

permittee, including sworn statements from the permittee or other persons with knowledge relevant to the allegations on which the Division action is based. The petition and its supporting statements and documentation shall be made available to the court and all parties in advance of any hearing.

4. The Division shall reinstate horseshoe crab harvesting privileges suspended for late or incomplete reports, but no more than one time per permittee in any single permit year, if that permittee personally delivers any missing reports, completed, along with a credible written explanation for the delay and/or omissions to the Division within 20 business days from the date on the notice of suspension.

5. Any permittee who has had his or her horseshoe crab harvesting privilege revoked shall be disqualified from exercising any privilege associated with a horseshoe crab harvesting permit for 24 months following the effective date of an uncontested notice of proposed revocation of privileges, or whichever of the following is applicable:

i. The date of the Commissioner's Final Decision affirming revocation of horseshoe crab harvesting privileges, or

ii. The filing date of the court order affirming the Commissioner's Final Decision revoking horseshoe crab harvesting privileges.

6. The Division shall issue a horseshoe crab permit to an applicant pending resolution of a contested Division proposal to revoke that applicant's horseshoe crab harvesting privilege, but that permittee shall not exercise or enjoy any horseshoe crab harvesting privilege pending resolution of a proposed revocation until, as appropriate, one of the following occurs:

i. The Division Director lifts the suspension of that permittee's horseshoe crab harvesting privilege;

ii. The Commissioner issues a Final Decision reinstating that permittee's horseshoe crab harvesting privilege; or

iii. A court of competent jurisdiction orders reinstatement of that permittee's horseshoe crab harvesting privileges.

New Rule, R.1993 d.185, effective May 3, 1993.

See: 24 N.J.R. 2978(a), 25 N.J.R. 1876(b).

Amended by R.1996 d.218, effective May 6, 1996.

See: 28 N.J.R. 245(a), 28 N.J.R. 2375(a).

Emergency amendment R.1997 d.268, effective May 30, 1997 (expired July 29, 1997).

See: 29 N.J.R. 3084(a).

The emergency amendment substantially amended (a); rewrote (b) and (c); and deleted (d).

Emergency amendment R.1997 d.350, effective July 29, 1997 (to expire September 27, 1997).

See: 29 N.J.R. 3737(a).

In (a), substituted ", land or possess horseshoe crabs" for "horseshoe crabs except by hand collection or while using other gear allowed under this chapter and/or N.J.S.A. Titles 23 and 50" and inserted "be eligible to" preceding "obtain a permit"; added (a)3; inserted new (b) and (c);

added (f) and (g); recodified former (b), (b)1, (c) and (d) as (d), (e), (h) and (i), respectively; deleted former (d)2 and 3; in (e), inserted reference to uplands; and in (h), for contents of monthly report, deleted to gear utilized.

Adopted concurrent proposal, R.1997 d.446, effective September 25, 1997.

See: 29 N.J.R. 3737(a), 29 N.J.R. 4900(a).

Deleted (g); changes upon adoption effective November 17, 1997.

Amended by R.1998 d.185, effective April 6, 1998.

See: 30 N.J.R. 262(b), 30 N.J.R. 1320(a).

Rewrote (c); and in (d), extended the horseshoe crab season from May 1 through June 30 to April 1 through August 15.

Amended by R.2001 d.73, effective March 5, 2001.

See: 32 N.J.R. 4435(a), 33 N.J.R. 874(a).

Amended by R.2001 d.346, effective September 17, 2001.

See: 33 N.J.R. 453(a), 33 N.J.R. 3352(a).

Rewrote (d), (e), and (g); added new (h); recodified former (h) as (i) and rewrote first sentence as new first and second sentences; and recodified former (i) as (j).

Emergency amendment, R.2002 d.223, effective May 1, 2003 (to expire June 30, 2003).

See: 35 N.J.R. 2366(a).

In (d), substituted "150,000" for "297,680" in the introductory paragraph; in (d)1, specified season for horseshoe crab; in (i), rewrote the first sentence and added a second sentence.

Adopted concurrent amendment, R.2003 d.305, effective June 30, 2003.

See: 35 N.J.R. 2366(a), 35 N.J.R. 3611(b).

Provisions of R.2002 d.223 adopted without change.

