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ENVIRONMENTAL PROTECTION

DIVISION OF FISH AND WILDLIFE

Fish and Game Council

2022 – 2025 Fish Code

Proposed Amendments: N.J.A.C. 7:25-6.1 to 6.3, 7:25-6.13, and 7:25-6.20.

Authorized By: Fish and Game Council, Frank Virgilio, Chair

Authority: N.J.S.A. 13:1B - 29 et seq. and 23:1-1 et seq.

DEP Docket Number: 03 – 21 - 02

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

Proposal Number:

The Fish and Game Council (Council) will hold a **virtual public hearing** on this notice of proposal on April 22, 2021 at 7 P.M. A link to the virtual public hearing as well as registration protocols and alternate call-in options will be provided on the Division’s website at www.NJFishandWildlife.com. The meeting will be recorded.

Submit written comments electronically by May 14, 2021, at <http://www.nj.gov/dep/rules/comments>. The Fish and Game Council (Council) encourages electronic submittal of comments. In the alternative, comments may be submitted on paper to:

New Jersey Department of Environmental Protection

2022 - 2025 Fish Code Comments

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Division of Fish and Wildlife

Mail Code 501-03

P.O. Box 420

Trenton, New Jersey 08625-0420

This rule proposal may be viewed or downloaded from the Department of Environmental Protection's (Department) website at <http://www.nj.gov/dep/rules>.

The Council proposal follows:

SUMMARY

The Fish Code (Code), N.J.A.C. 7:25-6, states when, by what means, at which locations, in what numbers, and at what sizes, fish may be pursued, caught, killed, or possessed. As the Fish and Game Council has provided for a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

The proposed amendments to N.J.A.C. 7:25-6 for the 2022 to 2025 fishing seasons are as follows:

1. In N.J.A.C. 7:25-6.1, the Council is proposing to clarify that notice of changes to season, size, gear and possession limits, for migratory species of Alewife, American Eel, American Shad, Blueback Herring, Hickory Shad, and Striped Bass, required to comply with

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fishery management plans approved by the Atlantic States Marine Fisheries Commission (ASMFC) or to maintain consistency with any Mid-Atlantic Fishery Management Council plan adopted by the National Marine Fisheries Service, are effective upon filing the notice with the Office of Administrative Law unless specified otherwise in the notice. This proposed amendment makes clear that, in accordance with the Office of Administrative Law's Rules for Agency Rulemaking at N.J.A.C. 1:30-2.7(a), changes reflected in notices filed in accordance with this section are effective at the time they are filed unless the notice indicates that a subsequent effective date is applicable to the particular change. Failure to make required regulation changes within established timeframes designated by the ASMFC risks the potential closure of these valuable fisheries.

Anglers interested in signing up to receive notifications through the freshwater email list, including notification of the filing of Notices of Administrative Change, can do so through the Division's website at www.NJFishandWildlife.com.

2. In N.J.A.C. 7:25-6.2, the Council is proposing to amend the definition of the term "opening day" to include dates for the opening day of the 2022 to 2025 trout seasons and to remove dates for 2018 to 2020 seasons. For all proposed years, the opening day continues to fall on either the first or second Saturday of April.

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Dates for established in-season stocking periods, and pre-season closures, also specified at N.J.A.C. 7:25-6.2 in the definitions of the terms “in-season stocking period” and “pre-season closure,” are dependent on opening day and have been adjusted accordingly to reflect these dates. The pre-season closure is the three-week time period preceding the opening day of trout season when waters are closed to fishing for stocking purposes. The amendment to the definition of “in-season stocking period” describes the dates during the 2022 to 2025 trout seasons when stocking will occur after the season opens.

3. The Fish Code includes regulations specific to fish species identified as potentially dangerous. The list of species classified as “potentially dangerous fish” is specified in the definition of that term at N.J.A.C. 7:25-6.2. The Council proposes to identify Black Bass (*Micropterus spp.*), other than Largemouth bass (*Micropterus salmoides*) and Smallmouth Bass (*Micropterus dolomieu*), Blue Catfish, and the Round Goby (*Neogobius melanostomus*) as potentially dangerous fish. Black Bass species, other than the indigenous Largemouth and Smallmouth Bass, and Blue Catfish are top level predators and may negatively impact the structure of indigenous and established fish populations. Largemouth and Smallmouth Bass have naturalized in New Jersey and are both recreationally and economically important species. Others from the same genus such as the Alabama Bass (*Micropterus henshalli*) and Spotted Bass (*Micropterus punctulatus*) are problematic in waters beyond their native ranges; hybridizing with native black bass species.

