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## **ENVIRONMENTAL PROTECTION**

### **DIVISION OF FISH AND WILDLIFE**

#### **Notice of Administrative Change**

##### **Marine Fisheries**

##### **Modification of Summer Flounder, Black Sea Bass, Striped Bass and Hybrid Striped Bass**

##### **Recreational Season, Size and Possession Limits and Modification of the Striped Bass**

##### **Bonus Program**

##### **N.J.A.C. 7:25-18.1 and N.J.A.C. 7:25-18.13**

**Take Notice** that, pursuant to N.J.A.C. 7:25-18.1(p) and N.J.A.C. 7:25-18.13(p), the Commissioner of the Department of Environmental Protection (Commissioner), with the approval of the New Jersey Marine Fisheries Council (Council) at its March 3, 2016 meeting, has modified the recreational seasons, minimum size limit and possession limits for summer flounder, black sea bass, striped bass and hybrid striped bass. The actions for summer flounder and black sea bass have been taken to comply with the Atlantic States Marine Fisheries Commission (ASMFC) management plan and for the optimal utilization of available summer flounder and black sea bass quotas while at the same time constraining landings to prevent harvest that exceeds available quotas. The actions for striped bass and hybrid striped bass were taken to comply with the ASMFC management plan and reflect legislative changes adopted on May 4, 2015 (P.L. 2015, c. 45).

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At their February 2016 meeting, the ASMFC's Summer Flounder, Scup, and Black Sea Bass Management Board (Board) approved Addendum XXVII, which continues the use of regional management for the 2016 summer flounder and black sea bass recreational fisheries, with a modification to the summer flounder regions.

Addendum XXVII was initiated to address the discrepancy in management measures between New Jersey and Delaware in the Delaware Bay. In recent years, the difference in size limits specified in the two states' rules, with the 16-inch minimum size for summer flounder in Delaware waters being two inches less than the 18-inch minimum size limit in New Jersey portions of the Delaware Bay in 2015, has been cited as having a significant economic impact on the southern New Jersey for-hire fleet and associated shore-based support industries. Prior to approval of Addendum XXVII, New Jersey waters were grouped with New York and Connecticut waters in one region. Management measures applicable to the waters of each state within the same region, including size and possession limits, are required to be consistent. As a result, New Jersey was unable to implement limits applicable to the Delaware Bay that varied in any way from the management measures applicable to the waters of the Atlantic Ocean. The newly modified summer flounder regions place New Jersey in its own separate region so New Jersey can implement size and possession limits and other management measures specific to Delaware Bay. Other New Jersey waters continue to be subject to management measures consistent with New York and Connecticut waters. The modified summer flounder regions contained in Addendum XXVII are intended to provide more equity in recreational harvest opportunities along the coast, specifically between New Jersey and Delaware in the Delaware Bay.

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As part of the effort to provide equity in recreational harvest opportunities in the Delaware Bay while ensuring that management measures applicable to all the State's waters would not exceed the State's share of available harvest quota and are enforceable, Council-approved regional specific management measures for New Jersey's 2016 summer flounder recreational fishery include Delaware Bay specific regulatory measures. Particularly, a 17 inch minimum size limit, four fish possession limit, and a 128 day season, beginning May 21 and ending September 25, is applicable in New Jersey waters of the Delaware Bay west of the COLREGS line (the line that delineates the boundary of the Delaware Bay and the Atlantic Ocean) from Cape May Point Light to Cape Henlopen. While not identical to the limits applicable in the waters of the state of Delaware, the revised limit improves equity while ensuring, as noted above, compliance with harvest quotas and sustainability of the resource. The 17 inch minimum size limit applicable to these waters does not include the waters of the Cape May Canal, with waters east of the Cape May Ferry Terminal within the Cape May Canal continuing to be subject to management measures applicable to the State's other waters, summarized below. To prevent anyone from circumventing the size and possession limits, the Council also defined areas where transport aboard a fishing vessel of summer flounder which were caught in the State's portion of the Delaware Bay satisfying the 17 inch minimum size limit applicable there but less than the 18 inch minimum size limit applicable in the rest of the State's waters, may occur. Particularly, such transport may occur in waters east of the Cape May Ferry Terminal to the George Redding Bridge (Route 47) located at the entrance of Wildwood. Vessels traversing this area while transporting/carrying/possessing summer flounder sized anywhere

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from 17 inches to 18 inches must have all fishing gear stowed with rigs removed and may not stop to fish for any species.

