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ENVIRONMENTAL PROTECTION

DIVISION OF FISH AND WILDLIFE

Crab and Lobster Management; Marine Fisheries

Proposed Amendments: N.J.A.C. 7:25-14.4, 14.12, 14.21, 18.1, 18.5, and 18.12

Authorized By: Bob Martin, Commissioner,
Department of Environmental Protection.

Authority: N.J.S.A. 13:1B-30 et seq., 13:1D-9, 23:1-1 et seq.,
and 50:1-5 et seq.

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

DEP Docket Number: 06-15-06.

Proposal Number: PRN 2015-085.

Submit comments by September 18, 2015, electronically at
www.nj.gov/dep/rules/comments.

The Department of Environmental Protection (Department) encourages electronic
submittal of comments. In the alternative, comments may be submitted on paper to:

G. Colin Emerle, Esq.

Attn: DEP Docket Number: 06-15-06

Office of Legal Affairs

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Department of Environmental Protection

401 East State Street, Floor 7

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Trenton, NJ 08625-0402

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 Crab and Lobster Management, N.J.A.C. 7:25-14, and Marine Fisheries, N.J.A.C. 7:25-18. The Department is proposing amendments related to fisheries for blue crab, tautog, bluefish, black sea bass, and summer flounder as well as amendments concerning various gear types and reporting requirements.

N.J.A.C. 7:25-14.4 Commercial licenses for crab pot/trot lines and crab dredges

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N.J.A.C. 7:25-14.4 prohibits the harvest of crabs for sale or barter without a commercial license, specifies eligibility requirements for commercial crab pot/trot line and crab dredge licenses, and prohibits license transfers except in limited circumstances.

Due to stresses to the crab resource as the result of the number of outstanding licenses, the commercial crab pot/trot line fishery was converted to a limited entry fishery in 1994, with then-licensed harvesters allowed to annually renew licenses, but no new licenses to be issued until the number of licenses outstanding had decreased below the number that were issued in 1991 (for commercial crab pot licenses, 312 licenses). While the number of licenses outstanding recently did decrease below the number of licenses that were issued in 1991, enabling the Department to issue licenses to dozens of individuals who had been on the lottery list that was developed at the time the fishery became a limited entry fishery, the number of individuals interested in obtaining a crab pot/trot line license continues to far exceed the number of licenses available. There are over 1,000 names currently on the commercial crab pot/trot line license lottery and/or waiting lists. Further, in accordance with N.J.A.C. 7:25-14.2(e), no crab pot/trot line license holder is allowed to fish more than 600 crab pots in the Delaware Bay or more than 400 crab pots in all other waters; this limitation applies to a license holder regardless of how many licenses he or she holds. Currently, no crab pot/trot line licensee holds more than one license. In order to help ensure that one individual cannot possess more than one valid license in his or her name and to allow for the maximum number of individuals to participate in the fishery, N.J.A.C. 7:25-14.4(a)1 is proposed for

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amendment to expressly state that the Department will not issue more than one commercial license to a single individual.

This express statement is also proposed with respect to the Atlantic Coast commercial crab dredge license at N.J.A.C. 7:25-14.4(a)3. In accordance with N.J.A.C. 7:25-14.7(a), crab dredge licensees are required to have their valid crab license in their possession at any time they are catching crabs by dredge. As the rules do not allow anyone other than the licensee to use an Atlantic Coast commercial crab dredge license and there is no daily harvest limit applicable to this fishery, there is no advantage to holding more than one Atlantic Coast commercial crab dredge license. As a result, no Atlantic Coast commercial crab dredge fisherman currently holds more than one license.

This restriction of one license per licensee is not necessary at N.J.A.C. 7:25-14.4(a)5 for the Delaware Bay crab dredge license because of historic differences in how fishermen operate in the Delaware Bay crab dredge fishery. In contrast to the Atlantic Coast crab dredge and crab pot-trot line fisheries where licensees have historically held only one license, commercial fishermen in the Delaware Bay own multiple vessels, predominantly for participation in the oyster fishery, and obtain licenses for each fishing vessel. Individual fishermen in the past have held multiple licenses, and they continue to do so. This historic difference in how this fishery operates is currently recognized in the rule at N.J.A.C. 7:25-14.7(a), which permits licensees in the Delaware Bay dredge fishery to authorize an agent to operate the licensee's crab dredge vessel if the agent is in possession of the licensee's license, with Department approval; this enables the licensee

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holding multiple licenses to utilize the licenses on multiple vessels without the need to personally be on board each vessel while the license is being utilized.

The process to be followed for issuance of crab pot/trot line licenses to individuals on the lottery list when the number of licenses issued drops below 1991 levels is governed by N.J.A.C. 7:25-14.4(a)2i. In accordance with N.J.A.C. 7:25-14.4(a)4 and 6, the process specified in this subparagraph is additionally utilized for issuance of Atlantic Coast commercial crab dredge licenses and Delaware Bay commercial crab dredge licenses when the numbers of licenses issued for these two fisheries decreases below the levels specified for each of these limited entry fisheries (250 licenses and 93 licenses for Atlantic Coast and Delaware Bay commercial crab dredge fisheries, respectively). The Department is proposing to relocate N.J.A.C. 7:25-14.4(a)2i at proposed N.J.A.C. 7:25-14.4(a)10 since it is applicable to the three different fisheries. The Department is additionally proposing to amend the provision to specify that an individual on the list who is offered an opportunity to purchase an available crab pot/trot line, Atlantic Coast crab dredge, or Delaware Bay crab dredge license by the Department, regardless of whether the individual purchases the license, will be removed from the lottery list. This amendment will also provide that an individual on the lottery list for a crab pot/trot line license or for an Atlantic Coast commercial crab dredge license will be removed from the applicable lottery list if that individual obtains a license from a family member by way of transfer pursuant to N.J.A.C. 7:25-14.4(a)7. As indicated above, the number of individuals interested in obtaining crab pot/trot line licenses far exceeds the

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number of licenses available. This is also true of the Atlantic Coast and Delaware Bay commercial crab dredge licenses. Because there are individuals not on the existing lottery lists who are interested in obtaining a license, the Department believes that it is appropriate to eliminate those on the current lists who choose not to obtain a license when given the opportunity. This will result in the size of the current lists being reduced and eventually eliminated in a quicker manner than if these individuals were to continue to remain on the list with repeated opportunities to purchase a license, providing those further down the list, as well as those not currently on the list who are interested in getting on a future lottery list, an opportunity to obtain a license.

N.J.A.C. 7:25-14.4(a)7 limits the transferability of commercial crab pot/trot line and crab dredge licenses to specified family members, provided the license sought to be transferred is not pending revocation. The Department is proposing to further preclude transfer to the specified family members if the license is pending suspension or court action on any violation. This amendment is needed to ensure that a license holder who has committed a violation that could result in the license being suspended or the license being permanently revoked cannot circumvent the rules by requesting a hearing and transferring the license during the period of time from when a violation is issued through the violation being adjudicated.

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Additionally, throughout this section the Department is clarifying that, consistent with the existing lead-in language in paragraph (a) and the heading of the section, references to commercial crab pot licenses refer to commercial crab pot/trot line licenses.

N.J.A.C. 7:25-14.12 Filing of reports

The Department is proposing to amend N.J.A.C. 7:25-14.12 in several ways. This section describes the mandatory blue crab harvest reporting requirements for all persons holding commercial licenses to take blue crabs, the penalty schedule for failure to abide by the reporting requirements, and a licensee's opportunity to administratively appeal a suspension or revocation of a license. The Department is proposing to amend the provision to cross-reference N.J.A.C. 7:25-14.21, which sets forth the process for requesting an adjudicatory hearing in accordance with the Administrative Procedure Act and the Uniform Administrative Procedure Rules for license and permit decisions under N.J.A.C. 7:25-14.

The Department is also proposing to add a new subsection, N.J.A.C. 7:25-14.12(c), to provide for the automatic removal of specified reporting offenses from a licensee's reporting record by the Department after the licensee completes an 18-month period of reporting compliance. Currently, reporting offenses remain on a licensee's record indefinitely. Under the proposed amendment, the Department will automatically remove all prior reporting offenses, reducing the reporting offenses on record to zero, if the licensee complies with the requirements outlined in N.J.A.C. 7:25-14.12(a) for a

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period of 18 months. The 18-month period starts from the date of the first offense on record or from the date of completion of the suspension imposed as a result of a second reporting offense on record. Under the existing rules, if a licensee commits a reporting offense, such as failing to timely file a report, including a report that the licensee did not harvest any crab during the prior month, any subsequent reporting offense subjects the licensee to a license suspension, even if the subsequent reporting offense occurs 20 years after the prior reporting offense, with no intervening reporting offenses. Similarly, if the licensee has committed two violations and served a suspension, a third violation will result in permanent license revocation pursuant to N.J.A.C. 7:25-14.12(a)3, no matter how many years it might be since the last violation. The proposed new subsection will eliminate this unnecessarily harsh result in situations where the licensee demonstrates through continuous compliance over an 18-month period a good faith effort to comply with the rules while ensuring that licensees who are habitual violators are subject to the appropriate penalties imposed under the rules.

