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## **ENVIRONMENTAL PROTECTION**

### **DIVISION OF FISH AND WILDLIFE**

#### **Marine Fisheries**

#### **Sharks and Smooth Dogfish**

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

**Authorized By:** Bob Martin, Acting 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:** 01-10-03/747

**Proposal Number:** PRN 2010 -063

A **public hearing** concerning this proposal will be held on Thursday, May 13, 2010 at 6:30 P.M. following the New Jersey Marine Fisheries Council meeting at:

Galloway Township Public Library  
306 E. Jimmie Leeds Road  
Absecon, New Jersey 08205

Submit written comments by June 4, 2010 to:

Gary J. Brower, Esq.

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Attn: DEP Docket Number: 01-10-03/747

Office of Legal Affairs

Department of Environmental Protection

401 East State Street, Floor 4

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. Submittals on disk or CD must not be access-restricted (locked or read-only) in order to facilitate use by the Department of the electronically submitted comments. 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 applicable N.J.A.C. citation, with the commenter's name and affiliation following the comment.

The agency proposal follows:

### **Summary**

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 Division of Fish and Wildlife Rules (rules), N.J.A.C. 7:25, govern the management and harvest of fish and wildlife within the State. The Department is proposing to amend portions of the rules regarding Marine Fisheries at N.J.A.C. 7:25-18.

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The proposal includes amendments related to fisheries for Atlantic coastal sharks and smooth dogfish. The proposed amendments regarding recreational and commercial fisheries for Atlantic coastal sharks reflect the management measures mandated under the Atlantic States Marine Fisheries Commission (ASMFC) Interstate Fishery Management Plan for Atlantic Coastal Sharks, which contains an implementation date of January 1, 2010. The smooth dogfish is also included in the ASMFC Interstate Fishery Management Plan for Atlantic Coastal Sharks.

A description of the proposed amendments follows:

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

N.J.A.C. 7:25-18.1 contains size, season and possession limits for various marine species. The Department is proposing various amendments to N.J.A.C. 7:25-18.1 affecting the Atlantic coastal shark and smooth dogfish fisheries.

All amendments the Department is proposing at N.J.A.C. 7:25-18.1(a), (b), (c), (d), and (e) pertaining to the commercial and recreational regulation of coastal sharks and smooth dogfish are to reflect the management measures mandated under the ASMFC Interstate Fishery Management Plan for Atlantic Coastal Sharks. States included within the area covered by the ASMFC Interstate Fishery Management Plan for Atlantic Coastal Sharks are required to maintain consistency with the plan. If the state does not maintain consistency, it may be subjected to a Federally mandated moratorium imposed on the state's recreational and commercial shark fisheries.

The Department is proposing to amend N.J.A.C. 7:25-18.1(a) to delete several species from the Shark Large Coastal group, Small Coastal group, and Pelagic group.

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Species proposed for removal include the bignose shark, Caribbean reef shark, dusky shark, Galapagos shark, narrowtooth shark, night shark, sandbar shark, Atlantic angel shark, Caribbean sharpnose shark, smalltail shark, bigeye sixgill shark, sevengill shark, sixgill shark, longfin mako shark, and the bigeye thresher shark. All species deleted from each of these shark groups, except for the sandbar shark, are now defined as prohibited species in proposed N.J.A.C. 7:25-18.1(d), and may not be taken, possessed, landed, purchased, sold or offered for sale by any individual. Sandbar shark is defined as a Research Only species in the ASMFC Interstate Fishery Management Plan for Atlantic Coastal Sharks. In addition, the silky shark is listed as a prohibited species in proposed N.J.A.C. 7:25-18.1(d) for recreational anglers only because the ASMFC Interstate Fishery Management Plan for Atlantic Coastal Sharks states that recreational anglers are prohibited from possessing any shark species that is illegal to catch or land by recreational anglers in Federal waters. The silky shark is a prohibited species in the Federal recreational shark fishery in 2010.

Species are listed by both common and scientific name at N.J.A.C. 7:25-18.1(a) because in subsequent sections where size, season and possession limits are discussed, the common names of species are used. This provision eliminates any confusion surrounding common names by specifically defining the scientific name for each species. Since prohibited species have no allowable size, season and possession limits, they are removed from N.J.A.C. 7:25-18.1(a) and included, with both common and scientific name, in the list of prohibited species at N.J.A.C. 7:25-18.1(d). The silky shark is not removed from N.J.A.C. 7:25-18.1(a) since it can be harvested in the commercial fishery.

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The silky shark is, however, listed as a prohibited species at N.J.A.C. 7:25-18.1(d) with the notation, recreational fishery only.

The Department is additionally proposing to amend N.J.A.C. 7:25-18.1(a) to add a new Research Only group of sharks. This proposed new group contains only one species, the sandbar shark, *Carcharhinus plumbeus*, which is currently included under the Large Coastal group. This change is also mandated under the ASMFC Interstate Fishery Management Plan for Atlantic Coastal Sharks. In accordance with the ASMFC Interstate Fishery Management Plan for Atlantic Coastal Sharks, the sandbar shark may be taken by persons collecting sandbar sharks for strictly scientific purposes only and operating under the terms and conditions specified by a required scientific collecting permit issued pursuant to N.J.S.A. 23:4-52 by the Administrator of the Marine Fisheries Administration within the Division of Fish and Wildlife.

