

cant must provide a copy of a previously valid New Jersey gill net license held by the applicant between January 1, 1997, and July 13, 2000. Individuals may purchase the greatest number of each type of gill net license they held in any one calendar year between January 1, 1997, and July 13, 2000. To be eligible for a gill net license in all subsequent years, an applicant must provide a copy of a previously valid gill net license held by the applicant from the preceding year. Individuals must purchase the maximum number of gill net licenses to which they are entitled annually. Any licenses not purchased will be forfeited. The holder of a valid gill net license not pending revocation or court action due to violation of provisions of this subchapter may transfer the right to purchase all of the gill net licenses he or she is entitled to purchase to another individual at any time, upon notification to the Department. The new licensee shall have a license(s) issued in his or her name after payment of the fee specified in (g)5vi or (g)6ix below. Any licenses not purchased by the new entrant will be forfeited. Individuals who applied to the gill net delayed entry program prior to July 12, 2000, and who obtained gill net licenses after the July 13th control date in 2000 or 2001 or who obtained gill net licenses or are eligible to obtain gill net licenses in 2002, will be restricted to purchase a maximum of two drifting and/or six staked or anchored gill net licenses. Any licenses not purchased in any year will be forfeited. Availability of Delaware Bay Gill Net Permits shall be determined pursuant to N.J.A.C. 7:25-18.6 through 18.11. Upon receipt of the application, and the prescribed license fee, the Commissioner may, in his or her discretion, issue single season licenses and/or permits as specified for each net type for the taking of fish with nets only as follows:

1. Haul seines shall have a mesh not smaller than 2.75 inches stretched and shall not exceed 70 fathoms in length, whether used singly or in series. Haul seines may be used for all species except those specifically protected.

i. The haul seine season shall begin on November 1 and end on April 30;

ii. A person shall not use or attempt to use a haul seine for any species in Lake Takanassee, Spring Lake, Wreck Pond and Deal Lake;

iii. American eel may be taken by haul seine during the season of January 1 through April 30. Any American eel taken by haul seine from November 1 through December 31 shall not be retained and must be immediately returned to the water.

iv. The haul seine resident fee shall be \$25.00 per net.

2. Fykes shall have a length, including leaders, which shall not exceed 30 fathoms and no part of the net or leaders shall be constructed of monofilament or have a mesh larger than five inches stretched or smaller than three eight inches stretched (inside measurement). Fyke nets may be used for all species except those specifically protected.

i. The fyke season shall begin on November 1 and end on April 30;

ii. A person shall not use or attempt to use a fyke net for any species in Lake Takanassee, Spring Lake, Wreck Pond and Deal Lake, or in the area commonly known as Collins Cove off the Mullica River between a line starting at aid to navigation channel marker flashing red number 8 (latitude 39°33.36'N, longitude 74°28.39'W), bearing approximately 229°T to a point on the western shore of Collins Cove at latitude 39°33.09'N, longitude 74° 28.72'W and the Garden State Parkway where it crosses the Mullica River;

iii. No fyke net nor any part of a fyke net shall be set in the middle one third of any river, stream or tributary.

iv. All stakes used for the setting of fyke nets must be removed within 30 days of the close of the season;

v. Submerged anchored fyke nets shall be marked at each end with a fluorescent orange float at least 12 inches in diameter or a fluorescent orange flag at least 12 inches by 12 inches and suspended at least three feet above the water, measured from the surface of the water to the bottom of the flag. No less than 24 square inches of any reflective material shall be attached and maintained on each marker.

vi. Winter flounder may be taken by fyke net during the season of November 1 through February 19. Any winter flounder taken by fyke net from February 20 through April 30 shall not be retained and must be immediately returned to the water.

vii. American eel may be taken by fyke net during the season of January 1 through April 30. Any American eel taken by fyke net from November 1 through December 31 shall not be retained and must be immediately returned to the water.

viii. The fyke resident fee shall be \$12.00 per net. Each licensee shall notify the Department in their license application of the specific estuary in which they intend to fish the fyke net(s). Licensees shall notify the Department as to any change in the specific estuary within which the fyke net is located no later than seven days following the change in estuary. Such notice shall be in writing to:

Division of Fish and Wildlife  
Marine Fisheries Administration  
PO Box 400  
Trenton, New Jersey 08625-0400.

3. Miniature fyke or pots shall only be used for the taking of catfish, suckers, killifish (Cyprinodontidae) and eels. The mesh of this net type shall be no smaller than one-half inch by one-half inch bar, inside measurement. The net type shall not have leaders or wings and shall not exceed 16 inches in diameter if cylindrical or 201 square

inches in cross section if any other configuration in any of the marine waters of this State.

i. The miniature fyke or pot season shall begin on January 1 and end on December 31;

ii. The miniature fyke or pot resident fee shall be \$100.00 regardless of the number of miniature fykes or pots employed;

iii. One or two miniature fykes or pots may be used for the taking of killifish or eels only for bait without application for or granting of a license, provided, however, that killifish or eels taken without having a valid license in possession may not be sold or used for barter.

iv. No miniature fyke or pot shall be placed in any man-made lagoon or in any marked or charted channel except noncommercial pots or miniature fykes fastened to a pier or other shore connected structure by a line no longer than twice the depth of the water at that point.

v. All persons holding a miniature fyke net license shall keep, on forms provided by the Division, accurate records of their catch and effort using that gear, including name, amount of gear used, fishing time, area fished, species caught, total amount of each species taken, and any other data required by the Division that is relevant to the management of the fishery. These forms shall be completed for all fishing activity with miniature fyke nets for the months of January through December, inclusive; signed by the licensee attesting to the validity of the information; and filed within 10 days following the end of the reported month with the Division at the address shown on the reporting form. Said filing must be current before a license for miniature fyke nets is issued for the subsequent year. If there was no harvest for a given month, a report to that effect shall be submitted to the Division. Failure to file on or before the 10th of the month following the month of record may lead to suspension or permanent revocation of said license by the Department according to the following schedule:

- (1) First offense: no suspension;
- (2) Second offense: 120 days suspension; and
- (3) Third offense: permanent revocation;

vi. Prior to suspension or revocation of the license, the licensee shall have the opportunity to request a hearing pursuant to 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.

4. The bait net season shall begin on January 1 and shall end on December 31. Except as provided in N.J.S.A. 23:5-24.2, bait net resident fees shall be \$10.00 per license.

i. Bait nets shall be limited to one or more of the following types:

(1) Hand held dip nets 24 inches in diameter or less;

(2) Bait seines not exceeding 150 feet and mesh not less than three eighths inches stretched, inside measurements, and not more than 2.5 inches stretched;

(3) Cast nets not exceeding 30 feet in diameter;

(4) Lift or umbrella nets not exceeding four feet square; and

(5) Killipots with mesh not less than three sixteenth inches bar, inside measurements, and not exceeding 10 inches in diameter or 25 inches in length if cylindrical or 2,000 cubic inches for any other conformation for the taking of killifish (*Cyprinodontidae* spp.) only; and

ii. No person shall harvest or attempt to harvest fish by any means from the Deal Lake flume, the Lake Takanassee spillway or Wreck Pond spillway on Monday, Wednesday, and Friday, during the months of April and May in any year.

