ENVIROMENTAL PROTECTION
DIVISION OF FISH AND WILDLIFE
MARINE FISHERIES
Crab and Lobster Management; Marine Fisheries; Fishery Management in New Jersey
Proposed Amendments: N. J. A. C. 7:25-14.4, 14.20, 18.1, 18.5, 18.11, 18.12, 18.15, 22.1, and 22.2
Authorized By: Bradley M. Campbell, Commissioner,
Department of Environmental Protection
Authority: N. J. S. A. 23:2B-6 and 23:2B-14
Calendar Reference: See Summary below for explanation of exception to calendar requirement.
DEP Docket Number: 03-05-02/462
Proposal Number: PRN 2004-___

Submit written comments by May 6, 2005 to:
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The Department of Environmental Protection (Department) requests that commenters submit comments on disk or CDs as well as on paper. Submission of a disk or CD is not a requirement. The Department prefers Microsoft Word 6.0 or above. Macintosh formats should not be used. Each comment should be identified by the applicable N.J.A.C. citation, with the commenter’s name and affiliation following the comment.

The agency proposal follows:
Summary

The Division of Fish and Wildlife rules (rules), N.J.A.C. 7:25, establish limits and other controls to manage fish and wildlife in New Jersey. The Department is proposing to amend portions of the rules regarding Crab and Lobster Management, N.J.A.C. 7:25-14; Marine Fisheries, N.J.A.C. 7:25-18; and Fishery Management in New Jersey, N.J.A.C. 7:25-22. As the Department 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. 1:30-30.3(a)5.

The proposed amendments concern fisheries for blue crab, lobster, tautog, striped bass, American shad, black sea bass, summer flounder, scup, Atlantic sturgeon, and Atlantic menhaden as well as fisheries utilizing fillet permits and Delaware Bay Gill Net Permits.

As discussed more fully below, these provisions have been developed at the request of the participants of the fishery involved or to correct, clarify or simplify existing regulations.

A description of the proposed amendments follows:

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

The Department is proposing at N.J.A.C. 7:25-14.4(a)7 to allow commercial crab licenses to be transferred to a licensee’s brother or sister in addition to the currently allowed transfers to spouse, father, mother, son or daughter. The Department’s intent when originally limiting the transfer of commercial crab licenses was to allow transfers within a licensee’s immediate family. However, transfers to brother or sister were not specifically included in the list of allowable transfers. The Department has recently
received requests to transfer licenses to brothers or sisters. Because the transfer to a brother or sister conforms to the original intent of limiting transfers to within an immediate family, the Department is proposing to allow commercial crab licenses to be transferred to a licensee’s brother or sister. The Department is additionally proposing to amend this paragraph to provide that transfer to any other person is permitted only upon an application to the Commissioner demonstrating that the transfer is necessary to avoid undue hardship.

N.J.A.C. 7:25-14.20 Penalties

The Department is proposing to amend N.J.A.C. 7:25-14.20(h) to clarify that a suspension of a lobster permit or license will be imposed during the period from April 1 to November 30. The lobster fishery has no closed season, but the majority of fishing activity occurs between April 1 and November 30. This amendment will clarify that only time during which the majority of fishermen would participate in the lobster fishery will be counted to satisfy a permit or license suspension due to violation of lobster regulations. To allow the suspension to be satisfied during a time of the year when the lobster fishery is not active would not serve as a deterrent to violation of the lobster regulations.

The Department is also proposing at N.J.A.C. 7:25-14.20(h)4 to change how certain previous suspensions are taken into account in setting the period of suspension for subsequent violations of the rules. Particularly, the Department is proposing that a lobster permit holder incurring a permit suspension who does not incur a second
suspension of the rules applicable to the lobster fishery for a three year period will have
the first permit suspension removed from consideration in determining permit suspension
periods for any subsequent violation. Currently, any lobster pot permit holder or lobster
pot licensee who incurs three violations has their permit or license permanently revoked,
regardless of the amount of time that has elapsed between violations. The Department
believes that, if a permit or license holder remains violation-free in the particular fishery
for a period of three years, it is appropriate to remove one permit suspension from
consideration when determining future permit suspensions to avoid permanent revocation
for violations that may occur many years apart. However, the rule makes it clear that a
permittee who commits more than one violation of the rules within a three year period
will only be allowed to have one permit or license violation withdrawn from
consideration under this provision as a result of the permittee being violation-free for
three years. If, for example, a permittee with two violations completes a three year
violation-free period, only one of the two violations would be removed from
consideration for determining an appropriate suspension period for any subsequent
violation of the rules. The permittee who has more than one violation within a three year
period will never be considered a first time offender as a result of operation of this
provision. This provision does not affect the monetary penalties applicable to violations
of the rules; all violation are taken into account for that purpose.

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

The Department is proposing to amend N.J.A.C. 7:25-18.1(a) and (c) to add striped
bass to these sections. In N.J.A.C. 7:25-18.1(a), striped bass and its scientific name
(Morone saxatilis) are added to the list specifying the scientific names of fish referred to
by common names in the subchapter. In N.J.A.C. 7:25-18.1(c), striped bass is added to
the list of minimum size, open season and possession limits. This amendment provides a
ready reference to the statutory limits on the taking of striped bass which are codified at
N.J.S.A. 23-45.1. The proposed amendment does not impose any new or different
limitations.

The Department is proposing to amend N.J.A.C. 7:25-18.1(f)3vii(1) and (2) to
change the suspension periods for violations of fillet permits. The Department is
proposing to increase the suspension period for a first offense from 30 to 60 days and the
suspension period for a second offense from 90 days to 120 days. The purpose of these
modifications is to standardize all permit suspension periods in N.J.A.C. 7:25-18.

The Department is proposing to amend N.J.A.C. 7:25-18.1(f)3vii(4) to add
language consistent with that proposed for N.J.A.C. 7:25-14.20(h)4, discussed above, to
remove a previous fillet suspension from consideration in determining an appropriate
suspension for subsequent violations if a second suspension is not incurred within a three
year period. This will avoid permanent permit revocation for violations that occur greater
than three years apart. As is the case in the proposed amendment for violations of lobster
pot permit requirements, this provision does not affect the monetary penalties applicable
to violations of fillet permits; all violations are taken into account for that purpose.

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

The Department is proposing to add a provision at N.J.A.C. 7:25-18.5(j), which sets
forth the procedures for requesting an extension of the December 31 deadline for
renewing a Gill Net or Lobster or Fish Pot license. Under these new subsections, an
extension will be granted if the applicant demonstrates that, because of extraordinary hardship or exceptional situation or condition which was outside of the applicant’s control, they were precluded from renewing the license in the normal course and not allowing an extension would result in an exceptional or undue hardship. However, an extension will only be granted if approval of the extension would not unreasonably interfere with the orderly administration of the program (for example, renewal of the license would result in overtake of the resource due to issuance of other licenses during the time since the expiration of the applicant’s license for which the extension is sought)). This procedure is identical to that currently applicable to the renewal of commercial crab pot and/or dredge licenses under N.J.A.C. 7:25-14.4.

N.J.A.C. 7:25-18.11 Transfer of Delaware Bay Commercial and noncommercial gill net permits

The Department is proposing to amend N.J.A.C. 7:25-18.11(b) to allow Delaware Bay gill net permits to be transferred to a permittee’s spouse, father, mother, brother or sister in addition to the currently allowed transfer to a son or daughter. The purpose of this modification is to allow transfers to immediate family members consistent with what is proposed for commercial crab licenses under N.J.A.C. 7:25-14.4(a7 (see discussion above). Similar to amendments proposed for commercial crab licenses, the Department is also proposing to amend N.J.A.C. 7:25-18.11 to add a new (c) which provides that transfer to any other person is permitted only upon an application to the Commissioner demonstrating that the transfer is necessary to avoid undue hardship.
N.J.A.C. 7:25-18.12 Commercial fishing seasons, quotas and trip limits

The Department is proposing to amend N.J.A.C. 7:25-18.12(c)12iii, (e)13i and (k)8i to clarify that a suspension of a tautog, shad or scup permit will be imposed during the open season or, for shad, from March 1 to May 15, which is the season shad fishing operations are normally conducted. These revisions will clarify that a fisherman will be suspended during the time he would normally be participating in the tautog, shad or scup fishery. Suspending permits during a time of the year when these fisheries are not active would not affect a violator’s ability to participate in these fisheries and would not serve as a deterrent to violation of the tautog, shad and scup regulations.