Emergency amendment, R.2005 d.215, effective June 9, 2005 (to expire August 8, 2005).

See: 37 N.J.R. 2565(a).

In (d), updated the horseshoe crab season dates in 1.

Emergency amendment, R.2005 d.215, expired August 8, 2005.

Public Notice: Horseshoe crabs.

See: 37 N.J.R. 4074(a), 5066(a).

Amended by R.2006 d.195, effective May 15, 2006.

See: 38 N.J.R. 873(a), 38 N.J.R. 2139(a).

In the introductory paragraph of (a), substituted "Subject to the . . . in (d) below, any" for "Any" in the second sentence and substituted "section" for "prohibition" in the third sentence; and rewrote the former first sentence of (d) as the first and second sentences.

Petition for Rulemaking: Horseshoe crabs.

See: 39 N.J.R. 700(b), 1528(a).

Petition for Rulemaking: Horseshoe crabs.

See: 40 N.J.R. 893(a), 2139(b), 2291(a), 3753(a).

Case Notes

Adoption of a permanent rule for harvesting horseshoe crabs rendered moot an appeal from a judgment determining that an emergency amendment, which extended prior emergency amendment's 60-day ban on taking horseshoe crabs for another 60 days, violated the Administrative Procedure Act (APA). Delaware Bay Waterman's Ass'n of New Jersey v. New Jersey Dept. of Environmental Protection, 709 A.2d 192, 153 N.J. 345 (N.J. 1998).

Emergency amendment to regulation, which extended prior emergency amendment's ban on taking horseshoe crabs, violated Administrative Procedure Act's requirement of legislative approval for such amendment continuation; although Department of Environmental Protection offered two different reasons for original and successive amendments, each amendment had same cause and same result, rendering successive amendment a continuation of first. Delaware Bay Waterman's Ass'n of New Jersey v. New Jersey Dept. of Environmental Protection, 304 N.J. Super. 20, 697 A.2d 957 (A.D. 1997).

7:25-18.17 Request for adjudicatory hearing

Any person, subject to the limitation on third party appeal rights set forth in P.L. 1993, c.359 (N.J.S.A. 52:14B-3.1 through 3.3), who believes himself or herself to be aggrieved with respect to a license and/or permit decision made by the

Department under this subchapter may request an adjudicatory hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., in accordance with the provisions set forth in N.J.A.C. 7:25-14.21, Request for adjudicatory hearing.

New Rule, R.2004 d.20, effective January 5, 2004.
See: 35 N.J.R. 4224(b), 36 N.J.R. 174(b).

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**SUBCHAPTER 18A. FISHERIES CLOSURES AND
ADVISORIES FOR STRIPED BASS, AMERICAN
EEL, BLUEFISH, WHITE PERCH AND WHITE
CATFISH TAKEN FROM THE NORTHEAST
REGION OF THE STATE**

Subchapter Historical Note

Subchapter 18A, Fisheries Closures and Advisories for Striped Bass, American Eel, Bluefish, White Perch and White Catfish Taken from the Northeast Region of the State, was adopted as emergency new rules by R.1982 d.477, effective December 15, 1982.

7:25-18A.1 Authority

This subchapter has been promulgated pursuant to the Marine Fisheries Management and Commercial Fisheries Act, N.J.S.A. 23:2B-1 et seq.

7:25-18A.2 Scope and construction

(a) The following shall constitute the rules governing the issuance by the Department, of fisheries closures and advi-

sories concerning PCB contaminated fish taken from the waters of the Northeast Region of the State.

(b) These rules shall be liberally construed to permit the Department to effectuate the purpose of these rules.

7:25-18A.3 Definitions

“Advisory” means a Departmental warning to limit consumption of designated fish species taken from designated regions of the State’s waters.

“Closure” or “closed” means prohibition of sales of designated fish species taken from designated regions of the State’s waters.

“Commissioner” means the Commissioner of the Department of Environmental Protection.

“Department” means the Department of Environmental Protection.

“Limited consumption” or “limit consumption” means that in order to reduce exposure to and bioaccumulation of PCBs, persons of high risk, including but not limited to pregnant women, nursing mothers, women of child-bearing age, and young children, should not eat any designated fish species taken from designated regions of the State’s waters and all other persons should not consume more than one meal per week of any designated fish taken from designated regions of the State’s waters.