5. Drifting gill nets shall be used only in the Atlantic Ocean, Delaware Bay, and the tributaries of Delaware Bay. The smallest mesh of any drifting gill net shall be not less than five inches stretched beginning February 12 through February 29. From March 1 through December 15 the smallest mesh of any drifting gill net shall be not less than 3.25 inches stretched except in the tributaries of Delaware Bay and in Delaware Bay and the Atlantic Ocean within two nautical miles of the mean high water line where the smallest mesh shall be not less than 2.75 inches stretched and subject to the permitting and reporting requirements specified in (g)5vii below and in N.J.A.C. 7:25-18.12. These nets shall not individually exceed 200 fathoms in length. Individual drifting gill nets shall not be fastened together to form a series of nets exceeding 400 fathoms in length beginning February 12 through May 15 or exceeding 200 fathoms in length beginning May 16 through December 15. Drifting gill nets may be used for all species except those specifically protected.

i. Separate drifting gill nets or a series of joined drifting gill nets shall not be set or fished closer than 100 fathoms from any other net or series of nets;

ii. Separate drifting gill nets or a series of joined drifting gill nets shall be marked at each end with a fluorescent orange float at least 12 inches in diameter or a fluorescent orange flag at least 12 inches by 12 inches and suspended at least three feet above the water, measured from the surface of the water to the bottom of the flag. No less than 24 square inches of any reflective material shall be attached and maintained on each end marker. A white float measuring at least eight inches in diameter shall be located approximately 20 feet inside of each end marker;

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 d.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).  
 Public Notice: Horseshoe crabs.  
 See: 37 N.J.R. 4074(a), 5066(a).  
 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).  
 Administrative change.  
 See: 38 N.J.R. 5359(a).  
 Petition for Rulemaking. Horseshoe crabs.  
 See: 39 N.J.R. 700(b), 1528(a).  
 Amended by R.2008 d.15, effective January 7, 2008.  
 See: 39 N.J.R. 143(a), 40 N.J.R. 126(a).  
 In the introductory paragraph of (g), inserted "or she"; added (g)3v and (g)3vi; in the introductory paragraph of (g)11, deleted "and" preceding "pursuant to"; in the introductory paragraph of (g)11i, substituted "March 31" for "h 31"; rewrote (g)11i(4) and (g)11i(5); and in (i), inserted "or to maintain consistency with any Mid-Atlantic Fishery Management Council plan adopted by the National Marine Fisheries Service".  
 Administrative change.  
 See: 42 N.J.R. 1374(a).  
 Administrative change.  
 See: 44 N.J.R. 493(a).  
 Administrative change.  
 See: 45 N.J.R. 205(a).  
 Administrative change and correction.  
 See: 46 N.J.R. 212(b).

Amended by R.2015 d.168, effective November 2, 2015.  
 See: 47 N.J.R. 315(a), 47 N.J.R. 2669(c).  
 In the introductory paragraph of (g), inserted a comma following "1997" twice, and inserted a comma following the third occurrence of "2000"; in the introductory paragraph of (g)11, inserted "N.J.A.C. 7:25-18.5A or"; and in the introductory paragraph of (g)11ix, inserted "and except as provided in N.J.A.C. 7:25-18.5A".

**7:25-18.5A Artificial reefs**

(a) This section establishes the location of the artificial reefs located in State waters and the full access zones located within certain reefs. The artificial reefs are open to all recreational and commercial activities except no person shall use, leave, deploy, or tend any lobster, fish, or conch pot within an artificial reef located in State waters except in an area designated as a full access zone under this section. Persons who use, leave, deploy, or tend lobster, fish, or conch pots in a full access zone may do so only in compliance with (d) below.

(b) The locations and boundaries of the Sandy Hook Reef site and the Axel J. Carlson Jr. Reef site are as follows:

1. The Sandy Hook Reef site is located approximately 1.4 miles east of Sea Bright, Monmouth County. The site is located approximately 5.7 nautical miles at a compass bearing of 157 degrees from Sandy Hook Channel. The boundaries of the Sandy Hook Reef site are as follows (latitude and longitude expressed as dd mm.mmm, that is, degrees minutes and thousandths of minutes):

<u>Boundaries</u>	<u>Latitude</u>	<u>Longitude</u>
NE Corner	40 23.300'	73 55.880'
NW Corner	40 23.300'	73 56.600'
SE Corner	40 20.880'	73 55.880'
SW Corner	40 20.880'	74 56.600'

2. The Axel J. Carlson Jr. Reef site is located approximately 2.0 miles east of Mantoloking, Ocean County. The site is located approximately 4.4 nautical miles at a compass bearing of 166 degrees from Manasquan Inlet. The boundaries of the Axel J. Carlson Jr. Reef site are as follows (latitude and longitude expressed as dd mm.mmm, that is, degrees minutes and thousandths of minutes):

<u>Boundaries</u>	<u>Latitude</u>	<u>Longitude</u>
NE Corner	40 03.720'	73 58.570'
NW Corner	40 04.180'	73 59.750'
SE Corner	39 59.830'	73 59.400'
SW Corner	40 00.350'	74 00.650'

(c) The boundaries of the full access zones are as follows:

1. At the Sandy Hook Reef site, the full access zone is that portion of the Sandy Hook Reef site lying within a continuous line beginning at 40 22.800' 73 56.600' to 40 22.800' 73 55.880'; then south to 40 22.500' 73 55.880'; then west to 40 22.500' 73 56.300'; then south to 40 22.400' 73 56.300' and west to 40 22.400' 73 56.600' (latitude and longitude expressed as dd mm.mmm, that is, degrees minutes and thousandths of minutes).

2. At the Axel J. Carlson, Jr. Reef site, there are two full access zones, the North full access zone and the South full access zone.

i. The North full access zone is that portion of the Axel J. Carlson, Jr. Reef site lying within a continuous line beginning at 40 04.180' 73 59.750' to 40 04.110' 73 59.600'; then south to 40 03.500' 73 59.600'; then west to 40 03.500' 73 59.906' (latitude and longitude expressed as dd mm.mmm), that is, degrees minutes and thousandths of minutes); and

ii. The South full access zone is that portion of the Axel J. Carlson, Jr. Reef site lying within a continuous line beginning at 40 00.900' 74 00.499' to 40 00.900' 74 00.000'; then south to 40 00.060' 74 00.000'; then west to 40 00.350' 74 00.650' (latitude and longitude expressed as dd mm.mmm), that is, degrees minutes and thousandths of minutes).

(d) Any person intending to use, leave, deploy, or tend any lobster, fish, or conch pot within a full access zone shall hold the appropriate license as provided under N.J.A.C. 7:25-18.5(g)11 and shall comply with the following:

1. Lobster, fish, and conch pots shall be used, left, deployed, or tended only:

i. In an area designated as a full access zone under this section; and

ii. Between sunrise and sunset.

2. When deploying lobster, fish, and conch pots or setting strings of such pots, the following requirements shall be met:

i. All deployed lobster, fish, and conch pots shall be marked with buoys or flags, either individually or at the beginning and end of a string. All buoys, flags, and strings shall meet the requirements of the National Oceanic and Atmospheric Administration's (NOAA) Fisheries Greater Atlantic Region's Atlantic Large Whale Take Reduction Plan and Harbor Porpoise Take Reduction Plan, and the NOAA Office of Protected Resources' Bottlenose Dolphin Take Reduction Plan, 50 CFR Part 229, and any amendments thereto, incorporated herein by reference. The Atlantic Large Whale Take Reduction Plan is available from NOAA at <http://www.nero.noaa.gov/Protected/whaletrp/>, the Harbor Porpoise Take Reduction Plan is available at <http://www.nero.noaa.gov/protected/porptrp/>, and the Bottlenose Dolphin Take Reduction Plan is available at <http://www.nmfs.noaa.gov/pr/interactions/trt/bdtrp.htm>.

ii. Strings of lobster, fish, and conch pots shall contain no more than 20 pots.