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Round Goby are similar to other dangerous fish species such as the Asian Swamp Eel, Brook Stickleback, and Oriental Weatherfish in that this species is a highly tolerant, generalist feeder that competes with native fish. The possession of these and other potentially dangerous species is prohibited in N.J.A.C. 7:25-6.1(g). If these fish are encountered while someone is angling, they must be destroyed.

The listing for Snakeheads in the definition is also proposed to be relocated to correctly appear below Round Goby in the alphabetical listing.

4. In N.J.A.C. 7:23-6.3(d) the Council proposes to establish a statewide 12-inch minimum size limit for Atlantic (landlocked) salmon, with a daily creel limit of two fish per day. Currently, the 12-inch size limit for Atlantic (landlocked) salmon applies only to waters regulated as Holdover Trout Lakes. The Council is considering expanding the stocking of salmon beyond designated Holdover Lakes to increase angling opportunities. Landlocked salmon do not reproduce within New Jersey waters and are maintained entirely through an annual stocking program. The 15-inch, one fish per day, limits for salmon stocked in Merrill Creek, a designated Trophy Trout Lake, remains unchanged.

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5. The Council proposes to remove Hook's Creek Lake from the Division's Trout Stocking program in N.J.A.C 7:25-6.3(i)12. Hook's Creek Lake was inundated with salt water during Hurricane Sandy, resulting in freshwater fish mortality. In 2015, after several years of monitoring, suitable levels for freshwater fish were documented and the Division restocked the pond with a variety of warmwater species. In 2018, returning elevated salinity levels resulted in a die-off of trout stocked during the prior month, demonstrating that either saltwater intrusion was still occurring or that salt trapped in the sediments was being remixed into the water column. Due to continuing uncertainty of salinity levels, the lake has not been restocked with freshwater fish.

Social Impact

The proposed amendments to the Code balance opportunities for recreational fishing with adequate protection of the natural resource and are anticipated to have a positive social impact. Even the loss of stocked locations benefits the angler since fish will no longer be stocked within a waterbody which can no longer sustain the fishery. Any negative social impact will be offset by the alternative fishing opportunities which already exist in these areas.

Amendments that would allow the expansion of a successful stocking program such as that for Atlantic (landlocked) Salmon are anticipated to have a positive social impact as the expanded rearing

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and stocking of this species could fill a niche left by the discontinued rearing of Brown Trout at the Division's Pequest Trout Hatchery and offer anglers a unique fishing experience in additional waters.

Economic Impact

Amendments that establish dates for the 2022 through 2025 trout seasons will provide a positive economic impact by continuing to allow angling opportunities in the State. These dates not only establish the start of the seasons, but also determine stocking dates for more than 570,000 Rainbow Trout each spring. Amendments which would allow the expansion of successful stocking programs, such as expanding the size and creel limit for Landlocked salmon beyond designated Holdover Trout Lakes, are anticipated to have a positive economic impact. Collectively, these amendments will provide increased revenue for those businesses that support and serve fishermen, due to an anticipated overall increase in the number of participating anglers. There may be a negative economic impact in one localized area where trout stocking is proposed to be discontinued. However, other existing trout fishing opportunities that occur in this area will offset any impacts, and reallocation of fish previously stocked to other locations where mortality due to environmental conditions is not a concern will increase overall angling opportunities.

The proposed amendments to the Fish Code do not affect the current costs associated with how the Division of Fish and Wildlife manages the freshwater fisheries resource and are not expected

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to result in increased expenditures by individual anglers. Wildlife-associated recreation generates \$2.2 billion dollars into the State's economy each year, with an estimated 300,000 freshwater anglers generating \$138 million dollars. The sale of fishing licenses and trout stamps generates over \$4 million in revenue for the Department's Division of Fish and Wildlife annually. These funds are used towards the protection, propagation, and management of the State's freshwater resources, directly benefitting the State's nine million residents.

