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ENVIRONMENTAL PROTECTION

DIVISION OF FISH AND WILDLIFE

Fish and Game Council

2022-2025 Fish Code

Adopted Amendments: N.J.A.C. 7:25-6.1, 6.2, and 6.3

Proposed: March 15, 2021, at 53 N.J.R. 403(a).

Adopted: January 11, 2022, by the Fish and Game Council, Frank Virgilio, Chair.

Filed: January 25, 2022, as R.2022 d.028, **without change**.

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

DEP Docket Number: 03–21–02.

Effective Date: February 22, 2022.

Expiration Date: June 7, 2028.

The Fish and Game Council (Council) is adopting amendments at N.J.A.C. 7:25-6.1, 6.2, and 6.3. The proposed amendments were published in the New Jersey Register on March 15, 2021, at 53 N.J.R. 403(a). The 60-day comment period closed on May 14, 2021. Additional notice was achieved by emailing notification to all State House press offices and other newspapers and news media throughout the State. Notice was also posted on the Department of Environmental Protection's (Department) website and the Division of Fish and Wildlife's (Division) website, and emailed to those on the Department's rulemaking LISTSERV and to the Division's 40,000 freshwater LISTSERV members.

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Summary of Hearing Officer's Recommendation and Agency's Response:

The Council's Fish Committee conducted a virtual public hearing on April 22, 2021. After reviewing the testimony given at the public hearing and written comments received during the comment period, the Fish Committee, a subcommittee of the Fish and Game Council that reviews regulatory changes governing freshwater fish species and provides recommendations to the Council, recommended that the Council adopt the proposed amendments without change.

The Council held a virtual public meeting on June 8, 2021. The Council, after having considered the testimony from the April 22, 2021 hearing, written comments received relevant to the proposed amendments, and the recommendation of the Fish Committee, adopted the amendments. A copy of the hearing record may be obtained by contacting the New Jersey Division of Fish and Wildlife, PO Box 400, Trenton, New Jersey 08625-0400.

Summary of Public Comments and Agency Responses:

The following commenters submitted oral or written comments on the proposed amendments at N.J.A.C. 7:25-6.

1. Amberger, Michael
2. Angley, Connor
3. Brozosky, Tony (hearing)

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4. Bush, Mike
5. Curreri, George
6. DeBleick, Michael
7. Edwards, Dave
8. Hausamann, Tyler
9. Kisurin, Alexander (hearing)
10. McLaughlin, James
11. Quinn, William (hearing)
12. Sachau, Barbara
13. Vollenweider, Dave, United Anglers of New Jersey (hearing)

A summary of the comments timely submitted and the Council's responses follow. After each comment, the number(s) in parentheses identifies the respective commenter(s) listed above.

N.J.A.C. 7:25-6

1. COMMENT: The creel limit on trout should not be reduced to two trout per day, as fishing licenses and trout stamps are too expensive, and trout stocked are too small. (6)

RESPONSE: No change or reduction was proposed to the creel limit of six per day, minimum nine-inch size limit, which applies to trout. The Fish and Game Council expanded the two fish per day, minimum 12-inch size limit, which, prior to this rulemaking, applied only to Landlocked Salmon stocked in Trophy Trout and Holdover Trout lakes, to be equally applicable to

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Landlocked Salmon in all trout-stocked waters. This change will allow the Division of Fish and Wildlife to expand the Landlocked Salmon stocking program to new waters to increase angling opportunities. Landlocked salmon stocked average 14 inches in length, well above the 12-inch size limit.

2. COMMENT: Regulations regarding invasive species should be clarified, as many anglers question whether they can possess such species and whether they must kill them when caught. Wanton waste and snagging regulations should also be clarified as to whether or not they apply to invasive species. (8)

RESPONSE: The Fish Code does not include regulations specific to invasive species in general. Instead, at N.J.A.C. 7:25-6.2, the rules provide a list of fish species identified as potentially dangerous. These species, including species such as Flathead Catfish and Snakeheads, are those invasive species that have been determined to pose the most significant threat to New Jersey's fishery resources, and, thus, warrant special regulation. N.J.A.C. 7:25-6.1(g) prohibits the possession or release of any live potentially dangerous fish species, and any "encountered while angling shall be destroyed." While there are no creel limits for these species, anglers are still prohibited under wanton waste restrictions, at N.J.A.C. 7:25-6.18, from leaving dead fish or fish remains in the water or along the shoreline. This prohibition applies to any species, invasive, potentially dangerous, or native. Accordingly, any potentially dangerous species caught must be immediately destroyed when caught with the fish to be retained by the angler.

