures are warranted to maximize utilization of the available quota within a specific season for a specific fishery, the Commissioner may make the above specified control measures to achieve optimal utilization of the total allowable catch. The Department shall publish notice of any such modification by filing and publishing a notice of administrative change in the New Jersey Register and a notice in the Division's commercial regulation publication. All such notices shall be effective when the Department files the notice with the Office of Administrative Law or as specified otherwise in this notice. This proposed amendment is consistent with existing language in N.J.A.C. 7:25-18.12(o), 18.13(p) and 18.14(k). The Department is additionally proposing to correct the reference to limits specified in "this section" to refer to limits specified in this subchapter as the limits and quotas referenced are included in other sections of Subchapter 14.

The Department is also proposing to amend N.J.A.C. 7:25-14.19 to provide the Commissioner, with the approval of the New Jersey Marine Fisheries Council, the authority to modify listed management measures by notice to maintain consistency with any Federal fisheries management plan or to provide for the optimal utilization of any quotas specified in this section. The Marine Fisheries Management and Commercial Fisheries Act, N.J.S.A. 23:2B-1 et seq., directs, among other things, that fishery resources be managed to achieve various objectives, including the objective of conserving the resource while achieving the objective of optimum yield. To achieve these objectives, fishery management plans seek to regulate the take of the resource by imposing limitations such as dates during which the resource may be taken and trip limits that will result in the quota contained in the fishery management plan approved by the Atlantic

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States Marine Fisheries Commission or contained in a Federally approved fishery management plan being taken, but not exceeded. However, there have been occasions where, due to factors such as extended periods of poor weather, a period may occur during which no fish or less than the planned amount of fish were taken. As a result, continued implementation of the trip limits and other restrictions for the remainder of the year would result in only a small portion of the approved quota being taken. At other times, unanticipated conditions may result in more fish than anticipated being taken in the early part of the season. Allowing adjustments to be made in a timely manner to allow for fishing which will result in a higher percentage of the approved quota being taken will allow the Commissioner to satisfy the statutory objectives while also assuring that the Commissioner has the ability to make timely adjustments that assure that no more than the approved quota is taken should it become evident that conditions have resulted in more than the anticipated portion of the quota being taken early in the year. The proposed amendment will also maintain the resource and fishing opportunities at a more consistent level throughout the year.

These management measures could include increases or decreases in trip limits or landing days that are not required by any Federal or Atlantic States Marine Fisheries Commission fishery management plan, but are necessary to match landings that may have been impacted by adverse weather conditions, seasonal fish availability or other unanticipated factors to the available quota. This expanded flexibility is not being proposed to provide a mechanism to increase landings above the available quota, but is meant to make it possible to make seasonal adjustments in trip limits and landing days, either up or down, as a fishery develops throughout the year.

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N.J.A.C. 7:25-14.20 Penalties

The Department is proposing to amend N.J.A.C. 7:25-14.20(f) to include a 12 month mandatory crab pot/trot line license privilege revocation for damaging or illegally tending commercial crab gear as specified at N.J.A.C. 7:25-14.2(b). Currently, crab dredgers dredging crabs outside of the crab dredge area or dredging crabs on unauthorized lease shellfish grounds are subject to a mandatory 12 month crab dredge license privilege revocation. The addition of license revocation for damaging or illegally tending commercial crab gear standardizes violations of commercial crabbing regulations and is also being proposed to provide an additional deterrent to illegal crabbing activity by licensed commercial crabbers.

N.J.A.C. 7:25-18.1 Size, season and possession limits

The Department is proposing to amend N.J.A.C. 7:25-18.1(a), (b), (c) and (f) to add dolphin, hybrid striped bass and/or striped bass to these subsections.

In N.J.A.C. 7:25-18.1(a), dolphin and hybrid striped bass and their scientific names are proposed to be added to the list specifying the scientific names of fish referred to by common names in the subchapter. In N.J.A.C. 7:25-18.1(b), dolphin is added to the list of minimum size for sale, with no minimum size listed. The purpose of this addition is the anticipation of a dolphin size limit in the future and does not impose any new or different limitations.

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In N.J.A.C. 7:25-18.1(c) dolphin and hybrid striped bass are proposed to be added to the list of recreational minimum size, open season and possession limits. The purpose of the addition of dolphin is the anticipation of limits in the future. The amendment also provides a ready reference to the statutory limits on the taking of hybrid striped bass which are codified at N.J.S.A. 23:5-45.1. The proposed amendments do not impose any new or different limitations.

The Department is proposing to add a new paragraph at N.J.A.C. 7:25-18.1(e)2 to permit a person to use the parts of one legal sized summer flounder as bait. Parts of summer flounder were traditionally used as a favorite bait by recreational summer flounder fishermen. Current regulations at N.J.A.C. 7:25-18.1(e) prevent the removal of the head, tail or skin of any fish with a minimum size limit, thereby preventing the use of summer flounder parts as bait. The amendment will allow the limited use of summer flounder parts as bait while at the same time preserving the enforceability of the summer flounder minimum size and possession limits.

In N.J.A.C. 7:25-18.1(f), hybrid striped bass and striped bass are proposed to be added to the list of species with minimum fillet or fish part lengths with the length specified as 24 inches. This amendment will allow better enforcement of hybrid striped bass and striped bass size limits on vessels utilizing Special Fillet Permits by making it illegal to possess fillets or fish parts from under-sized fish. The Department is proposing to amend N.J.A.C. 7:25-18.1(f)3v to clarify that no fish of any species less than the minimum size listed in N.J.A.C. 7:25-18.1(c) can be filleted. The purpose of this amendment is to strengthen the enforcement of minimum size limits by clarifying that sub-legal fish cannot be filleted under the authority of a Special Fillet Permit.

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The Department is proposing to amend N.J.A.C. 7:25-18.1(g) to eliminate the reference to N.J.A.C. 7:25-18.1(f) regarding penalties for violations of provisions applicable to a Special Fillet Permit. Penalties for violations of provisions applicable to a Special Fillet Permit are listed in N.J.A.C. 7:25-18.1(f)3vii and do not need to be referenced in N.J.A.C. 7:25-18.1(g).

The Department is proposing to amend N.J.A.C. 7:25-18.1(p) to add language similar to that proposed at N.J.A.C. 7:25-14.19 to allow the Commissioner, with the approval of the New Jersey Marine Fisheries Council, to modify certain management measures by notice to maintain consistency with any Federal fisheries management plan. The Department believes allowing the Commissioner to make such changes through this mechanism is necessary to institute changes to management measures in a timely fashion in order to keep the State regulations consistent with Federal regulations.

The Department is proposing to amend N.J.A.C. 7:25-18.1(q) to make it illegal to dispose of fish, fish parts or any other matter after receiving communication from an authorized law enforcement officer indicating the officer's intent to perform an inspection and the person so notified may not dispose of fish, fish parts or any other matter in any manner until such time as the inspection is complete. The purpose of this provision is to strengthen the enforcement of marine fisheries regulations by making it illegal to dispose of fish when being approached by a law enforcement officer before the fish can be inspected for compliance with minimum size, season or bag limit provisions.

N.J.A.C. 7:25-18.5 General Net regulations

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The Department is proposing to add language at N.J.A.C. 7:25-18.5(g)3v to require that all miniature fyke net licensees provide monthly reports of their fishing activity. The Atlantic State Marine Fisheries Commission established a mandatory commercial catch and effort monitoring program for American eel in Addendum I to the Interstate Fishery Management Plan for American Eel. All states are required to implement an American eel commercial catch and effort monitoring program. Failure to comply could result in a Federal moratorium being placed on New Jersey's American eel fishery. In New Jersey, almost all American eels harvested commercially are harvested by miniature fyke nets. As a result, the Atlantic States Marine Fisheries Commission has agreed that requiring miniature fyke net licensees to report their catch will satisfy the mandatory requirements of Addendum I to the Interstate Fishery Management Plan for American Eel. Proposed license suspension and revocation penalties for failure to file monthly reports are no suspension for the first offense, 120 days for the second offense and permanent revocation for the third offense. In addition, all required reports must be filed before a miniature fyke net license is issued for the subsequent year. The suspension and revocation schedule and reporting requirement for license renewal are consistent with blue crab reporting requirements existing at N.J.A.C. 7:25-14.12.

