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ENVIRONMENTAL PROTECTION

DIVISION OF FISH AND WILDLIFE

Marine Fisheries

Proposed Amendment: N.J.A.C. 7:25-18.1

Authorized By: Shawn M. LaTourette, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 23:2B-1 et seq.

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

DEP Docket Number: 05-22-06.

Proposal Number: PRN 2022-100.

Submit comments by September 30, 2022 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:

Melissa Abatemarco, Esq.

Attn: DEP Docket Number: 05-22-06

Office of Legal Affairs

Department of Environmental Protection

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The agency proposal follows:

Summary

As the Department of Environmental Protection has provided 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 Department is proposing an amendment at N.J.A.C. 7:25-18.1(p) to allow the Commissioner of the Department (Commissioner), with the approval of the New Jersey Marine Fisheries Council (Council), to modify management measures by notice to either maintain compliance with any fishery management plan approved by the Atlantic State Marine Fisheries Commission (ASMFC) or consistency with any plan approved by the Mid-Atlantic Fishery Management Council (MAFMC), the New England Fishery Management Council, the South Atlantic Fishery Management Council, or the National Marine Fisheries Service.

The Marine Fisheries rules at N.J.A.C. 7:25-18.1(p) establish a procedure for the Commissioner to, under limited circumstances, modify specific management measures, such as fishing seasons, size limits, and possession limits, that affect specific recreational and/or commercial fisheries through publication of a notice of administrative change in the New Jersey Register. The purpose of the procedure is to provide the Department with the ability to modify its rules expeditiously, so that when changes are made to Federal or multistate regional fisheries plans, the Department can act promptly to maintain compliance with amendments designed to ensure the protection and sustainability of the fishery resources. The ability to react quickly to changes to fishery management plans will allow the Department to effectively protect and manage the State's fisheries resources. In addition, this authority avoids risking the imposition of a fishing moratorium for noncompliance, or otherwise disadvantaging New Jersey's fishing industry.

N.J.S.A. 23:2B-6 requires that the Commissioner prepare fishery management plans that “... take into consideration the appropriate Federal, Federal-State, regional management council and interstate programs,” and N.J.S.A. 23:2B-3 defines a fishery management plan as one that is created “... in accordance with management plans promulgated pursuant to the Fisheries Conservation and Management Act of 1976 and any appropriate interstate programs ...”

Many times, changes are made to a fishery management plan with a short deadline for State compliance with the plan. Currently, the State’s fishery management plans are implemented through regulation. The proposed amendments are intended to allow the Department to amend the rules in limited circumstances through the notice of administrative change process for two main reasons. First, an amendment by notice of administrative change allows for amendments to the regulations to be made quickly, as the amendments are effective upon filing with the Office of Administrative Law. As indicated above, the ability to make changes on an expedited basis is particularly important where the changes are necessary to maintain compliance with fishery management plans designed to protect the sustainability of the fishery resource on a regional basis and ensure that the State is not subject to penalties applicable to noncompliance. Second, oftentimes, the Department has little discretion to vary from the specific direction embodied in a Federal or regional plan, except for those rare times when the State offers a conservational equivalent to a fishery management plan pursuant to N.J.A.C. 7:25-18.1(p)1. Further, there is a public process at the Federal and regional plan levels, whereby the public is provided the opportunity to be heard.

At N.J.A.C. 7:25-18.1(p), the Department is proposing to add gear types and gear restrictions to the existing management measures that can be changed by notice. As a fishery management plan could mandate a gear type or gear restriction in a given fishery with an

implementation date that requires immediate action, it is necessary for the Commissioner to have the ability provided by the notice of administrative change process to make amendments to the gear rules quickly. Indeed, citing similar concerns, the ASMFC allowed the Coastal Sharks Board to streamline its own gear type or restriction modification procedure in recognition that reacting to new scientific information or management changes requires a more expedient process. (see http://www.asmfc.org/uploads/file/5be5af89CoastalSharksDraftAddendumV_Oct2018.pdf).

For instance, in October 2019, in accordance with the Fishery Management Plan for coastal sharks, the ASMFC Coastal Sharks Board approved measures to require in all coastal states' waters the use of non-offset, corrodible, non-stainless steel circle hooks when fishing for sharks recreationally, with an implementation deadline of July 1, 2020 (see <http://www.asmfc.org/uploads/file/60774094CoastalSharksFMReview2019.pdf>; http://www.asmfc.org/uploads/file/5be5af89CoastalSharksDraftAddendumV_Oct2018.pdf). The intent of the requirement is to reduce discard mortality in the recreational fishery. Circle hooks can reduce rates of "gut-hooking" and lower the likelihood of puncturing internal organs if the hook is swallowed. As another example, in October 2019, ASMFC approved Addendum VI to the Striped Bass Interstate Fishery Management Plan, which requires the use of non-offset circle hooks in all Atlantic coastal States' waters while recreationally fishing for striped bass with bait, with an implementation deadline of January 1, 2021 (see http://www.asmfc.org/uploads/file/5dd447baStripedBassAddendumVI_Amend6_Oct2019.pdf).

For various reasons, including competing demands on Department resources, rulemaking to incorporate changes reflecting these requirements into the rules could not be completed until after the applicable compliance deadline, putting the State out of compliance with the changes. While the Department was in close communication with the ASMFC on the progress toward achieving

compliance, thus avoiding any penalty for temporary noncompliance, the proposed changes will allow the Department to better maintain compliance in the future.