The Department is proposing to amend N.J.A.C. 7:25-18.12(c)12iii(4), (e)13i(4), (h)13iii(4), (i)9iii(4), and (k)8i(4) to add language consistent with that proposed at N.J.A.C. 7:25-14.20 to remove from consideration for setting suspension periods for subsequent violations a tautog, shad, black sea bass, summer flounder, or scup permit suspension if a second suspension of the rules applicable to the particular fishery is not incurred within a three year period. For example, if a fisherman previously suspended for a violation of the rules applicable to the summer flounder fishery has not committed a second violation of the summer flounder rules resulting in a suspension within a three year period, the first suspension will not be considered in setting the suspension period for a subsequent violation of the summer flounder rules. This will avoid permanent permit revocation for violations that occur greater than three years apart. Consistent with other similar proposed provisions discussed previously, this provision would not affect the penalties for the violations.
The Department is proposing at N.J.A.C. 7:25-18.12(e)2i and 5i to institute a shad permit application deadline of July 31, 2005. Shad permits were established by the Department in 2000 and the application period has been open since then. The Department believes that a sufficient amount of time has been allowed for anyone interested and eligible to apply for a shad permit to do so. Application deadlines were previously established for summer flounder, black sea bass, tautog, and lobster permits. Establishing a shad permit application deadline conforms the shad application procedure to those established for other permits. This proposed amendment will allow for better management of New Jersey’s fisheries resources.

The Department is proposing to amend N.J.A.C. 7:25-18.12(e)13i(1) and (2), and (k)8i(1), (2) and (3) to change the shad and scup permit suspension periods. The Department is proposing to increase the suspension period applicable to shad for a first offense from 30 days to 60 days and the suspension period for a second offense from 90 days to 120 days. The suspension period applicable to scup permit violations is proposed to increase for a first offense from no suspension to 60 days suspension, for a second suspension from 60 days to 120 days and for a third suspension from 120 days to permanent revocation. The purpose of these proposed modifications is to standardize all permit suspension periods in N.J.A.C. 7:25-18.

The Department is proposing new provisions at N.J.A.C. 7:25-18.12(i)1iv to allow summer flounder permit holders to request modification of the gear type authorized by their summer flounder permit. Summer flounder permits to date have been issued only for the gear types used to harvest the minimum poundage of fish necessary to qualify for a permit. Currently, the gear types listed on the permit cannot be changed. Recently, a
fisherman requested through the New Jersey Marine Fisheries Council that gear types listed on the summer flounder permit should be allowed to be changed if a permit holder chooses to harvest summer flounder with a less efficient gear. The New Jersey Marine Fisheries Council recommended that the following gear changes should be allowed: (1) otter trawl to scallop dredge, hook and line, pound net or gill net; (2) scallop dredge to hook and line, pound net or gill net; and (3) hook and line, pound net or gill net to each other. A gear change can occur one time only for each permit and within one year of the date of the gear change, a permit holder may elect to revert back to the original gear type. In all cases, no gear modification may be made without prior approval by the Department. These modifications will allow summer flounder permit holders more flexibility in gear types used to harvest summer flounder while at the same time preventing permit holders from changing to more efficient gear that could increase the harvest of summer flounder and result in overfishing of the resource.

The Department is proposing to add a provision at N.J.A.C. 7:25-18.12(p), which sets forth the procedures for requesting an extension of the application deadline for obtaining a Tautog, Non Directed Fishery Tautog, Shad Commercial Net, Shad Incidental Harvest, or New Jersey Black Sea Bass permit. Under these new subsections, an extension will be granted if the applicant demonstrates that, because of extraordinary hardship or exceptional situation or condition which was outside of the applicant’s control, they were precluded from filing the application for the permit in the normal course and not allowing an extension would result in an exceptional or undue hardship. However, an extension will only be granted if approval of the extension would not unreasonably interfere with the orderly administration of the program (for example, issuance of the permit would
result in overtake of the resource due to issuance of other permits during the time prior to request of the extension). This procedure is identical to that currently applicable to the renewal of commercial crab pot and/or dredge licenses under N.J.A.C. 7:25-14.4.

N.J.A.C. 7:25-18.15 Atlantic sturgeon management

The Department is proposing to amend N.J.A.C. 7:25-18.15 (a) to make clear that the taking and possession of Atlantic sturgeon is prohibited by deleting sections of the regulations, N.J.A.C. 7:25-18.15 (b) through (o), pertaining to the administration of the commercial fishery for Atlantic sturgeon. Existing regulations at N.J.A.C 7:25-18.1(d) state that a person shall not take, possess, land, purchase, sell or offer for sale Atlantic sturgeon. Amendment 1 to the Atlantic States Marine Fisheries Commission’s (ASMFC) Interstate Fishery Management Plan for Atlantic Sturgeon required the implementation of an Atlantic coast moratorium on the taking of Atlantic sturgeon by June 30, 1998 to allow for the rebuilding of the Atlantic sturgeon stock. Amendment 1 applies in states’ marine waters, including those of New Jersey, out to three nautical miles from shore. In 1999, the Federal government, through the National Marine Fisheries Service (NMFS), complemented the ASMFC’s actions by banning the possession and harvest of Atlantic sturgeon in the exclusive economic zone from three to 200 nautical miles from shore. Both ASMFC and NMFS actions were implemented to allow for the rebuilding of the Atlantic sturgeon stock. The Atlantic sturgeon stock had been severely overfished and resource managers recommended a rebuilding of 20 yearclasses of this fish. It is estimated that it will take 20 to 40 years for a 20 yearclass rebuild of this species to be
accomplished. When a commercial fishery for Atlantic sturgeon was allowed in New Jersey, only qualified permitted fishermen were allowed to harvest Atlantic sturgeon. Each permittee was issued a yearly allocation of possession tags that were affixed to each Atlantic sturgeon harvested. The allocation of yearly possession tags to permitted Atlantic sturgeon fishermen controlled the annual harvest of Atlantic sturgeon. With the declaration of the moratorium along the entire Atlantic coast, the Department stopped issuing the possession tags required to harvest and possess Atlantic sturgeon, effectively closing the fishery. The Department has not issued any possession tags for Atlantic sturgeon since the moratorium was declared and consequently, New Jersey has not allowed for a commercial Atlantic sturgeon fishery for many years. Since the moratorium period will be of such a long duration to rebuild this stock, the Department is proposing to repeal the sections of the regulations pertaining to the permits and possession tags required in the administration of the Atlantic sturgeon commercial fishery.

N.J.A.C 7:25-22.1 Menhaden season

The Department is proposing to amend N.J.A.C. 7:25-22.1 to revise the title of this section of the regulations from “Menhaden season” to “Taking of Atlantic menhaden for fish meal reduction.” The Department is proposing to revise this section to clarify that the taking of Atlantic menhaden by any means for fish meal reduction is prohibited. The Department is further deleting language referring to the taking of menhaden for chum or purposes other than for fish meal reduction since chum is a form of bait and the only market for landing menhaden for purposes other than for fish meal reduction is the bait
market. Before January 6, 2002, the Department allowed for two commercial markets; the bait market and the fish meal reduction market. Effective January 6, 2002, N.J.S.A. 23:3-51 prohibits the taking of Atlantic menhaden by any means for fish meal reduction. The statute superceded this rule. N.J.A.C. 7:25-22.1 is proposed to be modified to make clear that the taking of Atlantic menhaden for fish meal reduction is prohibited. The taking of Atlantic menhaden for the bait market was not affected by N.J.S.A. 23:3 51, and is regulated under N.J.A.C. 7:25-22.3.

N.J.A.C. 7:25-22.2 Purse seine fishing of Atlantic menhaden

The Department is proposing to delete N.J.A.C. 7:25-22.2(a)1 through 10. These paragraphs refer to the taking of Atlantic menhaden for purposes other than bait, specifically, the reduction market. As indicated above, the taking of Atlantic menhaden for reduction is prohibited by N.J.S.A. 23:3-51. The taking of Atlantic menhaden for bait is covered by N.J.A.C. 7:25-22.3.

Social Impact

The proposed amendments to N.J.A.C. 7:25-14.4 and 18.11 modifying the transferability of commercial crab licenses and Delaware Bay gill net permits will result in positive social impacts. The proposed amendments all expand transferability of these licenses or permits; therefore additional people will be eligible to participate in these fisheries by license or permit transfer.

The proposed amendments to N.J.A.C. 7:25-14.20 and 18.12 requiring that lobster permit or license, tautog, shad and scup permit suspensions be imposed during an open
season or during the active season of fishing operations will result in positive social impacts. The proposed amendments will provide a deterrent to violation of regulations governing these fisheries thus providing for better management of these resources and assuring that they will not be overfished. Suspending permits or licenses during a time of the year when these fisheries are not active does not affect a violator’s ability to participate in these fisheries and does not serve as a deterrent to further violation of the fishing regulations.

The proposed amendments to N.J.A.C. 7:25-14.20, 18.1 and 18.12 that remove from consideration a lobster, fillet, tautog, shad, black sea bass, summer flounder or scup permit suspension if a second suspension is not incurred for a three year period will result in positive social impacts to those fishermen who may otherwise have their permit permanently revoked. Under the proposed amendments, a permit holder who has not committed a violation for a three year period will have a permit suspension removed from consideration when determining subsequent permit suspensions, thereby avoiding permanent revocation for violations that occur greater than three years apart and retaining the opportunity to participate in the fishery.