At N.J.A.C. 7:25-14.12(d), the Department is proposing to allow a licensee to request that the Department nullify a reporting offense and any resultant penalty under N.J.A.C. 7:25-14.12(a) in limited circumstances. Proposed N.J.A.C. 7:25-14.12(d) specifies the process for preparing and submitting the nullification request, including the information that must be supplied. The information required is designed to provide the Department with information sufficient to determine if the licensee has satisfied the requirements specified in N.J.A.C. 7:25-14.12(e) in order to nullify an offense.

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As specified in proposed N.J.A.C. 7:25-14.12(e), in order to qualify under this provision, the licensee must demonstrate all three of the following: 1) that an extraordinary hardship or exceptional situation or condition precluded the licensee from complying with the reporting requirements; 2) that strict compliance with the reporting requirements would result in exceptional and undue hardship for the licensee; and 3) that the hardship was not created by the licensee. The Department must also ensure the approval of the nullification will not unreasonably interfere with the orderly administration of these reporting requirements. The Department understands that unforeseen and extraordinary situations and circumstances arise occasionally which may preclude a licensee from reporting for a particular period of time or from reporting by the deadline in a particular month. Under these circumstances, which must be documented and demonstrated in writing to the Division by the licensee, the licensee will have the opportunity to work with the Division to attempt to resolve the violation before a formal administrative hearing is scheduled at the Office of Administrative Law. To ensure efficient processing of nullification requests and that final resolution of violations is not delayed, the licensee must submit the nullification request as part of the request for an adjudicatory hearing on the reporting offense. This will provide the licensee the opportunity to resolve the reporting offense more quickly and possibly avoid suspension and/or license revocation, while preserving the licensee's right to a hearing should the Department determine that the hardship requirements have not been met. This proposed

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amendment is similar to the existing provisions for requesting an extension of time to renew commercial crab licenses at N.J.A.C. 7:25-14.4(c) through (e).

Pursuant to proposed N.J.A.C. 7:25-14.12(f), the Division will notify the licensee of its decision in writing. If the Division determines that the licensee has not satisfied the requirements of N.J.A.C. 7:25-14.12(d) to qualify for a nullification of an offense and any resultant penalty, the hearing request on the underlying reporting offense will be deemed to include a request for an adjudicatory hearing on the denial of the nullification, saving the necessity of filing a further hearing request and any potential delay in ultimate resolution of the alleged violation.

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, which specifies size, season, and possession limits, in a number of ways. N.J.A.C. 7:25-18.1(b) is being amended to make it illegal to barter, trade, or exchange for money or for any other thing of value any of the listed species of fish less than the minimum legal size limit or to attempt to make such a transaction. N.J.A.C. 7:25-18.1(b) currently prohibits the purchase or sale of fish less than the minimum legal size limit. This proposed modification clarifies that the terms sell and sale are not limited to a monetary transaction, but also include barter or trade of sub-legal sized fish for something other than money. The proposed amendment will strengthen enforcement of the prohibition on

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the sale of sub-legal sized fish by making clear that no one may receive anything of value in exchange for fish that do not satisfy size requirements of the rules.

The Department is proposing to amend N.J.A.C. 7:25-18.1(g) to increase the monetary penalty for illegally taken or possessed tautog from \$30.00 per fish to \$100.00 per fish. Currently, the monetary penalty for all species is \$30.00 per fish. In 2011, the Atlantic States Marine Fisheries Commission (ASMFC) adopted Addendum VI to the Interstate Fishery Management Plan for Tautog that, in part, was to address the illegal trade of live tautog. Recent information indicates the illegal harvest of sub-legal size tautog and harvest of tautog in excess of the possession limit constitutes a substantial portion of overall fishing mortality for the species. Increasing the monetary penalty for tautog is intended to discourage illegal possession and reduce impacts to the stock.

The Department is proposing to amend N.J.A.C. 7:25-18.1(h) to change the upstream boundary for the April 1 to May 31 striped bass closed season in the Delaware River and its tributaries from the U.S. Route 1 Bridge to the bridge approximately one mile north of it, the Calhoun Street Bridge. This proposed amendment is consistent with regulations governing striped bass fishing in fresh waters of the State at N.J.A.C. 7:25-6.20, as they pertain to the Delaware River.

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

N.J.A.C. 7:25-18.5(g)3 describes the requirements applicable to the take of fish utilizing miniature fyke or pots, including mandatory reporting requirements for

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all persons commercially licensed to use miniature fyke or pots, the penalty schedule for failure to abide by the reporting requirements, and a licensee's opportunity to administratively appeal a suspension or revocation of a license. The Department is proposing to amend N.J.A.C. 7:25-18.5(g)3vi to cross-reference N.J.A.C. 7:25-18.17, which sets forth the process for requesting an adjudicatory hearing in accordance with the Administrative Procedure Act and the Uniform Administrative Procedure Rules on license and permit decisions under N.J.A.C. 7:25-18. The process and procedural requirements for requesting an adjudicatory hearing under this subchapter are the same as those applicable to hearing requests in N.J.A.C. 7:25-14.21. This modification will help ensure that a person who believes he or she has been inappropriately slated for license suspension or revocation follows the applicable process and submits necessary information to allow the hearing request to proceed.

Similar to the proposed language at N.J.A.C. 7:25-14.12(c), discussed above, the Department is proposing to amend N.J.A.C. 7:25-18.5(g)3vii to provide for automatic removal of specified reporting offenses by the Department from a licensee's reporting record after the licensee completes an 18-month period of reporting compliance. Currently, reporting offenses remain on a licensee's record indefinitely. Under the proposed amendment, the Department will automatically remove all prior reporting offenses from a licensee's record if the licensee complies with the requirements outlined in N.J.A.C. 7:25-18.5(g)3v for a period of 18 months; said 18-month period to start from the date of the first offense on record or from the date of completion of the suspension

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imposed as a result of a second offense on record. Under the existing rules, a licensee who commits a violation of the reporting requirements such as failing to timely file a report, including a negative or zero-harvest report during the prior month, is subject to license suspension for a second reporting offense and permanent license revocation for a third offense, even if the latter reporting offenses occur 20 years after the first reporting offense, with no intervening offenses.

Consistent with changes proposed at N.J.A.C. 7:25-14.12(d) through (f), the Department is proposing at N.J.A.C. 7:25-18.5(g)3viii through x to allow a licensee to request that the Department nullify an offense and any resultant penalty under N.J.A.C. 7:25-18.5(g)3v. As specified in the proposed amendments, the licensee must submit the nullification request as part of the request for an adjudicatory hearing. In the nullification request, the licensee must demonstrate all three of the following: 1) that an extraordinary hardship or exceptional situation or condition precluded the licensee from complying with the reporting requirements; 2) that strict compliance with the reporting requirements would result in exceptional and undue hardship for the licensee; and 3) that the hardship was not created by the licensee. The Department must also ensure the approval to nullify will not unreasonably interfere with the orderly administration of these reporting requirements. The proposed amendments are consistent with those proposed at N.J.A.C. 7:25-14.12(d) through (f) and are proposed for the same reasons as explained in the summary for N.J.A.C. 7:25-14.12(d) through (f). These reasons include the Department's recognition that unforeseen and extraordinary situations and circumstances arise

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occasionally, which may preclude a licensee from reporting for a particular period of time or from reporting by the deadline in a particular month. As is the case in N.J.A.C. 7:25-14.12(d) through (f), the proposed amendments at N.J.A.C. 7:25-18.5(g)3viii through x are similar to the provisions for requesting an extension of time to renew gill net, or lobster or fish pot licenses that are already part of this section at N.J.A.C. 7:25-18.5(j) through (l).

The Department is proposing to amend N.J.A.C. 7:25-18.5(g)5, (g)5iii, and (g)6iii to allow a licensee to utilize only one drifting gill net or one staked/anchored gill net, with a mesh size that is four inches or greater stretched mesh, in the Atlantic Ocean from September 1 through December 15 provided it is tended at all times. The taking of striped bass by net is illegal pursuant to N.J.S.A. 23:5-47. However, the use of these gill nets for other target species will inevitably result in catching striped bass. As the coastwide striped bass population has continued to grow and expand over the last fifteen years, the unintentional ensnarement of striped bass in gill nets, and subsequent discard of these fish, has increased in the various coastal gill net fisheries. The Department is proposing these changes in order to minimize the capture and discard of striped bass in the fall when striped bass discard mortality tends to be higher due to higher water temperatures. To help ensure minimization of the mortality of by-catch of striped bass during this time in the Atlantic Ocean, the proposed amendments require that an authorized gill net in use that has a stretched mesh size of four inches or greater will be tended at all times, the operator of the gill net will be within one-half nautical mile (3,040

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feet) of the gill net, and the entire gill net will be brought into the boat within five hours of the initial set of the gill net. These measures will minimize mortality of the by-catch by assuring that the time they are ensnared in the gill net is limited.

The Department is additionally proposing to delete as obsolete language from N.J.A.C. 7:25-18.5(g) that specifies eligibility requirements applicable to individuals who applied for licenses in 2003.