The Department is proposing to correct an error at N.J.A.C. 7:25-18.5(g)11i dealing with the eligibility for a lobster or fish pot license. This subparagraph currently indicates that an applicant must provide a copy of a previously valid New Jersey lobster or fish pot license held by the applicant in one of the years from 1995 through h 31, 2002. The date of h 31, 2002 is being corrected to March 31, 2002.

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The Department is proposing to amend N.J.A.C. 7:25-18.5(g)11i(4) and (5) to eliminate the reference to N.J.A.C. 7:25-14.6(a)1iv which should have been correctly referenced as N.J.A.C. 7:25-14.16(a)1iv and which the Department is proposing to delete as discussed under N.J.A.C. 7:25-14.16 above. The Department is also proposing to amend N.J.A.C. 7:25-18.5(g)11i(4) to clarify that individuals intending to harvest lobsters by lobster pots for recreational purposes must purchase a fish and lobster pot license which allows for the use of 10 lobster pots to be fished in State waters only with a maximum harvest of six lobsters per day. Lobsters taken for recreational purposes may not be sold, offered for sale, or used for barter. These provisions currently exist at N.J.A.C. 7:25-14.16(a)1iv and are being moved to N.J.A.C. 7:25-18.5(g)11i(4) to consolidate regulations regarding the recreational harvest of lobsters by lobster pots.

The Department is proposing to amend N.J.A.C. 7:25-18.5(i) to add language consistent with that proposed at N.J.A.C. 7:25-14.19 to provide the Commissioner, with the approval of the New Jersey Marine Fisheries Council, the authority to modify certain management measures by notice to maintain consistency with any Federal fisheries management plan. The Department believes the ability provided to the Commissioner to make changes in this manner is necessary to institute changes to management measures in a timely fashion in order to ensure the State regulations remain consistent with Federal regulations.

N.J.A.C. 7:25-18.12 Commercial fishing seasons, quotas and trip limits

The Department is proposing to amend N.J.A.C. 7:25-18.12(e) to allow for the transfer of commercial shad permits to the permit holder's immediate family.

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Commercial shad permits are currently non-transferable and the Department has recently received requests to transfer permits to immediate family members. Because commercial shad permits are the only type of limited entry permit or license that is non-transferable, the Department believes that the proposed amendment is reasonable and will preserve a fishing family's ability to participate in the fishery.

The Department is proposing to amend N.J.A.C. 7:25-18.12(o) to add language consistent with that proposed at N.J.A.C. 7:25-14.19 to allow the Commissioner, with the approval of the New Jersey Marine Fisheries Council, to modify certain management measures by notice to maintain consistency with any Federal fisheries management plans or to provide for the optimal utilization of any quotas specified in this section. The Department believes the ability provided to the Commissioner to make changes in this manner is necessary to institute changes to management measures in a timely fashion in order to ensure that State regulations remain consistent with Federal regulations as well as to ensure that the objectives of the Marine Fisheries Management and Commercial Fisheries Act are achieved and that New Jersey's fishermen are provided with the ability to harvest annual quotas while protecting against the possibility of the resource being overfished.

N.J.A.C. 7:25-18.13 Striped bass bonus program

The Department is proposing to amend N.J.A.C. 7:25-18.13(b) through (f), (h), (i) and (k) through (n) in order clarify the intent of the striped bass bonus program and standardize language. Proposed major changes are as follows.

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The striped bass bonus size limit listed in N.J.A.C. 7:25-18.13(b) is proposed for repeal because it is already listed in N.J.A.C. 7:25-18.13(a) and the size limit does not need to be repeated.

Fish checking stations will no longer be identified by public notice in the New Jersey Register pursuant to proposed amendments to N.J.A.C. 7:25-18.13(b)2. Fish checking stations will be identified via a list provided to all participants in the striped bass bonus program and on the Division of Fish and Wildlife's website at www.njfishandwildlife.com pursuant to proposed amendments to N.J.A.C. 7:25-18.13(i). Applications to participate in the striped bass bonus program will also be available on the Division's website as proposed at N.J.A.C. 7:25-18.13(b)3. The Department believes that fishermen will be more familiar with the list of fish checking stations if the list is available on the Division's website or received in the mail along with the fish possession cards rather than expecting fishermen to look for the list in the New Jersey Register. In addition, fishermen will be able to easily access applications to participate in the striped bass bonus program via the Division's website.

In N.J.A.C. 7:25-18.13(e), the number of fish possession cards received by participants in the striped bass bonus program is proposed to be changed from two cards to a number determined by the Commissioner based on the available quota. Similarly, in N.J.A.C. 7:25-18.13(k), the Commissioner or designee will have the authority to determine if additional fish possession cards will be issued after a bonus striped bass is legally harvested based on the available quota. The number of cards available to fishermen needs to remain flexible to allow for yearly variations in the striped bass bonus program due to changes in the striped bass quota or budgetary and manpower constraints.

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In addition, N.J.A.C. 7:25-18.13(e) is proposed for amendment to provide that fish possession cards issued to party and charter boats cannot be sold, offered for sale or used for barter. The intent of the striped bass bonus program is to provide anglers the opportunity to harvest an extra fish; it is not intended as a way for party and charter boats to raise their fees if an angler harvests a bonus striped bass.

In N.J.A.C. 7:25-18.13(f), the Department is proposing to repeal the requirement that all fish possession cards not utilized during the calendar year must be returned to the Division of Fish and Wildlife by January 15 of the next year. This requirement serves no purpose in the administration of the striped bass bonus program. All fish possession cards are marked as valid for a particular calendar year and therefore are of no use to fishermen or the Division after the year ends.

In N.J.A.C. 7:25-18.13(h), the identification of the striped bass possession limit of three fish and the striped bass bonus size limit of 28 inches is proposed for repeal. The striped bass possession limit is defined by N.J.S.A. 23:5-45.1 and the striped bass bonus size limit is already listed in N.J.A.C. 7:25-18.13(a). These items do not need to be repeated.

The Department is proposing to amend N.J.A.C. 7:25-18.13(i) to provide that fish checking stations will be identified via a list provided to all participants in the striped bass bonus program and on the Division's website as discussed above in the summary of proposed amendments to N.J.A.C. 7:25-18.13(b)2

The Department proposes to amend N.J.A.C. 7:25-18.13(n) to provide public notice as to the number of fish possession cards that will be issued to each participant, the

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availability of additional fish possession cards and changes to the striped bass quota via a news release to individuals on the Division's outdoor writers mailing list and to all participants in the striped bass bonus program. The Department believes that public notification in this manner is the most efficient and timely method of informing fishermen regarding the administration of the striped bass bonus program. Additionally, the Department will continue to file a notice in the New Jersey Register.

The Department is proposing to amend N.J.A.C. 7:25-18.13(p) to add language consistent with that proposed at N.J.A.C. 7:25-14.19 to provide the Commissioner, with the approval of the New Jersey Marine Fisheries Council, the authority to modify certain management measures by notice to provide for the optimal utilization of any quotas specified in this section. The Department believes the expanded authority provided to the Commissioner is necessary to institute management measures in a timely fashion to decrease the possibility of quotas being underutilized and ensuring that New Jersey's fishermen have the ability to harvest annual quotas.

N.J.A.C. 7:25-18.14 Otter and beam trawls

N.J.A.C. 7:25-22.3 Taking of Atlantic menhaden for bait

The Department is proposing to amend N.J.A.C. 7:25-18.14(k) and N.J.A.C. 7:25-22.3(c) to add language consistent with that proposed at N.J.A.C. 7:25-14.19 to provide the Commissioner, with the approval of the New Jersey Marine Fisheries Council, the authority to modify certain management measures by notice in order to maintain consistency with any Federal fisheries management plan or to provide for the optimal utilization of any quota specified in these sections. The Department believes the expanded authority provided to the Commissioner is necessary to institute changes to

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management measures in a timely fashion through a notice of administrative change in order to make State regulations consistent with Federal regulations and to ensure that New Jersey's fishermen have the ability to harvest annual quotas.