For all other New Jersey waters, the Council approved measures that maintain the 2015 recreational summer flounder management measures in 2016, specifically, an 18-inch minimum size, 5 fish possession limit, and a 128 day season with a season modification from the current season of May 22 - September 26 adjusted to a 2016 season of May 21 - September 25 to maintain a Saturday season open and Sunday season closure. These measures continue to be consistent with those of New York and Connecticut. Changes reflecting these amendments are codified at N.J.A.C. 7:25-18.1(c)5. Previous N.J.A.C. 7:25-18.1(c)5, which contains special limits applicable to Island Beach State Park will remain and is recodified to N.J.A.C. 7:25-18.1(c)5iii with amendment reflecting the two zones created by Addendum XXVII to make clear that fish harvested at Island Beach State Park continue to count toward the possession limit for either the Delaware Bay zone or the all other State waters possession limit, as applicable.

For black sea bass, the Board approved the continuation of ad hoc regional management requiring New Jersey, as part of the Northern Region (consisting of the states from New Jersey to Massachusetts), to implement regulations that would reduce the 2016 recreational harvest of black sea bass by 23 percent compared to the 2015 recreational harvest. The black sea bass season consists of three segments. In order to achieve the 23 percent harvest reduction target, the Council approved modifying the current recreational black sea bass regulations as follows. The first season segment is modified from an open season of May 27 – June 30 with a 15 fish

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possession limit and a 12.5 inch minimum size limit to an open season of May 23 – June 19 with a ten fish possession limit and a 12.5 inch minimum size limit. The second segment is modified from an open season of July 1 – July 31 with a two fish possession limit and a 12.5 inch minimum size limit to a July 1 – August 31 open season with a two fish possession limit and 12.5 inch minimum size limit. The third segment is modified from an open season of October 22 – December 31 with a 15 fish possession limit and 12.5 inch minimum size limit to an open season of October 22 – December 31 with a 15 fish possession limit and 13 inch size limit. These amendments are reflected at N.J.A.C. 7:25-18.1(c).

In October 2014, ASMFC approved Addendum IV to the Fishery Management Plan for Striped Bass which required a 25 percent reduction in coastal harvest from 2014 levels of striped bass for both the recreational and commercial fisheries. At that time, daily limits for the take of striped bass were set in accordance with N.J.S.A. 23:5-45.1. That section provided that no more than two striped bass at least 28 inches in length could be taken in one day or possessed by a person unless the Department, with the approval of the ASMFC, established by notice published in the New Jersey Register management measures for the take of striped bass in addition to the two fish allowed by the statute. In May 2015, legislation was signed into law (P.L. 2015, c. 45) providing complete authority to the Commissioner to regulate all aspects of the take of striped bass (i.e., not just those in excess of the two fish specified in N.J.S.A. 23:5-45.1 and not only during the open seasons specified at the time of passage of that legislation in N.J.S.A. 23:5-45.2). The new section created by P.L. 2015, c.45, N.J.S.A. 23:5-45.1a, continued the Commissioner's authority previously provided under N.J.S.A. 23:5-45.1 to regulate size, take and possession

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limits and provided expanded authority to regulate all aspects of take and management of striped bass provided those measures were consistent with the ASMFC management plan for striped bass. In accordance with P.L. 2015, c. 45, N.J.S.A. 23:5-45.1 and 45.2 (which limits the striped bass season outside of the Atlantic Ocean) expire on May 3, 2016 or upon the Department enacting striped bass management provisions. Through this notice of administrative change the Department is amending various striped bass management measures in the rules, including provisions of the Striped Bass Bonus Program in N.J.A.C 7:25-18.13, that were previously adopted in accordance with N.J.S.A. 23:5-45.1.

