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**ENVIRONMENTAL PROTECTION
DIVISION OF FISH AND WILDLIFE
Marine Fisheries**

Proposed Amendments: N.J.A.C. 7:25-18.5
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.
Proposal Number: PRN 2016 –

Submit comments by _____, 2016, 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:

Ryan H. Knapick, Esq.
Attn: DEP Docket Number: _____
Office of Legal Affairs
Department of Environmental Protection
401 East State Street, Floor 7
Mail Code 401-04L
P.O. Box 402
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. On July 20, 2015, the Department proposed amendments to N.J.A.C. 7:25-14, Crab and Lobster Management and N.J.A.C. 7:25-18, Marine Fisheries (see 47 N.J.R. 1815(a)). The adoption of the majority of those proposed amendments

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appears elsewhere in this issue of the New Jersey Register with the exception of the amendments proposed at N.J.A.C. 7:25-18.5(g)5iii and (g)6iii, relating to gill nets. The Department determined that the proposed amendments that would limit the use of one drifting or staked/anchored gill net, with a mesh size that is four inches or greater when stretched, in the Atlantic Ocean from September 1 through December 15 provided the net was tended at all times, which were intended to minimize the capture and discard of striped bass in the fall when striped bass discard mortality tends to be higher, were too restrictive. The Department has determined that fishermen can tend two nets at the same time without causing a significant increase in the number of striped bass taken as by-catch.

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

The proposed amendments to N.J.A.C. 7:25-18.5(g)5iii and (g)6iii will allow a licensee to utilize only two drifting gill nets or two staked/anchored gill nets, respectively, when using a gill net with a mesh size that is four inches or greater when stretched, in the Atlantic Ocean from September 1 through December 15 provided the nets are tended at all times. Tended means that the licensee must be within one-half nautical mile (3,040 feet) of the nearest portion of the gill nets, and the gill nets must be fully brought into the boat within five hours of the initial set. These measures will minimize mortality of the by-catch by limiting the time striped bass are ensnared.

The proposed amendments will also minimize the mortality of by-catch of Atlantic sturgeon. In 2012, the Atlantic sturgeon was listed by the National Marine Fisheries Service as an endangered species. Data collected coastwide by at-sea observers on commercial fishing

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vessels have shown that gill nets, particularly those left unattended for extended periods of time, are one of the types of commercial fishing gear that most frequently ensnares Atlantic sturgeon. As with striped bass, the requirement that nets be tended at all times will enable fishermen to quickly release Atlantic sturgeon caught in the net, which will minimize the amount of time Atlantic sturgeon are ensnared.

Social Impact

The proposed amendments to N.J.A.C. 7:25-18.5(g)5iii and 6iii allowing the use of only two drifting gill nets or two anchored/staked gill nets in the Atlantic Ocean from September 1 through December 15 when utilizing 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 and Atlantic sturgeon. These measures will have a positive social impact by promoting the sustainability of the striped bass fishery and encouraging the population recovery of the Atlantic sturgeon.

Economic Impact

The proposed amendments to N.J.A.C. 7:25-18.5(g)5iii and 6iii allow the use of only two drifting gill nets or two staked and anchored gill nets in the Atlantic Ocean from September 1 through December 15 when utilizing a net with a stretched mesh size of four inches or greater. While this restriction may limit some fishermen from maintaining catch rates of targeted fish, it is intended to reduce the inadvertent by-catch, retention, and mortality of coastal striped bass and

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Atlantic sturgeon, thereby promoting the sustainability of the striped bass fishery and encouraging the population recovery of the Atlantic sturgeon.

The proposed amendments relating to staked/anchored gill nets (which are limited under existing rules to an individual net length of 50 fathoms) could potentially reduce a licensee's targeted catch because the measures will reduce the total net length allowed from September 1 to December 15 from 200 fathoms to 100 fathoms. Despite this potential, catch is largely dependent upon the location and timing of the placement of nets, the availability of target fish, and the efficiency of the licensee's operations.

The proposed requirement that a licensee to tend nets at all times and bring them into the boat within five hours of an initial set, could have a negative economic impact on a licensee by affecting work scheduling, labor efficiency, and overall productivity. While the existing rules do not allow staked/anchored gill nets to be left unattended overnight in the Atlantic from June 15 through October 31, the proposed amendments, which require staked/anchored gill nets with stretched mesh four inches or greater be tended at all times in the Atlantic Ocean from September 1 through December 15, could negatively impact a licensee by limiting their area of harvest from November 1 through December 15. Further, the proposed amendment to require that these nets be fully brought into the boat from which they were set within five hours of the initial set could also negatively impact a licensee by limiting the amount of time that can be spent harvesting. The existing rules also restrict drifting gill net fishing to the hours between sunrise and sunset. The requirement to tend nets at all times and fully bring them into the boat within five hours of the initial set could negatively impact a licensee by further limiting

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harvesting during this time period. The proposed amendments require fishermen to be present to release any coastal striped bass or Atlantic sturgeon that become ensnared in their gill nets.