Social Impact

The proposed amendments to N.J.A.C. 7:25-14.2 and 7:25-14.4 establishing a two tier commercial crab pot licensing system and allowing full transferability of commercial crab pot licenses will result in positive social impacts. The proposed amendments maintain existing crab pot limits for current license holders and individuals receiving the right to a license from an immediate family member, thereby preserving an individual's or fishing family's ability to participate in the fishery at their current levels. The proposed amendments that allow license transferability to non-family members will permit new entrants into the fishery and increase the opportunity to participate in the fishery. Tier 2 license holders that can provide proof that more than 50% of their income is derived from commercial fishing will be permitted to upgrade to a Tier 1 license, which will allow active commercial fishermen to participate in the fishery at a higher level. The proposed amendments to N.J.A.C. 7:25-14.2 and 14.20 modifying existing language to clarify that no person can remove fish, crabs or other organisms from any crab pot or pull up any crab pot which he or she does not own or is not authorized to tend and including a 12 month mandatory crab pot/trot line license revocation for violation of this provision will result in positive social impacts. The proposed amendment will provide a deterrent to violation of regulations governing the blue crab fishery and should

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lessen negative interaction between commercial crabbers by discouraging a crabber from tending someone else's crab pots.

The proposed amendments to N.J.A.C. 7:25-14.16 and 18.5 eliminating the requirement to obtain a Type D Recreational Pot Permit in addition to a fish and lobster pot license to recreationally harvest lobsters by lobster pots will result in positive social impacts. The amendments will require only a fish and lobster pot license, thus making the licensing and permitting procedure for recreational lobster potting less complicated and will allow for easier compliance.

The proposed amendment to N.J.A.C. 7:25-18.12 allowing for the transfer of commercial shad permits to immediate family members will result in positive social impacts. Commercial shad permits are currently non-transferable. The proposed amendment that allows transfers to immediate family members will provide for a fishing family's ability to continue to participate in the fishery at their current levels in the event that the family member holding the permit exits the fishery.

The proposed amendments to N.J.A.C. 7:25-14.19, 18.1, 18.5, 18.12, 18.13, 18.14 and 22.3 that provide the Commissioner, with the approval of the New Jersey Marine Fisheries Council, the authority to modify certain management measures to maintain consistency with any Federal fisheries management plan or to provide for optimal utilization of quotas in addition to maintaining compliance with Atlantic States Marine Fisheries Commission management plans will result in positive social impacts. These amendments will allow for timely changes in management measures to provide consistency in State and Federal regulations and will ensure that New Jersey's fishermen have every opportunity to harvest available quotas.

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The proposed amendment to N.J.A.C. 7:25-18.1 allowing fishermen to use the parts of one legal size summer flounder as bait will result in positive social impacts. Parts of summer flounder were traditionally used as a favorite bait by recreational summer flounder fishermen, and this amendment will allow for this traditional use to be resumed.

The proposed amendments to N.J.A.C. 7:25-18.1 clarifying that no fish less than the minimum size limit can be filleted and adding a length of 24 inches to the minimum fillet or fish part length for hybrid striped bass and striped bass will result in positive social impacts. These amendments will provide for better enforcement of size limits on vessels utilizing Special Fillet permits thus providing for better management of these resources and assuring that they will not be overfished.

The proposed amendment to N.J.A.C. 7:25-18.1 adding language to make it unlawful for any person to dispose of fish, fish parts or any other matter after any instructions, signals or other communication from an authorized law enforcement officer indicating the officer's intent to perform an inspection will result in positive social impacts. The proposed amendment will strengthen the enforcement of marine fisheries regulations, thus providing for better management of the marine resource and assuring that these resources will not be overfished.

The proposed amendments to N.J.A.C. 7:25-18.5 requiring miniature fyke net license holders to file monthly reports of their harvest will result in both negative and positive social impacts. Negative social impacts will occur as a result of additional time required to complete and file monthly reports. However, the information collected on the harvest of American eels will allow for better management of the resource, thereby

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increasing the chances for a robust population and fishermen participation in a long-term successful fishery.

The proposed amendments to N.J.A.C. 7:25-18.13 clarifying the intent of the striped bass bonus program will result in positive social impacts. The proposed amendments to allow the Commissioner to determine the number of fish possession cards available to fishermen will allow for yearly variations in the striped bass bonus program due to changes in the striped bass quota. This flexibility will ensure that the striped bass quota is not over harvested thus providing better management of the resource, while at the same time ensuring that New Jersey's fishermen have every opportunity to harvest the quota. In addition, positive social impacts will result from the proposed amendments to provide information regarding the striped bass quota, authorized fish check stations and the number of fish possession cards via the Division's website and directly to outdoor writers and participants in the striped bass bonus program, as well as retaining the requirement of publishing such notices in the New Jersey Register. Fishermen will be better informed as a result of these proposed amendments.

Economic Impact

The proposed amendments to N.J.A.C. 7:25-14.2 and 14.4 establishing a two tier commercial crab pot licensing system and allowing expanded transferability of commercial crab pot licenses will result in positive economic impacts. Currently, commercial crab pot licenses are only transferable to immediate family members. Allowing transferability to non-family members will provide commercial crabbers who want to exit the fishery an increased opportunity to sell their business. Commercial

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crabbers will be able to sell the business to any prospective buyer and then transfer the license so the buyer can participate in the fishery. Therefore, buyers will not be limited to those individuals that already have a license. This should increase the value of the business. In addition, while transfers to non-family members will result in conversion of the license to a Tier 2 license with a reduced maximum take, the proposed amendments provide that any Tier 2 license holder that can provide evidence of a greater than 50% of their income derived from commercial fishing during the previous year will be eligible to convert the Tier 2 license into a Tier 1 license. This will allow active commercial fishermen to fish more pots and increase their income from the fishery.

A slight negative economic impact will occur from the proposed two tier license fee. The commercial crab pot license fee is currently \$100.00. All current license holders will be eligible for a Tier 1 license only, with a proposed fee of \$200.00. The proposed Tier 2 license fee is \$100.00. The Department believes that the proposed two tier license fee is appropriate because Tier 1 license holders will be permitted to fish twice as many pots as a Tier 2 license holder.

The proposed amendments to N.J.A.C. 7:25-14.2 and 14.20 modifying existing language to clarify that no person can remove fish, crabs or other organisms from any crab pot or pull up any pot which they do not own or are not authorized to tend and including a 12 month mandatory crab pot/trot line license revocation for violation of this provision will not result in any economic impact to those fishermen that are operating legally in the fishery. The proposed amendments to N.J.A.C. 7:25-14.19, 18.1, 18.5, 18.12, 18.13, 18.14 and 22.3 that provide the Commissioner, with the approval of the New Jersey Marine Fisheries Council, the authority to modify certain management

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measures to maintain consistency with any Federal fisheries management plan or to provide for the optimal utilization of quotas in addition to maintaining compliance with Atlantic States Marine Fisheries Commission management plans will result in positive economic impacts. These amendments will allow for timely changes in management measures to provide consistency in State and Federal regulations and, more importantly, ensure that New Jersey's fishermen have every opportunity to harvest available quotas that have already been set at a conservative level to prevent overfishing. In 2005, New Jersey's commercial summer flounder landings were about 437,000 pounds below the annual quota and black sea bass landings were about 241,000 pounds below the annual quota. These unlanded fish were worth approximately \$1,130,000 to New Jersey's commercial fishermen. Although lower landings may have been influenced by fish availability and weather conditions, commercial landings are also constrained by management measures such as trip limits and limited landing days. Increasing trip limits and landing days may have enabled New Jersey's fishermen to increase harvest of summer flounder and black sea bass to quota levels. At present, however, the Department has no way to quickly change management measures unless they are mandated by the Atlantic States Marine Fisheries Commission. The proposed amendments will provide the Commissioner the authority to modify management measures to provide for optimal utilization of quotas and will help prevent the re-occurrence of the loss of approximately \$1,130,000 to New Jersey's commercial fishermen.

The proposed amendments to N.J.A.C. 7:25-18.1 clarifying that no fish less than the minimum size limit can be filleted, adding a 24 inch minimum fillet or fish part

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length for hybrid striped bass and striped bass, and adding language to make it unlawful for any person to dispose of fish, fish parts or any other matter after receiving any instructions from an authorized law enforcement officer will result in no economic impact to those fishermen abiding by the regulations.