The proposed amendments to N.J.A.C. 7:25-18.1 and 18.12 standardizing fillet, shad and scup permit suspensions to 60 days, 120 days and permanent revocation for the first, second and third offenses, respectively, will result in positive social impacts. Standardizing permit suspensions will provide less confusing regulations that are more easily understood by those fishermen participating in these fisheries.

The proposed amendment to N.J.A.C. 7:25-18.12 instituting application deadlines for shad permits will result in no overall social impact. Shad permits were established by
the Department in 2000 and the application period has been open since then. The Department believes that a sufficient amount of time has been allowed for anyone interested and eligible to apply for a shad permit to do so.

The proposed amendment to N.J.A.C. 7:25-18.12 to allow summer flounder permit holders to modify the gear type listed on the permit will result in a positive social impact. The proposed amendment will allow a summer flounder permit holder to participate in the directed summer flounder fishery with gear preferred by the fishermen provided the gear type change is to a less efficient gear as described in the Summary above.

The proposed amendments to N.J.A.C. 7:25-18.15(a) modifying existing language to reflect that the taking and possession of Atlantic sturgeon is prohibited will have no social impact since this fishery has been closed for several years. Likewise, proposed amendments deleting N.J.A.C. 7:25-18.15(b) through (o) pertaining to the administration of the commercial fishery for Atlantic sturgeon will have no social impact since this fishery has been closed for several years.

The proposed amendments to N.J.A.C. 7:25-22.1 that revise the title of this section and revise the language in the section to state that the taking of Atlantic menhaden for fish meal reduction is prohibited will have no social impact since this commercial fishery has been closed since January 6, 2002 under N.J.S.A. 23:3-51. Similarly, deleting the language at N.J.A.C. 7:25-22.2 that pertains to the taking of Atlantic menhaden for purposes other than bait, specifically, for the reduction market, will have no social impact since the taking of Atlantic menhaden for reduction purposes has been prohibited by statute since January 6, 2002.
The proposed amendments to N.J.A.C. 7:25-18.5 and 18.12 establish procedures and requirements for requesting an extension of the deadline for application or renewal for a New Jersey Tautog, New Jersey Non-Directed Fishery Tautog, Shad Commercial Net or Shad Incidental Harvest, New Jersey Black Sea Bass, or a Gill Net or Lobster or Fish Pot License. Establishing these procedures will result in a positive social impact by enabling permittees and licensees who were not able to apply or renew within the stated deadlines to obtain or renew their permit or license if they can demonstrate hardship.

**Economic Impact**

The proposed amendments to N.J.A.C. 7:25-14.4 and 18.11 modifying the transferability of commercial crab licenses and Delaware Bay gill net permits will result in positive economic impacts by expanding the universe of family members who will be able to gain entry into these fisheries and allowing transfers to others upon a demonstration of undue hardship.

The proposed amendments to N.J.A.C. 7:25-14.20 and 18.12 requiring that lobster permit or license and tautog, shad and scup permit suspensions will be imposed during an open season or during the active season of fishing operations will result in no economic impact to those fishermen abiding by the regulations. These amendments do not affect participation in these fisheries by law-abiding fishermen and, therefore do not affect the overall economics of the fishery.

The proposed amendments to N.J.A.C. 7:25-14.20, 18.1 and 18.12 to remove from consideration a lobster, fillet, tautog, shad, black sea bass, summer flounder or scup permit suspension if a second suspension is not incurred for a three year period will result
in positive economic impacts to those fishermen who may otherwise have their permit permanently revoked. Under the proposed amendments, a permit holder who has not committed a violation for a three year period will have a permit suspension removed from consideration when determining subsequent permit suspensions, thereby avoiding permanent revocation for violations that occur greater than three years apart and realizing the economic benefits of participating in the fishery.

The proposed amendments to N.J.A.C. 7:25-18.1 and 18.12 standardizing fillet, shad and scup permit suspensions to 60 days, 120 days and permanent revocation for the first, second and third offenses, respectively, will result in no economic impacts to those fishermen abiding by the regulations. These amendments do not affect participation in these fisheries by law-abiding fishermen and, therefore, do not affect the overall economics of the fishery.

The proposed amendment to N.J.A.C. 7:25-18.12 instituting application deadlines for shad permits will result in no overall economic impact. Shad permits were established by the Department in 2000 and the application period has been open since then. To be eligible to apply for a shad permit, the applicant must demonstrate significant experience in the industry, which limits the number who qualify for these permits. A sufficient amount of time has been allowed for anyone interested and eligible to apply for a shad permit to do so.

The proposed amendment to N.J.A.C. 7:25-18.12 to allow summer flounder permit holders to modify the gear type listed on the permit will result in a positive economic impact. The proposed amendment will allow a summer flounder permit holder to harvest and sell summer flounder with gear preferred by the fishermen provided the
gear type change is to a less efficient gear as described in the Summary above. Fishermen may choose to fish less efficient gear in order to harvest summer flounder with the gear type they are already using to catch other species or because the gear type may be better suited to a particular area, thus allowing the fisherman to tailor the gear to their particular circumstances.

The proposed amendments to N.J.A.C. 7:25-18.15(a) clarifying that the taking and possession of Atlantic sturgeon is prohibited will have no economic impact since this fishery has been closed for several years. Likewise, proposed amendments deleting N.J.A.C. 7:25-18.15 (b) through (o) pertaining to the administration of the commercial fishery for Atlantic sturgeon will have no economic impact since this fishery has been closed for several years.

The proposed amendments to N.J.A.C. 7:25-22.1 that revise the title of this section and revise the language within this section to state that the taking of Atlantic menhaden for fish meal reduction is prohibited will have no economic impact since this commercial fishery has been closed since January 6, 2002. Similarly, deleting the language at N.J.A.C. 7:25-22.2 that pertains to the taking of Atlantic menhaden for purposes other than bait, specifically, for the reduction market, will have no economic impact since the taking of Atlantic menhaden for reduction purposes has been prohibited since January 6, 2002.

The proposed amendments to N.J.A.C. 7:25-18.5 and 18.12 establish procedures and requirements for requesting an extension of the deadline for application or renewal for a New Jersey Tautog, New Jersey Non-Directed Fishery Tautog, Shad Commercial Net, Shad Incidental Harvest, New Jersey Black Sea Bass, or a Gill Net or Lobster or
Fish Pot License. Establishing these procedures will result in a positive economic impact by enabling permittees and licensees who were not able to apply or renew within the stated deadlines to obtain or renew their license or permit if they demonstrate hardship.

**Environmental Impact**

The proposed amendments to N.J.A.C. 7:25-14.4 and 18.11 modifying the transferability of commercial crab licenses and Delaware bay gill net permits do not change the number of licenses or permits available and, therefore, will have no environmental impact.

The proposed amendments to N.J.A.C. 7:25-14.20 and 18.12 requiring that lobster permit or license, tautog, shad and scup permit suspensions will be imposed during an open season or during the active season of fishing operations will result in positive environmental impacts by providing a deterrent to violation of the regulations governing these fisheries and thereby reducing the potential for over-fishing as a result of illegal fishing activities.

The proposed amendments to N.J.A.C. 7:25-14.20, 18.1 and 18.12 to remove from consideration a lobster, fillet, tautog, shad, black sea bass, summer flounder or scup permit suspension if a second suspension is not incurred for a three year period does not change current fishing practices in any way and, therefore, will have no environmental impact. Most of these fisheries, including tautog, black sea bass, summer flounder and scup are controlled by a commercial quota. Therefore lessening the probability of permit revocations will not increase the overall amount of fish harvested, which is controlled by the commercial quota.
The proposed amendments to N.J.A.C. 7:25-18.1 and 18.12 standardizing fillet, shad and scup permit suspensions to 60 days, 120 days and permanent revocation for the first, second and third offenses will have a positive environmental impact by increasing deterrents to permit violations, thus better protecting the resource.

The proposed amendment to N.J.A.C. 7:25-18.12(e) instituting application deadlines for shad permits will result in no overall environmental impact. Shad permits were established by the Department in 2000 and the application period has been open since then. The Department believes that a sufficient amount of time has been allowed for anyone interested and eligible to apply for a shad permit to do so. Therefore, instituting an application deadline will not change the number of participants in the fishery.

The proposed amendment to N.J.A.C. 7:25-18.12(i)iii(4)-(8) to allow summer flounder permit holders to modify the gear type listed on the permit will result in no environmental impact. The proposed amendment will allow a summer flounder permit holder to harvest and sell summer flounder with gear preferred by the fishermen provided the gear type change is to a less efficient gear as described in the Summary above. However, the harvest of summer flounder is controlled by a commercial quota. Therefore the total amount of summer flounder harvested will not change.