Social Impact

The proposed amendments at N.J.A.C. 7:25-18.1(p), will allow the Department to modify gear types and gear restrictions by administrative notice and maintain consistency throughout the various marine fisheries regulations included at N.J.A.C. 7:25-18.1. The amendments will result in a positive social impact because the Department will have the ability to respond more expeditiously to maintain compliance within implementation timeframes mandated under any fishery management plan and thereby ensure protection of the fisheries while also keeping them open for anglers.

Economic Impact

The proposed amendments at N.J.A.C. 7:25-18.1(p) are expected to have a positive economic impact. Allowing the Commissioner to make changes to gear types and gear restrictions by administrative notice is necessary to respond to gear mandates in future fishery management plans in a timely manner. Delayed compliance with revised fishery management plans could result in a temporary closure of the fishery, which would have a direct and immediate negative financial impact on New Jersey's recreational fishers. A fishery closure would also harm the businesses that support anglers in New Jersey, while creating additional negative impacts on local businesses and State tax revenues. The economic contributions of New Jersey's recreational fisheries are significant. As reported in NOAA's Fisheries Economics of the United States report (<https://media.fisheries.noaa.gov/2022-04/FEUS-2018-final-v2.pdf>), in 2018, New Jersey's recreational fisheries supported roughly 14,395 jobs and generated \$1.9 billion in sales impacts,

\$815 million in income impacts, and contributed \$1.272 billion to the regional economy. New Jersey leads the mid-Atlantic region in all four indicators tracked by NOAA's Fisheries Economics of the United States report and ranks sixth nationwide in sales income.

Environmental Impact

The proposed amendments at N.J.A.C. 7:25-18.1(p) will have a positive environmental impact. Fisheries management aims to protect the productivity and sustainability of the marine ecosystems while also allowing enough harvest to sustain and build the fishing and seafood industries. Fishery management plans achieve these objectives through establishing comprehensive conservation and management measures. Gear types and gear restrictions are one of the controls put into place to protect a species from inadvertent fishing mortality. For example, the recent circle hook requirements for both striped bass and sharks were approved under their respective fishery management plans because circle hooks can reduce rates of gut-hooking and lower the likelihood of puncturing internal organs if the hook is swallowed. In addition, the greater flexibility provided to the Commissioner in this proposal to amend gear types and gear restrictions will allow the Department to be more responsive to changes in fishery management plans that are developed based on the most current science available. Although some mortality is considered when developing fishery management plans and quotas, a reduction in preventable mortality events means that more fish are available to ensure the species' future.

Federal Standard Analysis

N.J.S.A. 52:14B-1 et seq., requires State agencies that adopt, readopt, or amend State rules 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 and determined that the proposed amendments at N.J.A.C. 7:25-18.1(p) will have negligible direct impacts on jobs. Authorizing the Commissioner to make changes by administrative notice to gear types and gear restrictions to maintain compliance with a fishery management plan will allow the uninterrupted operation of the jobs supported by the recreational fishing industry. The inability to act quickly on the implementation of gear types or gear restrictions may result in non-compliance and potential closure of a fishery, which could jeopardize hundreds of charter fishing businesses operating off the shores of New Jersey and other firms which support the recreational fishing sector.

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 Statement

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 have no reporting, recordkeeping, or compliance requirements.

Housing Affordability Impact Analysis

Pursuant to N.J.S.A. 52:14B-4, the Department has evaluated this rulemaking to determine the nature and extent of the proposed amendments on the impact to housing affordability. The proposed amendments apply solely to the marine fishing industry and have no impact on the average costs associated with housing or on the affordability of housing in the State.

Smart Growth Development Impact Analysis

Pursuant to N.J.S.A. 52:14B-4, the Department has evaluated this rulemaking to determine the nature and extent of the proposed amendments on the impact to smart growth development. The proposed amendments apply solely to the marine fishing industry and have no impact on the housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Department 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**):

SUBCHAPTER 18. MARINE FISHERIES

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

(a) – (o) (No change.)

(p) The Commissioner, with the approval of the New Jersey Marine Fisheries Council, may modify the fishing seasons, size limits, possession limits, **gear types, gear restrictions**, and the list of shark species contained within any of the shark groups specified in this section by **administrative** notice, in order to maintain and/or to come into compliance with any fishery management plan approved by the Atlantic States Marine Fisheries Commission pursuant to 16 U.S.C. § 5104(b) or to maintain consistency with any Mid-Atlantic Fishery Management Council, New England Fishery Management Council, or South Atlantic Fishery Management Council plan adopted by the National Marine Fisheries Service or any plan implemented by the National Marine Fisheries Service. Additionally, where fishing seasons, size limits, possession limits, or the list of shark species contained within any of the shark groups specified in this section have been developed in accordance with (p)1 below and differ from those specified in a fishery management plan and have been approved by the Atlantic States Marine Fisheries Commission, Mid-Atlantic Fishery Management Council, New England Fishery Management Council, South Atlantic Fishery Management Council, and/or the National Marine Fisheries Service through the conservation equivalency process as being estimated to achieve the same quantified level of conservation for the fishery governed by that plan, such fishing seasons, size limits, possession limits, or the list of shark species contained within any of the shark groups specified in this section may be modified by **administrative** notice. The Department shall provide notice of any such modification in the New Jersey Marine Digest, the New Jersey Register, on the Department's website, through email, when provided, to commercial license holders, and in the Division's commercial regulation

publication. All such **administrative** notices shall be effective when the Department files the notice with the Office of Administrative Law, or as specified otherwise in the notice.

1. (No change.)

(q) – (r) (No change.)