

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.

Amended by R.1988 d.285, effective June 20, 1988.  
See: 19 N.J.R. 1610(a), 20 N.J.R. 1344(b).

Substantially amended.

Amended by R.1988 d.286, effective June 20, 1988.  
See: 20 N.J.R. 866(a), 20 N.J.R. 1345(a).

Amended (g)4.

Administrative Correction to (g)6vi: Added text.

See: 22 N.J.R. 2301(a).

Amended by R.1991 d.278, effective June 3, 1991.

See: 22 N.J.R. 1311(a), 23 N.J.R. 1792(a).

Changed "persons" to "individuals"; added reference to "permits" in (g).

Amended by R.1992 d.143, effective March 16, 1992.

See: 24 N.J.R. 4(c), 24 N.J.R. 1113(a).

Further eligibility qualifications for certain fishing with nets added at (g); specifications regarding the tributaries of the Delaware Bay.

Amended by R.1992 d.449, effective November 16, 1992.

See: 24 N.J.R. 207(a), 24 N.J.R. 4256(a).

Requirements to eliminate fyke netting and haul seining from certain small bodies of water.

Amended by R.1994 d.202, effective April 18, 1994.

See: 25 N.J.R. 5397(a), 26 N.J.R. 1633(a).

Amended by R.1994 d.615, effective December 19, 1994.

See: 26 N.J.R. 1931(a), 26 N.J.R. 5011(a).

Amended by R.1995 d.82, effective February 6, 1995.

See: 26 N.J.R. 4277(b), 27 N.J.R. 487(a).

Administrative correction.

See: 27 N.J.R. 1794(a).

Administrative correction.

See: 27 N.J.R. 2212(a).

Administrative change.

See: 27 N.J.R. 4916(c).

Amended by R.1996 587, effective December 16, 1996 (operative January 1, 1997).

See: 28 N.J.R. 3998(a), 28 N.J.R. 5231(a).

Made changes to mesh sizes throughout; inserted (g)2iii, (g)4ii, and (g)11vi; and recodified from (g)2iii through (g)2viii as (g)2iv through (g)2ix, (g)4ii and (g)4iii as (g)4iii and (g)4iv, and (g)11vi through (g)11x as (g)11vii through (g)11xi.

Amended by R.1997 d.246, effective June 2, 1997.

See: 29 N.J.R. 285(a), 29 N.J.R. 2555(a).

In (g), made nonsubstantive changes; and substantially amended (g)11.

Amended by R.1999 d.52, effective February 16, 1999.

See: 30 N.J.R. 3881(a), 31 N.J.R. 538(a).

Rewrote (g)11; and added (i).

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).

In (g), rewrote the second sentence and deleted the fifth sentence in the introductory paragraph, inserted 3iv, rewrote the first sentence in 9 and substituted "exceeds 100 lobsters" for "occurs" in 11vi(1).

Administrative change.

See: 34 N.J.R. 921(a).

Amended by R.2002 d.277, effective August 19, 2002.

See: 34 N.J.R. 1375(a), 34 N.J.R. 2995(a).

Rewrote (g).

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

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

In (g)11ix(1), inserted a new third 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.2003 d.223 adopted without change.

Amended by R.2004 d.20, effective January 5, 2004.

See: 35 N.J.R. 4224(b), 36 N.J.R. 174(b).

In (g)2, deleted former vii and viii, and recodified former ix as new vii; in (g)11ix, inserted "and spider crabs" following "conchs or whelks".

Administrative change.

See: 37 N.J.R. 1177(b).

Amended by R.2005 d.413, effective November 21, 2005.

See: 37 N.J.R. 742(a), 37 N.J.R. 4408(a).

Added (j)-(m).

## 7:25-18.6 Delaware Bay commercial and non-commercial gill net permit.

(a) An individual utilizing a drifting, staked or anchored gill net in that portion of Delaware Bay or its tributaries defined as the area east of the New Jersey-Delaware boundary enclosed by a line from Cape Henlopen, Delaware to Cape May Point Light, New Jersey and the "southwest line" as defined in N.J.S.A. 50:3-11 shall have a commercial or non-commercial gill net permit for each gill net license in their possession. The person shall have the permit on his or

her person at all times while fishing in that portion of Delaware Bay or its tributaries defined in this subsection.

(b) For a period of 60 days following June 3, 1991, Delaware Bay commercial and non-commercial gill net permits shall be issued in accordance with N.J.A.C. 7:25-18.5.

(c) No new Delaware Bay commercial or non-commercial gill net permits shall be issued after August 2, 1991 until the combined number of Delaware Bay commercial and non-commercial gill net permits falls below either 800 for staked or anchored gill nets or 200 for drifting gill nets.

(d) An individual possessing a Delaware Bay Gill Net Permit shall obtain the number of gill net licenses authorized by the Delaware Bay Gill Net Permit in each calendar year. Failure to do so will result in the number of nets authorized by the permit being reduced to the number of net licenses actually obtained in that calendar year beginning in 1994, or in the event no licenses are purchased, invalidation of the permit immediately following the end of that calendar year.