The proposed amendments to N.J.A.C. 7:25-18.15(a) clarifying that the taking and possession of Atlantic sturgeon is prohibited will have no environmental impact since this fishery has been closed for several years. Likewise, proposed amendments deleting N.J.A.C. 7:25-18.15 (b) through (o) pertaining to the administration of the commercial
fishery for Atlantic sturgeon will have no environmental impact since this fishery has been closed for several years.

The proposed amendments to N.J.A.C. 7:25-22.1 that revise the title of this section and revise the language within this section to state that the taking of Atlantic menhaden for fish meal reduction is prohibited will have no environmental impact since this commercial fishery has been closed since January 6, 2002. Similarly, deleting the language at N.J.A.C. 7:25-22.2 that pertains to the taking of Atlantic menhaden for purposes other than bait, specifically, for the reduction market, will have no environmental impact since the taking of Atlantic menhaden for reduction purposes has been prohibited since January 6, 2002.

The proposed amendments to N.J.A.C. 7:25-18.5 and 18.12 establishing procedures and requirements for requesting an extension of the deadline for application or renewal for a New Jersey Tautog, New Jersey Non-Directed fishery Tautog, Shad Commercial Net or Shad Incidental Harvest, New Jersey Black Sea Bass, or a Gill Net or Lobster or Fish Pot License will have no environmental impact, because the total allowable harvest for any particular species will not increase and the maximum amount of gear will not change.

**Federal Standard Analysis**

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

The proposed amendments to N.J.A.C. 7:25-14.4 and 18.11 modifying the transferability of commercial crab licenses and Delaware Bay gill net permits are not
more stringent than Federal regulations in that there are no Federal regulations that apply
to these fisheries in State waters. The management of these species in State waters
throughout the Atlantic coastal area is under the authority of various states. State
regulation in this area is essential in order to protect, manage and conserve these State-
specific fisheries.

The proposed amendments to N.J.A.C. 7:25-14.20 and 18.12 requiring that lobster
permit or license and tautog, shad and scup permit suspensions be imposed during an
open season or during the active season of fishing operations does not modify current
fishing practices and would not create a regulation which is more stringent than Federal
regulations The proposed amendments to N.J.A.C. 7:25-14.20, 18.1 and 18.12 adding
language to remove from consideration a lobster, fillet, tautog, shad, black sea bass,
summer flounder or scup permit suspension if a second suspension is not incurred for a
three year period do not modify current fishing practices and would not create a
regulation which is more stringent than Federal regulations as the Federal regulations do
not provide any mechanism for reduction of the number of violations considered for
suspensions regardless of the time between violations.

The proposed amendments to N.J.A.C. 7:25-18.1 and 18.12 standardizing fillet,
shad and scup permit suspensions; and implementing application deadlines for shad
permits are not more stringent than Federal regulations as there are no Federal regulations
that apply to permit suspensions in State waters. The management of these fisheries in
state waters throughout the Atlantic coastal area is under the authority of various states.
State regulation in this area is essential in order to protect, manage and conserve these
state-specific fisheries.
The proposed amendment to N.J.A.C. 7:25-18.12 to allow summer flounder permit holders to modify the gear type listed on the permit are not more stringent than Federal regulations as there are no Federal regulations that apply to State summer flounder permits. Issuing of State summer flounder permits throughout the Atlantic Coastal area is under the authority of various states. State regulation in this area is essential in order to manage the summer flounder fishery.

The proposed amendments to N.J.A.C. 7:25-18.15 (a) modifying existing language to state that the taking and possession of Atlantic sturgeon is prohibited are consistent with Federal regulations that require a moratorium on the Atlantic sturgeon fishery. Likewise, proposed amendments deleting N.J.A.C. 7:25-18.15 (b) through (o) pertaining to the administration of the commercial fishery for Atlantic sturgeon are consistent with Federal regulations that have established a moratorium on the Atlantic sturgeon fishery.

The proposed amendments to N.J.A.C. 7:25-22.1 revising the title of this section and revising the language within this section to state that the taking of Atlantic menhaden for fish meal reduction is prohibited are more stringent than Federal regulations since the taking of Atlantic menhaden for fish meal reduction is allowed in Federal waters as long as coastal harvest levels do not exceed fishing mortality and egg production target biological reference points on a coastwide basin. The Interstate Fishery Management Plan for Atlantic Menhaden (FMP) that covers Atlantic coastal states from Maine to Florida, however, allows individual states to be more restrictive than the management measures recommended in the FMP. Many Atlantic coastal states have prohibited the use of purse seines in their marine waters or have prohibited the purse seining of menhaden
and have effectively closed their state marine waters to the taking of Atlantic menhaden for fish meal reduction. Similarly, deleting the language at N.J.A.C. 7:25-22.2 that pertains to the taking of Atlantic menhaden for purposes other than bait is more stringent than Federal regulations since the taking of Atlantic menhaden for fish meal reduction is allowed in Federal waters. Again, however, individual Atlantic coastal states may be more restrictive than the recommended management measures of the FMP. Amendments to N.J.A.C. 7:25-22.1 and 22.2 implement the New Jersey legislative mandate codified at N.J.S.A. 23:3-51 that prohibits the taking of Atlantic menhaden by any means for fish meal reduction.

The proposed amendments to N.J.A.C. 7:25-18.5 and 18.12, establishing procedures and requirements for requesting an extension of the deadline for application or renewal for a New Jersey Tautog, New Jersey Non-Directed fishery Tautog, Shad Commercial Net or Shad Incidental Harvest, New Jersey Black Sea Bass, or a Gill Net or Lobster or Fish Pot License, would not create a regulation which is more stringent than Federal regulations because there are no Federal regulations controlling deadlines for issuing State licenses or permits.

**Jobs Impact**

The proposed amendments to N.J.A.C. 7:25-14.4, 18.11 and 18.12 modifying the transferability of commercial crab licenses and Delaware bay gill net permits and implementing application deadlines for shad permits will not result in the generation or loss of jobs. Participation in these commercial fisheries is managed by limited entry systems that control the number of permits and, therefore, the number of jobs that are
available. The proposed amendments do not change the number of permits available to commercial fishermen.

The proposed amendments to N.J.A.C. 7:25-14.20 and 18.12 requiring that lobster permit or license and tautog, shad and scup permit suspensions will be imposed during an open season or during the active season of fishing operations do not affect the legal harvest of any marine resource. The amendments will not result in the generation or loss of jobs.

The proposed amendments to N.J.A.C. 7:25-14.20, 18.1 and 18.12 to remove one permit violation from consideration in determining the applicable suspension of a lobster, fillet, tautog, shad, black sea bass, summer flounder or scup permit for a subsequent violation if a second suspension is not incurred for a three year period could avoid job losses. Currently, any permit holder who incurs three violations will have their permit permanently revoked, regardless of the amount of time that has elapsed between violations. These amendments will serve to avoid permanent permit revocation for violations that occur greater than three years apart and, therefore avoid job losses as a result of a permit holder permanently losing the ability to participate in a fishery.

The proposed amendments to N.J.A.C. 7:25-18.1 and 18.12 standardizing fillet, shad and scup permit suspensions do not affect the legal harvest of any marine resource. The amendments will not result in the generation or loss of jobs.

The proposed amendment to N.J.A.C. 7:25-18.12 to allow summer flounder permit holders to modify the gear type listed on the permit will not result in the generation or loss of jobs. Participation in the commercial summer flounder fishery is currently controlled by a limited entry system that controls the number of permits and,
therefore, the number jobs that are available. The proposed amendment does not change
the number of permits available to commercial fishermen.

The proposed amendments to N.J.A.C. 7:25-18.15(a) clarifying that the taking
and possession of Atlantic sturgeon is prohibited will not result in the generation or loss
of jobs since this fishery has been closed for several years. Likewise proposed
amendments deleting N.J.A.C. 7:25-18.15 (b) through (o) pertaining to the administration
of the commercial fishery for Atlantic sturgeon will not result in the generation or loss of
jobs since this fishery has been closed for several years.

The proposed amendments to N.J.A.C. 7:25-22.1 revising the title of this section
and revising the language within this section to state that the taking of Atlantic menhaden
for fish meal reduction is prohibited will not result in the generation or loss of jobs since
this commercial fishery has been closed since January 6, 2002. Similarly, deleting the
language at N.J.A.C. 7:25-22.2 that pertains to the taking of Atlantic menhaden for
purposes other than bait, specifically, for the reduction market, will not result in the
generation or loss of jobs since the taking of Atlantic menhaden for reduction purposes
has been prohibited since January 6, 2002.