As a result of the proposed amendments to N.J.A.C. 7:25-18.1(a), 15 species of sharks are proposed to be removed from the current Large Coastal, Small Coastal and Pelagic Groups of sharks and listed either as a prohibited species in N.J.A.C. 7:25-18.1(d) or in the Research Only Group. Current stock assessment data in the ASMFC Interstate Fishery Management Plan for Atlantic Coastal Sharks indicate that these 15 species of Atlantic coastal sharks are severely depleted and must be protected.

At N.J.A.C. 7:25-18.1(b), the Department is proposing to eliminate the 48-inch minimum size limit for shark species in the Large Coastal, Small Coastal and Pelagic groups for shark. The ASMFC Interstate Fishery Management Plan for Atlantic Coastal Sharks does not require a minimum size limit for these non-prohibited species in the commercial shark fishery. The Department is also proposing to list the smooth dogfish at

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N.J.A.C. 7:25-18.1(b) with no size limit because the commercial fisheries for this species are receiving increased interstate management attention with the possibility that future management action may be deemed appropriate by the ASMFC. By listing smooth dogfish within the rule, if the ASMFC determines in the future that a minimum size limit is necessary for this species, the Department, with the approval of the Marine Fisheries Council, would be able to implement the required minimum sizes by notice of administrative change pursuant to N.J.A.C. 7:25-18.1(p).

At N.J.A.C. 7:25-18.1(c), the Department is proposing amendments to increase the minimum size limit in the recreational fishery applicable to the Large Coastal and pelagic groups of shark from 48 inches total length to 54 inches fork length and eliminate the 48-inch minimum size limit for small coastal sharks, which will have no minimum size limit. These proposed amendments are consistent with the requirements of the ASMFC Interstate Fishery Management Plan for Atlantic Coastal Sharks. The proposed open season for the Large Coastal shark group specified in N.J.A.C. 7:25-18.1(c) is from January 1 to May 14 and from July 16 to December 31 of the calendar year. The season for the Small Coastal group and the Pelagic group is open throughout the year. This proposed two part season for the Large Coastal shark group will achieve consistency with the ASMFC Interstate Fishery Management Plan for Atlantic Coastal Sharks. The ASMFC Interstate Fishery Management Plan for Atlantic Coastal Sharks requires a closed season for the Large Coastal shark group from May 15 through July 15 in all states' waters (from 0 to three miles offshore) from Virginia to New Jersey to provide protection to these species of sharks in shark pupping grounds and nursery areas. States' waters extend out to three nautical miles from shore. Pregnant females of the species

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included within this group of sharks migrate seasonally to the nearshore waters of these states to give birth (in other words, pupping). The newly hatched sharks, called pups, are particularly vulnerable during the first few years of their life while they are in pupping and nursery grounds within the states' waters. Offering protection by prohibiting harvest and possession by recreational fishermen of the large coastal group of shark species in states' water nursery and pupping grounds should contribute significantly to rebuilding these depleted species.

At N.J.A.C. 7:25-18.1(c), the Department is also proposing to add smooth dogfish with an unlimited recreational possession limit, no size limit and a season from January 1 to December 31. Listing smooth dogfish in the rule with no possession limit and no size limit is consistent with the ASMFC management plan and will allow the Department to timely implement any future changes to the AMSFC plan for the recreational smooth dogfish fishery by notice of administrative change pursuant to N.J.A.C. 7:25-18.1(p).

The Department is proposing to amend N.J.A.C. 7:25-18.1(c)2 to provide that the minimum size limit for Large Coastal, Small Coastal and Pelagic group sharks is determined as fork length rather than total length, as required by the ASMFC Interstate Fishery Management Plan for Atlantic Coastal Sharks. Shark fork length is measured from the tip of the snout to the V shaped indentation between the two separate tail segments forming a shark's caudal fin and is generally a more accurate method of measuring a fish to determine its minimum size.

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N.J.A.C. 7:25-18.1(c)2 is additionally proposed for amendment to limit the harvest of sharks in the recreational fishery to a person angling with a hand line or rod and reel only. No other gear, such as bait net or spearfishing, is allowed.

Amendments are also proposed to N.J.A.C. 7:25-18.1(c)2 to modify the daily possession limits for shark for both vessel and shore-based anglers. Currently, a possession limit of two sharks of any recreationally permitted species is allowed per vessel or shore-based fisherman. The proposed possession limit for shark under the new groupings of species proposed at N.J.A.C. 7:25-18.1(a) is a maximum harvest of one shark per boat or shore-based angler from either the Large Coastal, Small Coastal, or Pelagic species group, plus each recreational angler fishing from a boat or from the shore may harvest one bonnethead and one Atlantic sharpnose per day. The proposed possession limits will reduce the harvest of shark species in need of additional conservation protection while allowing recreational fishermen the opportunity to harvest some shark species whose current stock assessment data indicate that biological conditions for these species can sustain limited harvesting.