The proposed amendments to N.J.A.C. 7:25-18.5 requiring miniature fyke net license holders to file monthly reports of their harvest could result in some negative economic impacts due to the cost of filing monthly reports. This impact will be minimal and should include only postage to mail the reports. All reporting forms will be provided at no cost to the fishermen.

The proposed amendment to N.J.A.C. 7:25-18.12 allowing for the transfer of commercial shad permits to immediate family members will result in positive economic impacts. Commercial shad permits are currently non-transferable. The proposed amendment that allows transfers to immediate family members will provide for a fishing family's ability to continue to receive the economic benefits of participating in the fishery in the event that the family member holding the permit exits the fishery.

The proposed amendments to N.J.A.C. 7:25-18.13 allowing the Commissioner to determine the number of fish possession cards available to fishermen will ensure that striped bass fishermen have every opportunity to participate in the fishery. This will result in positive economic impacts by providing the flexibility needed to determine the number of fish possession cards available to fishermen relative to the quota. Increased opportunity to participate in the fishery will result in economic benefits to bait and tackle stores and party and charter boats that cater to striped bass fishermen.

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Environmental Impacts

The proposed amendments to N.J.A.C. 7:25-14.2 and 14.4 establishing a two tier license system and allowing full transferability of commercial crab pot licenses will result in positive environmental impacts. Under the proposed amendments, Tier 1 license holders will be allowed to fish a maximum 600 pots in Delaware Bay and 400 pots in all other waters. Any Tier 1 license that is transferred outside of the license holder's immediate family will automatically be reduced to a Tier 2 license, allowing the license holder to fish a maximum 300 pots in Delaware Bay and 200 pots in all other waters. In addition, any individual that receives the right to a license via a lottery will be eligible for a Tier 2 license only. The Department believes that, over the long term, the two tier licensing system will result in an overall reduction in the total number of pots that the fishery can legally set and reduce the likelihood that the crab resource will be overfished. In addition, preventing inactive crabbers from immediately transferring the right to the license to an individual that will become active in the fishery by instituting minimum performance criteria prior to transfer will prevent an immediate increase in fishing effort and further reduce the likelihood of overfishing.

The proposed amendments to N.J.A.C. 7:25-14.19, 18.1, 18.5, 18.12, 18.13, 18.14 and 22.3 that provide the Commissioner, with the approval of the New Jersey Marine Fisheries Council, the authority to modify certain management measures to maintain consistency with any Federal fisheries management plan or to provide for the optimal utilization of quotas in addition to maintaining compliance with Atlantic States Marine Fisheries Commission management plans will result in positive environmental impacts. These amendments will allow for timely changes in management measures to provide

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consistency in State and Federal regulations and will ensure that harvest of fishery resources do not exceed available quotas, thus providing additional measures of protection from overfishing these resources.

The proposed amendments to N.J.A.C. 7:25-18.1 clarifying that no fish less than the minimum size can be filleted, adding a 24 inch minimum fillet or fish part length for hybrid striped bass and striped bass, and adding language to make it unlawful for any person to dispose of fish, fish parts or any other matter after any instructions from an authorized law enforcement officer will result in positive environmental impacts. These amendments will provide for better enforcement of size limits on vessels utilizing Special Fillet Permits and marine fisheries regulations in general, thus providing for better management of the marine resource and assuring that these resources will not be overfished.

The proposed amendments to N.J.A.C. 7:25-18.5 requiring miniature fyke net license holders to file monthly reports of their harvest will result in positive environmental impacts. The Atlantic States Marine Fisheries Commission has identified catch and effort data as a critical need for an accurate stock assessment for American eel. These data will help to identify the current status of the stock and provide for better management of the resource in the future.

The proposed amendments to N.J.A.C. 7:25-18.13 clarifying the intent of the striped bass bonus program as described in the summary above will result in positive environmental impacts. The proposed amendments to allow the Commissioner to determine the number of fish possession cards available to fishermen will allow for yearly variations in the striped bass bonus program due to changes in the striped bass

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quota. This flexibility will ensure that the striped bass quota is not over harvested, thus providing better management of the resource.

Federal Standard Analyses

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.

The proposed amendments to N.J.A.C. 7:25-14.2, 14.4 and 14.20 clarifying regulations pertaining to tending crab pots, creating a two tier commercial crab pot licensing and fee system, allowing transfers of commercial crab pot licenses and modifying penalties for the illegal tending of crab pots are not more stringent than Federal regulations in that there are no Federal regulations that apply to blue crabs in State waters. The management of blue crabs in State waters throughout the Atlantic coastal area is under the authority of various states. State regulation in this area is essential in order to protect, manage and conserve this state-specific fishery.

The proposed amendments to N.J.A.C. 7:25-14.16 and 18.5 eliminating the Type D Recreational Pot Permit for the recreational harvest of lobster pots and consolidating regulations regarding the recreational harvest of lobsters by lobster pots are not more stringent than Federal regulations in that there are no Federal regulations that apply to the recreational harvest of lobsters in State waters. The proposed amendments also do not modify current fishing practices in the recreational lobster fishery.

The proposed amendments to N.J.A.C. 7:25-14.19, 18.1, 18.5, 18.12, 18.13, 18.14 and 22.3 that provide the Commissioner, with the approval of the New Jersey Marine

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Fisheries Council, the authority to modify certain management measures to maintain consistency with any Federal fisheries management plan or to provide for the optimal utilization of quotas will not result in State regulations that exceed Federal standards. The proposed amendments will allow for timely changes in management measures to provide consistency between State and Federal regulations. In addition, there are no Federal regulations that apply to State quota management programs that utilize State specific seasons and trip limits to match harvest to available quotas.

The proposed amendments to N.J.A.C. 7:25-18.1 adding dolphin and hybrid striped bass to the list of common and scientific names and the lists for minimum size, open season and possession limits will not result in State regulations that are more stringent than Federal regulations. The proposed amendments do not impose any new or different limitations for dolphin and there are no Federal regulations that pertain to hybrid striped bass. In addition, the proposed amendments to N.J.A.C. 7:25-18.1 adding hybrid striped bass and striped bass to the list of species with minimum fillet or fish part lengths, specifying the length as 24 inches, permitting the parts of one legal summer flounder to be used as bait, clarifying that fish less than the minimum size cannot be filleted and making it illegal to dispose of fish after receiving communication from a law enforcement officer do not create regulations that are more stringent than Federal regulations in that there are no Federal regulations that regulate filleting or disposing of fish in State waters.

The proposed amendments to N.J.A.C. 7:25-18.5 requiring miniature fyke net license holders to file monthly reports of their harvest are not more stringent than Federal

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regulations in that there are no Federal regulations that apply to this gear type in State waters.

The proposed amendment to N.J.A.C. 7:25-18.12 allowing for the transfer of commercial shad permits to immediate family members is not more stringent than Federal regulations in that there are no Federal regulations that apply to New Jersey's commercial shad permits.

The proposed amendments to N.J.A.C. 7:25-18.13 clarifying the intent of the striped bass bonus program and standardizing language are not more stringent than Federal regulations in that there are no Federal regulations that apply to New Jersey's striped bass bonus program. The management of striped bass in State waters throughout the Atlantic coastal area is under the authority of various states. State regulation in this area is essential in order to protect, manage and conserve this state-specific fishery.

Jobs Impact

The Department has evaluated this rulemaking to determine the impact of the proposed amendments on jobs. The proposed amendments concern various marine fisheries resources at N.J.A.C 7:25-14.2, 14.4, 14.16, 14.19, 14.20, 18.1, 18.5, 18.12, 18.13, 18.14 and 22.3. The proposed amendments concern fisheries for blue crab, lobster, dolphin, shad, hybrid striped bass, striped bass and summer flounder as well as fisheries utilizing fillet permits, miniature fyke nets, and fisheries controlled by quotas or affected by Federal fisheries management plans. None of the proposed amendments will result in the generation or loss of jobs except as follows:

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The proposed amendments to N.J.A.C. 7:25-14.4 to allow full transferability of commercial crab pot licenses should result in the creation of jobs. Many individuals currently holding licenses do not participate in the fishery. Once these licenses become eligible for transfer, new participants can enter the fishery thereby increasing the number of jobs supported by the fishery.