Environmental Impact

The proposed amendments are designed to have a positive environmental impact in continuing the conservation, management and enhancement of the State's freshwater fisheries resources based on their current population, distribution, and habitat status. Amendments that set creel or minimum size limits have positive environmental impacts in providing for the protection of species while allowing appropriate recreational and commercial harvest, which creates positive environmental impacts by maintaining balanced populations. Amendments defining Blue Catfish, Round Goby, and Black Bass other than Largemouth Bass and Smallmouth Bass as potentially dangerous exotic fish will have positive environmental benefits. Characteristics such as high reproductive fitness, high tolerance for environmental stress, the ability to disperse, predate and compete with native species make them effective invasive species, which also lack natural enemies. As a result, they pose a significant threat to indigenous species and to the aquatic environment as a whole. The existing Administrative Code requires anglers to destroy potentially dangerous fish species

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when encountered and to provide the specimen to Division staff for confirmation, which allows the Division to track the spread of these invasive species. It also prohibits the transfer of these species during water lowering activities, which require fish to be collected and relocated, helping to reduce the spread of these invasive species. Recent expansion of their populations into and/or close to New Jersey necessitates proactive invasive species management.

The proposed amendment that results in discontinuing stocking in a location that can no longer support freshwater fish is anticipated to have a positive environmental benefit. Proposed amendments that allow additional waters to be stocked with salmon pose neither an environmental benefit or impact as these locations are short term seasonal fisheries.

Federal Standards Statement

N.J.S.A. 52:14B-1 et seq. requires State agencies which adopt, readopt or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a Federal standards analysis. The United States Fish and Wildlife Service regulates the harvesting of freshwater fish in National Wildlife Refuge Areas in New Jersey pursuant to the National Wildlife Refuge System Administration Act, 16 U.S.C. 668dd (1966), and regulations at 50 C.F.R. Parts 25 through 38. In areas of the State where there are no Federal regulations pertaining to the harvest of freshwater fish, the State's Fish Code applies. The proposed amendments to the Fish Code do not contain any standards or requirements that exceed Federal regulations involving the National

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Wildlife Refuge Areas. Accordingly, Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. do not require further analysis.

Job Impacts

The proposed amendments provide for continued recreational and economic benefits to the citizens of the State and the regulated use and proper management of the State's freshwater fisheries resource. Amendments which protect species by setting creel or minimum size limits are not expected to produce any job impacts. These amendments impact recreational fisheries and no impact on fishing related businesses is anticipated. As addressed under Economic Impacts, there may be positive economic impacts in areas where landlocked salmon may now be introduced, and slight negative economic impacts in localized areas where trout stocking is proposed to be discontinued. However, these economic impacts, whether positive or negative, are not anticipated to result in either the creation or loss of jobs.

Agricultural Industry Impact

N.J.S.A. 52:14B-4(a)2 requires that agencies proposing a rule include a statement on the impact that the proposal will have on the agricultural industry. In New Jersey, the raising of fish for sale for food or for stocking purposes falls within the realm of agriculture. The proposed amendments neither restrict or expand opportunities for private fish culture operations and therefore are not

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anticipated to have any impacts on the agricultural industry.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Council has determined that the proposed amendments will have no effect on "small businesses" as defined in the Act. None of the proposed amendments impose any additional reporting, recordkeeping or other compliance requirements on small businesses. The proposed amendments will impact anglers who are fishing recreationally, either individually or as part of a recreational club, and not commercially or as part of a small business. Accordingly, no lesser standard is provided for small businesses.

Housing Affordability Impact

Pursuant to N.J.S.A. 52:14B-4, as amended effective July 17, 2008, by P.L. 2008, c. 46, the Council has evaluated the proposed amendments to determine their impact, if any, on the affordability of housing. The Council has evaluated this rulemaking to determine the nature and extent the proposed amendments impact on housing affordability. Since the proposed amendments relate to daily creel, migratory fish, and the State's trout and salmon stocking programs, the Council has determined the proposed amendments do not impact housing affordability.

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Smart Growth Development Impact

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 the proposed amendments for purposes of determining their impact, if any, on housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan (State Plan).

The proposed amendments regulate the means, locations, numbers and sizes that freshwater fish may be pursued, caught, killed, or possessed and therefore will have no impact on housing production in Planning Areas 1 or 2, or within designated centers, under the State Plan.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Council has evaluated this rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

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

7:25-6.1 General provisions

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(a) – (h) (No change.)