At N.J.A.C. 7:25-18.1(d), the Department is proposing to add the 14 species of shark proposed for deletion from the Large Coastal group, the Small Coastal group, and the Pelagic group in N.J.A.C. 7:25-18.1(a) to the list of prohibited species that no person is allowed to take, land, purchase, sell or offer for sale. These species are proposed for protection as populations in State waters have been reduced by overfishing. The Department is also proposing to add the silky shark to the prohibited species list for recreational fishermen only, as required by the ASMFC Interstate Fishery Management Plan for Atlantic Coastal Sharks and explained above.



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At N.J.A.C. 7:25-18.1(e)1, the Department proposes to delete language that currently allows a recreational fisherman to remove the head and tail of a shark prior to landing, provided that the alternate length, as measured from the origin of the first dorsal fin to the precaudal pit, is not less than 23 inches. The ASMFC Interstate Fishery Management Plan for Atlantic Coastal Sharks does not allow for the removal of any part of a shark prior to landing in the recreational fishery and consequently does not allow for any alternate length on any shark species that would be required to have a minimum possession limit of 54 inches fork length under the proposed amendments.

The Department is proposing to amend N.J.A.C. 7:25-18.1(p) to allow the Commissioner, with the approval of the Marine Fisheries Council, to modify the list of shark species contained within any shark group listings by notice of administrative change in order to maintain or come into compliance with any future management requirements on Atlantic coastal sharks and smooth dogfish approved by the Atlantic States Marine Fisheries Commission or to maintain consistency with any mid-Atlantic Fishery Management Council Plan adopted by the National Marine Fisheries Service. Consistent with the current process for modifying fishing seasons, minimum size limits and possession limits, notice of changes within the shark group listings would be published in the New Jersey Fish and Wildlife Digest and in the New Jersey Register, and a news release would be sent to individuals on the Division's outdoor writer's mailing list.

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

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The Department is proposing numerous amendments to N.J.A.C. 7:25-18.12(d) dealing with many aspects of the commercial shark and smooth dogfish fishery. Both sharks and smooth dogfish are included in the ASMFC Interstate Fishery Management Plan for Atlantic Coastal Sharks.

At N.J.A.C. 7:25-18.12(d)1, the Department proposes to increase the allowable commercial possession limit of shark from two sharks of any kind per vessel to 33 sharks from the Large Coastal shark species group, an unlimited number from the Small Coastal shark species group, and an unlimited number from the Pelagic shark species group. The larger commercial possession limits are allowed under the ASMFC fishery management plan since the 15 shark species needing protection are proposed to be reclassified to the prohibited or Research Only groupings, and so will not be subject to harvest pressure, and the numbers of the remaining shark species can support the anticipated harvest level. There is no annual quota or trip limit on smooth dogfish at this time. The change in the commercial possession limit for sharks is in accordance with the ASMFC Interstate Fishery Management Plan for Atlantic Coastal Sharks. Pursuant to the proposed amendments, commercial shark and smooth dogfish fishermen will be required to possess either a valid annual vessel permit for sharks issued by the National Marine Fisheries Service or a New Jersey commercial fishing license issued for the gear that is used to catch the allowable shark species or smooth dogfish. This proposed amendment allows commercial fishermen fishing for sharks solely in State waters to land sharks provided they have a State issued license for an acceptable gear that can harvest sharks – gillnets, trawl nets and pound nets. Additionally, under the proposed amendments commercial shark and smooth dogfish fishermen must sell all commercially caught sharks and smooth

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dogfish to Federally permitted shark dealers. This latter requirement, in conjunction with proposed amendments to this paragraph, will allow the Department to effectively monitor the commercial harvest of sharks and smooth dogfish landed in New Jersey since, at N.J.A.C. 7:25-18.12(d)2, it is proposed that Federally permitted shark dealers be required to report commercial shark landings electronically through the Standard Atlantic Fisheries Information System (SAFIS). This proposed amendment is for consistency with Federal requirements since all Federally permitted dealers are already required to submit commercial landings via the SAFIS system.

Proposed N.J.A.C. 7:25-18.12(d)4 specifies a general year-round commercial fishing season for shark and smooth dogfish, but prohibits the commercial harvesting of Large Coastal sharks (in other words: silky, tiger, blacktip, spinner, bull, lemon, nurse, scalloped hammerhead, great hammerhead and smooth hammerhead sharks) from May 15 through July 15 in State marine waters. This closed season in State marine waters will protect these shark species in nursery waters during the pupping season when young sharks are born. This is the same closed season for the same shark species identified in proposed amendments at N.J.A.C. 7:25-18.1(c) for the recreational shark fishery. Proposed N.J.A.C. 7:25-18.12(d)4 also provides that commercial fishermen can legally harvest Large Coastal sharks in Federal waters during the May 15 through July 15 closure in State waters and transport their catch through State waters, provided the fisherman notifies the Department by calling 609-748-2050 prior to entering the State's marine waters and the fisherman's gear is stowed and unavailable for fishing. The proposed amendments further clarify, consistent with the ASMFC Interstate Fishery Management Plan for Atlantic Coastal Sharks, when gear is considered to be stowed and not available

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for immediate use to ensure compliance with the State water closure when sharks that were legally harvested in Federal waters are transported through State waters to reach port.