The proposed amendments to N.J.A.C. 7:25-14.20 and 18.5 to include mandatory license suspension or revocation for violation of certain provisions of these sections will not result in a loss of jobs for those fishermen that comply with the regulations.

The proposed amendments to N.J.A.C. 7:25-14.19, 18.12, 18.13, 18.14 and 22.3 that provide the Commissioner the authority to modify certain management measures to provide for the optimal utilization of quotas could result in the creation of jobs. The proposed amendments will increase the possibility that quotas will be fully utilized by New Jersey's fishermen. Maximizing landings in the fishing industry should maximize jobs.

The proposed amendment to N.J.A.C. 7:25-18.12 allowing for the transfer of commercial shad permits to immediate family members will prevent the loss of jobs. Currently, commercial shad permits are non-transferable. Once a permit holder exits the fishery, the permit is no longer valid for any other family member to continue to participate in the fishery. The proposed amendment will allow continued participation by other family members in the shad fishery and preserve jobs.

Agriculture Industry Impact

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Pursuant to N.J.S.A. 52:14B-4(a)2, the Department has evaluated this rulemaking to determine the nature and extent of the proposed amendments impact on the agriculture industry. The proposed amendments apply solely to the marine fishing industry and will have no impact upon the agriculture industry.

Regulatory Flexibility Analysis

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has reviewed the proposed amendments for reporting, recordkeeping or other compliance requirements on small businesses. The proposed amendments apply to commercial fishermen and party boats owners that utilize fillet permits. Most of these fishermen would qualify as small businesses under the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et. seq. None of the proposed amendments will require additional reporting, recording keeping or other compliance requirements, except as follows:

Proposed amendments to N.J.A.C. 7:25-14.4 and 18.12 expand the transferability of commercial crab pot licenses and commercial shad permits. The proposed rules do impose additional requirements on small businesses that participate in these fisheries by requiring the submission of transfer applications. These requirements only apply to those fishermen applying to transfer a license or permit.

Proposed amendments to N.J.A.C. 7:25-14.4 concerning commercial crab pot licenses allow for Tier 2 license holders to obtain the right to a Tier 1 license upon providing proof that greater than 50 percent of their income from the previous year was received from commercial fishing. Proof includes submission of the applicant's Federal

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income tax return and a notarized Federal IRS Form 4506-T providing the Department the authority to verify proof of income. The proposed rule does impose additional requirements on small businesses that participate in the commercial blue crab fishery by requiring these forms, but these requirements only apply to those fishermen applying to upgrade to a Tier 1 license. Proposed amendments to N.J.A.C. 7:25-18.5 require miniature fyke net license holders to file monthly reports of their harvest. The proposed rule does impose additional requirements on small businesses that participate in the miniature fyke net fishery by requiring these monthly reports. However, the proposed amendments will not result in the need to hire outside assistance to comply with the submission of forms or the reporting requirement.

In developing this rule proposal, the Department has balanced the need to protect and preserve marine resources against the economic impact of the proposed rule on small businesses that participate in the commercial crab pot, shad or miniature fyke net fisheries and has determined that to minimize the impact of the rule would endanger the protection and conservation of the marine resource. Therefore, no exemption from coverage for small businesses is provided.

Smart Growth Impact

Executive Order No. 4(2002) requires State agencies which adopt, amend or repeal any rule adopted pursuant to N.J.S.A. 52:14B-4(a) of the Administrative Procedure Act, to describe the impact of the proposed rule on the achievement of smart growth and implementation of the New Jersey State Development and Redevelopment Plan (State Plan). The Department has evaluated this rulemaking to determine the nature and extent

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of the proposed amendments impact on smart growth and the implementation of the State Plan. The proposed amendments concerning various marine fisheries provisions at N.J.A.C. 7:25-14.2, 14.4, 14.16, 14.19, 14.20, 18.1, 18.5, 18.12, 18.13, 18.14 and 22.3 do not involve land use policies or infrastructure development and, therefore, will not have any impact on the achievement of smart growth. The amendments are intended to conserve the State's natural resources, which is one of the overall goals of the State Plan. Accordingly, the conservation of the fisheries resource is supportive of the goals of the State Plan.

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

SUBCHAPTER 14. CRAB AND LOBSTER MANAGEMENT

7:25-14.2 Use of crab pots and trot lines

(a) (No change.)

(b) No person shall cut or break the lines or otherwise tamper with or damage in any way, any pot, trot line or buoy, **or remove fish, crabs or other organisms from any pot or pull up any pot** which he **or she** does not own or is not authorized to tend.

(c) – (d) (No change.)

(e) No **Tier 1 commercial crab pot/trot line** license holder shall fish more than 600 crab pots in Delaware Bay nor more than 400 crab pots in all other waters. **No Tier 2 commercial crab pot/trot line license holder shall fish more than 300 crab pots in Delaware Bay nor more than 200 crab pots in all other waters.**

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(f) - (g) (No change.)

7:25-14.4 Commercial licenses for crab pots/trot lines and crab dredges

(a) No individual shall take or attempt to take crabs by any means for the purpose of sale or barter without having in his or her possession his or her valid commercial crab pot/trot lines or crab dredge license issued by the Division pursuant to N.J.S.A. 23:5-35.2. A Delaware Bay commercial crab dredge license is valid to harvest crabs only within that portion of the "Delaware Bay" defined at N.J.A.C. 7:25-14.1 as part of the "crab dredge area." An Atlantic Coast commercial crab dredge license is valid to harvest crabs in all areas defined at N.J.A.C. 7:25-14.1 as the "crab dredge area" except [that] the area defined as the "Delaware Bay."

1. To be eligible for a commercial crab pot license, the applicant must provide a copy of a previously valid commercial crab pot license held by the applicant from the previous year. **Effective {the effective date of this amendment}, there shall be two types of commercial crab pot licenses: Tier 1 and Tier 2. On renewal of a valid commercial crab pot license issued prior to {the effective date of this amendment}, the licensee shall receive a Tier 1 license. Thereafter, Tier 1 license holders shall be eligible to renew the Tier 1 license. Holders of a Tier 2 license established in accordance with 2i or 7 below shall be eligible to only renew the Tier 2 license, except as follows:**

i. Tier 2 license holders shall be eligible to apply for a Tier 1 license after holding the Tier 2 license for at least one year and upon providing proof that

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greater than 50 percent of their earned income from the previous year was received from commercial fishing.

ii. Proof of income shall include a copy of the applicant's Federal income tax return and a notarized Federal IRS Form 4506-T providing the Department the authority to verify proof of income.

iii. Falsification or misrepresentation of any information on the application shall result in the denial of the application in addition to any civil or criminal penalties prescribed by law.

2. No additional crab pot licenses will be issued until the **total** number of licenses issued decreases below the number issued in 1991 (312 licenses).

i. When additional licenses are available, unsuccessful applicants from the previous lottery will be given the first right to the license provided they purchase a license within 30 days of being notified by the Department. Notification by the Department shall be by first class mail. It is the responsibility of the applicant to provide the Department with written notification of any change in mailing address. **Each applicant shall also annually confirm that he/she wants to remain on an existing lottery list. Confirmation shall be made by letter, postmarked between January 1 and January 31 and sent to the Department at the following address:**

Department of Environmental Protection

Division of Fish and Wildlife

Crab Pot Lottery List Confirmation

P.O. Box 418

Port Republic, NJ 08241

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Failure to send confirmation to the Department as provided above shall result in the removal of the applicant from the lottery list without the Department giving notice

to the applicant. Once a lottery list is exhausted, the Department shall notify commercial docks and fishing organizations as to the availability of licenses. Applications for a license shall be available from the Department[;],_ and successful applicants shall be chosen by lottery, if necessary, from all completed applications received by the Department. **Applicants receiving the right to a license through any lottery shall be eligible for a Tier 2 license.**

3. (No change.)

4. No additional Atlantic Coast commercial crab dredge licenses will be issued until the number of licenses issued decreases below [the number issued in 1993 plus 20 percent (338) **250** licenses []]. When additional licenses are available, the Department will issue available licenses pursuant to (a)2i above.

5. – 6. (No change.)