The proposed amendments to N.J.A.C. 7:25-18.5 and 18.12, establishing
procedures and requirements for requesting an extension of the deadline for application
or renewal for a New Jersey Tautog , New Jersey Non-Directed fishery Tautog , Shad
Commercial Net or Shad Incidental Harvest , New Jersey Black Sea Bass, or a Gill Net or
Lobster or Fish Pot License, will result in little or no job creation. Holders of the various
permits and licenses who miss the deadlines will continue to have the ability to fish for
the target species listed on the permit or license, provided they demonstrate hardship.
Agriculture Industry Impact

Pursuant to N.J.S.A. 52:14B-4(a)2, the Department has evaluated this rulemaking to determine the nature and extent of the proposed amendments impact on the agriculture industry. The proposed amendments apply solely to the marine fishing industry and will have no impact upon the agriculture industry.

Regulatory Flexibility Analysis

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has reviewed the proposed amendments for reporting, record keeping, or other compliance requirements on small businesses. The proposed amendments apply to commercial fishermen fishing for blue crab, lobster, tautog, American shad, black sea bass, summer flounder, scup, Atlantic Sturgeon, or Atlantic menhaden and fisheries utilizing fillet permits and Delaware Bay gill net permits. Most of these fishermen would qualify as small businesses under the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. None of the proposed amendments will require additional reporting, record keeping or other compliance requirements. Accordingly, there will be no impact on small businesses as a result of the proposed amendments.

Smart Growth Impact

Executive Order No. 4 (2002) requires State agencies which adopt, amend or repeal any rule adopted pursuant to N.J.S.A. 52:14B-4(a) of the Administrative Procedure
Act, to describe the impact of the proposed rule on the achievement of smart growth and implementation of the New Jersey State Development and Redevelopment Plan (State Plan). The Department has evaluated this rulemaking to determine the nature and extent of the proposed amendments’ impact on smart growth and the implementation of the State Plan. The proposed amendments concerning various marine fisheries provisions at N.J.A.C. 7:25-14.4, 14.20, 18.1, 18.5, 18.11, 18.12, 18.15, 22.1 and 22.2, do not involve land use policies or infrastructure development and, therefore, will not have any impact on the achievement of smart growth. The amendments are intended to conserve the State’s natural resources, which is one of the overall goals of the State Plan. Accordingly, the conservation of the fisheries resource is supportive of the goals of the State Plan.

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

**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 the area defined as the “Delaware Bay.”

1.–6. (No change.)

7. Commercial crab pot and crab dredge licenses are non-transferable except that the holder of a valid license not pending revocation due to the violation of provisions of this subchapter may transfer the right to the license at any time to the license holder’s spouse, father, mother, son, [or] daughter, brother or sister upon application to the Division. **Transfer to any other person is permitted, but only upon an application to the Commissioner of the Department of Environmental Protection demonstrating that the transfer is necessary to avoid undue hardship.** The new licensee shall have a license issued in their name after payment of the fee specified at (a)8 below.

8. – 9. (No change.)

(b) – (f) (No change.)

7:25-14.20 Penalties

(a) – (g) (No change.)

(h) Failure to comply with the provisions of N.J.A.C. 7:25-14.13, lobster size, tail size, and landing of lobster parts; N.J.A.C. 7:25-14.15, prohibition of egg-bearing lobsters, v-notched female lobster; N.J.A.C. 7:25-14.16, eligibility for a lobster pot permit and pot allocation; N.J.A.C. 7:25-14.17, lobster pot tag program; N.J.A.C. 7:25-18.5(g)11ii, lobster pot maximum size; or N.J.A.C. 7:25-18.5(g)11vii, escape vents, shall result in the suspension during the period which extends from April 1 to November 30, or revocation of the vessel’s lobster pot permit and/or the lobster pot license of the operator according to the following schedule:
1. – 3. (No change.)

4. In calculating the period of suspension or revocation applicable under (h)1-3 above, the number of previous suspensions shall be reduced by one for each three-year period in which the permit holder does not commit any other violation subject to this subsection, provided, however, that if more than one suspension is imposed within a three-year period, only one of those suspensions may be forgiven under this subsection; therefore, a permit holder who incurs more than one suspension within a three-year period shall not be considered a first offender under this subsection regardless of the length of any subsequent period without violation. The reduction in suspensions provided in this subsection applies only to determination of suspension periods; all prior suspensions shall be taken into account in calculating monetary penalties in accordance with N.J.S.A. 23:2B:14.

(i) – (k) (No change.)

SUBCHAPTER 18.  MARINE FISHERIES

7:25-18.1  Size, season and possession limits

(a) For the purpose of this subchapter, the following common names shall mean the following scientific name(s) for a species or group of species, except as otherwise specified elsewhere in this subchapter.

<table>
<thead>
<tr>
<th>Common Name</th>
<th>Scientific Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>…</td>
<td>…</td>
</tr>
<tr>
<td>Striped Bass</td>
<td>Morone saxatilis</td>
</tr>
<tr>
<td>…</td>
<td>…</td>
</tr>
</tbody>
</table>
(b) (No change.)

(c) A person angling with a hand line or with a rod and line or using a bait net or spearfishing shall not have in his or her possession any species listed below less than the minimum length, nor shall such person take in any one day or possess more than the possession limits as provided below, nor shall such person possess any species listed below during the closed season for that species. Exceptions to this section as may be provided elsewhere in this subchapter, and shall be subject to the specific provisions of any such section. Fish length shall measure from the tip of the snout to the tip of the tail (total length), except as noted below:

<table>
<thead>
<tr>
<th>Species</th>
<th>Minimum Size in Inches</th>
<th>Open Season</th>
<th>Possession Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Striped Bass</td>
<td>refer to N.J.S.A. 23: 5-45.1</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(d) – (e) (No change.)

(f) Special provisions applicable to a Special Fillet Permit are as follows:

1. – 2. (No change.)

3. The Special Fillet Permit shall be subject to the following conditions:

i. – vi. (No change.)

vii. Violation of any of the provisions of the Special Fillet Permit shall subject the captain and permit holder to the penalties established pursuant to N.J.S.A. 23:2B-14 and shall result in a suspension or revocation, applicable to both the vessel and the owner[,]

(1) First offense: [30] 60 days suspension
(2) Second offense: [90] 120 days suspension; and

(3) (No change.)

viii. In calculating the period of suspension or revocation applicable under (f) above, the number of previous suspensions shall be reduced by one for each three year period in which the permit holder does not commit any other violation subject to this subsection, provided, however, that if more than one suspension is imposed within a three year period, only one of those suspensions may be forgiven under this subsection; therefore, a permit holder who incurs more than one suspension in a three-year period shall not be considered a first offender under this subsection regardless of the length of any subsequent period without violation. The reduction in suspensions provided in this subsection applies only to determination of suspension periods; all prior suspensions shall be taken into account in calculating monetary penalties in accordance with N.J.S.A. 23:2B:14.

[viii.] ix. (No change in text.)

(g) – (r) (No change)

7:25-18.5 General net regulations

(a) – (i) (No change)

(j) An applicant who is otherwise eligible for a Gill Net or Lobster or Fish Pot license under (g) 11 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 (k) through (m) below.
1. The written request, along with any supporting documentation, shall be submitted to:

   New Jersey Division of Fish and Wildlife

   PO Box 400

   Trenton, New Jersey 08625-0400

2) The request shall:

   i. Identify the specific license for which the extension of time to renew is requested;

   ii. Explain in detail why the extension of time to renew is needed, including a statement of the type and degree of hardship that prevented the timely renewal of the license, and the hardship that will result to the applicant if the license is not renewed; and

   iii. Provide appropriate documentation as necessary to support the request for extension.

   (k) The Department shall approve an extension request under (j) above only if it determines that the request and documentation demonstrate that:

1. By reason of extraordinary hardship or exceptional situation or condition, the applicant was precluded from renewing his or her Gill Net License or Lobster or Fish Pot License during the 12 month application period preceding the year for which the license/permit is requested;
2. By reason of extraordinary or exceptional situation or condition, strict compliance with the deadline in (g) 11 above would result in exceptional and undue hardship upon the applicant; and

3. The circumstances supporting (k) 1 and 2 above were not created by the applicant or persons under his or her control, and the approval of the extension will not unreasonably interfere with the orderly administration of the licensing program.

(l) The Department shall provide written notice to the applicant of its decision to approve or deny the request for extension.

(m) The denial of an extension request may be appealed pursuant to the procedures outlined in N.J.A.C. 7:25-18.17, Request for adjudicatory hearing.

7:25-18.11 Transfer of Delaware Bay commercial and noncommercial gill net permits

(a) Except as provided in (b) or (c) below, Delaware Bay commercial and non-commercial gill net permits are non-transferable.

(b) The Commissioner shall transfer a Delaware Bay commercial or non-commercial gill net permit to the spouse, father, mother, son, [or] daughter, brother or sister of the holder of the commercial or noncommercial permit provided that:

1. The Division receives a written request at the address set forth in N.J.A.C. 7:25-18.9(a) signed by the holder of a Delaware Bay commercial or noncommercial gill net permit requesting transfer of the holder’s permit to a designated spouse, father, mother, son, [or] daughter, brother or sister;
2. For the transfer of a Delaware Bay commercial gill net permit, the written request under (b)1 above shall be accompanied by documentation that establishes that the designated spouse, father, mother, son, [or] daughter, brother or sister has three years of commercial fishing experience; and

3. (No change.)