Proposed N.J.A.C. 7:25-18.12(d)5 describes the legal gear in State waters for commercial shark fishermen to include gill nets, trawl nets and pound nets. Large-mesh gill nets are defined as having a stretch mesh greater or equal to five inches, consistent with the ASMFC Interstate Fishery Management Plan for Atlantic Coastal Sharks.

Proposed N.J.A.C. 7:25-18.12(d)6 prohibits commercial shark fishermen within State waters from removing the tail or fins of sharks through dockside landing. The head of the shark may be removed and the shark may be eviscerated prior to landing to maintain the quality of the meat of the shark but the tail and fins must remain attached to aid in identifying the species of shark being landed. Commercial fishermen, however, may completely remove the fins of smooth dogfish from March through June of each year. If the fins are removed, the total wet weight of the fins may not exceed five percent of the total dressed weight of smooth dogfish carcasses landed or found on board a vessel. From July through February for the smooth dogfish fishery only, commercial fishermen may completely remove the head, tail, pectoral fins, pelvic (ventral) fins, anal fin, and second dorsal fin, but must keep the first dorsal fin attached naturally to the carcass through landing. If fins are removed, the total wet weight of the fins may not exceed five percent of the total dressed weight of smooth dogfish carcasses landed or found on board a vessel. This processing of smooth dogfish is allowed because smooth dogfish meat spoils quickly. The fin removal allowance, as proposed, will not create any enforcement problems in identifying the dressed carcasses as smooth dogfish.

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The ASMFC Interstate Fishery Management Plan for Atlantic Coastal Sharks does not mandate a smooth dogfish annual quota or a trip limit at this time. Proposed N.J.A.C. 7:25-18.12(d)7 explicitly recognizes this unlimited annual quota and no trip limit. By incorporating smooth dogfish annual quota and trip limits into the rules, the Department, with the approval of the Marine Fisheries Council, will be able to change this provision by notice, pursuant to N.J.A.C. 7:25-18.12(o), to maintain consistency with an annual quota or trip limit, if one is mandated by the ASMFC in the future.

The Department is proposing to amend N.J.A.C. 7:25-18.12(o) to allow the Commissioner, with the approval of the New Jersey Marine Fisheries Council (Council), to modify gear types and gear restrictions by notice of administrative change for the commercial fisheries in this section. At the present time, the Commissioner has the authority, with the approval of the Council, to modify quotas, trip limits and/or seasons to maintain or come into compliance with any fishery management plan approved by the ASMFC or to provide for optimal utilization of commercial quotas. Allowing the Commissioner, with the approval of the Marine Fisheries Council, to modify gear types and gear restrictions by notice of administrative change would allow the Department to timely implement gear types and gear restrictions necessary to come into compliance with any fishery management plan approved by the ASMFC or to maintain consistency with any Mid-Atlantic Fishery Management Council plan adopted by the National Marine Fisheries Service as well as to assure that utilization of quotas is optimized as required by N.J.S.A. 23:2B-2.

### **Social Impact**

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The proposed amendments to N.J.A.C. 7:25-18.1(a) to delete several species from the Shark Large Coastal group, Small Coastal group, and Pelagic group and identifying these same species as either in a Research Only Group or as a prohibited species should have a positive social impact since the re-building of these Atlantic coastal shark species in the future will provide for a sustainable fishery for these species with increased harvesting opportunities. A public hearing jointly conducted on March 4, 2008 by the ASMFC and the Division of Fish and Wildlife on the Draft ASMFC Interstate Fishery Management Plan for Atlantic Coastal Sharks was attended by major recreational and commercial Atlantic coastal shark fishery interests. All participants at that public hearing were in agreement that the developing ASMFC Interstate Fishery Management Plan for Atlantic Coastal Sharks was a necessary management program to conserve the many species of Atlantic coastal sharks that are presently overfished. Proposed amendments at N.J.A.C. 7:25-18.1(b), (c) and (d) to modify existing minimum size, possession and season limits for Atlantic coastal sharks under the new groupings proposed at N.J.A.C. 7:25-18.1(a) similarly should have a positive social impact by allowing for the rebuilding of many species of Atlantic coastal sharks for future sustainable yield to both recreational and commercial fishermen. Depending on which species of sharks are caught by a recreational angler, the possession limit may actually increase under the new possession limits and have an immediate positive social impact. Limiting the harvest of sharks in the recreational fishery to a person angling with a hand line or rod and reel only and not allowing any other gear, for example, bait net or spearfishing, should have a positive social impact since Atlantic coastal sharks are most frequently and safely taken by this gear type. Further, this gear type is specified in the ASMFC Interstate Fishery

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Management Plan for Atlantic Coastal Sharks. The new open seasons and possession limits mandated by the ASMFC Interstate Fishery Management Plan for Atlantic Coastal Sharks for the Large Coastal, Small Coastal and Pelagic shark groups in the recreational fishery will have positive social impacts in re-building many Atlantic coastal shark species for increased future fishing opportunities. Recreational fishermen realize the necessity of closing the pupping and nursery grounds in State waters to the harvest of some species of sharks for conservation and re-building of these species for future increased fishing opportunities.