7. [Commercial crab pot and crab dredge licenses are non-transferable except that] The holder of a valid **commercial crab pot or crab dredge** license not pending revocation due to the violation of provisions of this subchapter may transfer the right to the license at any time to the license holder's spouse, father, mother, son, daughter, brother or sister upon application to the Division. **The holder of a valid commercial crab pot license not pending revocation due to the violation of provisions of this subchapter may transfer the right to the license to any individual upon application to the Division once the combined number of Tier 1 and Tier 2 licenses issued decreases to 312 or below. The holder of a valid commercial crab pot license**

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transferring the right to the license to someone other than the license holder's spouse, father, mother, son, daughter, brother or sister must have landed a minimum of 50 bushels of hard crabs or 500 peeler or shedder crabs in at least three of the five years immediately preceding the license transfer application as determined by monthly harvest reporting forms required by N.J.A.C. 7:25-14.12. Individuals receiving the right to a commercial crab pot license through a transfer from someone other than the individual's spouse, father, mother, son, daughter, brother or sister shall be eligible for a Tier 2 license. The new licensee shall have a

license issued in their name after payment of the fee specified at (a) 8 below.

8. The license fee for New Jersey residents shall be **\$200.00 for a Tier 1 commercial crab pot/trot line license**, \$100.00 for a **Tier 2** commercial crab pot/trot line license, \$100.00 for a Delaware Bay commercial crab pot dredge license and \$100.00 for an Atlantic Coast commercial crab dredge license. The license fee for non-residents will be the same as that for a resident if a New Jersey fisherman can obtain a license to harvest crabs in the state of residence of the non-resident applicant for the same fee as a resident of that state. Otherwise, the non-resident license fee shall be an amount equal to five times the [\$100.00] New Jersey resident license fee. All licenses shall expire on December 31 of the calendar year for which they were issued.

9. (No change.)

(b) – (f) (No change.)

7:25-14.16 Eligibility for lobster pot permit and pot allocation

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(a) As of December 31, 2001, a vessel shall not land lobster harvested by a lobster pot unless such vessel is in the possession of a valid New Jersey Lobster Pot Permit issued in the name of the vessel and owner, **except as provided for at N.J.A.C. 7:25-18.5(g)11(4).**

1. To be eligible for a Type A, B, C and F Lobster Pot Permit allowing the use or possession in Federal and/or State waters of an allotted number of lobster pots as defined under N.J.A.C. 7:25-18.5(g)11, a complete application, including the required documentation, must be received by the Department no later than December 31, 2001. To be eligible for a Type E Lobster Pot Permit allowing the use or possession in Federal and/or State waters of an allotted number of lobster pots as defined under N.J.A.C. 7:25-18.5(g)11, a complete application, including the required documentation, must be received by the Department no later than December 31, 2002. Applications may be mailed to:

New Jersey Lobster Pot Permit

Nacote Creek Research Station

PO Box 418

Port Republic, NJ 08241

i.-iii (No change.)

[iv. For a Type D Recreational Pot Permit, the applicant must purchase a New Jersey Lobster or Fish Pot License.

(1) A Type D Recreational Lobster Pot permittee shall receive an allocation for 10 lobster pots to be fished in State waters only and limited to six lobsters per person per day.

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(A) Lobsters taken under provisions of a Type D Recreational Pot Permit may not be sold, offered for sale or used for barter.

(B) An applicant for a Type D Recreational Pot Permit will be exempt from qualifying criteria and application deadline as established under this paragraph and (a)2 through 11 below.]

Recodify existing v. – vi. as iv. – v. (No change in text.)

2. – 7 (No change.)

8. The owner of a vessel permitted pursuant to this subsection may transfer his or her Lobster Pot Permit, upon application to the Department as follows:

i. – iii. (No change.)

iv. No permit shall be transferred without the prior approval of the Department, based upon satisfaction of (a) [7] **§** i through iii above.

9. – 11. (No change.)

7:25-14.19 Administrative notice

The Commissioner, with the approval of the New Jersey Marine Fisheries Council, may modify minimum or maximum size limits, pot and trap limits, trip limits, **quotas** and possession limits in this [section] **subchapter** by notice in order to maintain compliance with any fishery management plan approved by the Atlantic States Marine Fisheries Commission pursuant to 16 U.S.C. § 5104(b), **or Mid-Atlantic Fishery Management Council plan adopted by the National Marine Fisheries Service. The Commissioner, with the approval of the New Jersey Marine Fisheries Council, may modify minimum or maximum size limits, pot and trap limits, trip limits and possession limits in this subchapter by notice in order to provide for the optimal**

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utilization of any quotas specified in this subchapter. The Commissioner will review the catch rate for a particular species in relation to the season quota and if harvest data indicate that upward adjustments in harvest control measures are warranted to maximize utilization of the available quota within a specific season for a specific fishery, the Commissioner may make the above specified control measures to achieve optimal utilization of the total allowable catch. The Department shall publish notice of any such modification by filing and publishing a notice of administrative change in the New Jersey Register and a notice in the Division's commercial regulation publication. All such notices shall be effective when the Department files the notice with the Office of Administrative Law or as specified otherwise in the notice.

7:25-14.20 Penalties

(a) – (e) (No change.)

(f) Any person dredging crabs outside of the “crab dredge area” or dredging crabs on unauthorized marked leased shellfish grounds pursuant to N.J.A.C. 7:25-14.7(b) **or damaging or tampering with gear in violation of N.J.A.C. 7:25-14.2(b)** shall be subject to the penalties provided by N.J.S.A. 23:2B-14 in addition to a mandatory 12 month crab dredge **or crab pot/trot line** license privilege revocation and seizure of the entire catch in possession. The commercial licensee shall be held liable and subject to license privilege revocation and catch seizure for violations actually committed by an agent based upon the apparent authority of the agent to act for his or her principal.

(g) – (k) (No change.)

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SUBCHAPTER 18. MARINE FISHERIES

7:25-18.1 Size, season and possession limits

(a) For the purpose of this subchapter, the following common names shall mean the following scientific name(s) for a species or group of species, except as otherwise specified elsewhere in this subchapter.

<u>Common Name</u>	<u>Scientific Name</u>
• • •	
<u>Dolphin</u>	<u>Coryphaena hippurus</u>
• • •	
<u>Hybrid striped bass</u>	<u>Morone saxatilis x Morone spp.</u>
• • •	

(b) A person shall not purchase, sell, offer for sale, or expose for sale any species listed below less than the minimum length, measured in inches, except as may be provided elsewhere in this subchapter, and subject to the specific provisions of any such section. Any commercially licensed vessel or person shall be presumed to possess the following species for sale purposes and shall comply with the minimum sizes below. Fish length shall be measured from the tip of the snout to the tip of the tail (total length), except as noted below.

<u>Species</u>	<u>Minimum Size (inches)</u>
• • •	
<u>Dolphin</u>	<u>No Limit</u>

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1.-3. (No change.)

(c) A person angling with a hand line or with a rod and line or using a bait net or spearfishing shall not have in his or her possession any species listed below less than the minimum length, nor shall such person take in any one day or possess more than the possession limits as provided below, nor shall such person possess any species listed below during the closed season for that species. Exceptions to this section as may be provided elsewhere in this subchapter shall be subject to the specific provisions of any such section. Fish length shall be measured from the tip of the snout to the tip of the tail (total length), except as noted below:

<u>Species</u>	<u>Minimum Size in Inches</u>	<u>Open Season</u>	<u>Possession Limit</u>
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•••

<u>Dolphin</u>	<u>No Limit</u>	<u>Jan. 1 – Dec. 31</u>	<u>No Limit</u>
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•••

<u>Hybrid striped bass</u>	<u>Refer to N.J.S.A 23:5-45.1</u>		
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•••

1. – 3. (No change.)

(d) (No change.)

(e) Except as provided in **2 and** (f) below, a person shall not remove the head, tail or skin, or otherwise mutilate to the extent that its length or species cannot be determined, any species with a minimum size limit specified at (b) or (c) above or any other species of flatfish, or possess such mutilated fish, except after fishing has ceased and such species

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have been landed to any ramp, pier, wharf or dock or other shore feature where it may be inspected for compliance with the appropriate size limit.

1. (No change.)