3. Two hours' notice shall be provided to the Marine Law Enforcement Unit by calling (609) 748-2050 prior to any lobster, fish, or conch pot being deployed. The notice shall include the operator's name; vessel name; license number for the lobster, fish, and conch pots or traps being

tended; date, time, and port of landing; and on what reef and in what zone the pots will be deployed.

(e) Any person who violates any provision of this section shall be subject to the following penalties and/or suspension or revocation of the applicable license:

1. Deployment or tending of lobster, fish, or conch pots outside a designated full access zone or between sunset and sunrise:

i. First offense: \$100.00 penalty and 30-day suspension of lobster, fish, or conch pot license.

ii. Second offense: \$200.00 penalty and permanent revocation of lobster, fish, or conch pot license.

2. Deployment or tending of gear not marked or not properly marked with a buoy or flag, or setting strings with more than 20 pots or strings not meeting the requirements of (d)2 above:

i. First offense: \$100.00 penalty and 30-day suspension of lobster, fish, or conch pot license.

ii. Second offense: \$200.00 penalty and 45-day suspension of lobster, fish, or conch pot license.

iii. Third offense: \$200.00 penalty and permanent revocation of lobster, fish, or conch pot license.

3. Failure to provide notification in accordance with (d)3 above:

i. First offense: \$100.00 penalty.

ii. Second offense: \$200.00 penalty.

iii. Third or subsequent offenses: \$200.00 penalty and 30-day suspension of lobster, fish, or conch pot license.

(f) In calculating the period of suspension or revocation applicable pursuant to (e) above, the number of previous suspensions imposed pursuant to (e)1, 2, or 3 above, respectively, shall be reduced by one for each three-year period in which the license holder does not commit any other violation subject to penalty and/or suspension or revocation under the same paragraph in (e) above. If more than one suspension is imposed under the same paragraph (for example, two violations subject to (e)2 above) within a three-year period, only one of those suspensions may be forgiven under this subsection. Therefore, a license holder who incurs more than one suspension under a single paragraph of (e) above 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. Any reduction in suspensions as provided in this subsection applies only to the determination of the period of suspension. All prior suspensions shall be taken into account in calculating monetary penalties in accordance with section (e) above.

New Rule, R.2015 d.168, effective November 2, 2015.  
See: 47 N.J.R. 315(a), 47 N.J.R. 2669(c).

ing monetary penalties in accordance with N.J.S.A. 23:2B-14.

iii. Prior to the suspension or revocation of the permit, the permittee shall have the opportunity to request a hearing pursuant to the Administrative Procedures 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.

(f) The following provisions are applicable to the commercial harvest of black drum:

1. A vessel shall not possess or land by any gear more than 10,000 pounds of black drum in any one day;
2. A dealer shall not accept from a vessel or person more than 10,000 pounds of black drum a day landed in New Jersey;
3. The annual black drum harvest quota for New Jersey shall be 65,000 pounds; and
4. The Commissioner, or his or her designee, may close the season upon two days public notice of the projected date the quota shall be landed. Such notice shall be sent by first class mail to all commercial docks and commercial fishing organizations on the mailing list of the Division of Fish and Wildlife.

(g) The following provisions are applicable to the commercial harvest of spiny dogfish:

1. A person or vessel shall not possess for sale any spiny dogfish nor shall a person sell or attempt to sell spiny dogfish without a valid annual vessel permit for spiny dogfish issued by the National Marine Fisheries Service.
2. A dealer shall not purchase or receive spiny dogfish without a valid annual dealer permit for spiny dogfish issued by the National Marine Fisheries Service.
3. No person or vessel shall have in possession or land and no dealer shall accept from any one vessel more than the daily trip limit set by the National Marine Fisheries Service or the Atlantic State Marine Fisheries Commission.
4. Any closure of the spiny dogfish fishery by the National Marine Fisheries Service in adjacent Federal waters or recommended closure by the Atlantic States Marine Fisheries Commission for areas including New Jersey automatically closes New Jersey waters to the harvest of spiny dogfish and to the commercial landings of spiny dogfish.

(h) The following provisions are applicable to the commercial harvest of black sea bass:

1. After December 31, 2002, a vessel shall not land more than 100 pounds of black sea bass during the period of January 1 through March 31 or more than 50 pounds of black sea bass during the period April 1 through December 31 in New Jersey on any one trip unless said vessel is in

possession of a valid New Jersey Black Sea Bass Permit. 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. Applicants for a New Jersey Black Sea Bass Permit shall complete and submit an application provided by the Department by December 31, 2002 that includes information on name, address, vessel name, vessel documentation or registration number, gear and landings criteria as specified in (h)1ii below. Applications for a New Jersey Black Sea Bass Permit received after the above date shall be denied.

ii. To be eligible for a New Jersey Black Sea Bass Permit, the vessel's owner shall meet the following criteria:

(1) The vessel shall have landed and sold a minimum cumulative total of 10,000 pounds of black sea bass in New Jersey during the period 1988 through May 3, 2001;

(2) The vessel shall have possessed a valid Federal Black Sea Bass Moratorium Permit or appropriate New Jersey gear license for each year of submitted landings documentation; and

(3) Documented proof of landings shall consist of one or more of the following:

(A) Weigh-out slips totaling the weight harvested;

(B) A notarized statement from the applicant and the purchaser(s) attesting to the weight harvested (a copy of the business records supporting the statement(s) must accompany the application);

(C) Other documentation similar to that in (h)1ii(3)(A) or (B) above may be accepted at the discretion of the Commissioner after his or her review.

2. The New Jersey Black Sea Bass 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 a black sea bass fishery, may only have on board the gear type(s) listed on that vessel's New Jersey Black Sea Bass Permit.

3. The owner of a vessel permitted pursuant to this subsection not pending revocation or court action may transfer his or her Black Sea Bass Permit, upon application to the Department, as follows:

i. To his or her replacement vessel, provided the replacement vessel is not greater than 10 percent larger in vessel length, gross registered tonnage and net tonnage and not more than 20 percent greater in horsepower than the originally permitted vessel. The vessel being

replaced shall no longer be eligible for a black sea bass permit; or

ii. Along with the sale of his or her vessel to a new owner. The owner selling the vessel shall no longer be eligible for a Black Sea Bass Permit based on the harvesting history of the vessel being sold.

4. Transfer of a permit to a new vessel shall be limited to the same gear type(s) of the originally permitted vessel.

5. Applicants for permit transfer shall complete an application provided by the Department, and no permit may be transferred without the prior approval of the Department.

6. A vessel possessing a valid Black Sea Bass Permit to commercially harvest black sea bass by angling or hook and line and when operating under the permit shall be subject to the following:

i. Crew size shall be limited to no more than five persons, including the captain; and

ii. The vessel shall not carry any passengers for hire. When carrying passengers for hire the Black Sea Bass Permit is not valid and the recreational possession limits and seasonal restrictions as specified in N.J.A.C. 7:25-18.1 apply.

7. A vessel that does not possess a New Jersey Black Sea Bass Permit shall be permitted to land not more than 100 pounds of black sea bass during the period of January 1 through March 31, or not more than 50 pounds of black sea bass during the period of April 1 through December 31 on any trip provided the amount of black sea bass landed from any vessel shall not exceed 10 percent, by weight, of the total weight of all species landed and sold. Vessels taking black sea bass by angling or hook and line that do not possess a New Jersey Black Sea Bass Permit shall be subject to the possession limits established in N.J.A.C. 7:25-18.1 and the seasonal by-catch limits and 10 percent criteria specified above.