The proposed amendment to N.J.A.C. 7:25-18.1(p) allowing the Commissioner to change shark species groupings by notice of administrative change should have no social impact.

The proposed amendments to N.J.A.C. 7:25-18.12(d) dealing with many aspects of the commercial shark fishery will have positive social impacts in the future with the re-building of many Atlantic coastal shark stocks for increased fishing opportunities. Proposed amendments changing the current possession limit of sharks in the commercial shark fishery to an increased possession limit for all non-prohibited species under new proposed groupings will have positive social impacts with increased fishing opportunities. Proposed amendments defining commercial fishery permitting requirements, dealer reporting requirements, fishing seasons, and describing legal gear and gear restrictions for commercial shark fishermen will have positive social impacts in the efficient administration of a commercial shark fishery in New Jersey. Allowing commercial shark fishermen to remove the head of the shark and eviscerating the shark prior to landing should have a positive social impact since these cleaning practices at sea

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are necessary in maintaining the quality of the meat of the shark prior to dockside landing and will result in a better product for consumers. Additionally, cleaning commercial shark landings dockside usually creates a solid waste management problem in marinas. Allowing for the at-sea processing of smooth dogfish, seasonally and within defined circumstances, will also have positive social impacts by producing a quality product and minimizing waste of spoiled smooth dogfish meat.

The proposed amendments to N.J.A.C. 7:25-18.12(o) to allow the Commissioner, with the approval of the New Jersey Marine Fisheries Council (Council), to modify gear types and gear restriction by notice of administrative change for the commercial fisheries in this section should have a positive social impact since gear changes and gear restrictions that are compliance requirements to ASMFC fishery management plans can be implemented in a timely manner to avert a potential Federally mandated moratorium on any fishery that does not comply with ASMFC management or monitoring requirements.

### **Economic Impact**

The proposed amendments to N.J.A.C. 7:25-18.1(a) to delete several species from the shark Large Coastal group, Small Coastal group, and Pelagic group and identify these same species as either in a Research Only group or as a prohibited species will have positive economic impacts through the re-building of these Atlantic coastal shark species and an increased recreational fishery in the future. An expanding recreational fishery results in many positive economic impacts in the bait and tackle industry, boat charters, and tourism. Proposed amendments at N.J.A.C. 7:25-18.1(b), (c) and (d) to modify existing minimum size, possession and season limits for Atlantic coastal sharks under the



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new groupings proposed at N.J.A.C. 7:25-18.1(a) will also have a positive economic impact by allowing for the rebuilding of many Atlantic coastal shark stocks and providing for future increased sustainable yield to both recreational and commercial fishermen. Depending on which species of sharks are caught by a recreational angler, the possession limit may actually increase under the new possession limits and have an immediate positive economic impact. Limiting the harvest of sharks in the recreational fishery to a person angling with a hand line or rod and reel only and not allowing any other gear, for example, bait net or spearfishing, will have no economic impact since Atlantic coastal sharks are most frequently and safely taken by this gear type, which is the gear specified in the ASMFC Interstate Fishery Management Plan for Atlantic Coastal Sharks.

The proposed amendment to N.J.A.C. 7:25-18.1(p) allowing the Commissioner to change shark species groupings by notice of administrative change should have no economic impact.

The proposed amendments to N.J.A.C. 7:25-18.12(d) dealing with many aspects of the commercial shark fishery will have positive economic impacts in the future with the re-building of many species of Atlantic coastal sharks and increased harvests. The Department proposes protecting many additional species of sharks in a prohibited or Research Only group, but increasing the current possession limit for the remaining allowable sharks in the commercial shark fishery. Commercial landings may increase in the short term and most likely will increase in the long term with the re-building of many species of sharks. The proposed amendments defining commercial fishery permitting requirements, dealer reporting requirements, fishing seasons, trip limits, and describing

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legal gear and gear restrictions for commercial shark fishermen are required to administer the commercial shark fishery and monitor landings. Commercial fishermen may experience a short term negative economic impact due to the seasonal closure for the Large Coastal sharks' pupping and nursery areas within State waters, but these shark species affected by the area closure may be legally harvested in Federal waters and the proposed amendments allow for the transit of these sharks through State waters for landing. Allowing commercial shark fishermen to remove the head of the shark and eviscerate the shark prior to landing should have a positive economic impact since these cleaning practices at sea are necessary in maintaining the quality of the meat of the shark prior to dockside landing and should yield a higher price per pound. Allowing for the at-sea processing of smooth dogfish, seasonally and within defined circumstances, will have positive economic impacts by producing a quality, usable product and garnering a greater price per pound for the smooth dogfish product.

The proposed amendments to N.J.A.C. 7:25-18.12 (o) to allow the Commissioner, with the approval of the New Jersey Marine Fisheries Council (Council), to modify gear types and gear restriction by notice of administrative change for the commercial fisheries in this section should have a positive economic impact since gear changes and gear restrictions that are compliance requirements to ASMFC fishery management plans can be implemented in a timely manner to avert a Federally mandated moratorium on any fishery that does not comply with ASMFC management or monitoring requirements.