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

The Department is proposing numerous changes to N.J.A.C. 7:25-18.12(b) dealing with various aspects of the commercial bluefish fishery.

The Department is proposing to change the annual commercial bluefish allocation by gear type as described in N.J.A.C. 7:25-18.12(b)2. Currently, the annual allocation is divided by gear type among gill net, pound net, otter trawl, purse seine, and hook and line. The Department proposes to remove the annual quota allocation for purse seine fisheries, 7.5 percent of total quota, and use this allocation as a by-catch allotment during potential closed seasons for the other net fisheries – gill net, pound net, and trawl gear types – when the quota for that gear type has been harvested and the gear specific season is closed. Gear specific bluefish quotas have been reached several times over the last five years and this provision would allow a limited amount of bluefish to be harvested.

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The current allocation structure continually leaves fish unavailable for harvesting and therefore under-utilizes the State's bluefish quota. The New Jersey commercial bluefish purse seine fishery has not landed any bluefish since 1995. The Department does not foresee this fishery becoming active in the future. Therefore, changing the current allocation scheme will have a positive benefit for the remaining commercial bluefish fisheries. Utilizing the purse seine allocation as by-catch for the net fisheries will allow for optimal utilization of the Statewide quota and bluefish resource by allowing the various bluefish net fisheries the opportunity to land a limited amount of bluefish during their respective directed closed period instead of discarding those fish, many of which are dead or would not survive if thrown back. In order to ensure that fishermen do not directly target bluefish during the closed period when a gear specific season has been closed due to the quota being harvested and that the take of bluefish shall only be as by-catch, proposed N.J.A.C. 7:25-18.12(b)3i specifies that no vessel shall have in possession or land more than 150 pounds of bluefish daily. The proposed amendments further specify that the amount of bluefish may not be more than 50 percent, by weight, of the total weight of all species landed and sold, similar to specifications applicable to weakfish at N.J.A.C. 7:25-18.12(a).

To further ensure by-catch is controlled, the Department proposes to similarly amend N.J.A.C. 7:25-18.12(b)4 to provide that a bluefish dealer is held to the same restrictions as the commercial fishermen, i.e., the bluefish dealer may not accept more than the 150 pound daily by-catch limit during a specific closed season, provided the

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amount of bluefish is not more than 50 percent, by weight, of the total weight of all species landed.

The Department is proposing to amend N.J.A.C. 7:25-18.12(b)5 to incorporate gear-specific quota “paybacks” in subsequent years for bluefish if more than the designated quota is taken in a given year using a particular type of gear and the Statewide quota is exceeded in that year. Currently, if any gear type fishery exceeds its gear-specific quota in any one year, except for an excess take utilizing purse seine gear, there is no provision for a reduction in harvest by that fishery in the subsequent year to offset the quota exceedance (a “payback”). Instead, any overage in one gear-specific quota is subtracted off the Statewide quota for the current year, which may lead to early closures of other gear types even though the other gear fisheries may have not reached their gear-specific quotas. The proposed amendment will ensure that the fishery utilizing each gear type is responsible and held accountable for its specific quota. Additionally, this amendment will ensure that the actions of a fishery utilizing one type of gear will not negatively impact bluefish fisheries utilizing other types of gear.

N.J.A.C. 7:25-18.12(b)9 specifies landing report requirements for permitted bluefish dealers. Currently, bluefish landing reports must be submitted to the Division on a form supplied by the Commissioner. The Department is proposing to expand the options available for reporting by allowing dealers to submit landing reports by any method approved by the Department. This language is consistent with other mandatory reporting options at N.J.A.C. 7:25-18.12(h), (i), and (k) for dealers of other species and

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enables the bluefish dealers and the Department to take advantage of other reporting systems that may be developed in the future, including electronic reporting systems such as the Standard Atlantic Fisheries Information System (SAFIS).

The Department is proposing to amend N.J.A.C. 7:25-18.12(b)11 to change the number of days of public notice the Commissioner is required to provide prior to closing a gear-specific season for bluefish. Currently, the Commissioner must provide four days public notice prior to closing a season for a specific gear type. The Department is proposing to reduce this to two days public notice. The shorter notice period will allow the Commissioner to react more quickly when it appears the quota is being approached. The ability to respond more quickly will correspondingly allow the Commissioner to wait until the quota is nearer to being fully utilized before having to take action to ensure over-fishing does not occur, making it possible to more closely achieve optimal take. This change is consistent with similar provisions applicable to other fisheries, such as summer flounder (see N.J.A.C. 7:25-18.12(i)). A change from four days public notice to two days public notice is likewise proposed at N.J.A.C. 7:25-18.12(c)11ii for the tautog fishery. The Department is also amending N.J.A.C. 7:25-18.12(b)11 to reflect that notice of closures will be provided by any number of other methods, such as notice on the Department's website, via email, or by first class mail to commercial docks and fishing organizations. Similar changes are proposed at N.J.A.C. 7:25-18.12(c)11iii and (f)4 with respect to the tautog and black drum fisheries to make the various notice provisions consistent. Also for consistency, the Department is proposing that all the notice

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provisions state the Commissioner *shall* close the season when the particular trigger event occurs, rather than *may* close, as some of the provisions currently state.

The Department is proposing at N.J.A.C. 7:25-18.12(b)12 to allow the Commissioner to re-open a closed season for a particular gear-specific bluefish fishery. On occasion, a gear-specific season may be closed in anticipation of the quota for that gear being fully utilized. However, due to unanticipated events occurring after the Commissioner provides the required notice of the pending closure and before the actual closure date, such as storm conditions that preclude vessels from leaving port, the gear-specific quota may not be entirely landed by the projected date. The proposed amendment would allow the Commissioner to re-open the gear-specific season with two days' public notice. A change from four days public notice to two days public notice to reopen a fishery is likewise proposed at N.J.A.C. 7:25-18.12(c)11iv for the tautog fishery. These proposed changes are consistent with provisions applicable to other fisheries, such as black sea bass, summer flounder, and scup (see N.J.A.C. 7:25-18.12(h), (i), and (k)).

The Department is proposing numerous changes to N.J.A.C. 7:25-18.12(h) dealing with various aspects of the commercial black sea bass fishery. Amendments to N.J.A.C. 7:25-18.12(h)8 and (h)8i and iv are being proposed to clarify that the Commissioner will implement the annual black sea bass quota determined by the Mid-Atlantic Fishery Management Council (MAFMC) or the Atlantic States Marine Fisheries Commission (ASMFC). The MAFMC and the ASMFC no longer set seasonal quota allocations or daily trip limits for the states' black sea bass fisheries. The states are given

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the flexibility to modify the seasonal allocations and daily trip limits to meet the needs of the respective states' fisheries, so long as the established seasonal quota allocations and daily trip limits do not lead to landings that exceed the MAFMC or ASMFC established annual quota.

The Department is proposing to amend N.J.A.C. 7:25-18.12(h)8iii(5) to allow the Commissioner to set daily trip limits for the commercial black sea bass fishery for the remainder of a season if at least 50 percent of a season's quota remains unlanded when there is at least 50 percent of the season remaining. Currently, the Commissioner may only modify daily trip limits through the process outlined at N.J.A.C. 7:25-18.12(o), except for the final season if 50,000 pounds of black sea bass remain unharvested as of December 1 in any calendar year. While the process described at N.J.A.C. 7:25-18.12(o) is sufficient for setting daily trip limits when the initial coastwide quota is established by the MAFMC or ASMFC, it is not responsive enough to make potential in-season modifications to the trip limit, either up or down, based on the performance of the fishery within a particular season. In many years, a particular seasonal quota is not harvested and that quota rolls into the next season. Often, that seasonal quota is then not harvested, with increasing surpluses rolling over and eventually leaving unused quota left un-harvested and lost opportunity for commercial black sea bass fishermen. It should be noted, this proposed change will not modify the Commissioner's fishery closure authority described at N.J.A.C. 7:25-18.12(h)8v. If trip limits are modified in an effort to increase landings, the Commissioner will close the fishery once the seasonal quota is reached. Notice of the

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changes to the daily trip limits will be made upon two days' notice, with the notice posted on the Department's website, and sent either via e-mail or first class mail to black sea bass dealers and permit holders, in accordance with proposed N.J.A.C. 7:25-18.12(h)8v. Expansion of the current requirement that such notice be provided solely by first class mail to permit holders to also provide website notice as well as notice to dealers and to allow notification to alternatively occur by e-mail will allow use of these technologies to provide more efficient and timely notice to a broader audience affected by the change. Similar changes are proposed to notice requirements for other fisheries at N.J.A.C. 7:25-18.12(i)2vi and (k)1iii. The Commissioner will work with black sea bass industry advisors and the Marine Fisheries Council before modifying any seasonal trip limit.

The Department is proposing to amend N.J.A.C. 7:25-18.12(h)8vii to correct an incorrect cross-reference to N.J.A.C. 7:25-18.12(h)7v that is intended to refer to N.J.A.C. 7:25-18.12(h)8v, where the method for the giving of notice of changes in the black sea bass season is specified. The Department is additionally proposing to amend this subparagraph as well as equivalent provisions at N.J.A.C. 7:25-18.12(i)2viii and (k)1v to achieve consistency in terminology between these provisions and proposed N.J.A.C. 7:25-18.12(b)12, and to correct a typographical error in N.J.A.C. 7:25-18.12(k)1v in the term "projected."