(i) The New Jersey Fish and Game Council may modify the fishing seasons, minimum size limits, and possession limits of migratory species of Alewife, American Eel, American Shad, Blueback Herring, Hickory Shad, and Striped Bass, by notice in order to maintain [and/or] **or** to come into compliance with any fishery management plan approved by the Atlantic States Marine Fisheries Commission pursuant to 16 U.S.C. § 5104(b) or to maintain consistency with any Mid-Atlantic Fishery Management Council plan adopted by the National Marine Fisheries Service. **All such notices shall be effective when the Department files the notice with the Office of Administrative Law or as specified otherwise in the notice.** The Division shall publish notice of any such modification in the New Jersey Fish and Wildlife Digest and the New Jersey Register, and through email to the Division's freshwater angler [Listserv membership] **email list. Members of the public can subscribe to the list from the Division's website at www.NJFishandWildlife.com.**

7:25-6.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

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"In-season stocking period" shall mean [April 9, 2018, through May 25, 2018, for the 2018 trout season, April 8, 2019, through May 24, 2019, for the 2019 trout season, and April 13, 2020, through May 29, 2020, for the 2020 trout season,] April 12, 2021, through May 28, 2021, for the 2021 trout season, **April 11, 2022 through May 27, 2022, for the 2022 trout season, April 10, 2023, through May 26, 2023, for the 2023 trout season, April 8, 2024, through May 24, 2024, for the 2024 trout season, and April 7, 2025, through May 23, 2025, for the 2025 trout season.**

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"Opening day" shall mean 8:00 A.M. on [April 7, 2018, for the 2018 trout season, 8:00 A.M. on April 6, 2019, for the 2019 trout season, 8:00 A.M. on April 11, 2020, for the 2020 trout season, and 8:00 A.M. on] April 10, 2021, for the 2021 trout season, **8:00 A.M. on April 9, 2022 for the 2022 trout season, 8:00 A.M. on April 8, 2023 for the 2023 trout season, 8:00 A.M. on April 6, 2024 for the 2024 trout season, and 8:00 A.M. on April 5, 2025 for the 2025 trout season.**

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"Potentially dangerous fish" means the following species:

- 1.-2. (No change.)
3. **Black Bass species other than Large-mouth Bass and Smallmouth Bass** **Micropterus spp. other than M. salmoides and M. dolomieu**

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4.	Blue Catfish	Ictalurus furcatus
[3.-6.] 5.- 8.	(No change in text.)	
[7.	Snakeheads	Channa spp.]
[8.] 9.	(No change in text.)	
10.	Round Goby	Neogobius melanostomus
11.	Snakeheads	Channa spp.]
[9.- 10.] 12.-13.	(No change in text.)	

"Pre-season closure" shall be the period from [midnight March 18, 2018, to 8:00 A.M. on April 7, 2018, for the 2018 trout season, the period from midnight March 17, 2019, to 8:00 A.M. on April 6, 2019, for the 2019 trout season, the period from midnight March 22, 2020, to 8:00 A.M. on April 11, 2020, for the 2020 trout season, and the period from] midnight March 21, 2021, to 8:00 A.M. on April 10, 2021 for the 2021 trout season, **the period from midnight March 21, 2022 to 8:00 A.M. on April 9, 2022 for the 2022 trout season, the period from midnight March 20, 2023 to 8:00 A.M. on April 8, 2023 for the 2023 trout season, the period from midnight March 18, 2024 to 8:00 A.M. on April 6, 2024 for the 2024 trout season, and the period from midnight March 17, 2025 to 8:00 A.M. on April 5, 2025 for the 2025 trout season.** Unless otherwise specified, this closure applies to all waters, both public and private, stocked with trout.

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7:25-6.3 Trout

(a) – (c) (No change.)

(d) Except as designated for Trophy Trout Lakes, N.J.A.C. 7:25-6.8, **the minimum size for Atlantic (landlocked) salmon shall be 12 inches with a daily bag and possession limit of two, and** the minimum size limit for Lake Trout shall be 15 inches with a daily bag and possession limit of two.

(e) – (h) (No change.)

(i) This subsection sets forth trout stocked waters for which no in-season closures will be in force. Road names referenced below, unless otherwise indicated, refer to the bridge where the road crosses the river. Municipal references are provided to assist in identifying the locations of upstream and downstream boundaries on streams and canals, to which pre-season stocking closures apply, and to describe general locations of ponds, lakes, and reservoirs. The municipal references are not intended to identify all municipalities through which the identified water passes.

1. – 11. (No change.)

12. Middlesex County

[Hook's Creek Lake--Cheesequake State Park, Old Bridge Twp.]

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13. – 21. (No change.)

(j) (No change.)