### **Environmental Impact**

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All of the proposed amendments to N.J.A.C. 7:25-18.1(a), (b), (c) and (d) dealing with the many aspects of regulating Atlantic coastal sharks and the smooth dogfish are designed to have positive environmental impacts on these resources immediately and in the future. For the first time, there exists an Interstate Fishery Management Plan for Atlantic Coastal Sharks and smooth dogfish that mandates consistent management measures for all Atlantic coastal states' marine waters from the shoreline out to three nautical miles from Maine through Florida and also complements existing Federally mandated regulations that exist in Federal waters from three to 200 nautical miles from shore. The goals and objectives of the ASMFC Interstate Fishery Management Plan for Atlantic Coastal Sharks include reducing fishing mortality to rebuild stock biomass, prevent stock collapse, and supporting a sustainable fishery. To that end, the ASMFC Interstate Fishery Management Plan for Atlantic Coastal Sharks mandates all states identify recreationally and commercially permitted species, implement a seasonal closure in the mid-Atlantic region, establish new size and possession limits, impose landing requirements, and specify authorized recreationally permitted gear. These mandated management measures are proposed at N.J.A.C. 7:25-18.1(a), (b), (c) and (d) to meet the goal and objectives of the fishery management plan.

The proposed amendment to N.J.A.C. 7:25-18.1(p) allowing the Commissioner to change shark species groupings by notice of administrative change would have a positive environmental impact in the future by allowing the Department to take action expeditiously if a shark species that can now be harvested is determined to be overfished and must be put under a prohibited species listing.

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The proposed amendments to N.J.A.C. 7:25-18.12(d) dealing with the many aspects of the commercial shark and smooth dogfish fisheries should have positive environmental impacts on these resources immediately and in the future. With the recent implementation of the ASMFC Interstate Fishery Management Plan for Atlantic Coastal Sharks, there now exists an expanded commercial fishery management program on Atlantic coastal sharks and the smooth dogfish that is consistent along the Atlantic coast from Maine through Florida. All proposed amendments to N.J.A.C. 7:25-18.12(d) are mandated by the ASMFC fishery management plan whose goal and objectives are to rebuild stock biomass, reduce fishing mortality, prevent stock collapse, and support a sustainable commercial fishery. Consequently, New Jersey must adopt the fishery management plan's compliance requirements specifying a commercial closed season, permitted and prohibited species, quota specifications, permitting requirements, dealer reporting, authorized commercial gear, and landing requirements.

The proposed amendment to N.J.A.C. 7:25-18.12(o) to allow the Commissioner, with the approval of the New Jersey Marine Fisheries Council (Council), to modify gear types and gear restriction by notice of administrative change for the commercial fisheries in this section should have positive environmental impacts since the Commissioner, with the approval of the Council, can modify gear types and gear restrictions developed to reduce by-catch of non-targeted organism in a timely manner and enhance the re-building of overfished stocks.

### **Federal Standards Analysis**

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

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

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

The proposed amendments to N.J.A.C. 7:25-18.12(d) dealing with the commercial shark fishery are not more stringent than Federal regulations on minimum size limits, possession limits, permitting requirements for fishermen, and reporting requirements for Federally permitted shark dealers, to whom all commercially caught sharks must be sold. The closed season from May 15 through July 15 in State marine waters is more stringent than Federal regulations, but as previously stated, these nursery and pupping grounds that

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exist within states' marine waters from Virginia through New Jersey do not exist in Federal waters. Proposed amendments to N.J.A.C. 7:25-18.12(d)5 include the following gear types that may be used for commercial shark harvest: gill nets, trawl nets, and pound nets. Some additional gear types are allowed in the commercial shark fishery in Federal waters, but will not be allowed in the State's commercial shark fishery. Pelagic and bottom longline gear allowed in Federal waters are not currently allowed in State waters. Use of such gear in nearshore waters could spatially interfere with other fishing activities occurring in these waters. Further, the ASMFC Interstate Fishery Management Plan for Atlantic Coastal Sharks prohibits use of this gear in these waters. Because noncompliance with the management plan could result in the imposition of a moratorium on the harvest of sharks and smooth dogfish by all methods, not allowing Pelagic and bottom longline gear in the State's waters will have a positive impact by assuring that appropriate limitations are in place to manage this resource in nearshore waters and that appropriate harvest continues to be allowed utilizing other forms of gear. The State is not allowing the use of rod and reel or handlines in the commercial shark fishery. Fishing by rod and reel or handlines is predominantly a means of harvest used by recreational fishermen as it is not an efficient method for the commercial fishery. In order to establish a program that could effectively monitor the harvest by that gear and assure compliance with the applicable rules necessary to manage the resource to assure overfishing does not occur, legislative changes would be necessary to authorize fees for a new State permit for such gear. The Department believes that any impact from not providing such a permit in State waters is minimal and is outweighed by the ability to assure that overall harvest from all forms of permitted gear is not threatening the resource.