The Department is proposing to amend N.J.A.C. 7:25-18.12(i)2v to allow the Commissioner to set daily trip limits for the commercial summer flounder fishery for the remainder of a season if at least 50 percent of a season's quota remains unlanded when at

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least 50 percent of the season remaining. This is similar to the proposed change for black sea bass at N.J.A.C. 7:25-18.12(h)8iii(5). Currently, the Commissioner may only modify daily trip limits through the process outlined at N.J.A.C. 7:25-18.12(o), except for the final season if 100,000 pounds of summer flounder remain as of December 1 in any calendar year. While the process described at N.J.A.C. 7:25-18.12(o) is sufficient in setting daily trip limits when the initial coastwide quota is established by the MAFMC or ASMFC, it is not responsive enough to make potential in-season modifications to the trip limit, either up or down, based on the performance of the fishery within a particular season. While the commercial summer flounder fishery has not experienced recent continued under-harvest within a particular season as is the case for black sea bass, providing for increased flexibility and responsiveness in real time as the fishery operates will help ensure commercial quotas continue to be optimally managed. Notice of the changes to the daily trip limits will be made upon two days' notice and posted on the Department's website, and sent either via e-mail or first class mail to summer flounder dealers and permit holders.

The Department is proposing at N.J.A.C. 7:25-18.12(u) to define a "fish dealer" or "dealer" as any person who receives fish that are subject to regulation under N.J.A.C. 7:25-18 for any commercial purpose. The proposed definition includes examples of what are considered to be commercial purposes and clarifies that transactions involving exchange of fish for things of value other than money will result in the person receiving

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the money or other thing of value being considered a fish dealer under these rules and, accordingly, subject to all requirements applicable to fish dealers.

The Department is proposing new N.J.A.C. 7:25-18.12(v) to require any Federally permitted vessel or person to complete a Federal Vessel Trip Report prior to landing any species of fish. Completion of these reports is currently required pre-landing by Federal regulation. The proposed amendment would conform State regulations to Federal regulations and allow State enforcement officers to better enforce the Federal requirement and State fisheries regulations.

Social Impact

The proposed amendments to N.J.A.C. 7:25-14.4, which involves commercial crab licenses, will result in positive social impacts. New commercial crab licenses have been made available and a licensee can only obtain and possess one license for both the commercial crab pot/trot line and Atlantic Coast dredge fisheries. The proposed amendments will allow new participants in the fishery while maintaining the small-scale, traditional fishery.

The proposed amendment to N.J.A.C. 7:25-18.1 adding language to make it unlawful to barter, trade, or exchange for any monetary or physical value any fish less than the minimum legal size limit will result in positive social impacts. The amendment will strengthen the enforcement of the prohibition on the sale of illegal fish, thus providing for better management of these resources and lessening the likelihood that

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these resources will be overfished, which could have an impact both on the viability of the resource and the availability/price of the resource to the public as a food source.

The proposed amendments to N.J.A.C. 7:25-18.1(g) to increase the monetary penalty for illegally taken or possessed tautog will result in positive social impacts. The proposed amendment will provide a deterrent to violating regulations governing the recreational tautog fishery and should lessen negative interaction between recreational anglers and Conservation Officers.

The proposed amendments to N.J.A.C. 7:25-18.5(g)5iii and 6iii allowing the use of only one anchored/staked gill net or drift gill net in the Atlantic Ocean from September 1 through December 15 with a mesh size of greater than four inches will result in positive social impacts. The proposed amendments will allow commercial gill net fishermen to continue to target and land the species of interest, while minimizing the incidental catch and discarding of striped bass. The decline in incidental striped bass catch will benefit the coastwide striped bass population by greatly reducing by-catch mortality and will therefore have a positive effect on the recreational fishery with increased fish availability.

The proposed amendments to N.J.A.C. 7:25-18.12(b) dealing with the commercial bluefish fishery will have both positive and negative social impacts. Negative social impacts may occur by eliminating the annual purse seine quota for bluefish that would eliminate the potential for that fishery to participate in the commercial bluefish fishery in the future without further rulemaking. However, the commercial bluefish purse seine fishery has not harvested any bluefish since 1995 and the Department does not believe

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this fishery will become active in the future. Allocating the purse seine quota for by-catch during the closed seasons of the bluefish net fisheries will help optimize the commercial bluefish quota and provide participants in those fisheries increased opportunity to land bluefish during the participants' respective closed season when the bluefish are available, and therefore provide a product to the public that may not otherwise have been available. Reducing the amount of time required for public notice and providing the Commissioner the authority to re-open a closed season will allow for optimal utilization of the commercial bluefish quota.

The proposed amendment to N.J.A.C. 7:25-18.12(h)8iii(5) will result in positive social impacts. Over the last several years, the MAFMC and the ASMFC have established restrictive coastwide black sea bass quotas due to significant concerns and uncertainty with the coast-wide black sea bass stock assessment. The New Jersey Marine Fisheries Council has tried to be pro-active over these years in an effort to ensure landings do not exceed New Jersey's available quota while attempting to maximize season length and opportunities for the commercial fishermen. The existing regulations established a limited number of trips allowed per week with relatively modest trip limits. These regulations have been successful at keeping the seasons open; however, the trip limits have been too low and consequently New Jersey has been under-harvesting its available quota. These proposed changes will allow for a much more expeditious change in the trip limits for the optimal utilization of quotas, allow for New Jersey commercial

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black sea bass fishermen harvest the quota available to them, and, therefore, optimize their financial opportunities.

The proposed amendment to N.J.A.C. 7:25-18.12(v) requiring any Federally permitted vessel or person to complete a Federal Vessel Trip Report prior to landing any species of fish will result in positive social impacts. The proposed amendment will conform State regulations to Federal regulations, allow State enforcement officers to better enforce fisheries regulations, and will result in better management of a public resource.

Economic Impact

The proposed amendments to N.J.A.C. 7:25-14.4 dealing with commercial blue crab licenses will result in both neutral and positive economic impacts. Currently, there are no licensees who hold more than one commercial crab pot/trot line or Atlantic Coast crab dredge license, so there will be no economic losses for anyone currently possessing a valid license. New licenses have been made available. These proposed changes, which limit an applicant to just one license, will allow for new participants in the fishery and will result in positive economic results for those new participants.

The proposed amendments to N.J.A.C. 7:25-14.12 dealing with commercial blue crab mandatory reporting requirements will result in positive economic impacts. The new reporting violation forgiveness provision will provide licensees who have been in compliance with the reporting compliance requirements for 18 months to have up to two

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prior violations removed from their records. This will avoid a mandatory license suspension or permanent license revocation and, therefore, the licensee will not incur the negative economic impact those violations may cause under the existing rules. Also, the proposed amendments establish the process by which a licensee may submit a nullification request to nullify specific reporting offenses in the case of extraordinary hardship demonstrated by the licensee. In the event the Department approves a licensee's nullification request, the licensee will avoid the need for a hearing in the Office of Administrative Law. This allows the licensee to more quickly return to using the license and participating in the fishery, thus generating economic benefits, which include maintaining employment in the fishery and continued landing of blue crabs for sale. Similar language has been added in N.J.A.C. 7:25-18.5(g)3vii for marine fishermen who have violated the reporting requirements. As with blue crab fishermen, this provision will allow prior violators to avoid a mandatory license suspension or permanent license revocation, and licensees will not incur the negative economic impact those violations may cause.

The proposed amendment to N.J.A.C. 7:25-18.1 adding language to make it illegal to barter, trade, or exchange for any monetary or physical value any fish less than the minimum legal size limit 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. 7:25-18.1(g) to increase the monetary penalty for illegally taken or possessed tautog will result in positive economic impacts.

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Currently, fishing mortality on the tautog stock is slowing population growth as the stock recovers from years of overfishing. According to the Atlantic States Marine Fisheries Commission's Fishery Management Plan for Tautog, illegal harvest has been found to account for a substantial portion of overall fishing mortality. Increasing the monetary penalty will provide a deterrent to illegal harvest of tautog, thereby reducing fishing mortality on the stock. Reduced mortality rates will promote stock rebuilding, and eventually lead to increased recreational and commercial fishing opportunities for tautog.

The proposed amendments to N.J.A.C. 7:25-18.5(g)3 regarding commercial miniature fyke reporting requirements will result in positive economic impacts for those commercial fishermen who qualify under this proposed paragraph. Creating a reporting violation forgiveness provision will provide a licensee the opportunity to continue to operate if the licensee satisfies the criteria established in the rules, rather than being subject to a license suspension or permanent license revocation for violations that may be years apart. The proposed amendments to give the Division the authority to rescind reporting offenses in the case of extraordinary hardship will expedite the appeals process and provide a licensee a quicker decision to potentially allow a licensee to utilize the license, participate in the fishery, and avoid possible economic hardship that would occur through a suspension or license revocation.