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The prohibition against wanton waste is intended to ensure that fish caught are taken and used. Therefore, regardless of whether the retained fish is an invasive species, a potentially dangerous species, or a highly prized game species, the fish must be removed from the area at the conclusion of the fishing trip.

Similar to the wanton waste regulations, snagging restrictions, codified at N.J.A.C. 7:25-6.12, apply to all fish species. Snagging is an illegal method of fishing and is, therefore, prohibited from being utilized "for any species," including potentially dangerous species.

The Division of Fish and Wildlife educates anglers on freshwater angling regulations in its widely distributed Freshwater Fishing Digest. The annual regulatory publication includes regulations and information pertaining to potentially dangerous fish species and other aquatic invasives. Expanded information concerning aquatic invasive species is regularly featured. The Division's website also carries similar information, including online versions of the Freshwater Digest to provide another source of information to anglers. This information will be reviewed to determine if additional clarification could be helpful.

3. COMMENT: The early catch-and-release season for trout instituted during COVID-19 should be continued. (1 and 11)

4. COMMENT: One angler was opposed to the early catch-and-release season for trout instituted during COVID-19 citing many dead trout due to some anglers not knowing how to release fish properly. (4)

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RESPONSE TO COMMENTS 3 AND 4: To help reduce angling pressure typically seen on the Opening Day of Trout Season and encourage social distancing during COVID-19, an early nine-day catch-and-release period was implemented just prior to the official season opener for both the 2020 and 2021 trout seasons. The early catch-and-release period was also intended to entice anglers to stay home to fish and not travel to adjoining states that had earlier scheduled season openers. As positivity rates varied from state to state, limiting out-of-State travel was a component of reducing the spread of COVID-19. Many anglers enjoyed the opportunity to fish early, while others would have preferred to either harvest the trout caught during the early season or adhere to the regular scheduled season. Coupled with the early catch-and-release season, over 90 percent of the trout allocated for the normal 10-week spring stocking program were distributed in four weeks under an accelerated stocking schedule. This was done due to the potential of COVID-19 impacting staffing and affecting the Division's ability to care for and distribute fish. The heavily stocked waters no doubt played a role in the success of the early opener.

Months after the 2020 Spring Trout Season, reports of large numbers of dead trout seen during the spring began to emerge. The dead trout were attributed to poor handling by anglers. However, none of the reports could be substantiated. Staff conducting opening day angler counts did not make a note of any numbers of dead trout nor were any brought to their attention by anglers at the time. It is important to note that the pandemic significantly reduced angler interactions with staff from previous years' counts.

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Due to mixed views on an early catch-and-release season and the effect of the accelerated stocking schedule on angler success in 2020 and 2021, the Council did not include an early catch-and-release season as part of the 2022-2025 trout season dates. Division staff will investigate ways to better assess angler interest in implementing such a change. Stocking implications for an early catch-and-release season also need to be considered as it impacts the Division's ability to distribute fish to all waters prior to the season opener.

5. COMMENT: The Division should return to weekly stockings of trout. (5)

RESPONSE: The rearing, allocation, and distribution of trout and other fish species stocked is not part of the New Jersey Administrative Code. These operations must allow for adjustments in response to prevailing and emerging conditions. To ensure an equitable distribution of trout, trout are allocated utilizing a trout stocking formula that accounts for physical, biological, and social factors and is based on a 10-week spring stocking program. However, scheduling and allocation adjustments are made based on emerging conditions, such as drought, flooding, deep snow, elevated water temperatures, and the pandemic, most recently. Changes are made to ensure the survival of the fish and to protect staff. In the springs of 2020 and 2021, trout were stocked under a four-week accelerated stocking schedule. These changes were made due to concerns of COVID-19 impacting staff, affecting the Division's ability to care for and distribute fish. Continued impacts to the spring trout stocking program due to the pandemic or

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other emerging issues are not yet known. The Division is hoping circumstances will allow the return to a normal ten-week stocking program in 2022.