(c) Transfer to any other person is permitted, but only upon an application to the Commissioner of the Department of Environmental Protection demonstrating that the transfer is necessary to avoid undue hardship.

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

(a)–(b) (No change.)

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

1. – 11. (No change.)

12. Any person violating the provisions of this section shall be subject to the penalties prescribed in N.J.S.A. 23:2B-14 in addition to the following:

i- ii (No change.)

iii. Failure to comply with the provisions of (c)11iii above, landing tautog after the season has been closed, or (c)11vii above, failure to submit accurate and timely monthly reports, shall result in the suspension during open seasons for tautog or revocation of the vessel’s tautog permit according to the following schedule:

(1)-(3) (No change.)

iv. In calculating the period of suspension or revocation applicable under (c)12iii above, the number of previous suspensions shall be reduced by one for each
three year period in which the permit holder does not commit any other violation subject to this subsection, provided, however, that if more than one suspension is imposed within a three year period, only one of those suspensions may be forgiven under this subsection; therefore, a permit holder who incurs more than one suspension in a three-year period shall not be considered a first offender under this subsection regardless of the length of any subsequent period without violation. The reduction in suspensions provided in this subsection applies only to determination of suspension periods; all prior suspensions shall be taken into account in calculating monetary penalties in accordance with N.J.S.A. 23:2B:14.

[iv.] v. (No change in text.)

(d) (No change.)

(e) The following provisions are applicable to the commercial harvest of shad:

1. (No change.)

2. To qualify for a Shad Commercial Net Permit, an applicant shall meet the following criteria:

   i. The applicant shall [complete] submit an application provided by the Department by July 31, 2005 including information regarding the name and address of the vessel owner, vessel name, vessel documentation or registration number and documented proof of landings as listed in (e)2ii and iii below. Except as provided by (p) below, applications for a Shad Commercial Net Permit received after the above date shall be denied. Completed applications should be submitted to:

   New Jersey Shad Permit

   Nacote Creek Research Station
3. – 4. (No change.)

5. A Shad Incidental Harvest Permit shall be issued to qualifying applicants which will allow the harvest or possession of not more than 300 pounds of shad per day from New Jersey’s waters. To qualify for a Shad Incidental Harvest Permit, an application shall comply with the following provisions:

   i. The applicant shall [complete]  
      **submit** an application provided by the Department by **July 31, 2005** including information regarding the name and address of the vessel owner, vessel name, vessel documentation or registration number and documented proof of landings as listed in (e)5ii and iii below. **Except as provided by (p) below, applications for a Shad Incidental Harvest Permit received after the above date shall be denied.** Completed applications should be submitted to:

      New Jersey Shad Permit  
      Nacote Creek Research Station  
      PO Box 418  
      Port Republic, NJ 08241-0418  

   ii. – iv. (No change.)

6. – 12. (No change.)

13. Any person or permittee violating the provisions of this section shall be subject to the penalties described in N.J.S.A. 23:2B-14 in addition to the following:
i. Failure to comply with the provisions of (e)1 above, landing shad without the applicable shad permit or landing greater than the allowable limit authorized by the applicable shad limit, (e)10 above, landing shad outside the open season or (e)11 above, timely submission of annual reports, shall subject the violator to suspension during the period from March 1 to May 15 or revocation of the Shad Commercial Net Permit or Shad Incidental Harvest Permit according to the following schedule:

   (1) First offense: [30] 60 day suspension
   (2) Second offense: [90] 120 day suspension
   (3) (No change.)

   ii. In calculating the period of suspension or revocation applicable under (e)13i above, the number of previous suspensions shall be reduced by one for each three year period in which the permit holder does not commit any other violation subject to this subsection, provided, however, that if more than one suspension is imposed within a three year period, only one of those suspensions may be forgiven under this subsection; therefore, a permit holder who incurs more than one suspension in a three-year period shall not be considered a first offender under this subsection regardless of the length of any subsequent period without violation. The reduction in suspensions provided in this subsection applies only to determination of suspension periods; all prior suspensions shall be taken into account in calculating monetary penalties in accordance with N.J.S.A. 23:2B:14.

   [ii.]iii. (No change in text.)

   (f) – (g) (No change)
(h) The following provisions are applicable to the commercial harvest of black sea bass:

1. – 12. (No change.)

13. Any person violating the provisions of this section shall be subject to the penalties prescribed in N.J.S.A. 23:2B-14 in addition to the following:

i. – ii. (No change.)

iii. Failure to comply with the provisions of (h)6 above, criteria under which a vessel may harvest black sea bass by angling or hook and line, (h)8 above, exceeding daily trip limits and landing black sea bass after the season has been closed, (h)9 above, accepting or purchasing black sea bass without a New Jersey Black Sea Bass Dealers Permit, (h)10 above, accepting or purchasing from any non-permitted vessel more than the amount of black sea bass stipulated pursuant to (h)1 and 7 above, and (h)11 above, selling black sea bass to a non-permitted dealer, shall result in the suspension during open season(s) or revocation of the vessel’s and/or dealer’s Black Sea Bass Permit according to the following schedule:

(1) – (3) (No change.)

iv. In calculating the period of suspension or revocation applicable under (h)13iii above, the number of previous suspensions shall be reduced by one for each three year period in which the permit holder does not commit any other violation subject to this subsection, provided, however, that if more than one suspension is imposed within a three year period, only one of those suspensions may be forgiven under this subsection; therefore, a permit holder who incurs more than one suspension in a three-year period shall not be considered a first offender under this
subsection regardless of the length of any subsequent period without violation. The reduction in suspensions provided in this subsection applies only to determination of suspension periods; all prior suspensions shall be taken into account in calculating monetary penalties in accordance with N.J.S.A. 23:2B:14.

[iv. – v.]v. – vi. (No change in text.)

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

1. A vessel shall not land more than 100 pounds of summer flounder during the period of May 1 through October 31 or more than 200 pounds of summer flounder during the period of November 1 through April 30 in New Jersey on any one trip unless said vessel is in possession of a valid New Jersey Summer Flounder Permit to participate in the directed fishery for summer flounder. Vessels fishing under the special terms of a quota transfer or combination program as provided in (i)3 below may be exempt from this requirement if such terms specify that a New Jersey Summer Flounder Permit is not necessary to land summer flounder in New Jersey. The permit shall be issued in the name of the vessel and the owner and for the specific gear type(s) used to qualify for the permit.

i. – ii. (No change.)

iii. The New Jersey Summer Flounder Permit shall be on board the vessel to which it is issued at all times. The permit is valid from the date of issuance and for any subsequent years unless revoked as part of a penalty action. The vessel, when engaged in the directed summer flounder fishery, may only have on board the gear type(s) listed on the New Jersey Summer Flounder Permit.
(1) – (3)  (No change.)

iv. The owner of a vessel permitted pursuant to this subsection which is not pending revocation or court action may apply to the Department to modify the gear type used on the vessel as reflected on the permit as follows:

(1) An applicant for gear modification shall submit an application provided by the Department, and no gear modification shall be made unless the Department approves the application.

(2) Except as provided in (4) below, gear may be modified only one time under any particular permit.

(3) Gear modification shall be limited to the following:

(A) Otter trawl gear may be modified to: scallop dredge, hook and line, pound net, or gill net.

(B) Scallop dredge gear may be modified to: hook and line, pound net, or gill net.

(C) Hook and line may be modified to pound net or gill net.

(D) Pound net may be modified to hook and line, or gill net.

(E) Gill net may be modified to hook and line, or pound net.

(4) Within one year of the date of approval of the gear modification, an applicant may undertake to refit the vessel with the original gear type by obtaining approval to do so from the Department based on an application submitted in accordance with this paragraph.

[iv. – v.] vi.  (No change in text.)