The proposed amendments to N.J.A.C. 7:25-18.12(b) regarding the commercial bluefish fisheries will have both positive and negative economic impacts. Reducing a gear-specific quota in subsequent years due to quota overages within a calendar year may

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result in some economic losses for that gear-specific fishery for the year(s) in which the quota is reduced. However, dealing with the overage in this way, rather than reducing the quotas allowed to other gear-specific fisheries later in that calendar year, will result in a positive economic impact to those participating in the other fisheries that will not have their quotas reduced as they would under the current system. Overall, it is anticipated that this change will have no net economic impact on the bluefish fishery.

Allocating the commercial bluefish purse seine quota for by-catch during the closed net fishery seasons will provide increased financial opportunities for commercial bluefish fishermen by allowing them to land 150 pounds per day of bluefish caught as by-catch, provided bluefish is not more than 50 percent of the total landings, in weight for that day during the respective net fishery closed season. It will also provide increased financial opportunities for the bluefish dealers who would be able to purchase bluefish and make those fish available to the public during times when bluefish was unavailable in the past because the directed fishery was closed. The commercial bluefish purse seine fishery has not harvested any bluefish since 1995, and therefore New Jersey has left the bluefish allocated to the purse seine fishery un-harvested. To account for the uncertainty and annual variability in the various quotas and dockside landing values, average values for the last four years (2009 – 2012, the latest complete years) were used in the economic analysis to determine the lost economic potential due to the un-harvested purse seine quota. The 7.5 percent allocation to the purse seine gear equates to about 109,241 pounds annually over the last four years (2009-2012). According to the National Marine

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Fisheries Service (NMFS) Commercial Landings data, the average dockside value for bluefish landed in New Jersey was \$0.48 per pound. If the average purse seine quota that has gone un-harvested for nearly 20 years is now harvested as by-catch because of these proposed amendments, an additional \$52,435 annually in revenue will be created for New Jersey's commercial fishermen. Commercial fisheries products values are then typically multiplied by a factor of six (Fisheries of the United States, 2012, National Marine Fisheries Service publication) to reflect indirect and induced economic activity as the product makes its way through the various markets (fish processor, delivery, fish market, restaurant, and supermarket) and as the workers and owners in those sectors spend the added income they receive. The total economic benefit equals the sum of the direct, indirect, and induced activity. This would equate to an additional annual \$314,614 in potential economic benefit to the State of New Jersey.

The other bluefish provisions will also create increased economic opportunities for commercial bluefish fishermen by providing the Department greater flexibility to monitor the fishery and close or reopen a season which will allow for optimal utilization of the commercial bluefish quota.

The proposed amendment to N.J.A.C. 7:25-18.12(h)8iii(5) will result in positive economic impacts for New Jersey's commercial black sea bass fishermen. Over the last several years, New Jersey has harvested, on average, only about 80 percent of its allocated commercial black sea bass quota. The New Jersey Marine Fisheries Council and the Department have been proactive and adjusted trip limits to increase commercial

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black sea bass landings but to no avail. The current process, outlined at N.J.A.C. 7:25-18.12(o), to modify seasonal trips limits has not been responsive or timely enough to the needs of New Jersey's commercial black sea bass fishermen. By the time trip limits could be modified under the current process, the current fishing season would have already ended and therefore rolling un-harvested quota into the next season. This proposed amendment will allow the Commissioner to make the necessary changes as harvest patterns and sea bass availability develop within a season and will increase the likelihood that New Jersey's quota will be harvested. As was done with bluefish, average landings, quotas and dockside values from 2009 – 2012 were used to account for the uncertainty and inherent variability in commercial fisheries statistics. Over the last four years, over 12 percent of the commercial black sea bass quota has gone un-landed – this equates to an annual average of 42,260 pounds of black sea bass. According to the NMFS Commercial Landings database (personal communication from the National Marine Fisheries Service to Brandon Muffley, 12/2013), the average price of black sea bass landed in New Jersey has a dockside value of \$3.24 per pound. If the proposed amendments result in New Jersey black sea bass fishermen harvesting the entire quota allocation, including the portions of the allocation that has not been landed in previous years, this would provide for an additional \$136,923 for New Jersey's fishermen. Again, applying the 6.0 multiplier mentioned above, this would equate to an additional annual \$821,542 in gross economic benefits to the State of New Jersey. Some of those benefits would flow to out-of-State firms, and some represents intra- and inter-company sales

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within industries inside New Jersey, so the net benefit would be smaller although still substantial. The Department lacks sufficient data to estimate the net benefit.

Environmental Impacts

The proposed amendment to N.J.A.C. 7:25-18.1 to make it unlawful to barter, trade, or exchange for any monetary or physical value any fish less than the minimum legal size limit will result in positive environmental impacts. The amendment will strengthen the enforcement of the prohibition on the sale of illegal fish, thus providing for better management of the resource and lessening the likelihood that these resources will be overfished.

The proposed amendments to N.J.A.C. 7:25-18.1(g) to increase the monetary penalty for illegally taken or possessed tautog will result in positive environmental impacts. Currently, tautog population size is 63 percent below the target population size identified in the tautog fishery management plan. The Atlantic States Marine Fisheries Commission approved Addendum VI to the tautog management plan which encouraged states to increase the monetary penalty for the illegal take or possession of tautog. These increased monetary penalties will deter anglers from illegally harvesting tautog and will decrease the number of tautog killed by illegal harvesting, allowing the stock to rebuild to an adequate population size.

The proposed amendments to N.J.A.C. 7:25-18.5(g)5iii and 6iii allowing the use of only one anchored/staked or drift gill net in the Atlantic Ocean from September 1

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through December 15 with a mesh size of greater than four inches will result in positive environmental impacts. Allowing only one gill net with a mesh size of four inches or greater will significantly reduce the incidental catch and discarding of coastal striped bass during the fall migration when discard mortality is higher.

The proposed amendment to N.J.A.C. 7:25-18.12(v) requiring any Federally permitted vessel or person to complete a Federal Vessel Trip Report prior to landing any species of fish will result in positive environmental impacts. The proposed amendment will conform State regulations to Federal regulations, allow State enforcement officers to better enforce fisheries regulations, and will result in better management of the resource.

Federal Standard Statement

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

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.

Jobs Impact

The Department has evaluated this rulemaking to determine the impact of the proposed amendments on jobs. The proposed amendments concern various marine

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fisheries resources at N.J.A.C. 7:25-14.4, 14.12, 18.1, 18.5, and 18.12. None of the proposed amendments will result in the generation or loss of jobs except as follows:

The proposed amendments to N.J.A.C. 7:25-18.1(g) to increase the monetary penalty for illegally taken or possessed tautog could result in a limited creation of jobs in the future. Tautog is an important target species, particularly for private boat and for-hire vessel fishing sectors. A fully rebuilt stock will provide increased fishing opportunities for this species and continue to support jobs in the future.

The proposed amendments to N.J.A.C. 7:25-18.12(b) removing the annual commercial purse seine quota for bluefish may cause the loss of potential jobs in the future since this gear type will not be able to participate in the bluefish fishery in the future. However, the purse seine fishery for bluefish has not landed any bluefish since 1995. Therefore, the Department does not anticipate that any job loss will occur.

The proposed amendments to N.J.A.C. 7:25-18.12(h) allowing the Commissioner to set daily trip limits if at least 50 percent of a season's quota remains un-landed, with at least 50 percent of the season remaining, may have a positive jobs impact. The changes will give the Commissioner the ability to monitor and react in "real-time" to changes occurring within the commercial black sea bass fishery and will help ensure the seasonal black sea bass quotas are harvested. Over the last four years, over 12 percent of the commercial black sea bass quota has gone un-landed – this equates to an average of 42,260 pounds annually of black sea bass. If these fish were landed, an additional annual \$821,542 in economic activity would occur in New Jersey and ensure current black sea

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bass fishermen remain in the fishery and may allow for the commercial docks to support jobs due to the increased landings.

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 or aquaculture industries.

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.

The proposed amendments at N.J.A.C. 7:25-14.12(d) and 18.5(g)3viii allow for commercial crab license holders and miniature fyke or pot license holders, respectively, the opportunity to request that the Department nullify an offense and any resultant penalty under N.J.A.C. 7:25-14.12(a) or 18.5(g)3v, respectively. These proposed amendments specify the process for preparing and submitting the nullification request,

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including the information that must be supplied, and that the nullification request must be part of the request for an adjudicatory hearing. These requests, both the adjudicatory hearing request and the nullification request, consist of a letter providing the information required and therefore do not add any financial cost to the licensee and no professional services would be required. There is no differentiation in these requirements based upon business size because these provisions apply to a single licensee, regardless if the licensee is an individual or part of a larger business.