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### **Jobs Impact**

The Department has evaluated this rulemaking to determine the impact of the proposed amendments on jobs. The proposed amendments concern the Atlantic coastal sharks and smooth dogfish fisheries resources at N.J.A.C 7:25-18.1 and 18.12. None of the proposed amendments will result in the generation or loss of jobs except that the proposed amendments to N.J.A.C. 7:25-18.12(d) may result in an increase in jobs in the future if the management measures are successful in re-building the many species of Atlantic coastal sharks that are presently depleted.

### **Agriculture Industry Impact**

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 recreational fishermen, commercial fishermen and party and charter boat owners.

Some 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

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amendments will require additional reporting, recordkeeping or other compliance requirements beyond what is already required under Federal fisheries requirements.

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 amendments on small businesses that participate in the commercial shark fisheries 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 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. 7:25-18.1 and 18.12 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



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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.

### **Housing Affordability Impact**

Pursuant to P.L. 2008, c. 46 (N.J.S.A. 52:14B-4b.a), the Department has evaluated this rulemaking to determine the nature and extent of the proposed amendments on the impacts to housing affordability. The proposed amendments apply solely to the marine fishing industry and will have no impact on the average costs associated with housing.

### **Smart Growth Development Impact**

Pursuant to P.L. 2008, c. 46 (N.J.S.A. 52:14B-4.1b.b), the Department has evaluated this rulemaking to determine the nature and extent of the proposed amendments on the impacts to smart growth development. The proposed amendments apply solely to the marine fishing industry and will have no impact on the housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan.

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

SUBCHAPTER 18. MARINE FISHERIES

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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.

Common Name

Scientific Name

• • •

• • •

Shark

Large Coastal Group

• • •

[*Carcharhinus altimus* (Bignose Shark)]

• • •

[*Carcharhinus perezi* (Caribbean Reef Shark)]

*Carcharhinus obscurus* (Dusky Shark)

*Carcharhinus galapagensis* (Galapagos Shark)]

• • •

[*Carcharhinus brachyurus* (Narrowtooth Shark)]

*Carcharhinus signatus* (Night Shark)

*Carcharhinus plumbeus* (Sandbar Shark)]

• • •

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### Small Coastal Group

[*Squatina dumerili* (Atlantic Angle Shark)]

• • •

[*Rhizoprionodon porosus* (Caribbean Sharpnose Shark)]

• • •

[*Carcharhinus porosus* (Smalltail Shark)]

### Pelagic Group

[*Hexanchus vitulus* (Bigeye Sixgill Shark)]

*Heptranchias perlo* (Sevengill Shark)

*Hexanchus griseus* (Sixgill Shark)

*Isurus paucus* (Longfin Mako)]

• • •

[*Alopias superciliosus* (Bigeye Thresher)]

• • •

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**Research Only Group**

**Carcharhinus plumbeus (Sandbar Shark)**

...

(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</u> <u>(inches)</u>
----------------	--

...

...

Shark	[48]
-------	------

<b>Large Coastal Group</b>	<b>No Limit</b>
----------------------------	-----------------

<b>Small Coastal Group</b>	<b>No Limit</b>
----------------------------	-----------------

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**Pelagic Group**

**No Limit**

**Smooth Dogfish**

**No Limit**

• • •

• • •

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:

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

• • •

Shark	[48]	[Jan. 1-Dec. 31]	[2]1 per vessel,  <b>as specified in (c)2 below</b>
-------	------	------------------	---

**Large Coastal Group    54**

**Jan. 1-May 14, and**

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		<b>July 16-Dec. 31</b>	
<b>Small Coastal Group</b>	<b>No Limit</b>	<b>Jan. 1-Dec. 31</b>	
<b>Pelagic Group</b>	<b>54</b>	<b>Jan. 1-Dec. 31</b>	
<b>Smooth Dogfish</b>	<b>No Limit</b>	<b>Jan. 1-Dec. 31</b>	<b>No Limit</b>

• • •

1. (No change.)
2. **Shark length shall be measured from the tip of the snout to the V shaped indentation between the two separate tail segments (fork length) forming the caudal fin. Sharks may be harvested in the recreational fishery only by angling with a hand line, or rod and reel. The possession limit for shark, as listed at (a) above, shall be [as enumerated at (c) above] a maximum harvest of one shark from the Large Coastal, Small Coastal, or Pelagic species group on a per vessel basis regardless of the number of individuals on board said vessel. In addition, each recreational angler fishing from a boat may harvest one bonnethead and one Atlantic sharpnose per trip. If a person is fishing from shore or a land based structure, the possession limit shall be [as enumerated at (c) above] a maximum harvest of one shark from the Large Coastal, Small Coastal, or Pelagic species group per calendar day on a per person basis. In addition, each recreational angler fishing from the shore or a land-based**

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**structure may harvest one bonnethead and one Atlantic sharpnose per calendar day.**

3. (No change.)