8. Annual and seasonal black sea bass quotas and daily trip limits shall be determined by the Mid-Atlantic Fishery Management Council and implemented by the National Marine Fisheries Service or determined by the Atlantic States Marine Fisheries Commission.

i. The Commissioner, or his or her designee, shall implement annual and seasonal black sea bass quotas and daily trip limits determined by the Atlantic States Marine Fisheries Commission upon four days public notice. Public notice shall include letters by first class mail to all New Jersey Black Sea Bass Permit holders. The implemented quotas and limits shall also be reflected in this subsection through a notice of administrative change in the New Jersey Register, in accordance with N.J.A.C. 1:30-2.7.

ii. Ten percent of the New Jersey annual black sea bass quota shall be allocated each year for by-catch land-

ings when any of the seasons for the directed commercial fishery defined in (h)8iii below are closed. The by-catch landings shall be divided between seasons as identified in (h)8iii below at the same percentage apportioned to each season specified at (h)8iii below.

(1) Any by-catch not landed during the season allocated shall be added to the directed fisheries quota of the following season except during the last season.

(2) If any of the by-catch allowance has not been landed by December 1 in any calendar year the remaining amount shall be added to the directed black sea bass fishery quota.

iii. The balance of the New Jersey annual quota for the black sea bass fishery remaining after deducting the by-catch allowance specified in (h)8ii above shall be divided into seasons, percentage of the annual quota apportioned into each season, daily trip limits and number of allowable landing days in each one- or two-week period (Sunday through Saturday) as follows:

(1) January 1 - April 15: 38.8 percent, 1,000 pound trip limit and a maximum of three days per two-week period that a vessel may land black sea bass, 1,500 pound trip limit and a maximum of two days per two-week period that a vessel may land black sea bass or 3,000 pound trip limit and a maximum of one day per two-week period that a vessel may land black sea bass. The first period shall begin on January 1 and end the second Saturday following January 1. Each two-week period will run consecutively from Sunday to the second Saturday thereafter.

(2) April 16 - June 30: 20.6 percent, 1,500 pound trip limit and a maximum of one day per week that a vessel may land black sea bass, or a 500 pound trip limit and a maximum of three days per week that a vessel may land black sea bass;

(3) July 1 - September 30: 13.5 percent, 3,000 pound trip limit and a maximum of one day per week that a vessel may land black sea bass, 1,000 pound trip limit and a maximum of three days per week that a vessel may land black sea bass, or 500 pound trip limit and a maximum of six days per week that a vessel may land black sea bass;

(4) October 1 - December 31: 27.1 percent, 1,500 pound trip limit and a maximum of two days per week that a vessel may land black sea bass, or 1,000 pound trip limit and a maximum of three days per week that a vessel may land black sea bass.

(5) If a minimum of 50,000 pounds of the New Jersey black sea bass quota remains unlanded as of December 1 in any calendar year, the Commissioner, or his or her designee, may set a daily trip limit for the remainder of that calendar year.

(6) Any daily landing of black sea bass not exceeding 100 pounds during the period of January 1

through March 31 or 50 pounds during the period of April 1 through December 31 shall not be applied to maximum weekly landing days during any season as specified in (h)8iii(1) through (4) above, provided the amount of black sea bass landed from any vessel shall not exceed 10 percent, by weight, of the total weight of all species landed and sold.

iv. No vessel shall have in possession or land and no dealer shall accept from any one vessel or person more than the lesser of the daily trip limit of black sea bass set by the National Marine Fisheries Service or the Atlantic States Marine Fisheries Commission in any one calendar day.

v. The Commissioner, or his or her designee, shall close the season for the commercial black sea bass fishery upon two days public notice of the projected date the seasonal percentage of the annual quota shall be caught. Public notice shall include letters by first class mail to all New Jersey Black Sea Bass Permit holders.

vi. Once the season has been closed for the directed commercial black sea bass fishery, no vessel or person shall land or sell any black sea bass and no dealer or person shall accept or purchase any black sea bass landed in New Jersey in excess of the by-catch allowances specified in (h)1 and 7 above and provided the amount of black sea bass landed from any vessel shall not exceed 10 percent, by weight of all species landed and sold. If the entire season and/or annual quota including the by-catch allowance has been landed, then no vessel or person shall land or sell any black sea bass and no dealer or person shall accept or buy any black sea bass landed in New Jersey.

vii. If the Commissioner, or his or her designee, closes the season prematurely because of unanticipated events resulting in the quota not being landed by the projected date, then the Commissioner, or his or her designee, may reopen the season for a specified period of time upon two days public notice. Public notice shall be made as specified in (h)7v above.

(1) The Commissioner or his or her designee may set daily trip limits when reopening a prematurely closed season.

viii. If the quota for a particular season is not taken, the balance shall be reallocated for the following season, except that any balance existing as of December 31 of any year shall not be reallocated.

ix. If the quota for any season is exceeded, the amount overharvested shall be deducted from the following season. The amount overharvested shall also be deducted from the following years seasonal quota in pounds and reallocated to the season from which it was deducted the previous year.

x. Any vessel participating in the black sea bass fishery shall notify the Department of the time and place

of unloading of the vessel at least two hours in advance of such unloading. Such unloading shall not occur except between the hours of 6:00 A.M. and 6:00 P.M. from November 1 through April 30 and 6:00 A.M. and 8:00 P.M. from May 1 through October 31. The vessel shall also report how many times that week (Sunday through Saturday) the vessel will have landed, including the trip being called in. For example, "This will be my third landing this week." Notification shall include a phone call to (609) 748-2050 unless changed by notice to permit holders via first class mail.

9. After December 31, 2002, no dealer shall accept or purchase any black sea bass from any vessel or harvester unless such dealer is in possession of a valid New Jersey Black Sea Bass Dealers Permit. A New Jersey Black Sea Bass Dealers Permit may be obtained by completing an application supplied by the Department and submitting it to:

New Jersey Black Sea Bass Dealers Permit  
Nacote Creek Research Station  
PO Box 418  
Port Republic, NJ 08241

10. After December 31, 2002, no dealer shall accept or purchase from any one vessel more than the amounts of black sea bass specified at (h)1 above unless said vessel is in possession of its valid New Jersey Black Sea Bass Permit.

11. After December 31, 2002, any harvester or vessel landing black sea bass in New Jersey for the purpose of sale shall sell all black sea bass to a permitted New Jersey Black Sea Bass Dealer.

12. All permitted New Jersey Black Sea Bass Dealers shall provide daily reports during the period January 1 through April 15 and weekly reports during the period April 16 through December 31 to the Division listing the amount of black sea bass landed on a daily basis and any other information that may be required by the Commissioner. If no black sea bass were landed, a report to that effect shall be required. Such report shall be faxed to the Division at the number listed on the reporting form no later than 10:00 A.M. on the following day for daily reports and 12:01 P.M. on Monday following the week's end for weekly reports or sent by any other method approved by the Department. For the purpose of this provision, the week shall begin on Sunday and end on Saturday.

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. Failure to submit the required documentation to an application shall result in the denial of the permit.

ii. Falsification or misrepresentation of any information on an application including documentation provided to verify the amount of black sea bass landed as specified in (h)1ii(3) above shall result in the denial or

revocation of the permit in addition to any civil or criminal penalties prescribed by law.

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) First offense: 60 days suspension;
- (2) Second offense: 120 days suspension;
- (3) Third offense: permanent revocation;

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 subparagraph; 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 subparagraph 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.

v. Any person who has had his or her New Jersey Black Sea Bass Dealers Permit suspended or revoked shall not land or permit the landing of any black sea bass at his or her facility during the suspension or revocation under the provisions of another permittee's New Jersey Black Sea Bass Dealers Permit.

vi. Prior to 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.