There are a number of proposed amendments at N.J.A.C. 7:25-18.5(g)5, (g)5iii, and (g)6iii that modify gill net requirements in the Atlantic Ocean from September 1 through December 15 to minimize the bycatch and discards of striped bass when striped bass discard mortality tends to be higher due to higher water temperatures. The proposed amendments limit a licensee to the use of only one staked/anchored or one drifting gill net, with a mesh size that is four inches or greater stretched mesh, provided the net is tended at all times. The operator of the gill net must be within one-half nautical mile (3,040 feet) of the gill net, and the entire gill net must be brought into the boat within five hours of the initial set of the gill net. A licensee does not need additional crew or new/additional nets to abide by these provisions and therefore there will be no additional costs incurred nor would there be a need for professional services. These provisions apply to the licensee (an individual) and the crew working on the boat and there is no differentiation in requirements based upon business size.

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The proposed amendments specified at N.J.A.C. 7:25-18.12(b)3i allow for a 150-pound by-catch allotment of bluefish to licensed commercial fishermen during potential closed seasons for the net fisheries – gill net, pound net, and trawl gear types – when the quota for that gear type has been harvested and the gear specific season is closed. The proposed amendments further specify that the amount of bluefish may not be more than 50 percent, by weight, of the total weight of all species landed and sold. The provisions at N.J.A.C. 7:25-18.12(b)4i provide for these same measures with regard to bluefish dealers when accepting bluefish during the closed season. Fishermen and dealers are targeting, harvesting, and buying other fish during this timeframe and, therefore, allowing for the harvest and sale of bluefish during the closed season will not result in any additional costs to the fishermen or dealer or the need for professional services. In fact, it should result in a financial benefit to both the fishermen and dealer by providing for an increased opportunity that would otherwise be lost because these bluefish would need to be discarded and not brought back to shore to land. These provisions apply to an individual licensee or dealer and there is no differentiation in the requirements based upon business size.

The Department is proposing new N.J.A.C. 7:25-18.12(v) to require any Federally permitted vessel or person to complete a Federal Vessel Trip Report prior to landing any species of fish. Completion of these reports is currently required pre-landing by Federal regulation. The proposed amendment would conform State regulations to Federal regulations. Since these reports are already required by Federal law, there are no

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additional costs or the need for professional services to comply with this provision. This provision applies to all Federally permitted vessels regardless of vessel size or crew and, therefore, there is no differentiation in requirements based upon business size.

Housing Affordability Impact Analysis

In accordance with N.J.S.A. 52:14B-4, as amended effective July 17, 2008, by P.L. 2008, c. 46, 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 Analysis

In accordance with N.J.S.A. 52:14B-4, as amended effective July 17, 2008, by P.L. 2008, c. 46, 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]):

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SUBCHAPTER 14. CRAB AND LOBSTER MANAGEMENT

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/**trot line** license, the applicant must provide a copy of a previously valid commercial crab pot/**trot line** license held by the applicant from the previous year. **The Department shall issue no more than one commercial crab pot/trot line license to any individual at any time.**
2. No additional crab pot/**trot line** licenses will be issued until the number of licenses issued decreases below the number issued in 1991 (312 licenses). **When the number of issued licenses decreases below this threshold, the Department shall issue the available licenses in accordance with (a)10 below.**

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[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. 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.]

3. To be eligible for an Atlantic Coast commercial crab dredge license, the applicant must provide a copy of a previously valid Atlantic Coast crab dredge held by the applicant from the previous year. **The Department shall issue no more than one valid Atlantic Coast crab dredge license to any individual at any time.**

4. No additional Atlantic Coast commercial crab dredge licenses will be issued until the number of licenses issued decreases below 250 licenses. When [additional] **the number of issued** licenses [are available] **decreases below this threshold**, the Department [will] **shall** issue **the** available licenses [pursuant to (a)2i above] **in accordance with (a)10 below.**

5. (No change.)

6. No additional Delaware Bay commercial crab dredge licenses shall be issued until the number of licenses issued decreases below the number sold in 1997 (93 licenses).

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When [additional] **the number of issued** licenses [are available] **decreases below this threshold**, the Department shall issue **the** available licenses [pursuant to (a)2i above] **in accordance with (a)10 below**.

7. Commercial crab pot/**trot line** and crab dredge licenses are non-transferable except that the holder of a valid license [not pending revocation due to violations 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, **provided the license is not pending revocation, suspension, or court action for any violation**. The new licensee shall have a license issued in [their] **his or her** name after payment of the fee specified at (a)8 below.

8. – 9. (No change.)

10. When any additional commercial crab pot/trot line or crab dredge license becomes available pursuant to (a)2, 4, or 6 above, the individual(s) remaining on the lottery list of prior unsuccessful applicants will be given the first opportunity to obtain the license in the order in which they are placed on the list, provided the individual(s) purchase a license within 30 days of being notified by the Department. The Department shall provide notice by first class mail to the individual(s) on the list about the opportunity to obtain an available license. It is the responsibility of the applicant to provide the Department with written notification of any change in mailing address. Once the existing list is exhausted, the Department shall notify commercial docks and fishing organizations by e-mail or first class mail as to the

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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. The Department shall remove an individual's name from the crab pot/trot line license list, the Atlantic Coast crab dredge license lottery list, or Delaware Bay crab dredge license lottery list if the individual is offered an opportunity to purchase an available license under this paragraph, regardless of whether the individual purchases the license or for the crab pot/trot line license and the Atlantic Coast crab dredge license, if the individual acquires a license from an immediate family member pursuant to (a)7 above.

(b) (No change.)

(c) An applicant who is otherwise eligible for a license under (a)1, 3, or 5 above, but who fails to provide a copy of his or her license before the December 31 expiration of that license, may request an extension of time to renew in accordance with this subsection and (d) through (f) below.

1. The written request, along with any supporting documentation, shall be submitted to:

New Jersey Division of Fish and Wildlife

Mail Code 501-03

PO Box [400] 420

Trenton, New Jersey 08625

2. (No change.)

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(d) – (f) (No change.)

7:25-14.12 Filing of reports

(a) (No change.)

(b) All license suspensions shall be imposed during the open season for the respective fishery; any period of suspension not occurring during the existing season shall be applied during the next open season even if such season falls in a different calendar year. Prior to suspension of the license, the [permittee shall have the opportunity to] **licensee may** 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] **in accordance with the procedures at N.J.A.C. 7:25-14.21.**

(c) **The Department shall automatically remove and reduce to zero the number of previous reporting offense(s) on a licensee’s record if the licensee does not commit any other violation of this section for 18 months from the date of the first reporting offense on record or from the date of completion of a suspension imposed as a result of a second reporting offense on record.**

(d) **A licensee cited for violation of this section may submit a nullification request to nullify a reporting offense and any resulting penalty due to an extraordinary hardship or exceptional circumstance in accordance with this subsection and (e) through (f) below. The licensee shall submit the nullification request as part of the request for an adjudicatory hearing on the reporting offense. The licensee shall file**

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the request for adjudicatory hearing in accordance with N.J.A.C. 7:25-14.21, with a copy of the nullification request and any supporting documentation. The nullification request shall:

- 1. Identify the specific reporting offense for which the nullification is requested;**
- 2. Explain in detail why the licensee was not able to comply with the reporting requirements at (a) above, including a statement of the type and degree of hardship that prevented compliance with the reporting requirements and the hardship that will result to the licensee if the reporting offense is not nullified; and**
- 3. Provide appropriate documentation as necessary to support the request for nullification.**

(e) The Department shall nullify an offense and any resultant penalty under (a) above if it determines that:

- 1. By reason of extraordinary hardship or exceptional situation or condition, the licensee was precluded from complying with the reporting requirements;**
- 2. By reason of extraordinary or exceptional situation or condition, strict compliance with the reporting requirements at (a) above would result in exceptional and undue hardship upon the licensee;**
- 3. The circumstances supporting (e)1 and 2 above were not created by the licensee or persons under his or her control; and**
- 4. The approval of the nullification will not unreasonably interfere with the orderly administration of these reporting requirements.**

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(f) The Department shall provide written notice to the licensee of its decision to approve or deny the nullification request. If the Department denies the nullification request, the request for an adjudicatory hearing on the reporting offense shall be deemed to include a request for an adjudicatory hearing on the denial of the nullification request. If the Department approves the nullification request, the request for an adjudicatory hearing on the reporting violation shall be deemed withdrawn as moot.

7:25-14.21 Request for adjudicatory hearing

(a) – (d) (No change.)

(e) A request for an adjudicatory hearing shall be submitted to the Department at the address listed below, with a copy to the Division of Fish and Wildlife at the address given at N.J.A.C. 7:25-14.4(c):

Office of Legal Affairs

New Jersey Department of Environmental Protection

Mail Code 401-04L; 7th Floor

PO Box 402

Trenton, New Jersey 08625-0402

Attention: Adjudicatory Hearing Requests

SUBCHAPTER 18. MARINE FISHERIES

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7:25-18.1 Size, season, and possession limits

(a) (No change.)

(b) A person shall not purchase, sell, offer for sale, [or] expose for sale, **barter, trade, or exchange for money or for any other thing of value, or attempt to purchase, sell, offer for sale, barter, trade, or exchange for money or for any other thing of value,** 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 **or permitted** 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>
• • •	• • •

1. – 3. (No change.)

(c) – (f) (No change.)

(g) Any person violating the provisions of (b), (c), (d), or (e) above shall be liable to a penalty of \$30.00 for each fish taken or possessed, **except that the penalty shall be**

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\$100.00 for each tautog taken or possessed. Each fish taken or possessed shall constitute an additional separate and distinct offense.