(d) A person shall not take, possess, land, purchase, sell or offer for sale any of the following species:

<u>Species</u>	<u>Scientific Name</u>
<b>Atlantic Angel Shark</b>	<b>Squatina dumerili</b>
...	...
<b>Bigeye Sixgill Shark</b>	<b>Hexanchus vitulus</b>
<b>Bigeye Thresher Shark</b>	<b>Alopias superciliosus</b>
<b>Bignose Shark</b>	<b>Carcharhinus altimus</b>
<b>Caribbean Reef Shark</b>	<b>Carcharhinus perez</b>
<b>Caribbean Sharpnose Shark</b>	<b>Rhizoprionodon porosus</b>
<b>Dusky Shark</b>	<b>Carcharhinus obscurus</b>
<b>Galapagos Shark</b>	<b>Carcharhinus galapagensis</b>
<b>Longfin Mako Shark</b>	<b>Isurus paucus</b>
<b>Narrowtooth Shark</b>	<b>Carcharhinus brachyurus</b>
<b>Night Shark</b>	<b>Carcharhinus signatus</b>
...	...
<b>Sharpnose Sevengill Shark</b>	<b>Heptranchias perlo</b>
...	...
<b>Sixgill Shark</b>	<b>Hexanchus griseus</b>

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**Silky Shark (recreational fishery only)**                      **Carcharhinus falciformis**

**Smalltail Shark**                                      **Carcharhinus porosus**

• • •

• • •

(e) Except as provided in (e)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 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. A shark **or dogfish** may be eviscerated [and the head and tail removed] prior to landing [, provided that the alternate length as measured from the origin of the first dorsal fin to the precaudal pit (located just forward of the origin of the upper lobe of the caudal or tail fin) is not less than 23 inches in length]. The fins may not be removed from a shark or dogfish, except after fishing has ceased and such shark or dogfish has been landed as specified in (e) above.

2. (No change.)

(f) – (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, **and the list of shark species contained within any of the shark groups** specified in this section by notice in order to maintain and/or to come into compliance with any fishery



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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) – ( r ) (No change.)

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

(a) – (c) (No change.)

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

1. A person shall not possess more **sharks** than [two sharks per vessel nor shall a person sell or attempt to sell more than two sharks] **the number specified in the possession limit at N.J.A.C. 7:25-18.1(c)** without a valid annual vessel permit for sharks issued by the National Marine Fisheries Service **or a New Jersey commercial fishing license issued for the gear allowed in the commercial shark fishery. With a valid annual vessel permit or a New Jersey commercial fishing license, the maximum possession limit is 33 sharks from the Large Coastal shark species group, an unlimited number of sharks from the Small Coastal shark species group, and an unlimited number of sharks from the Pelagic shark species group. A person shall not sell or attempt to sell any sharks without a valid annual vessel permit for sharks**

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**issued by the National Marine Fisheries Service or a New Jersey commercial fishing license issued for the gear allowed in the commercial shark fishery.**

i. Any harvester or vessel landing shark **or smooth dogfish** in New Jersey for the purpose of sale shall sell all shark **or smooth dogfish** only to a dealer with a valid permit for sharks issued by the National Marine Fisheries Service.

2. A dealer shall not purchase or receive a shark without a valid annual dealer permit for sharks issued by the National Marine Fisheries Service. **Each such shark dealer shall report weekly shark and smooth dogfish landings electronically through the Standard Atlantic Fisheries Information System (SAFIS).**

3. (No change.)

**4. The commercial fishing season for shark and smooth dogfish shall be from January 1 through December 31, except the harvest of Large Coastal sharks shall be prohibited from May 15 through July 15. A fisherman legally harvesting any of the Large Coastal sharks in Federal waters from three to 200 nautical miles offshore during the May 15 through July 15 time period may transport his or her catch through the State marine waters of New Jersey provided that the fisherman notifies the Department by calling 609-748-2050 prior to entering the State's marine waters and provided:**

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

ii. **The sharks possessed were not caught in the closed area; and**

iii. **All fishing gear is stowed and not available for immediate use as defined below:**

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**(1) “On-reel” stowage for vessels transiting a closed area shall be as follows:**

**(A) The net shall be on a reel, its entire surface is covered with canvas or other similar opaque material, and the canvas or other material is securely bound;**

**(B) The towing wires shall be detached from the doors; and**

**(C) No containment rope, codend tripping device, or other mechanism to close off the codend shall be attached to the codend; and**

**(2) Gillnet gear stowage for vessels transiting a closed area shall be as follows:**

**(A) All nets shall be covered with canvas or other similar material and lashed or otherwise securely fastened to the deck or rail; and**

**(B) All buoys larger than six inches (15.24 centimeters) in diameter, high flyers, and anchors shall be disconnected.**

**5. The following gear types may be used for commercial shark harvest in State marine waters: gillnets, trawl nets, and pound nets. Large-mesh gill nets are defined as having a stretch mesh greater than or equal to five inches.**

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

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**the smooth dogfish fins shall not exceed five percent of the total dressed weight of smooth dogfish carcasses landed or found on board a vessel.**

**7. The smooth dogfish annual quota is unlimited and the smooth dogfish trip limit is unlimited.**

(e) – (n) (No change.)

(o) The Commissioner, with the approval of the New Jersey Marine Fisheries Council, may modify quotas, trip limits and/or seasons, **as well as gear types and gear restrictions**, specified in [the] **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 Commissioner, with the approval of the New Jersey Marine Fisheries Council, may modify trip limits and/or seasons, **as well as gear types and gear restrictions**, 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 adjust 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.)