Environmental Impact

The proposed amendments to N.J.A.C 7:25-18.5(g)5iii and 6iii allowing the use of only two drifting gill nets or two anchored/staked gill nets in the Atlantic Ocean from September 1 through December 15 when utilizing a gill net with a mesh size of greater than four inches when stretched will result in positive environmental impacts. Allowing only two gill nets when a licensee is using a gill net with a mesh size of four inches or greater when stretched will significantly reduce the incidental catch and discard of coastal striped bass and Atlantic sturgeon during the fall migration when abundance and discard mortality is higher due to higher water temperatures during this time.

The requirement that the nets be tended at all times will also assist with reducing by-catch mortality of both species because fishermen will be able to quickly remove and release non-targeted fish from their nets, thereby shortening the amount of time they are ensnared.

Federal Standard Analysis

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq., require State agencies which adopt, readopt or amend State regulations that exceed 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

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standards applicable to the waters of the State. However, due to the Federal endangered species listing of the Atlantic sturgeon by the National Marine Fisheries Service, states are required to implement measures that will minimize or eliminate the take of Atlantic sturgeon in their fisheries. Take is defined as “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.” Data collected coastwide by at-sea observers on commercial fishing vessels have indicated that gill nets with a mesh size four inches or greater when stretched, particularly those left unattended for extended periods of time, are one of the types of fishing gear that most frequently ensnares Atlantic sturgeon. The proposed measures will significantly reduce the incidental catch of Atlantic sturgeon by limiting the number of gill nets allowed to be fished and minimizing the amount of time those nets can remain in the water.

Jobs Impact

The Department has evaluated this rulemaking to determine the impact of the proposed amendments on jobs. The proposed amendments concern the number and size of four-inch stretched mesh gill nets that can be used between September 1 and December 15. The Department has determined that the proposed amendments will not result in the generation of jobs because fishermen do not require additional crew to tend two nets instead of one. Additionally, the Department has determined that the proposed amendments will not result in the loss of jobs because though the measures relating to staked/anchored gill nets (which are limited to an individual net length of 50 fathoms) will reduce the total net length allowed September 1 to December 15 from 200 fathoms to 100 fathoms, catch is dependent upon the location and timing

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of the placement of nets, the availability of target fish, and the efficiency of the licensee's operations.

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 and other compliance requirements on small businesses. The proposed amendments apply to commercial gill net fishermen. 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. 7:25-18.5(g)5iii and 6iii modify the gill net requirements in the Atlantic Ocean from September 1 through December 15 to minimize the bycatch and unintended discards of striped bass and Atlantic sturgeon when discard mortality tends to be higher because of higher water temperatures. The proposed amendments limit a licensee to the use of only two staked/anchored or two drifting gill nets, when using a mesh size that is four inches or greater stretched mesh, provided the nets are tended at all times. Fishermen must be within one-half nautical mile (3,040 feet) of the nearest portion of the gill nets at all

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times and both gill nets must be fully brought into the boat within five hours of the initial set of the gill nets. The recordkeeping and reporting requirements for fishermen are not affected by these amendments. A licensee does not need additional crew or new/additional nets to comply with these provisions and therefore, there will be no additional costs incurred nor any need for professional services. These provisions apply to the licensee (an individual) and the crew working on the licensee's fishing vessel and 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.

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

SUBCHAPTER 18. MARINE FISHERIES

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, an applicant must provide a copy of a previously valid gill net license held by the applicant from the preceding year. Individuals must purchase the maximum number of gill net licenses to which they are entitled annually. Any licenses not 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. 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. – 4. (No change.)

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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 from February 12 through February 29. Except as provided in (g)5iii below for drifting gill nets in the Atlantic Ocean, from March 1 through December 15 the smallest mesh of any drifting gill net in the Delaware Bay, the tributaries of Delaware Bay and in the Atlantic Ocean within two nautical miles of the mean high water line 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 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.)

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, if using nets with four inches or greater stretched mesh, a licensee may utilize no more than two drifting gill nets subject to the requirements of this paragraph or two staked/anchored gill nets subject to the requirements of g(6) below, and the nets shall be tended at all times. For the purpose of this subparagraph, “tended” means an operator shall be no more than one-half nautical**

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mile (3,040 feet) from the nearest portion of the nets and both nets 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 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 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**

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September 1 through December 15, if using nets with four inches or greater stretched mesh, a licensee may utilize no more than two staked/anchored gill nets subject to the requirements of this paragraph or two drifting gill nets subject to the requirements of g(5) above, and the nets shall be 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 nets and both nets 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.)

Based on consultation with staff, I hereby certify that the above statements, including the Federal Standards statement addressing the requirements of Executive Order 27(1994), permit the public to understand accurately and plainly the purposes and expected consequences of these proposed amendments. I hereby authorize the proposal of these amendments.

Date

Bob Martin, Commissioner
Department of Environmental Protection