2.– 8. (No change.)
9. Any person violating the provisions of this section shall be subject to the penalties prescribed in N.J.S.A. 23:2B-14 in addition to the following:

i. – ii (No change.)

iii. Failure to comply with the provisions of N.J.A.C. 7:25-18.14(i)2., minimum mesh sizes, (i)2iii above, landing, possession or accepting in excess of the daily trip limit for summer flounder, (i)2iv above, failure of notification of landing of summer flounder, (i)2vii above, landing summer flounder after the directed fishery and/or by-catch season has been closed, (i)2xiii above, failure to submit accurate and timely monthly reports, (i)5 above, accepting more than by-catch amounts from non-permitted vessels, (i)6 above, accepting any summer flounder other than fresh product, or N.J.A.C. 7:25-18.14(a), (b), (d), (e), (f) or N.J.S.A. 23:3-46 through 47 shall result in the suspension during open seasons or revocation of the vessel’s New Jersey Summer Flounder Permit or the dealer’s New Jersey Summer Flounder Dealers Permit according to the following schedule:

(1) – (3) (No change.)

iv. In calculating the period of suspension or revocation applicable under (i) 9iii above, the number of previous suspensions shall be reduced by one for each three year period in which the permit holder does not commit any other violation subject to this subsection, provided, however, that if more than one suspension is imposed within a three year period, only one of those suspensions may be forgiven under this subsection; therefore, a permit holder who incurs more than one suspension in a three-year period shall not be considered a first offender under this subsection regardless of the length of any subsequent period without violation. The reduction in suspensions provided in this subsection applies only to determination of
suspension periods; all prior suspensions shall be taken into account in calculating monetary penalties in accordance with N.J.S.A. 23:2B:14.

[iii. – v.]

iv. – vi. (No change in text.)

(j) (No change.)

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

1. – 7. (No change.)

8. Any person violating the provisions of this section shall be subject to the penalties prescribed in N.J.S.A. 23:2B-14 in addition to the following:

i. Failure to comply with the provisions of (k)1iv above, landing or accepting scup after the season has been closed; (k)2 above, landing or accepting more than the daily trip limit; (k)3 above, accepting scup from a vessel without first having obtained a valid New Jersey Scup Dealer Permit; (k)4 above, landing for the purpose of sale or selling scup without first having obtained a valid scup moratorium permit; (k)5 above, selling scup to a non-permitted fish dealer; or (k)6 and 7 above, failure to submit accurate and timely reports shall result in the suspension during the open seasons or revocation of the dealer’s New Jersey Scup Dealer Permit according to the following schedule:

1. First offense: [No suspension] 60 days suspension

2. Second offense: [60] 120 days suspension. [during the open season as provide in (k)1 above.]

3. Third offense: [120 days suspension during the open season as provided in (k)1 above.] Permanent revocation.

[(4) Fourth offense: Permanent revocation.]ii. In calculating the period of suspension or revocation applicable under (k)8i above, the number of previous
suspensions shall be reduced by one for each three year period in which the permit
holder does not commit any other violation subject to this subsection, provided,
however, that if more than one suspension is imposed within a three year period,
only one of those suspensions may be forgiven under this subsection; therefore, a
permit holder who incurs more than one suspension in a three-year period shall not
be considered a first offender under this subsection regardless of the length of any
subsequent period without violation. The reduction in suspensions provided in this
subsection applies only to determination of suspension periods; all prior suspensions
shall be taken into account in calculating monetary penalties in accordance with

9. (No change.)

(l) – (o) (No change.)

(p) An applicant who is otherwise eligible for a license or permit under (c) 2 and
5; (e) 2 and 5; and (h) 1 above, but who fails to apply prior to the application
deadline, may request an extension of time to apply in accordance with this
subsection and (q) through (s) below.

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

New Jersey Division of Fish and Wildlife

PO Box 400

Trenton, New Jersey 08625-0400
2) The request shall:

   i. Identify the specific permit for which the extension of time to apply is requested;
   
   ii. Explain in detail why the extension of time to apply is needed, including a statement of the type and degree of hardship that prevented the timely application of the permit, and the hardship that will result to the applicant if the permit is not granted; and
   
   iii. Provide appropriate documentation as necessary to support the request for extension.

(q) The Department shall approve an extension request under (p) above only if it determines that the request and documentation demonstrate that:

1) By reason of extraordinary hardship or exceptional situation or condition, the applicant was precluded from applying for his or her Tautog, Non Directed Fishery Tautog, Shad Commercial Net, Shad Incidental Harvest, or New Jersey Black Sea Bass permit during the 12 month application period preceding the year for which the permit is requested;

2) By reason of extraordinary or exceptional situation or condition, strict compliance with the deadline in (c) 2 and 5; (e) 2 and 5; and (h) 1 above would result in exceptional and undue hardship upon the applicant; and

3) The circumstances supporting (q) 1 and 2 were not created by the applicant or persons under his or her control, and the approval of the extension will not unreasonably interfere with the orderly administration of the permitting program.
(r) The Department shall provide written notice to the applicant of its decision to approve or deny the request for extension.

(s) The denial of an extension request may be appealed pursuant to the procedures outlined in N.J.A.C. 7:25-18.17, request for adjudicatory hearing.

7:25-18.15 Atlantic sturgeon management

(a) An individual shall not take or attempt to take, possess or land any Atlantic sturgeon in the State [, without a valid Atlantic Sturgeon Commercial Gill Net Permit or a valid Atlantic Sturgeon By-Catch Permit issued by the Department. No holder of either permit shall land an Atlantic sturgeon unless such sturgeon has a valid, properly affixed possession tag as specified at (g) and (h) below. No person shall possess any Atlantic sturgeon that does not have a valid, properly affixed possession tag. “Land” shall mean to begin offloading fish, to offload fish or to enter port with fish].

[(b) An Atlantic Sturgeon Commercial Gill Net Permit may be transferred to another individual eligible for a gill net license for the purpose of taking Atlantic Sturgeon with gill nets. The permittee shall request approval to transfer the permit in writing to the Department, and no such transfer shall be valid until the transferee has received a valid permit issued in his or her name from the Department. An Atlantic sturgeon commercial gill net possession tag may be transferred to another Atlantic Sturgeon Commercial Gill Net Permit holder. The permittees shall list on the permittee’s annual report pursuant to (l) below the name of the permittee or permittees to whom the permittee transferred any possession tag. The recipient of the transferred possession tag or tags shall list in the annual report pursuant to (l) below each such transferred tag received.}
(c) To qualify for an Atlantic Sturgeon Commercial Gill Net Permit, an applicant shall comply with the provisions below by April 2, 1993:

1. The applicant shall complete an application provided by the Department, listing the dressed weight of Atlantic sturgeon harvested by gill net during 1988, 1989 or 1990, whichever year he landed the greatest dressed weight, or the number of nine-inch or greater stretched mesh gill nets purchased between January 1, 1989 and January 10, 1991 with the intent of entering a directed Atlantic sturgeon fishery.

2. The applicant shall attach documented proof of the dressed weight of Atlantic sturgeon harvested by gill net during 1988, 1989 or 1990, whichever year he landed the greatest dressed weight, or the number of nine-inch or greater stretched mesh gill nets purchased between January 1, 1989 and January 10, 1991. Documented proof shall consist of one or more of the following:

   i. Weigh-out slips totaling the dressed weight harvested;

   ii. A notarized statement from the applicant and the purchaser(s) attesting to the dressed weight harvested (records must be verifiable based upon inspection of the purchaser’s business records);

   iii. Sales receipts for the number of nine-inch or greater stretched mesh gill nets purchased, including date of sale, length, and stretched mesh size;

   iv. A notarized statement from the applicant and the seller(s) attesting to the number of nine-inch or greater stretched mesh gill nets purchased, including date of sale, length, and stretched mesh size; or

   v. Other documentation similar to that in (c)2i, ii, iii or iv above may be accepted at the discretion of the Commissioner after his or her review; and
3. The applicant shall sign an affidavit on the application certifying as to the validity of the information provided.

(d) The application period closed April 2, 1993. Therefore, the Commissioner will determine an annual quota of Atlantic Sturgeon (in pounds dressed) that may be harvested for each qualified applicant based upon the following:

1. The total allocation for the directed Atlantic sturgeon gill net fishery in 1993 shall equal the 1990 documented dressed weight landings provided by applicants on their applications, to be divided in the following way:

   i. Applicants providing documentation of having purchased a minimum of 10 nine-inch or greater stretched mesh gill nets between January 1, 1989 and January 10, 1991 shall receive an equal share of 10 percent of the total gill net allocation, not to exceed 3,000 pounds each or;

   ii. Applicants providing documentation of landings of at least 1,000 pounds dressed weight of Atlantic sturgeon during any one of the years 1988, 1989 or 1990 shall receive a minimum base of 3,000 pounds dressed weight plus a percentage of the remaining allocation determined as follows:

       (1) Each applicant shall document to the Department the dressed weight of Atlantic sturgeon landed during 1988, 1989, or 1990, whichever year he landed the greatest dressed weight. The Department will divide the individual dressed weight documented by each applicant by the total amount documented by all applicants under this subparagraph (d)1ii(1) to obtain each applicant’s percentage of the remaining allocation.
(e) All qualified applicants will receive an “Atlantic Sturgeon Commercial Gill Net Permit” by May 2, 1993 which shall indicate that permittee’s annual (calendar year) quota of Atlantic sturgeon that may be commercially harvested.