(h) A person shall not take, attempt to take, or have in his or her possession any striped bass or striped bass hybrids, as defined in (i) below, while on or angling in the Delaware River or its tributaries from the upstream side of the [U.S. Route 1 Bridge] **Calhoun Street Bridge** to and including the Salem River and its tributaries from April 1 through May 31 of each year, or from any waters of the State, except the Atlantic Ocean, from January 1 through February 28 of each year as set forth in N.J.S.A. 23:5-45.2.

1. (No change.)

(i) – (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 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

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preceding year. Individuals must purchase the maximum number of gill net licenses to which they are entitled annually. Any licenses not purchased 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 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 given 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 one-half inch by one-half inch bar, inside measurement. The net type shall not have leaders or

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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. – v. (No change.)

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] **in accordance with the procedures at N.J.A.C. 7:25-18.17.**

vii. The Department shall automatically remove and reduce to zero the number of previous reporting offense(s) on a licensee’s record if the licensee does not commit any other reporting offenses under (g)3v above for 18 months from the date of the first reporting offense on record or from the date of completion of the suspension imposed as a result of a second reporting offense on record.

viii. A licensee cited for violation of (g)3v above may submit a nullification request to nullify the reporting offense and any resulting penalty be nullified due to extraordinary hardship or exceptional circumstance in accordance with this subsection and (g)3ix through x below. The licensee shall submit the nullification request as part of the request for an adjudicatory hearing on the reporting offense filed in accordance with N.J.A.C. 7:25-18.17. The nullification request shall:

- (1) Identify the specific reporting offense for which the nullification is requested;**
- (2) Explain in detail why the licensee was not able to comply with the reporting requirements outlined at (g)3v above, including a statement of the type and degree**

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of hardship that prevented compliance with the reporting requirements and the hardship that will result to the licensee if the reporting offense is not nullified; and

(3) Provide appropriate documentation as necessary to support the request for nullification.

ix. The Department shall nullify an offense and any resultant penalty under (g)3v above, if it determines that:

(1) By reason of extraordinary hardship or exceptional situation or condition, the licensee was precluded from complying with the reporting requirements;

(2) By reason of extraordinary or exceptional situation or condition, strict compliance with the reporting requirements at (g)3v above would result in exceptional and undue hardship upon the licensee;

(3) The circumstances supporting (g)3ix(1) and (2) above were not created by the licensee or persons under his or her control; and

(4) The approval to nullify will not unreasonably interfere with the orderly administration of these reporting requirements.

x. The Department shall provide written notice to the licensee of its decision to approve or deny the nullification request. If the Department denies the nullification request, the request for an adjudicatory hearing on the reporting offense shall be deemed to include a request for an adjudicatory hearing on the denial of the nullification request. If the Department approves the nullification request, the

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request for an adjudicatory hearing on the reporting violation shall be deemed withdrawn as moot.

4. (No change.)

5. Drifting gill nets shall be used only in the Atlantic Ocean, Delaware Bay, and the tributaries of Delaware Bay. The smallest mesh of any drifting gill net shall be not less than five inches stretched [beginning] **from** February 12 through February 29. **Except as provided in (g)5iii below for drifting gill nets in the Atlantic Ocean, [From] from** March 1 through December 15, the smallest mesh of any drifting gill net [shall be not less than 3.25 inches stretched mesh except] **in the Delaware Bay**, the tributaries of Delaware Bay and in [Delaware Bay and] the Atlantic Ocean within two nautical miles of the mean high water line [where the smallest mesh] shall not be less than 2.75 inches stretched; **for areas of the Atlantic Ocean not within two nautical miles of the mean high water line, the smallest mesh of any drifting gill net shall not be less than 3.25 inches stretched mesh during this period. Drifting gill nets are [and] subject to the** permitting and reporting requirements specified in (g)5vii below and in N.J.A.C. 7:25-18.12. These nets shall not individually exceed 200 fathoms in length. Individual drifting gill nets shall not be fastened together to form a series of nets exceeding 400 fathoms in length beginning February 12 through May 15 or exceeding 200 fathoms in length beginning May 16 through December 15. Drifting gill nets may be used for all species except those specifically protected.

i. – ii. (No change.)

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iii. Drifting gill nets shall be used in the Atlantic Ocean only from February 12 through December 15. Drifting gill nets shall not be used in the Atlantic Ocean within 100 fathoms of the marked channel of any inlet. **From September 1 through December 15, a licensee may only utilize either one drifting or one staked/anchored gill net. The drifting or staked/anchored gill net utilized shall have a mesh size that is four inches or greater stretched mesh and shall be tended at all times. For the purpose of this subparagraph, “tended” means an operator shall be no more than one-half nautical mile (3,040 feet) from the nearest portion of the net and the net must be fully brought into the boat within five hours of the initial set.** Drifting gill nets between 2.75 inches stretched mesh and 3.25 inches stretched mesh shall be subject to the permitting and reporting requirements specified in (g)5vii below, and:

(1) – (4) (No change.)

iv. – vii. (No change.)

6. Staked and anchored gill nets shall be used only in the Atlantic Ocean, Raritan Bay, Sandy Hook Bay, and Delaware Bay and its tributaries. No unattended, overnight staked or anchored gill net shall be set in the Atlantic Ocean from June 15 through October 31. No unattended, overnight anchored gill net shall be set in Delaware Bay from June 15 through September 30. For the purpose of this section, “unattended” means that set of circumstances where the operator is more than ½ nautical mile (3,040 feet) from the nearest portion of his **or her** net. Staked or anchored gill nets shall not be fastened together to form a series of net exceeding 400 fathoms in length from the beginning of

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the season through May 15 or exceeding 200 fathoms in length beginning may 16 through December 15, subject to the additional conditions specified in N.J.A.C. 7:25-18.12.

i. – ii. (No change.)

iii. Staked and anchored gill nets may be used in the Atlantic Ocean for any species except those specifically protected only beginning February 12 through December 15, where individual gill net length shall not exceed 50 fathoms. The smallest mesh of any such net used in the Atlantic Ocean shall not be less than five inches stretched beginning February 12 through February 29 and not less than 3.25 inches stretched beginning March 1 through December 15. **From September 1 through December 15, a licensee may utilize either one drifting or one staked/anchored gill net subject to the requirements at (g)6 above with a mesh size that is four inches or greater stretched mesh, provided the gill net is tended at all times. For the purpose of this subparagraph, “tended” means an operator may be no more than one-half nautical mile (3,040 feet) from the nearest portion of the net and the net must be fully brought into the boat within five hours of the initial set.** Staked or anchored gill nets shall not be used in the Atlantic Ocean within 100 fathoms of the marked channel of any inlet;

iv. – ix. (No change.)

7. – 12. (No change.)

(h) – (m) (No change.)

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

(a) (No change.)

(b) The following provisions are applicable to the commercial harvest of bluefish:

1. (No change.)

2. New Jersey's annual allocation of bluefish as determined by the National Marine

Fisheries Service shall be allocated according to gear type as follows:

i - iii. (No change.)

[iv. Purse Seine: 7.5 percent; and]

[v.] **iv.** Hook and Line: 1.8 percent[.]; **and**

v. By-catch for gill net, pound net, and otter trawl fisheries during the closed season for that gear: 7.5 percent.

3. A vessel shall not land nor sell any bluefish taken by the gear type specified in

(b)2 above except during the respective open season specified below.

Gear

Open Season

• • •

[Purse Seine

Jan. 1 through Dec. 31]

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i. As specified in (b)2v above, 7.5 percent of the annual bluefish quota shall be allocated each year for by-catch landings during a closed period for the gill net, pound net, and otter trawl fisheries. No vessel shall have in possession or land more than 150 pounds of bluefish in any one day as by-catch during the closed season for the gear being utilized. The amount of bluefish landed from any vessel as by-catch shall not exceed 50 percent, by weight, of the total weight of all species landed and sold.

4. A dealer shall not accept any bluefish landed in New Jersey taken by the respective gear specified in (b)2 above except during the respective open season specified in (b)3 above, **or as specified in (b)4i below:**

i. A dealer may accept 150 pounds or less of bluefish from any one vessel a day during the closed season for bluefish for the gear utilized by the vessel, provided the amount of bluefish landed from any vessel shall not exceed 50 percent, by weight, of the total weight of all species landed and sold, during a gill net, pound net, or otter trawl closed season.

5. [As specified in (b)2 above, the annual bluefish quota for the purse seine fishery shall be 7.5 percent of New Jersey's annual commercial bluefish quota as allocated by the National Marine Fisheries Service. No purse seine vessel shall land and no dealer shall except any bluefish landed in New Jersey that have been harvested by purse seine in excess of the annual purse seine quota or after the purse seine season has been closed.] **If any of the annual [purse seine] gear-specific quotas at (b)2 above is exceeded in any**

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one calendar year **and the total annual New Jersey bluefish quota is exceeded in that calendar year**, the overharvest shall be deducted from [the purse seine] **that gear-specific** quota in the next subsequent calendar year(s).