2. **A person may use parts of one legal sized summer flounder as bait. The carcass of the fish minus the fillets, commonly known as the rack, of the summer flounder used must be retained by the person and counted as part of the person's daily bag limit for that day. The rack shall be kept fully intact so it can be measured for minimum size limit. One summer flounder caught on the person's current fishing trip can be used for this purpose. No parts of fish caught on previous fishing trips shall be in possession. No other species of flat fish or fish listed under N.J.A.C. 7:25-18.1 (b) or (c) shall be used for this purpose.**

(f) Special provisions applicable to a Special Fillet Permit are as follows:

1. – 2. (No change.)

3. The Special Fillet Permit shall be subject to the following conditions:

i. – iv. (No change.)

v. No **fish of any species less than the minimum size limit specified in (c) above shall be filleted and no** fillet of any species listed below shall have the skin removed and no fillet shall be less than the minimum length in inches specified below.

<u>Species</u>	<u>Minimum Fillet or Part Length</u>
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• • •

<u>Hybrid striped bass</u>	<u>24</u>
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Striped bass

24

•••

vi. – ix. (No change.)

(g) Any person violating the provisions of (b), (c), (d) [,] **or** (e) [or (f)] above shall be liable to a penalty of \$30.00 for each fish taken or possessed. Each fish taken or possessed shall constitute an additional separate and distinct offense.

(h) - (o) (No change.)

(p) The Commissioner, with the approval of the New Jersey Marine Fisheries Council, may modify the fishing seasons, minimum size limits and possession limits specified in this section by notice in order to maintain and/or to come into compliance with any fishery management plan approved by the Atlantic States Marine Fisheries Commission pursuant to 16 U.S.C. § 5104(b) **or to maintain consistency with any Mid-Atlantic Fishery Management Council plan adopted by the National Marine Fisheries Service.** The Department shall publish notice of any such modification in the New Jersey Fish and Wildlife Digest and the New Jersey Register, and shall submit a news release to individuals on the Division outdoor writers' mailing list.

(q) All persons aboard any fishing vessel subject to this rule shall immediately comply with instructions and signals issued by a conservation officer, a marine police officer or other law enforcement officer to facilitate safe boarding and inspection of the vessel, its gear, equipment, and catch for the purpose of enforcement of this rule. **After any instructions, signals or other communication from an authorized law enforcement officer indicating the officer's intent to perform an inspection, it shall be unlawful for any person to dispose of fish, fish parts or any other matter in any**

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manner until such time as the inspection is complete. Violation of this provision

shall subject the violator to the penalties established pursuant to N.J.S.A. 23:2B-14.

(r) (No change.)

7:25 – 18.5 General net regulations

(a)– (f) (No change.)

(g) Individuals intending to take fish with a net in the marine waters of this State pursuant to N.J.S.A. 23.5-24.2 shall, as required, apply to the Commissioner for a license and/or permit. To be eligible for a gill net license in 2003, an applicant must provide a copy of a previously valid New Jersey gill net license held by the applicant between January 1, 1997 and July 13, 2000. Individuals may purchase the greatest number of each type of gill net license they held in any one calendar year between January 1, 1997 and July 13, 2000. To be eligible for a gill net license in all subsequent years, an applicant must provide a copy of a previously valid gill net license held by the applicant from the preceding year. Individuals must purchase the maximum number of gill net licenses to which they are entitled annually. Any licenses not purchase will be forfeited. The holder of a valid gill net license not pending revocation or court action due to violation of provisions of this subchapter may transfer the right to purchase all of the gill net licenses he **or she** is entitled to purchase to another individual at any time, upon notification to the Department. The new licensee shall have a license(s) issued in his or her name after payment of the fee specified in (g)5vi or (g)6ix below. Any licenses not purchased by the new entrant will be forfeited. Individuals who applied to the gill net delayed entry program prior to July 13, 2000 and who obtained gill net licenses after the

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July 13th control date in 2000 or in 2001 or who obtained gill net licenses or are eligible to obtain gill net licenses in 2002, will be restricted to purchase a maximum of two drifting and/or six staked or anchored gill net licenses. Any licenses not purchased in any year will be forfeited. Availability of Delaware Bay Gill Net Permits shall be determined pursuant to N.J.A.C. 7:25-18.6 through 18.11. Upon receipt of the application, and the prescribed license fee, the Commissioner may, in his or her discretion, issue single season licenses and/or permits as specified for each net type for the taking of fish with nets only as follows:

1. – 2. (No change.)

3. Miniature fyke or pots shall only be used for the taking of catfish, suckers, killifish (Cyprinodontidae) and eels. The mesh of this net type shall be no smaller than three sixteenth inches bar, inside measurement. The net type shall not have leaders or wings and shall not exceed 16 inches in diameter if cylindrical or 201 square inches in cross section if any other configuration in any of the marine waters of this State.

i.-iv. (No Change.)

v. All persons holding a miniature fyke net license shall keep, on forms provided by the Division, accurate records of their catch and effort using that gear, including name, amount of gear used, fishing time, area fished, species caught, total amount of each species taken, and any other data required by the Division that is relevant to the management of the fishery. These forms shall be completed for all fishing activity with miniature fyke nets for the months of January through

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December, inclusive; signed by the licensee attesting to the validity of the information; and filed within 10 days following the end of the reported month with the Division at the address shown on the reporting form. Said filing must be current before a license for miniature fyke nets is issued for the subsequent year. If there was no harvest for a given month, a report to that effect shall be submitted to the Division. Failure to file on or before the 10th of the month following the month of record may lead to suspension or permanent revocation of said license by the Department according to the following schedule:

(1) First offense: no suspension

(2) Second offense: 120 days suspension; and

(3) Third offense: permanent revocation;

vi. Prior to suspension or revocation of the license, the licensee shall have the opportunity to request a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

4.-10. (No change.)

11. Lobster or fish pots may be used for the taking of all species except those specifically protected [and] pursuant to the specific requirements of N.J.A.C. 7:25-14.3 through 14.20 and shall be used only in the Atlantic Ocean, Delaware Bay, Raritan Bay and Sandy Hook Bay except as provided in (g)11ix below.

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i. To be eligible for a lobster or fish pot license in 2003, an applicant must provide a copy of a previously valid New Jersey lobster or fish pot license held by the applicant in one of the years from 1995 through [h] **March** 31, 2002. To be eligible for a lobster or fish pot license in all subsequent years, an applicant must provide a copy of a previously valid lobster or fish pot license held by the applicant from the preceding year.

(1) – (3) (No change.)

(4) [Applicants for] **Individuals intending to harvest lobsters by lobster pots for recreational purposes must purchase** a fish and lobster pot license [to recreationally take lobster pursuant to N.J.A.C. 7:25-14.6(a)1iv shall be exempt from this subsection]. **Individuals holding a** [F]fish and lobster pot license[s] issued [pursuant to N.J.A.C. 7:25-14.6(a)1iv for 2003 and subsequent years] **for the recreational harvest of lobster shall receive an allocation for 10 lobster pots to be fished in State waters only and** shall [be used only for the purpose of] **not** harvest[ing not] more than six lobsters per license per day. **Lobsters taken under the provisions of a fish and lobster pot license for recreational purposes may not be sold, offered for sale or used for barter.**

(5) Fish and lobster pot[s] **licenses** issued [pursuant to N.J.A.C. 7:25-14.6(a)1iv] **for the recreational harvest of lobster** shall not be included in the total of fish and lobster pot licenses identified in (g)11i(1) above.

ii.- xi. (No change.)

12. (No change.)

(h) (No change.)

(i) The Commissioner, with the approval of the New Jersey Marine Fisheries Council, may modify seasons, mesh sizes, maximum net lengths, species allowed to be

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harvested by specific gear types, escape vent sizes, ghost panel sizes and acceptable materials for fastening ghost panels to pot and traps specified in this section, by notice in order to maintain and/or to come into compliance with any fishery management plan approved by the Atlantic States Marine Fisheries Commission pursuant to 16 U.S.C. § 5104(b) **or to maintain consistency with any Mid-Atlantic Fishery Management Council plan adopted by the National Marine Fisheries Service.**

(j)– (m) (No change.)

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

(a)– (d) (No change.)

(e) The following provisions are applicable to the commercial harvest of shad:

1.- 8. (No change.)