(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. Applicants for a New Jersey Summer Flounder Permit shall complete an application provided by the Department. Applicants applying to use hook and line shall submit their applications no later than May 31, 1994. Applicants applying for a New Jersey Summer Flounder permit for any other gear type shall submit their applications no later than January 1, 2000. Applications for a New Jersey Summer Flounder Permit received after the above dates shall be denied.

ii. To be eligible for a New Jersey Summer Flounder Permit the vessel's owner shall meet the following criteria:

(1) The vessel shall have landed and sold at least 1,000 pounds of summer flounder in New Jersey in each of two years during the period of 1985-1992;

(2) The vessel shall have possessed a valid New Jersey otter trawl, pound net, or gill net license or a valid Federal summer flounder permit during each of the two years it qualified based upon the pounds of summer flounder landed and sold in (i)1ii(1) above. Vessels providing documentation regarding the amount of summer flounder landed for two years between January 1, 1985 to November 2, 1988 or vessels providing documentation of harvest by hook and line are exempt from this requirement; and

(3) Applicants shall provide weigh out slips to document the amount of summer flounder landed and copies of their New Jersey otter trawl, pound net or gill net license or Federal summer flounder permit for the respective years.

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) The owner of a permitted vessel pursuant to this subsection not pending revocation or court action may transfer his or her New Jersey Summer Flounder Permit, upon application to the Department, as follows:

(A) To his or her replacement vessel, provided the replacement vessel is not greater than 10 per-

cent larger in vessel length, gross registered tonnage and net tonnage and not more than 20 percent greater in horsepower than the originally permitted vessel. The vessel being replaced shall no longer be eligible for a New Jersey Summer Flounder Permit; or

(B) Along with the sale of his or her vessel to a new owner. The owner selling the vessel shall no longer be eligible for a New Jersey Summer Flounder Permit based on the harvesting history of the vessel being sold.

(2) Transfer of a permit to a new vessel shall be limited to the same gear type(s) of the originally permitted vessel.

(3) Applicants for permit transfer shall complete an application provided by the Department, and no permit may be transferred without the prior approval of the Department.

iv. A vessel possessing a valid New Jersey Summer Flounder Permit to commercially harvest summer flounder by angling or hook and line and when operating under the permit shall be subject to the following:

(1) Crew size shall be limited to no more than five persons, including the captain; and

(2) The vessel shall not carry any passengers for hire. When carrying passengers for hire the New Jersey Summer Flounder Permit is not valid and the recreational possession limits and seasonal restrictions as specified in N.J.A.C. 7:25-18.1 apply.

v. A vessel that does not possess a New Jersey Summer Flounder Permit shall be permitted to land not more than 100 pounds of summer flounder during the period of May 1 through October 31, or not more than 200 pounds of summer flounder during the period of November 1 through April 30 on any trip provided the amount of summer flounder landed from any vessel shall not exceed 10 percent, by weight, of the total weight of all species landed and sold, except that vessels taking summer flounder by angling or hook and line shall be subject to the possession limits established in N.J.A.C. 7:25-18.1.

2. The annual summer flounder harvest quota for New Jersey shall be determined by the Mid-Atlantic Fishery Management Council as implemented by the National Marine Fisheries Service. All landings of summer flounder in New Jersey shall be applied to the New Jersey annual summer flounder quota unless New Jersey enters into an agreement with another state(s) to transfer or combine summer flounder commercial quotas, as provided for pursuant to (i)3 below and such agreement indicated otherwise.

i. Ten percent, but not more than 200,000 pounds of the New Jersey annual summer flounder quota, shall be allocated each year for by-catch landings when any of

the six seasons for the directed commercial fishery are closed. The by-catch landings shall be divided between the six seasons as identified at (i)2ii below at the same percentage as for the directed fishery specified at (i)2ii below or as modified by the Commissioner.

(1) Any by-catch not landed during the season allocated shall be added to the directed fishery of the following season except during the last season.

(2) If any of the by-catch allowance has not been landed by December 1 in any calendar year, the remaining amount shall be added to the directed summer flounder fishery quota.

(3) For the purpose of this section, all directed fishery seasons identified at (i)2ii below shall start on the first Sunday of the applicable month.

ii. The balance of the New Jersey annual quota for the summer flounder fishery remaining after the by-catch allowance specified in (i)2i above shall be divided into seasons, percentage of the annual quota apportioned to each season, daily to trip limits and number of allowable landing days in each week (Sunday through Saturday) as follows:

(1) January – February: 28 percent, 2,500 pound trip limit and a maximum of two days per two-week period that a vessel may land summer flounder, or 5,000 pound trip limit and a maximum of one day per two-week period that a vessel may land summer flounder. Each two-week period shall begin on Sunday and end on the second Saturday with the first two week period beginning on the first Sunday of January;

(2) March – April: 11 percent, 2,000 pound trip limit and a maximum of two days per week that a vessel may land summer flounder;

(3) May–June: 10.5 percent, 500 pound trip limit and a maximum of four days per week that a vessel may land summer flounder, or 250 pound trip limit and a maximum of seven days a week that a vessel may land summer flounder;

(4) July–August: 10.5 percent, 500 pound trip limit and a maximum of four days per week that a vessel may land summer flounder, or 250 pound trip limit and a maximum of seven days a week that a vessel may land summer flounder;

(5) September – October: 29 percent, 650 pound trip limit and a maximum of four days that a vessel may land summer flounder, except as follows:

(A) A vessel may elect to land summer flounder only one day per week. If such an election is made, the trip limit shall be 2,500 pounds;

(6) November – December: 11 percent, 1,000 pound trip limit and a maximum of three days per week that a vessel may land summer flounder, except as follows:

(A) A vessel may elect to land summer flounder only one day per week. If such an election is made, the trip limit shall be 3,000 pounds; and

(7) Any daily landing of summer flounder not exceeding 100 pounds during the period of May 1 through October 31 or 200 pounds during the period November 1 through April 30 shall not be applied to maximum weekly landing days during any season as specified in (i)2ii(1) through (6) above, provided the amount of summer flounder landed from any vessel shall not exceed 10 percent, by weight, of the total weight of all species landed and sold.

iii. No vessel shall have in possession or land and no dealer shall accept from any one vessel more than the daily trip limit of summer flounder in any one calendar day.

iv. Any vessel participating in a directed summer flounder fishery shall notify the Department of the time and place of unloading of the vessel at least two hours in advance of such unloading. Such unloading shall not occur except between the hours of 6:00 A.M. and 6:00 P.M. from November 1 through April 30 and 6:00 A.M. and 8:00 P.M. from May 1 through October 31. The vessel shall also report how many times that week (Sunday through Saturday) the vessel will have landed, including the trip being called in. For example, "This will be my third landing this week." Notification shall include a phone call to (609) 748-2050 unless changed by notice to permit holders via first class mail.

v. If a minimum of 100,000 pounds of the New Jersey summer flounder quota remains unlanded as of December 1 in any calendar year, the Commissioner, or his or her designee, may set a daily trip limit for the remainder of that calendar year or until the quota specified in (i)2 above is landed, whichever occurs first.

vi. The Commissioner, or his or her designee, shall close the season for the directed and/or by-catch commercial summer flounder fishing season upon two days public notice of the projected date the seasonal percentage of the annual quota shall be caught. Public notice shall include letters by first class mail to all permitted New Jersey Summer Flounder Dealers and New Jersey Summer Flounder Permit holders.

vii. Once the season has been closed for the directed commercial summer flounder fishery, no vessel shall land any summer flounder and no dealer shall accept any summer flounder landed in New Jersey in excess of the by-catch allowances specified in (i)1 above and provided the amount of summer flounder landed from any vessel shall not exceed 10 percent by weight of the total weight of all species landed and sold. If the entire season and/or annual quota including the by-catch allowance has been landed, then no vessel or person shall land or sell any summer flounder and no dealer or person shall accept or buy any summer flounder landed in New Jersey.

viii. If the Commissioner, or his or her designee, closes the season prematurely because of unanticipated environmental events resulting in the quota not being landed by the projected date and at least one month remains in the current season, then the Commissioner, or his or her designee, may reopen the season for a specified period of time upon two days public notice. Public notice shall be made as specified in (i)2vi above.