(f) An Atlantic Sturgeon By-Catch permit and a harvest quota will be issued to each qualifying applicant who provides documentation of Atlantic sturgeon landed in New Jersey by otter trawl or pound net of at least 1,000 pounds dressed weight during any one of the years 1988, 1989, or 1990. The Atlantic Sturgeon By-Catch shall not exceed 5.8 percent of the State allocation for Atlantic sturgeon. This represents the percentage of Atlantic sturgeon landed in New Jersey by otter trawl and pound net in 1990 as reported by the National Marine Fisheries Service. To qualify for an Atlantic Sturgeon By-Catch Permit, an applicant shall comply with (f)1 through 4 below by March 23, 1995:

1. The applicant shall complete an application, provided by the Department, listing the dressed weight of Atlantic sturgeon he or she landed by otter trawl or pound net during any one of the years 1988, 1989, or 1990, whichever year the applicant landed the greatest dressed weight.

2. The applicant shall attach documented proof of the dressed weight of Atlantic sturgeon harvested by otter trawl or pound net during any one of the years 1988, 1989, or 1990, whichever year the applicant landed the greatest dressed weight. Such proof shall consist of one or more of the following:

   i. Weigh-out slips totaling the dressed weight harvested;

   ii. A notarized statement from the applicant and the purchaser(s) attesting to the dressed weight harvested (records must be verifiable based upon inspection of the purchaser’s business records);
iii. Other documentation similar to that specified in (f)2ii above may be accepted at the discretion of the Department.


4. By April 22, 1995, each qualified applicant will receive an “Atlantic Sturgeon By-Catch Permit” which shall indicate that permittee’s annual (calendar year) harvest quota of Atlantic sturgeon that may be landed.

(g) The Department will issue serially numbered Atlantic sturgeon possession tags to each Atlantic sturgeon commercial gill net and by-catch permittee based upon the permittee’s annual harvest quota percentage established pursuant to (d) and (f) above and an equivalent average weight per fish landed as determined through average weigh-out landing verifications. No person shall reuse or alter any tag, or use a broken tag. All unused tags must be returned to the Department by January 15 of the following year. Tags will be issued each calendar year by February 15.

(h) An Atlantic sturgeon commercial gill net or Atlantic sturgeon by-catch permittee who takes and possesses an Atlantic sturgeon of legal size shall tag such sturgeon with a numbered tag issued by the Department. Such tag shall be attached and securely locked at the nape of the fish once such fish has been dressed and prior to tending another piece of gear. All Atlantic sturgeon not tagged or of less than the legal minimum size shall be returned uninjured to the water immediately.

(i) The possession of Atlantic sturgeon of a length less than 60 inches or a dressed length less than 36 inches is prohibited. Dressed length is the length of an Atlantic sturgeon after the entire head, collar, tail and viscera have been removed.
(j) All Atlantic Sturgeon Commercial Gill Net and Atlantic Sturgeon By-Catch Permit holders shall have their permit on their person at all times when engaged in any phase of harvesting, transporting, selling or possessing Atlantic sturgeon.

(k) All Atlantic sturgeon harvested under the Atlantic Sturgeon Commercial Gill Net Permit or Atlantic Sturgeon By-Catch Permit shall be landed in New Jersey.

(l) All permittees shall be required to complete annual reports on forms supplied by the Department. The annual report shall be signed by the permittee attesting to the validity of the information and be submitted so it is received by the Department no later than January 15 of the next subsequent calendar year at the following address:

Division of Fish and Wildlife

Atlantic Sturgeon Program

PO Box 418

Port Republic, New Jersey 08241

1. The annual report shall include:

   i. The daily harvest and sale of Atlantic sturgeon (in pounds dressed) and possession tag number for each fish landed;

   ii. The buyer(s) name;

   iii. Name(s) and address(es) of the permit holder(s) who landed an Atlantic sturgeon that was tagged with the permittee’s transferred possession tag;

   iv. The cumulative total of Atlantic sturgeon (in pounds dressed) landed at the end of the year;

   v. Weigh out slips or sales receipts verifying the amount (in pounds dressed) of Atlantic sturgeon sold; and
vi. Any other requested information pertinent to management of the Atlantic sturgeon resource including catch/effort data, length and sex data, by-catch data, and tagging information from a representative size range of Atlantic sturgeon.

(m) Adjustments in individual allocation for any calendar year subsequent to 1993 may be made annually by the Department, based upon recommendations of the Atlantic States Marine Fisheries Commission, annual commercial landings data from the National Marine Fisheries Service and an individual’s historical harvest performance. If no such adjustment is made, each permittee’s quota shall remain at the previous year’s amount.

(n) Research personnel from the Department shall be allowed to sail aboard any permitted vessel at any time.

(o) Any person or permittee violating the provisions of this section shall be subject to the penalties prescribed in N.J.S.A. 23:2B-14 in addition to the following:

1. Failure to submit the application within 45 days of the effective date of this section or to attach the required documentation to the application will result in the denial of the permit.

2. Falsification or misrepresentation of any information on the application including documentation provided to verify the amount of Atlantic sturgeon harvested or number and size of gill nets purchased shall result in the denial or revocation of the permit in addition to any civil or criminal penalties prescribed by law.

3. Failure to comply with the provisions of (a), (h), or (l) above shall subject the violator to suspension or revocation of the Atlantic Sturgeon Commercial Gill Net Permit or the Atlantic Sturgeon By-Catch Permit.
4. Prior to the suspension or revocation of the permit, the permittee shall have the opportunity to request a hearing pursuant to the Administrative Procedure Act. N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules N.J.A.C. 1.1.

SUBCHAPTER 22. FISHERY MANAGEMENT IN NEW JERSEY


The [season for] taking of Atlantic menhaden (Brevoortia tyrannus) from the marine waters of the State of New Jersey by [purse seine] any means for fish meal reduction [shall begin on the third Monday in May and end on the third Friday in October] is prohibited. This [provision shall not impose a limited season for] prohibition does not apply to the taking of menhaden for bait[, chum or purposes other than for fish meal reduction.] which is regulated under N.J.A.C. 7:25-22.3.

7:25-22.2 [Purse seine fishing of Atlantic menhaden] (Reserved)

[(a) Persons licensed to fish for Atlantic menhaden with a purse seine or shirred net in the marine waters of New Jersey pursuant to N.J.S.A. 23:3-51 and N.J.S.A. 23:3-52 who are taking menhaden for purposes other than bait, as provided in N.J.A.C. 7:25-22.3, shall be subject to the following:

1. Fishing, for the purpose of this section, shall be defined as having a purse seine in the marine waters of this State.

2. Fishing shall be restricted to the Atlantic Ocean, not closer than 1.2 nautical miles of any point along the shore, jetties or piers. It will be incumbent upon the captain of a]
purse seine vessel to determine the possibility of drifting inside the 1.2 nautical mile limit while fishing, before setting his or her net. Drifting into the 1.2 nautical mile restricted area along the shore, or around a jetty or pier, while fishing shall constitute a violation of this subchapter.

3. A person shall not fish on Saturdays, Sundays, and the days on which Memorial Day, Independence Day, Labor Day and Columbus Day are officially observed by the State of New Jersey.

4. All pump outlets, except normal engine cooling water, shall discharge below the vessel’s water line.

5. All discharge from fish pumps must be treated with a United States Coast Guard approved anti-foaming agent.

6. No refuse, litter or garbage of any kind, or any quantity of dead fish shall be thrown overboard or released from the vessel or its net(s).

7. The licensee is responsible for cleaning up any fish, fish-parts, refuse, litter, or garbage of any kind which is released during any fishing operation or as a result of a fishing operation and must initiate such cleanup no later than 24 hours after the release begins. Upon the licensee’s failure to initiate such cleanup within the 24 hour period, the Department may conduct the cleanup or arrange for the performance of the cleanup. In addition to any other penalties or remedies provided by law, the licensee shall be liable for all costs associated with such cleanup, including any administrative costs incurred by the Department. Such cleanup shall include, but not be limited to, the marine and estuarine waters of the State and adjacent beaches, shorelines and marshes.
8. No markers or buoys designating channels, crab pots, lobster pots, fish pots, or traps shall be disturbed by the act of fishing.

9. Persons subject to this subchapter shall notify the Division’s Marine Enforcement Office at Nacote creek, Star Route, Absecon, New Jersey when they intend to fish in State waters, by calling 609-441-3474. The notification shall be made prior to and upon the completion of any fishing in State waters, by the Captain or his or her agent.

10. The possession of any fish, as defined at N.J.S.A. 23:2B-3e, other than Atlantic menhaden on a purse seine vessel harvesting menhaden is prohibited.

  i. The simultaneous possession of Atlantic menhaden and any other fish, as defined at N.J.S.A. 23:2B-3e, and a purse seine, aboard a vessel of any person holding an Atlantic menhaden bait permit or any vessel conducting menhaden fishing operations, shall constitute prima facie evidence of a violation of this subchapter.]

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 Bradley M. Campbell, Commissioner
Bradley M. Campbell, Commissioner
Department of Environmental Protection