New Rule, R.1991 d.278, effective June 3, 1991.

See: 22 N.J.R. 1311(a), 23 N.J.R. 1792(a).

Amended by R.2004 d.20, effective January 5, 2004.

See: 35 N.J.R. 4224(b), 36 N.J.R. 174(b).

In (c), deleted “, except as provided in (c)1 below” following “drifting gill nets” in the introductory paragraph and deleted 1.

#### **7:25-18.7 Eligibility for Delaware Bay commercial and non-commercial gill net permits during the 60 days following June 3, 1991**

(a) To be eligible for a Type A Delaware Bay commercial gill net permit during the 60-day period following June 3, 1991 allowing the use or possession on the waters of the Delaware Bay or its tributaries of no more than the maximum number of gill nets of the same type for which the applicant held valid New Jersey gill net licenses in any one calendar year during the period of January 1, 1985 through September 6, 1990 but no more than four drifting gill net permits and/or 25 staked or anchored gill net permits, the applicant shall, as part of the applicant's application for a commercial gill net permit:

1. Document that the applicant sold a minimum of 5,000 pounds of fish or 250 bushels of crabs or any combination thereof where one bushel of crabs is equal to 20 pounds of fish in any one year from 1985 through 1990; and

2. Provide a copy of a valid New Jersey gill net license(s) held by the applicant in any one calendar year from January 1, 1985 through September 6, 1990 for each gill net permit requested.

(b) To be eligible for a Type B Delaware Bay commercial gill net permit during the 60-day period following June 3, 1991 allowing the use or possession on the waters of the Delaware Bay or its tributaries of no more than two drifting

gill nets and/or up to six staked or anchored gill nets, the applicant shall, as part of the applicant's application for a commercial gill net permit document that the applicant sold a minimum of 5,000 pounds of fish or 250 bushels of crabs or any combination thereof where one bushel of crabs is equal to 20 pounds of fish in any one year from 1985 through 1990.

(c) To comply with the requirement that to be eligible for a Delaware Bay commercial gill net permit under (a) or (b) above an applicant shall have sold a minimum of 5,000 pounds of fish or 250 bushels of crabs or any combination thereof where one bushel of crabs is equal to 20 pounds of fish in any one year from 1985 through 1990, an applicant shall include as part of the applicant's application:

1. Weigh-out slips issued to the applicant by a wholesaler(s) that acquired fish from the applicant establishing that the applicant sold 5,000 pounds of fish or 250 bushels of crabs or any combination thereof where one bushel of crabs is equal to 20 pounds of fish in any one of the five years; or

2. Notarized statements of wholesaler(s) that the wholesaler(s) records establish that the applicant sold 5,000 pounds of fish or 250 bushels of crabs or any combination thereof where one bushel of crabs is equal to 20 pounds of fish in any one of the five years and that such records are available for inspection by the Division.

(d) An individual who does not meet any of the requirements in (a) or (b) above may apply for a maximum of two Delaware Bay non-commercial gill net permits during the 60-day period following June 3, 1991. The Delaware Bay non-commercial gill net permits shall allow the holder to use in or possess on the waters of Delaware Bay or its tributaries no more than one drifting gill net not to exceed 360 feet in length or two staked or anchored gill nets not to exceed 180 feet in length each.

New Rule, R.1991 d.278, effective June 3, 1991.

See: 22 N.J.R. 1311(a), 23 N.J.R. 1792(a).

#### **7:25-18.8 Eligibility for Delaware Bay commercial and non-commercial gill net permits after the 60-day period following June 3, 1991**

(a) To be eligible for a Delaware Bay commercial gill net permit issued after the 60-day period following June 3, 1991, the applicant shall, at the time that the application is submitted to the Division, have three years of commercial fishery experience. The applicant shall include with the application a notarized affidavit by a commercial fisherman that the applicant has served as a crew member on a commercial fishing boat for a minimum of three years.

(b) If, at the time that an application for a Delaware Bay gill net permit is submitted to the Division, the applicant does not satisfy the eligibility requirement for a Delaware Bay commercial gill net permit set forth in (a) above, the applicant shall be eligible for a Delaware Bay non-commercial gill net permit.

2. The permittee may request a hearing to contest a proposed revocation of horseshoe crab harvesting privileges in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. The request for an administrative hearing must be received in writing by the Department within 20 business days from the date on the Division's notice of suspension and intention to revoke, excluding the date on the notice. However, if a timely request for a hearing is not received by the Department, any allegation contained in the notice shall be deemed admitted by the permittee and horseshoe crab harvesting privileges shall be revoked as of the date stipulated in the notice, without any further action by the Division.

3. The Division Director may, in his or her sole discretion, stay the suspension of horseshoe crab harvesting privileges pending a hearing on the notice of proposed revocation of horseshoe crab harvesting privileges for any good cause set forth in a written petition from the 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.

Petition for Rulemaking.

See: 37 N.J.R. 4074(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).

### **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 advisories 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.