(1) The Commissioner, or his or her designee, may set daily trip limits when reopening a prematurely closed season.

ix. If the quota for a particular season is not taken, the balance shall be reallocated for the following season, except that any balance existing as of December 31 of any year shall not be reallocated.

x. If the quota for any of the first five seasons is exceeded, the amount overharvested shall be deducted from the following season.

xi. If the quota for any year is exceeded, the amount overharvested will be deducted from the following year's annual quota. The remaining annual quota will then be allocated as defined in (i)2i and ii above.

xii. Beginning in 1994, the Department shall notify the holders of New Jersey Summer Flounder Permits of the season allocations no later than January 31 of the year to which the allocation applies. Notification shall be accomplished by first class mail to permit holders.

xiii. All New Jersey Summer Flounder Permit holders shall be required to complete monthly reports supplied by the Department. The monthly 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 15 working days following the end of the reported month at the following address:

New Jersey Summer Flounder Program  
Nacote Creek Research Station  
PO Box 418  
Port Republic, NJ 08241-0418

(1) The monthly report shall include, but not be limited to, the following information: name, New Jersey Summer Flounder Permit number of the vessel, total amount (in pounds) of each species taken, dates caught, time at sea, duration of fishing time, gear type used to harvest, number of tows, area fished, crew size, landing port, date sold and buyer. This information shall be provided for any trip in which summer flounder are landed. New Jersey Summer Flounder Permit holders who also possess a Federal summer flounder permit and are required to report monthly to the Federal government may submit the "STATE" copy of their Federal log book in satisfaction of the New Jersey reporting requirements.

(2) If no trips for summer flounder were taken and no summer flounder were landed during the month, a report to that effect shall be required.

3. Pursuant to Amendment 5 of the Mid-Atlantic Fishery Management Council's Summer Flounder Management Plan, the Commissioner may enter into agreements with other states to transfer or combine summer flounder commercial quotas. Such agreements shall specify the terms and conditions under which vessels not in possession of a New Jersey Summer Flounder Permit may land summer flounder in New Jersey, as well as how the landings will be applied to the quota. Any agreement developed by the Commissioner and any other state is not valid until such time as it has been reviewed and approved by the Northeast Regional Director of the National Marine Fisheries Service.

4. No fish dealer shall accept any summer flounder from any vessel or harvester unless such dealer is in possession of a valid New Jersey Summer Flounder Dealers Permit. A New Jersey Summer Flounder Dealers Permit may be obtained by completing an application supplied by the Department and submitting it to:

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

5. No dealer shall accept from any vessel more than the amounts of summer flounder specified at (i)1 above unless said vessel is in possession of its valid New Jersey Summer Flounder Permit.

6. No vessel shall land and no dealer shall accept any summer flounder which have been frozen, filleted or processed in any way. Only whole, fresh summer flounder may be landed, except that by-catch amounts of summer flounder as specified in (i)1 above may be landed frozen provided that each fish is individually frozen whole and can be individually weighed and measured without thawing.

7. Any harvester or vessel landing summer flounder in New Jersey for the purpose of sale shall sell all summer flounder to a permitted New Jersey Summer Flounder Dealer.

8. All permitted New Jersey Summer Flounder Dealers shall provide daily reports during the period January 1 through February 28 and weekly reports during the period March 1 through December 31 to the Division listing the amount of summer flounder landed on a daily basis by size category and any other information that may be required by the Commissioner or as a result of any agreement with other states pursuant to (i)3 above. If no summer flounder were landed, a report to that effect shall be required. Such report shall be faxed to the Division at the number specified on the reporting forms supplied by the Division not later than 10:00 A.M. on the following day for daily reports and 12:01 P.M. on Monday following the week's end for weekly reports or sent by any other method approved by the Department. For the purpose of this

provision, the week shall begin on Sunday and end on Saturday.

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. Failure to submit the application by May 31, 1994 for use of hook and line or to attach the required documentation to the application shall result in the denial of the permit.

ii. Falsification or misrepresentation of any information on the application including documentation provided to verify the amount of summer flounder landed as specified in (i)1ii(3) above shall result in the denial or revocation of the permit in addition to any civil or criminal penalties prescribed by law.

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 nonpermitted 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 dealers New Jersey Summer Flounder Dealers Permit according to the following schedule:

- (1) First offense: 60 days suspension
- (2) Second offense: 120 days suspension
- (3) Third offense: permanent revocation

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 subparagraph; 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 subparagraph 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.

v. Any person who has had his or her New Jersey Summer Flounder Dealers Permit suspended or revoked shall not land or permit the landing of any summer flounder at his or her facility during the suspension or revocation under the provisions of another permittee's New Jersey Summer Flounder Dealers Permit.

vi. Prior to 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.

(j) The following provisions are applicable to the commercial harvest of winter flounder:

1. No person shall fish for or land any winter flounder taken by any net, trap, dredge or commercial gear in New Jersey waters, except during the open season of December 1 through May 31. No dealer shall accept any winter flounder taken in New Jersey waters except during such open season. No person shall have in possession, and no dealer shall accept from any person, more than the daily possession limit of 38 winter flounder taken in New Jersey waters. The harvest of winter flounder by the use of fyke net is subject to the provisions of N.J.A.C. 7:25-18.5(g)2 in addition to the daily possession limit specified in this paragraph.

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

1. Annual coastwide scup quotas and daily trip limits for the periods of January 1 through April 30 and November 1 through December 31, and an annual New Jersey scup quota for the period from May 1 through October 31 shall be determined by the Mid-Atlantic Fishery Management Council as implemented by the National Marine Fisheries Service or determined by the Atlantic State Marine Fisheries Commission. All landings of scup in New Jersey during the period from May 1 through October 31 shall be applied to the New Jersey scup quota.

i. Any closure of the scup fishery by the National Marine Fisheries Service in adjacent Federal waters or any closure that includes New Jersey marine waters during the periods January 1 through April 30 and November 1 through December 31 would automatically close New Jersey to commercial landings of scup.

ii. The Commissioner, or his or her designee, shall implement annual and seasonal scup quotas and daily trip limits as determined by the Atlantic States Marine Fisheries Commission upon two days public notice. The implemented quotas and limits shall also be reflected in this subsection through a notice of administrative change in the New Jersey Register, in accordance with N.J.A.C. 1:30-2.7.

iii. The Commissioner, or his or her designee, shall close the season for the commercial scup fishery upon

two days public notice of the projected date the New Jersey seasonal quota shall be caught. Public notice shall include letters by first class mail to all New Jersey Scup Dealer Permit holders and Federal scup moratorium permit holders that are New Jersey residents.

iv. Once any season has been closed for the commercial scup fishery, no vessel shall land any scup and no dealer shall accept any scup landed in New Jersey.

v. If the Commissioner, or his or her designee, closes the New Jersey season prematurely because of unanticipated events resulting in the quota not being landed by the project date, then the Commissioner, or his or her designee, may reopen the season for a specified period of time upon two days public notice. Public notice shall be made as specified in (k)1iii above.

vi. If the quota for any season is exceeded, the amount overharvested shall be deducted from the following year's quota for that season.