The existing plan for striped bass incorporates the statutory limits specified in N.J.S.A. 23:5-45.1 and the season limits specified at N.J.S.A. 23:5-45.2. Prior to the changes made at this time, the minimum size and possession limits of N.J.S.A. 23:5-45.1 were reflected in the rules in the table entries for striped bass and hybrid striped bass at N.J.A.C. 7:25-18.1(c) by reference to the statutory provision. The season limits applicable to the Delaware River specified in N.J.S.A. 23:5-45.2 were reflected in the dates previously incorporated into the rules in N.J.A.C. 7:25-18.1(h), with reference to N.J.S.A. 23:5-45.2 additionally incorporated in that subsection. In order to continue to meet the required 25 percent reduction mandated by Addendum IV, the Council approved the same recreational measures for 2016 that were in place in 2015. With the pending expiration of N.J.S.A. 23:5-45.1 and 45.2 in accordance with P.L. 2015, c. 45, the Department is eliminating reference to those statutory provisions from N.J.A.C. 7:25-18.1(c) and (h) and replacing the references in the table at N.J.A.C. 7:25-18.1(c) with the limits and seasons currently contained in the statutory provisions. Similar changes to replace statutory references

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with appropriate regulatory cross-references are made throughout N.J.A.C. 7:25-18.13, the striped bass bonus program.

Because the sale of striped bass is prohibited under N.J.S.A 23:5-45.3, New Jersey currently does not have a commercial fishery. Therefore, New Jersey's commercial quota for striped bass, in accordance with approval obtained from ASMFC, has been allocated to the recreational sector under the Striped Bass Bonus Program (SBBP), N.J.A.C. 7:25-18.13, since 1990. The Department is correcting terminology in the rule at N.J.A.C. 7:25-18.13(i) to replace a reference to "card" with "permit" issued by the Department to reflect that this document is the permit for participation in this program. The Department inadvertently neglected to make this change when similar references in N.J.A.C. 7:25-18.13(e), (f), (g), (h), (k), (n) and (o) were changed in June of 2015 (see 47 N.J.R. 1320(a)).

As N.J.S.A. 23:5-45.2 does not impose any closed season in the Atlantic Ocean, amendments to reflect the existing season for striped bass and hybrid striped bass reflect continuation of the full year season. The Delaware River and tributaries will continue to have a closed season during January and February as currently reflected in N.J.S.A. 23:5-45.2a and the season will also continue to be closed during the April 1 to May 31 spawning season as currently reflected in N.J.S.A. 23:5-45.2b. All other marine waters are open from March 1 to December 31, consistent with what has been part of the State's plan pursuant to N.J.S.A. 23:5-45.2a, which was approved by the Council in prior years. The Department is additionally amending the closed season specified in N.J.A.C. 7:25-18.1(h) to specify that the season ends on the last day of

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February, regardless of whether it is a leap year or not. Since New Jersey manages hybrid striped bass similarly to striped bass, these measures are also applicable to hybrid striped bass. These modifications are found in N.J.A.C. 7:25-18.1(h), N.J.A.C. 7:25-18.1(i), and N.J.A.C. 7:25-18.1(j).

These changes will be reflected in the Division of Fish and Wildlife rules at N.J.A.C. 7:25-18.1(c), N.J.A.C. 7:25-18.1(h), N.J.A.C. 7:25-18.1(i), and N.J.A.C. 7:25-18.1 (j), and N.J.A.C. 7:25-18.13. As required in N.J.A.C. 7:25-18.1(p), changes to N.J.A.C. 7:25-18.1 will be published in the New Jersey Register, the New Jersey Fish and Wildlife Digest and via a news release submitted to individuals on the Division's outdoor writers mailing list. As required in N.J.A.C. 7:25-18.13(p), changes to N.J.A.C. 7:25-18.13 will be published in the New Jersey Fish and Wildlife Digest and the New Jersey Register.