9. Shad Commercial Net Permits and Shad Incidental Harvest Permits are non-transferable **except that the holder of a valid permit not pending suspension or revocation may transfer the right to the permit at any time to the permit holder's spouse, father, mother, son, daughter, brother or sister upon application to the Department.**

10. – 13. (No change.)

(f)– (n) (No change.)

(o) The Commissioner, with the approval of the New Jersey Marine Fisheries Council, may modify quotas, trip limits and/or seasons specified in the section, by notice in order to maintain and/or to come into compliance with any fishery management plan approved by the Atlantic States Marine Fisheries Commission pursuant to 16 U.S.C. §

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5104(b), to maintain consistency with any Mid-Atlantic Fishery Management Council plan adopted by the National Marine Fisheries Service. The Commissioner, with the approval of the New Jersey Marine Fisheries Council, may modify trip limits and/or seasons specified in this section by notice in order to provide for the optimal utilization of any quotas specified in this section. The Commissioner will review the catch rate for a particular species in relation to the season quota and if harvest data indicate that upward adjustments in harvest control measures are warranted to maximize utilization of the available quota within a specific season for a specific fishery, the Commissioner may take the above specified control measures to achieve optimal utilization of the total allowable catch. The Department shall publish notice of any such modification in the New Jersey Register.

(p)– (s) (No change.)

7:25 – 18.13 Striped bass bonus program

(a) (No change.)

(b) Any person intending to take one “**bonus sized**” striped bass [measuring not less than 28 inches in length], as defined in (a) above, in addition to his or her striped bass possession limit as specified at N.J.S.A. 23:5-45.1 shall apply to the Division [for “fish possession cards”] to participate in the striped bass bonus program.

Applications may be obtained from the following:

1. (No change.)
2. Fish checking stations, as authorized by the Division and identified [by public notice in the New Jersey Register] pursuant to (i) below.

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**3. On the Division of Fish and Wildlife's website at
www.njfishandwildlife.com**

(c) (No change.)

(d) Applications [for fish possession cards will be accepted for participation] **to participate** in the **striped bass** bonus [fish] program [and] **shall be** processed in order of receipt by the Division.

(e) Successful applicants will receive [two, color coded] non-transferable fish possession cards, **the number to be determined by the Commissioner or his or her designee based on the available quota and the number of applicants.** One card shall be filed out completely and the month and day numbers perforated immediately upon retention of **a** bonus [fish] **striped bass.** A finite number of cards shall be available to participating party and charter boat captains in the name of the vessel and owner. **Fish possession cards issued to party and charter boats are for the use of patrons on that vessel and shall not be sold, offered for sale or used for barter.**

(f) Fish possession cards shall be valid in the calendar year for which they were issued except during those periods in which the Department has closed the State's waters to harvesting as provided at (l) below. [All fish possession cards not utilized during the calendar year shall be returned to the address at (b) above by January 15 of the next subsequent calendar year.]

(g) (No change.)

(h) A person shall not have in his or her possession at any time more than [three] **the number of** striped bass **provided for in N.J.S.A. 23:5-45.1,** [of which two] **nor** shall **such striped bass** be [not] less than the size provided for in N.J.S.A. 23:5-45.1. [and the

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other] **One additional striped bass may be possessed and** shall not be less than [28 inches in length] **the size defined in (a) above.** [and s]Said person shall have a properly completed and legal fish possession card, as provided for at (e) above.

(i) Any striped bass taken under this section may be transported to an authorized fish check station by the person who caught the fish on the day so taken. **A list of authorized fish check stations shall be provided to all participants in the striped bass bonus program by the Division via first class mail along with the fish possession cards. Fish check stations shall also be listed on the Division's website at www.njfishandwildlife.com.** A person shall not present for registration or permit to be registered in his or her name a striped bass which he or she did not catch. Any person who legally takes a striped bass under this section and who cannot arrive at a fish check station shall immediately mail his or her [bonus] **fish possession** card to the address presented at (b) above.

(j) (No change.)

(k) An additional fish possession card [shall] **may** be provided to the angler **as determined by the Commissioner or his or her designee based upon the available remaining quota and the number of applicants** upon recording of his or her prior legally harvested bonus striped bass at an authorized fish check[ing] station or via mail as presented at (i) above, provided the season has not been closed pursuant to (l) below.

(l) When, at any time during the calendar year, the Division has projected that the quota established by the Atlantic States Marine Fisheries Commission for striped bass will have been harvested, the Division will close the State's waters to any further harvesting upon two days public notice by distribution of a news release to individuals on

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the Division outdoor writers mailing list **and via the Division's website at www.njfishandwildlife.com**. A notice shall also be published in the New Jersey Register.

(m) (No change.)

(n) Upon promulgation of any change in the quota discussed in (l) above, the Division will provide public notice in the New Jersey Register and by distribution of a news release to individuals on the Division outdoor writers mailing list. **The Division will provide public notice via a news release to individuals on the Division outdoors writers mailing list and to all participants in the striped bass bonus program as to the number of fish possession cards that will be issued to each participant pursuant to (e) above, the availability of additional fish possession cards pursuant to (k) above, and changes to the quota described in (l) above.**

(o) (No change.)

(p) The Commissioner, with the approval of the New Jersey Marine Fisheries Council, may modify the size limit, bag limit, season and/or quota specified in this section, by notice in order to maintain and or to come into compliance with any quotas specified in this section. The Commissioner will review the catch rate in relation to the season quota and if harvest data indicate that upward adjustments in harvest control measures are warranted **to maximize utilization of the available quota within a specific season for a specific fishery, the Commissioner may make the above specified control measures to achieve optimal utilization of the total allowable catch.** The Department shall publish notice of any such notice in the Division's of Fish and Wildlife Digest publication and the New Jersey Register.

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7:25 – 18.14 Otter and beam trawls

(a)– (j) (No change.)

(k) The Commissioner, with the approval of the New Jersey Fisheries Council, may modify quotas, mesh sizes, minimum size limits, seasons, trip limits, by-catch allocations and the amount of fish that shall constitute a directed fishery specified in this section by notice in order to maintain compliance with any fishery management plan approved by the Atlantic States Marine Fisheries Commission pursuant to 16 U.S.C. 5104(b) **,or to maintain consistency with any Mid-Atlantic Fishery Management Council plan adopted by the National Marine Fisheries Service. The Commissioner, with the approval of the New Jersey Marine Fisheries Council, may modify mesh sizes, minimum size limits, seasons, trip limits, by-catch allocations and the amount of fish that shall constitute a directed fishery in this section by notice in order to provide for the optimal utilization of any quotas specified in this section.** The Commissioner will review the catch rate for a particular species **in relation to the season quota and if harvest data indicate that upward adjustments in harvest control measures are warranted to maximize utilization of the available quota within a specific season for a specific fishery, the Commissioner may make the above specified control measures to achieve optimal utilization of the total allowable catch.** The Department shall publish notice of such modification by filing and publishing in the New Jersey Register and in the Division’s commercial regulation publication. All such notices shall be effective when the Department files the notice with the Office of Administrative Law or as specified otherwise in the notice.

(l) – (q) (No change.)

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SUBCHAPTER 22. FISHERY MANAGEMENT IN NEW JERSEY

7:25-22.3 Taking of Atlantic menhaden for bait

(a)– (b) (No change.)

(c) The Commissioner, with the approval of the New Jersey Marine Fisheries Council, may modify the annual quota or seasons specified in this subchapter by notice in order to maintain consistency with any fishery management plan approved by the Atlantic States Marine Fisheries Commission pursuant to 16 U.S.C. § 5104(b) **,or to maintain consistency with any Mid-Atlantic Fishery Management Council plan adopted by the National Marine Fisheries Service. The Commissioner, with the approval of the New Jersey Marine Fisheries Council, may modify the seasons specified in this subchapter. The Commissioner will review the catch rate in relation to the seasonal quota and if harvest data indicate that upward adjustments in harvest control measures are warranted to maximize utilization of the available quota within a specific season for a specific fishery, the Commissioner may make the above specified control measures to achieve optimal utilization of the total allowable catch.** The Department shall publish notice of any such modification by filing and publishing in the New Jersey Register and in the Division's commercial regulation publication. All such notices shall be effective when the Department files the notice with the Office of Administrative Law or as specified otherwise in the notice.