2. No vessel shall have in possession or land and no dealer shall accept from any vessel more than the lesser of the daily trip limits set by the National Marine Fisheries Service or the Atlantic States Marine Fisheries Commission for the season of January 1 through April 30 and November 1 through December 31 and no vessel shall have in possession or land and no dealers shall accept from any one vessel more than the daily trip limit of 5,000 pounds of scup during the season of May 1 through October 31 or as provided for in (k)2i below.

i. If a minimum of 25 percent of the New Jersey scup quota is projected to remain unlanded as of October 1 in any calendar year, then there shall be a 10,000 pound trip limit for the remainder of the season or until the season is closed as provided in (k)1i above.

ii. The trip limit for scup shall be seven trips per week (Sunday through Saturday) with landings not to exceed 50,000 pounds per trip from January 1 through April 30 and a daily limit as established by the National Marine Fisheries Service from November 1 through December 31. During the period of January 1 through April 30, the daily trip limit will be reduced to 1,000 pounds when it is projected that 80 percent of the period quota will be harvested.

3. No fish dealer shall accept any scup from any vessel or harvester unless such dealer is in possession of a valid New Jersey Scup Dealer Permit. A New Jersey Scup Dealer Permit may be obtained by completing an application supplied by the Department and submitting it to:

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

4. A harvester or vessel shall not land scup for the purpose of sale or sell any scup unless such harvester or vessel

is in possession of a valid scup moratorium permit issued by the National Marine Fisheries Service.

5. Any harvester or vessel landing scup in New Jersey for the purpose of sale shall sell all scup to a permitted New Jersey Scup Dealer.

6. All permitted New Jersey Scup Dealers shall provide weekly reports to the Division listing the amount of scup landed on a daily basis and any other information that may be required by the Commissioner or as a result of an agreement with other states pursuant to (k)9 below. Such report shall be faxed to the Division at the number specified on the reporting forms supplied by the Division no later than two days following the week's end or sent by any other method approved by the Department. For the purpose of this provision, the week shall begin on Sunday and end on Saturday.

7. All scup moratorium permit holders landing scup in New Jersey shall be required to complete monthly reports supplied by the Department. The monthly 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 15 working days following the end of the reported month at the following address:

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

i. The monthly report shall include, but not be limited to, the following information: name, scup moratorium permit number, total amount (in pounds) of each species taken, dates caught, time at sea, duration of fishing time, gear type used to harvest, number of tows, area fished, crew size, landing port, date sold and buyer. This information shall be provided for any trip in which scup are landed. Scup moratorium permit holders may submit the "STATE" copy of the Federal log book in satisfaction of the New Jersey reporting requirements.

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: 60 days suspension.

(2) Second offense: 120 days suspension.

(3) Third 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 subparagraph; 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 subparagraph 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.

9. Pursuant to Amendment 8 of the Mid-Atlantic Fishery Management Council's Fishery Management Plan for the Summer Flounder and Scup Fishery, the Commissioner may enter into agreements with other states to transfer or combine scup commercial quotas. Such agreements shall specify the terms and conditions under which vessels may land scup in New Jersey, as well as how the landings will be applied to the quota. Any agreement developed by the Commissioner and any other state is not valid until such time as it has been reviewed and approved by the Northeast Regional Director of the National Marine Fisheries Service.

(I) Special provisions applicable to an Atlantic herring fishery are as follows:

1. The possession of more than 5,000 pounds of Atlantic herring on board a vessel or landed from a vessel shall constitute a directed fishery for Atlantic herring.

2. A person shall not fish for or land any Atlantic herring in excess of 5,000 pounds using any vessel in excess of 165 feet in length and in excess of 3,000 horsepower in a directed fishery for Atlantic herring.

3. Atlantic herring taken in a directed fishery for Atlantic herring shall not be processed for use as fish meal or oil.

4. Any closure of the Atlantic herring fishery by the National Marine Fisheries Service or the Atlantic States Marine Fisheries Commission in adjacent Federal waters or in any area which includes New Jersey marine waters would automatically close New Jersey waters to the commercial harvest of Atlantic herring.

5. If any of the management areas identified in the joint New England Fishery Management Council Atlantic States Marine Fisheries Commission Fishery Management Plan for Atlantic Herring are closed by the National Marine Fisheries Service or the Atlantic States Marine Fisheries Commission, the landing of Atlantic herring harvested

from any management area that is closed shall be prohibited in New Jersey.

(m) The following provisions are applicable to the commercial harvest of tilefish:

1. A vessel shall not possess or land from the Exclusive Economic Zone (Federal waters) in any one day more than 300 pounds, whole weight, of blueline tilefish during the open season of January 1 to December 31. Any vessel landing blueline tilefish from the Exclusive Economic Zone (Federal waters) must hold a valid Northeast open access golden tilefish commercial vessel permit, issued by the NMFS.

(n) Dealer business records may be used as admissible evidence in any proceeding to document violations of trip limits, weekly landing limits or closed seasons specified in this section.

(o) For the purpose of this section, "land" shall mean to begin offloading fish, to offload fish or to enter port with fish.

(p) The Commissioner, with the approval of the New Jersey Marine Fisheries Council, may modify quotas, trip limits and/or seasons, as well as gear types and gear restrictions, specified in this section by notice in order to maintain and/or to come into compliance with any fishery management plan approved by the Atlantic States Marine Fisheries Commission pursuant to 16 U.S.C. §5104(b) or to maintain consistency with any Mid-Atlantic Fishery Management Council plan adopted by the National Marine Fisheries Service. The Commissioner, with the approval of the New Jersey Marine Fisheries Council, may modify trip limits and/or seasons, as well as gear types and gear restrictions, specified in this section by notice in order to provide for the optimal utilization of any quotas specified in this section. The Commissioner will review the catch rate for a particular species in relation to the season quota and, if harvest data indicate that upward adjustments in harvest control measures are warranted to maximize utilization of the available quota within a specific season for a specific fishery, the Commissioner may adjust the above specified control measures to achieve optimal utilization of the total allowable catch. The Department shall publish notice of any such modification in the New Jersey Register.

(q) An applicant who is otherwise eligible for a license or permit under (c)2 and 5; (e)2 and 5; or (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 (r) through (t) 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.

(r) The Department shall approve an extension request under (q) 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; or (h)1 above would result in exceptional and undue hardship upon the applicant; and

3. The circumstances supporting (r)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 permitting program.

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

(t) 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.

(u) All persons shall comply with all commercial provisions of the approved Atlantic States Marine Fisheries Commission fisheries management plan for Spanish mackerel, spot, and spotted seatrout implemented by the National Marine Fisheries Service. The Federal provisions shall apply in both Federal and New Jersey territorial waters.

New Rule, R.1992 d.143, effective March 16, 1992.

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

Amended by R.1993 d.56, effective January 19, 1993.

See: 24 N.J.R. 4249(a), 25 N.J.R. 303(a).

Former (a) and (i) recodified to new rule at 7:25-8.14; remaining subsections recodified as (a)-(g).

Administrative Correction to N.J.A.C. 7:25-18.12(b) through (g).

See: 25 N.J.R. 2001(d).

Administrative Correction to (c).

See: 25 N.J.R. 2281(a).

Amended by R.1994 d.201, effective April 18, 1994.

See: 26 N.J.R. 789(a), 26 N.J.R. 1632(a).

Repeal and New Rule, R.1995 d.82, effective February 6, 1995.

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

Formerly "Weakfish management."

Administrative Correction.

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

Administrative Correction.

See: 27 N.J.R. 3420(a).