6. – 8. (No change.)

9. All permitted bluefish dealers shall provide weekly landing reports to the Division on a form supplied by the Commissioner **or by any other method approved by the Department.**

10. (No change.)

11. The Commissioner, or his or her designee, [may] **shall** close the season for the respective gear in (b)3 above upon [four] **two** days public notice of the projected date the quota for the respective gear shall be landed. Such notice shall be [sent] provided by **the posting of a notice on the Department's website, and either an e-mail or** first class mail to all **permit holders**, commercial docks, and commercial fishing organizations on the mailing list of the Division.

12. If the Commissioner, or his or her designee, has closed the season under (b)11 above and if unanticipated events result in the quota not being landed by the projected date stated in the closure notice, then the Commissioner, or his or her designee, may reopen the season for a specified period of time upon two days' public notice. Public notice shall be given as specified in (b)11 above.

(c) The following provisions are applicable to the commercial harvest of tautog:

1. – 10. (No change.)

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11. The annual tautog harvest quota for New Jersey shall be 103,000 pounds or as modified by the Commissioner pursuant to (i) below. All landings of tautog in New Jersey shall be applied to the New Jersey annual quota.

i. (No change.)

ii. The Commissioner, or his or her designee, shall close the season for the commercial tautog fishery upon [four] **two** days public notice of the projected date the annual quota shall be caught. Public notice shall [include letters by] **be provided by the posting of a notice on the Department's website, and either an e-mail or** first class mail to all New Jersey Tautog Permit and New Jersey Non-Directed Fishery Tautog Permit holders.

iii. (No change.)

iv. If the Commissioner, or his or her designee, [closes] **has closed** the season **under (c)11ii above** and if [prematurely because of] unanticipated environmental events result[ing] in the quota not being landed by the projected date **stated in the closure notice** and at least one month remains in the current season, then the Commissioner, or his or her designee, may reopen the season for a specified period of time upon [four] **two** days public notice. Public notice shall be [made] **given** as specified in (c)11ii above.

iii. – vii. (No change.)

12. (No change.)

(d) – (e) (No change.)

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(f) The following provisions are applicable to the commercial harvest of black drum:

1. – 3. (No change.)

4. The Commissioner, or his or her designee, [may] **shall** close the season upon two days public notice of the projected date the quota shall be landed. Such notice shall be [sent by] **provided by posting of a notice on the Department’s website and either an e-mail or** first class mail sent to all commercial docks and commercial fishing organizations on the mailing list of the Division of Fish and Wildlife.

(g) (No change.)

(h) The following provisions are applicable to the commercial harvest of black sea bass:

1. – 7. (No change.)

8. Annual [and seasonal] black sea bass quotas [and daily trip limits] shall be determined by the Mid-Atlantic Fishery Management Council and implemented by the National Marine Fisheries Service or determined by the Atlantic States Marine Fisheries Commission.

i. The Commissioner, or his or her designee, shall implement annual [and seasonal] black sea bass quotas [and daily trip limits] determined by the Atlantic States Marine Fisheries Commission upon four days’ public notice. Public notice shall include letters by first class mail to all New Jersey Black Sea Bass Permit holders. The implemented quotas

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[and limits] shall also be reflected in this subsection through a notice of administrative change in the New Jersey Register, in accordance with N.J.A.C. 1:30-2.7.

ii. (No change.)

iii. The balance of the New Jersey annual quota for the black sea bass fishery remaining after deducting the by-catch allowance specified in (h)8ii above shall be divided into seasons, percentage of the annual quota apportioned into each season, daily trip limits and number of allowable landing days in each one- or two-week period (Sunday through Saturday) as follows:

(1) – (4) (No change.)

(5) If a minimum of [50,000 pounds] **50 percent** of [the] **a** New Jersey black sea bass **seasonal** quota remains unlanded [as of December 1 in any calendar year] **when there is at least 50 percent of the season remaining**, the Commissioner, or his or her designee, may set a daily trip limit for the remainder of that [calendar year] **specified season to achieve optimal utilization of the available quota upon two days' public notice. Public notice shall be given as specified in (h)8v below.**

(6) (No change.)

iv. No vessel shall have in possession or land and no dealer shall accept from any one vessel or person more than the [lesser of the] daily trip limit of black sea bass set by the [National Marine Fisheries Service or the Atlantic States Marine Fisheries Commission] **Commissioner** in any one calendar day.

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v. The Commissioner, or his or her designee, shall close the season for the commercial black sea bass fishery upon two days' public notice of the projected date the seasonal percentage of the annual quota shall be caught. Public notice shall [include letters by first class mail] **be provided by posting of a notice on the Department's website and either an e-mail or first class mail sent** to all New Jersey Black Sea Bass **Dealers and New Jersey Black Sea Bass** Permit holders.

vi. (No change.)

vii. If the Commissioner, or his or her designee, [closes] **has closed** the season **under (h)8v above and if** [prematurely because of] unanticipated events result[ing] in the quota not being landed by the projected date **stated in the closure notice**, then the Commissioner, or his or her designee, may reopen the season for a specified period of time upon two days' public notice. Public notice shall be [made] **given** as specified in (h)[7v]**8v** above.

(1) (No change.)

viii. – x. (No change.)

9. – 13. (No change.)

(i) The following provisions are applicable to the commercial harvest of summer flounder:

1. (No change.)

2. The annual summer flounder harvest quota for New Jersey shall be determined by the Mid-Atlantic Fishery Management Council as implemented by the National Marine

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Fisheries Service. All landings of summer flounder in New Jersey shall be applied to the New Jersey annual summer flounder quota unless New Jersey enters into an agreement with another state(s) to transfer or combine summer flounder commercial quotas, as provided for pursuant to (i)3 below and such agreement indicated otherwise.

i. – iv. (No change.)

v. If a minimum of [100,000 pounds] **50 percent** of [the] a New Jersey summer flounder **seasonal** quota remains unlanded [as of December 1 in any calendar year] **where there is at least 50 percent of the season remaining**, the Commissioner, or his or her designee, may set a daily trip limit for the remainder of that [calendar year] **specified season to achieve optimal utilization of the available quota** or until the quota specified in (i)2 above is landed, whichever occurs first, **upon two days' public notice. Public notice shall be given as specified in (i)2vi below.**

vi. The Commissioner, or his or her designee, shall close the season for the directed and/or by-catch commercial summer flounder fishing season upon two days' public notice of the projected date the seasonal percentage of the annual quota shall be caught. Public notice shall [include letters by first class mail] **be provided by posting of notice on the Department's website and either an e-mail or first class mail sent** to all permitted New Jersey Summer Flounder Dealers and New Jersey Summer Flounder Permit holders.

vii. (No change.)

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viii. If the Commissioner, or his or her designee, [closes] **has closed** the season **under (i)2vi above and if** [prematurely because of] unanticipated [environmental] events result[ing] in the quota not being landed by the projected date [and at least one month remains in the current season] **stated in the closure notice**, then the Commissioner, or his or her designee, may reopen the season for a specified period of time upon two days' public notice. Public notice shall be [made] **given** as specified in (i)2vi above.

(1) (No change.)

ix. – xiii. (No change.)

3. – 9. (No change.)

(j) (No change.)

(k) The following provisions are applicable to the commercial harvest of scup:

1. Annual coastwide scup quotas and daily trip limits for the periods of January 1 through April 30 and November 1 through December 31, and an annual New Jersey scup quota for the period from May 1 through October 31 shall be determined by the Mid-Atlantic Fishery Management Council as implemented by the National Marine Fisheries Service or determined by the Atlantic States Marine Fisheries Commission. All landings of scup in New Jersey during the period from May 1 through October 31 shall be applied to the New Jersey scup quota.

i. – ii. (No change.)

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iii. The Commissioner, or his or her designee, shall close the season for the commercial scup fishery upon two days' public notice of the projected date the New Jersey seasonal quota shall be caught. Public notice shall [include letters by first class mail] **be provided by posting of notice on the Department's website and either an e-mail or first class mail sent** to all New Jersey Scup Dealer Permit holders and Federal scup moratorium permit holders that are New Jersey residents.

iv. (No change.)

v. If the Commissioner, or his or her designee, [closes] **has closed** the New Jersey season **under (k)1iii above and if** [prematurely because of] unanticipated events result[ing] in the quota not being landed by the projected date **stated in the closure notice**, then the Commissioner, or his or her designee, may reopen the season for a specified period of time upon two days' public notice. Public notice shall be [made] **given** as specified in (k)1iii above.

vi. (No change.)

2. – 9. (No change.)

(l) – (m) (No change.)

(n) For the purposes of this section, “land” **or “landing”** shall mean to begin offloading fish, to offload fish, or to enter port with fish.

(o) – (t) (No change.)

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(u) For the purposes of this section, a “fish dealer” or “dealer” shall mean any person who receives fish managed under this subchapter for any commercial purpose. Commercial purposes shall include sale and offering for sale, as well as the actual or attempted barter, trade, or exchange of fish for money or for any other thing of value.

(v) Any Federally permitted vessel or person shall complete the required Federal Trip Reports prior to landing any species of marine fish.