6. COMMENT: To enhance trout fishing opportunities, other trout species in addition to Rainbow Trout should be stocked. (2)

RESPONSE: The Division of Fish and Wildlife's Pequest Trout Hatchery has been rearing strictly Rainbow Trout since 2015, in response to a disease outbreak (furunculosis) at the facility that affected Brook and Brown Trout. As a result, Brook and Brown Trout have been temporarily removed from the hatchery's production cycle to reduce the potential of future outbreaks as the bacteria may still be present within the hatchery infrastructure. The pathogen is believed to have been introduced by raptors preying on the open raceways. The Division is covering the raceways at the hatchery to protect valuable hatchery stock from predation and diseases it may introduce. To make operations more energy-efficient, solar panels are being considered to serve as a cover to the raceways and provide a renewable energy source. However, covering a mile and a half of raceways is a large-scale project, with numerous legal, contractual, and engineering issues to be addressed. Once the hatchery's open raceway system has been addressed, additional species will be considered. It should be noted that wild populations of both Brook and Brown Trout exist in New Jersey and are often connected and overlap with trout stocked areas. These areas offer a more diverse trout fishing experience and are identified and managed under Wild Brown Trout Managed regulations.

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The ability of other states' hatcheries to continue rearing Brook and Brown Trout despite furunculosis outbreaks is due to their water source. Many hatcheries are fed by surface water, and furunculosis and other pathogens exist within the watersheds that feed the hatcheries and, thus, are continually present. Fish reared from these facilities, however, are limited to where they can be stocked. New Jersey's Pequest facility is fed by groundwater, which significantly limits pathogen introduction. As a result, maintaining a pathogen-free environment is feasible and desired.

The Council and the Division acknowledge and share anglers' interest in diversifying the State's stocking program, as soon as it is feasible to do so.

7. COMMENT: Information is needed to inform anglers on how to identify a non-offset circle hook. (10)

RESPONSE: The Atlantic States Marine Fisheries Commission's (ASMFC) interstate fishery management plan for striped bass requires using non-offset circle hooks when fishing for striped bass with bait in all waters. The use of non-offset circle hooks significantly increases the survival of released striped bass. A circle hook is a non-offset hook where the point is curved perpendicularly back towards the shank. Non-offset means the point and barb are in the same plane as the shank.

The Division's website includes descriptions and images of non-offset circle hooks at www.nj.gov/dep/fgw/circlehook_faq.htm to help anglers comply with the circle hook

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requirements. This information is also found in the 2021 Marine Digest and the 2022 Freshwater Digest.

8. COMMENT: One commentor was interested in the license and trout stamp requirements for anglers age 70 years and older. (10)

RESPONSE: In accordance with N.J.S.A. 23:3-4(b)(4) and 23:3-57, New Jersey residents age 70 and older do not need a fishing license or a trout stamp to fish for trout. Non-resident anglers age 70 and older are still required to purchase a non-resident fishing license and a trout stamp to fish for trout.

9. COMMENT: The commenter opposes the entire Fish Code and the proposed amendments because they do not protect fish. The Fish and Game Council (Council) is comprised only of farmers and hunters, and no one protects fish. The entire operation is corrupt and is not reflective of 2021 when all wildlife species are diminishing. (12)

RESPONSE: The composition of the New Jersey Fish and Game Council (Council) is established by New Jersey statute, N.J.S.A. 13:1B-24. While there is a farmer representative and two sportsman representatives for each region of the State, the Council also includes retired Law Enforcement personnel, the Chairman of the Endangered and Non-Game Species Advisory Committee, a public member, and, at times, members of academia. The Council and the Division of Fish and Wildlife are tasked with protecting and managing the State's freshwater

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fisheries resources. The Division's Bureau of Freshwater Fisheries conducts over 200 field assessments each year. This data is used to provide recommendations for protective stream classification designations, identify native fish species presence and distribution, and develop management goals that are protective of critical resources while providing recreational opportunities. The Bureau also monitors critical habitats and seeks to restore natural flow regimes through restoring connectivity through dam removal projects.

10. COMMENT: How does the Division track new aquatic invasive species in New Jersey? (9)

RESPONSE: Anglers are typically the first to encounter an invasive species, especially those new to New Jersey waters. Through its website, social media, and the Freshwater Digest, the Division of Fish and Wildlife strongly encourages anglers to report the catch of such species to Division of Fish and Wildlife personnel. Anglers typically submit encounters by telephone and email, often with photographic documentation.

Division biologists record the locations of these catches and follow-up with additional sampling, if deemed necessary, to document the full extent of an invasive species presence. The Division of Fish and Wildlife also conducts field surveys that could identify the presence of invasive species. Fisheries representatives of adjoining states are also alerted of newly documented invasive species. When invasive species are encountered during normal field survey activities they are not returned to the water.