**Full text** of the changed rule follows (additions indicated in boldface **thus**, deletions indicated in brackets [thus]):

7:25-18.1 Size, season and possession limits

(a – 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



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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 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:

<u>Species</u>	<u>Minimum Size In Inches</u>	<u>Open Season</u>	<u>Possession Limit</u>
• • •			
Black Sea Bass	12.5	May <b>23</b> [27] – June <b>19</b> [30]	[15] <b>10</b>
		July 1 – [July] <b>Aug</b> 31	2
	<b>13</b>	Oct 22 – Dec. 31	15
• • •			
Hybrid striped bass	[Refer to N.J.S.A 23:5-45.1]		
<b>Atlantic Ocean</b>	<b>28</b>	<b>Jan 1 – Dec 31</b>	<b>2 as specified at (h)1 below</b>
<b>Delaware River and tributaries</b>	<b>28</b>	<b>Mar 1 – Mar 31 and Jun 1 – Dec 31</b>	<b>2 as specified at (h)1 below</b>
<b>All other marine waters</b>	<b>28</b>	<b>Mar 1 – Dec 31</b>	<b>2 as specified at (h)1 below</b>
• • •			
Summer Flounder (Fluke)			
<b>Delaware Bay and tributaries</b>	<b>17</b>	<b>May 21 – Sept 25</b>	<b>4</b>

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**All other marine waters** 18 May 21[2] – Sept 25[6] 5

Striped Bass

**Atlantic Ocean** 28 **Jan 1 – Dec 31** 2 as specified at (h)1 below

**Delaware River and tributaries** 28 **Mar 1 – Mar 31 and Jun 1 – Dec 31** 2 as specified at (h)1 below

**All other marine waters** 28 **Mar 1 – Dec 31** 2 as specified at (h)1 below

[Refer to N.J.S.A 23:5-45.1]

• • •

1. – 4. (No change.)

**5. The following provisions are applicable to the recreational harvest of summer flounder.**

**i. In Delaware Bay, which includes all New Jersey waters within the Delaware Bay and tributaries west of the COLREGS line from Cape May Point Light to Cape Henlopen, a person shall not take, or possess, more than four summer flounder greater than or equal to 17 inches, total length, during the summer flounder recreational open season. The Cape May Canal is not considered a tributary of the Delaware Bay. Therefore, the authorization to take or possess summer flounder meeting the 17 inch size limit and four fish possession limit is inapplicable to the Cape May Canal beginning at its confluence with the Delaware**

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**Bay at the Cape May Ferry Terminal; the waters of Cape May Canal are instead subject to limits specified in (c)5ii below.**

**ii. In all other waters of the State, a person shall not take, or possess, more than five summer flounder greater than or equal to 18 inches, total length, during the summer flounder recreational open season.**

**iii. Except as provided in iv. below, a person may only elect to take and possess summer flounder in accordance with either i. or ii. above in any one day.**

**iv. At Island Beach State Park (IBSP), an angler fishing from a pier, jetty, beach, bank, or marsh utilizing a hook and line and who has a date and time stamped proof of IBSP entry receipt may possess no more than two summer flounder greater than or equal to 16 inches (total length) on the day of entry during the summer flounder open season. The proof of entry receipt shall be presented upon the request of a State Conservation Officer or New Jersey Park Police Officer. The proof of entry to IBSP must be retained with the fish until just prior to utilization. The one or two fish harvested at IBSP shall count toward the [five-fish] applicable possession limit [applicable] specified in 5i or 5ii above in waters outside IBSP.**

**v. A vessel may transport summer flounder greater than or equal to 17 inches but less than 18 inches from the waters of the Delaware Bay designated in 5i. above to areas accessed via the Cape May Canal, north to the northern boundary of State Highway Route 47 (George**

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**Redding Bridge), excluding the open waters of the Atlantic Ocean. Vessels transporting in this manner shall not stop to fish and all gear must be stowed with rigs removed.**

6. (No change.)

(d) – (g) (No change.)