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11. COMMENT: Many people are fishing without a license and littering at Gropps and White City Lakes. (3)

RESPONSE: As with any sport, the poor behavior of some anglers no doubt overshadows the multitude of others who behave responsibly. The Division reminds anglers not to litter and to respect property on its regulation signs. Over 2,000 signs are posted throughout the 180 waters stocked by the Division each year. Conservation police officers patrol areas and those fishing without a license or found littering are fined. The Conservation police officer patrol is in addition to any patrol activity conducted by local authorities.

12. COMMENT: Some marinas on Greenwood Lake refuse to allow anglers to launch their boats or charge high fees to launch for the day. (13)

RESPONSE: Greenwood Lake is one of the State's top angling lakes known for its excellent Muskellunge, Walleye, and Largemouth and Smallmouth Bass populations. The Muskellunge and Walleye fisheries are supported through annual stocking programs by the Division of Fish and Wildlife. The lake, slightly over 1,900 acres in size, does not have a public boat launch. Access for anglers is limited to private marinas or to those that reside on the lake. In recent years, private marinas have increasingly filled their boat slips to capacity with long seasonal rentals. This has further strained the already limited parking needed to accommodate season renters, resulting in restricted access to "day-passers," those individuals that launch for the day. The situation dramatically limits access to the lake for anglers and even some lakefront

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property owners seeking to launch their boats at the beginning of the season. The Department's Division of Fish and Wildlife and the Division of Parks and Forestry are seeking funding to develop a public boat ramp on the lake.

13. COMMENT: Open the Striped Bass fishery on the Delaware River to year-round fishing. (7)

RESPONSE: Striped Bass are anadromous, inhabiting marine waters and migrating in the spring into the fresh waters of the Delaware River to spawn. In the lower reaches of the Delaware River, downstream of the Calhoun Street Bridge, Striped Bass may not be taken from April 1 through May 30 to protect the species during their critical spawning period. Upstream of the Calhoun Street Bridge, which is outside of their spawning area, they may be harvested from March 1 to December 31, well beyond the time of year they are typically found in this section of the river. Regulations must comply with the goals and objectives of the Atlantic States Marine Fisheries Commission (ASMFC) Striped Bass Fisheries Management Plan. As such, regulations are developed by the Division of Fish and Wildlife's Bureau of Marine Fisheries, with the approval of the New Jersey Marine Fisheries Council, and in coordination with the ASFMC. In regard to anadromous species, the Fish and Game Council adopts regulations to maintain consistency for species found in both marine and fresh waters of the State.

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14. COMMENT: The growing Flathead Catfish population in the Delaware River needs to be addressed as it is limiting the Smallmouth Bass population. Make Smallmouth Bass catch-and-release only on the Delaware River to help the population. (7)

RESPONSE: Unfortunately, it is impossible to control an invasive species, such as Flathead Catfish, once they have begun to naturally reproduce in a large river system, such as the Delaware River. This is especially true when there are reproducing populations within connecting waters that provide a continual source. Invasive species control must be accomplished at the very onset of species detection, and even then, it is difficult. The impact of the Flathead Catfish on Smallmouth Bass in the Delaware River has not been documented. Due to the impacts of the COVID-19 pandemic, the Division has not been able to recently assess the Smallmouth Bass population in the Delaware River. However, it is important to note Smallmouth Bass are currently catch-and-release only during their critical spawning period of March 15 to June 15. Also, many successful anglers voluntarily release the vast majority of fish they catch. As such, reducing creel limits is not as useful a management tool as when harvesting fish was more prevalent among the angling community.

Federal Standards Statement

N.J.S.A. 52:14B-1 et seq., requires State agencies that adopt, readopt, or amend State rules that exceed any Federal standards or requirements to include in the rulemaking document a Federal standards analysis. The United States Fish and Wildlife Service regulates the harvesting of freshwater fish in National Wildlife Refuge Areas in New Jersey pursuant to

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the National Wildlife Refuge System Administration Act, 16 U.S.C. § 668dd (1966), and regulations at 50 CFR Parts 25 through 38. In areas of the State where there are no Federal regulations pertaining to the harvest of freshwater fish, the State's Code applies. The adopted amendments to the Code do not contain any standards or requirements that exceed Federal regulations involving the National Wildlife Refuge Areas. Accordingly, Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq., do not require further analysis.