**(h) The following provisions are applicable to the recreational harvest of striped bass and striped bass hybrids:**

**1. Except as permitted pursuant to N.J.A.C. 7:25-18.13, a person shall not take from the marine waters or other waters of the State in any one day, or have in the person's possession at any time, more than two striped bass. One of the striped bass taken in accordance with this subsection shall be at least 28 inches but less than 43 inches in total length and the other shall be at least 43 inches in total length.**

**2. A person shall not fillet, or remove the head or tail, or parts thereof, of any striped bass at sea, except in accordance with N.J.A.C. 7:25 – 18.1(f).**

**3. A person shall not take, attempt to take or have in his or her possession any striped bass or striped bass hybrids, as defined in (i) below, while on or angling in the Delaware River or its tributaries from the upstream side of the U.S. Route 1 Bridge to and including the Salem River**

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and its tributaries from April 1 through May 31 of each year, or from any waters of the State, except the Atlantic Ocean, from January 1 through **the last day of** February [28] of each year [as set forth in N.J.S.A. 23:5-45.2].

Recodify existing 1. as **4.** (No change in text)

(i) Except for the products of commercial aquaculture, no person shall take from the marine waters in this State or have in his or her possession while on or angling in the marine waters of this State any striped bass hybrids, being hybrids of the Morone genus, less than the striped bass minimum size limits **as specified at (h)1** above [established pursuant to N.J.S.A. 23:5-45.1].

1. – 2. (No change)

(j) Except for striped bass hybrids that are the products of commercial aquaculture, a person shall not possess more than the possession limit or less than the minimum size limits **as specified in (h)1 above** [established pursuant to N.J.S.A. 23:5-45.1], whether striped bass or striped bass hybrid, while on or angling in the marine waters of this State.

(k) – (r) (No change.)

#### 7:25-18.13 Striped bass bonus program

(a) [Pursuant to N.J.S.A. 23:5-45.1(c) , the] **The** possession of one "bonus sized" striped bass, measuring greater than or equal to 24 inches but less than 28 inches in length, will be allowed in

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addition to the possession limit allowed under [N.J.S.A. 23:5-45.1(a)] **N.J.A.C. 7:25-18.1(h)1**, pursuant to (b) through (o) below.

(b) Any person intending to take one "bonus sized" striped bass, as defined in (a) above, in addition to his or her striped bass possession limit as specified at [N.J.S.A. 23:5-45.1] **N.J.A.C. 7:25-18.1(h)1** shall apply to the Division to participate in the striped bass bonus program.

Applications may be obtained from the following:

1. – 2. (No change)

(c) – (g) (No change.)

(h) A person shall not have in his or her possession at any time more than the number of striped bass provided for in [N.J.S.A. 23:5-45.1] **N.J.A.C. 7:25-18.1(h)1**, nor shall such striped bass be less than the size provided for in [N.J.S.A. 23:5-45.1] **N.J.A.C. 7:25-18.1(h)1**. One additional striped bass may be possessed and shall not be less than the size defined in (a) above. Said person shall have a properly completed and legal fish possession permit, as provided for at (e) above.

(i) A person shall not present for registration or permit to be registered in his or her name a striped bass which he or she did not catch. Any person who legally takes a striped bass under this section may report the catch electronically at <http://www.njfishandwildlife.com/bonusbas.htm> or

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shall immediately mail his or her fish possession **permit** [card] to the address presented at (b) above.

(j) – (n) (No Change.)

(o) Any person violating the striped bass size and possession limits as provided for in [N.J.S.A. 23:5-45.1] **N.J.A.C. 7:25-18.1**, or this section shall be liable for penalty of \$100.00 per fish for each offense. In addition, any person violating any provision of this section shall be subject to revocation, applicable to both the vessel and the owner, from the Striped Bass Bonus Program. Revocation would render the vessel and the owner ineligible for participation in the program regardless of vessel ownership. Any fish possession permit in such person's possession shall be invalid and shall be returned to the Division upon such person's receipt of notification of such revocation. Failure to return the permits upon notification shall subject the violator to penalties prescribed pursuant to N.J.S.A. 23:2B-14.

(p) (No change.)