**Administrative Correction.**

See: 27 N.J.R. 3420(b).

**Administrative Change.**

See: 28 N.J.R. 3786(a).

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

See: 28 N.J.R. 3998(a), 28 N.J.R. 5231(a). Inserted (b)1, (c), and (d); recodified former (b)1 through (b)6 as (b)2 through (b)7 and former (c) and (d) as (e) and (f); and made conforming changes throughout.

Amended by R.1998 d.40, effective January 5, 1998.

See: 29 N.J.R. 4595(a), 30 N.J.R. 226(a).

Inserted (a)2 and recodified (a)2 as 3; deleted (c)2iii through v, added (c)3 through 10 and recodified (c)3 and 4 as 11 and 12; deleted (d), and recodified (e) and (f) as (d) and (e).

**Administrative change.**

See: 30 N.J.R. 1402(b).

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

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

In (a)3, substituted "more than 150 pounds of" for "any" following "accept"; inserted a new (d); and recodified former (d) and (e) as (e) and (f).

**Administrative change.**

See: 31 N.J.R. 1612(a).

Amended by R.2000 d.10, effective January 3, 2000.

See: 31 N.J.R. 2555(a), 32 N.J.R. 48(a).

Rewrote (a); inserted a new (e); and recodified former (e) and (f) as (f) and (g).

Amended by R.2000 d.395, effective October 2, 2000.

See: 31 N.J.R. 2555(a), 32 N.J.R. 3592(b).

**Rewrote the section.**

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 the section.**

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

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

In (c)2i and (c)5i, inserted "and submit their application no later than December 31, 2002" after "Department"; in (c)7i, substituted "has no greater than 10 percent increase in length overall and 20 percent increase in shaft horsepower" for "is of equal or less gross registered tonnage and vessel registered length"; in (d)1, added i; added a new (h), recodify existing (h), (i) as (i), (j).

**Administrative change.**

See: 34 N.J.R. 3264(a).

**Administrative change.**

See: 35 N.J.R. 709(a).

**Administrative change.**

See: 35 N.J.R. 1927(a).

**Administrative correction.**

See: 35 N.J.R. 4285(a).

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

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

**Rewrote the section.****Administrative change.**

See: 36 N.J.R. 1191(c).

**Administrative correction and change.**

See: 36 N.J.R. 2420(c).

**Administrative correction.**

See: 36 N.J.R. 3276(a).

**Administrative change.**

See: 37 N.J.R. 589(c).

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

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

**Rewrote the section.****Administrative change.**

See: 38 N.J.R. 1318(d), 5359(a).

Amended by R.2008 d.15, effective January 7, 2008.

See: 39 N.J.R. 143(a), 40 N.J.R. 126(a).

**Rewrote (e)9 and (o).****Administrative change.**

See: 40 N.J.R. 150(c), 879(b), 2109(c), 6204(a).

**Administrative change.**

See: 41 N.J.R. 220(a), 4114(a).

**Administrative change.**

See: 42 N.J.R. 68(b), 789(a).

Amended by R.2010 d.155, effective July 19, 2010.

See: 42 N.J.R. 700(a), 42 N.J.R. 1527(a).

Rewrote (d)1 and (d)2; added (d)4 through (d)7; and in (o), inserted ", as well as gear types and gear restrictions," twice, inserted a comma following "season quota and", and substituted the first occurrence of "this section" for "the section,".

**Administrative change.**

See: 42 N.J.R. 3059(a).

**Administrative change.**

See: 43 N.J.R. 3334(a).

**Administrative change.**

See: 44 N.J.R. 493(a), 1973(a).

**Administrative change.**

See: 44 N.J.R. 2129(a), 2650(a).

**Administrative change.**

See: 45 N.J.R. 205(a), 1129(a), 1399(a), 1915(a), 2040(a), 2330(b).

**Administrative change and correction.**

See: 46 N.J.R. 212(b).

**Administrative change.**

See: 46 N.J.R. 293(a), 789(a).

**Administrative change.**

See: 47 N.J.R. 106(a), 1320(a).

**Administrative change.**

See: 47 N.J.R. 2292(c).

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

(a) Pursuant to N.J.S.A. 23:5-45.1(c), 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 addition to the possession limit allowed under N.J.S.A. 23:5-45.1(a), 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 shall apply to the Division to participate in the striped bass bonus program. Applications may be obtained from the following:

**1. Division of Fish and Wildlife**

Striped Bass Bonus Fish Program  
Nacote Creek Research Station  
PO Box 418  
Port Republic, NJ 08241-0418

2. On the Division of Fish and Wildlife's website at [www.njfishandwildlife.com](http://www.njfishandwildlife.com).

(c) The application form shall be completed to include the name, address and telephone number of the applicant.

(d) Applications to participate in the striped bass bonus program shall be processed in order of receipt by the Division.

(e) Successful applicants will receive a non-transferable fish possession permit, the number to be determined by the Commissioner or his or her designee based on the available quota and the number of applicants. Each permit shall be filled out completely upon retention of a bonus striped bass. A finite number of permits shall be available to participating party and charter boat captains in the name of the vessel and owner. Fish possession permits issued to party and charter

boats are for the use of patrons on that vessel and shall not be sold, offered for sale or used for barter.

(f) Fish possession permits shall be valid from September 1 through December 31 in the calendar year for which they were issued except during those periods in which the Department has closed the State's waters to harvesting as provided at (l) below.

(g) Successful applicants may keep and submit annual records of their striped bass fishing activity as requested on forms furnished by the Division. Such records shall include the name, address, and permit number(s) of the fishermen, the days and hours fished, the lengths of striped bass caught, the location of fishing activity and the type of fishing. Party and charter boat captains shall be required to maintain and submit logbooks developed by the Division.

(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, nor shall such striped bass be less than the size provided for in N.J.S.A. 23:5-45.1. 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 shall immediately mail his or her fish possession card to the address presented at (b) above.

(j) A person shall not possess any striped bass taken or tagged under the provisions of this section which is damaged or mutilated to the extent that its length cannot be determined, other than immediately prior to preparation or being served as food.

(k) An additional fish possession permit may be provided to the angler as determined by the Commissioner or his or her designee based upon the available remaining quota and the number of applicants upon recording of his or her prior legally harvested bonus striped bass electronically or via mail as presented at (i) above, provided the season has not been closed pursuant to (l) below.

(l) When, at any time during the calendar year, the Division has projected that the quota established by the Atlantic States Marine Fisheries Commission for striped bass will have been harvested, the Division will close the State's waters to any further harvesting upon two days public notice by distribution of a news release to individuals on the Division outdoor writers mailing list and via the Division's website at [www.njfishandwildlife.com](http://www.njfishandwildlife.com). A notice shall also be published in the New Jersey Register.

(m) The quota described in (l) above shall be 215,912 pounds until such time as another quota is duly promulgated by the Atlantic States Marine Fisheries Commission. A

portion of this quota will be allotted to party and charter boats.

(n) The Division will provide public notice via a news release to individuals on the Division outdoors writers mailing list and to all participants in the striped bass bonus program as to the number of fish possession permits pursuant to (e) above, the availability of additional fish possession permits pursuant to (k) above, and changes to the quota described in (l) above. A notice shall also be published in the New Jersey Register.

(o) Any person violating the striped bass size and possession limits as provided for in N.J.S.A. 23:5-45.1, 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) The Commissioner, with the approval of the New Jersey Marine Fisheries Council, may modify the size limit, bag limit, season and/or quota specified in this section, by notice in order to maintain and/or to come into compliance with any fishery management plan approved by the Atlantic States Marine Fisheries Commission pursuant to 16 U.S.C. §5104(b). The Commissioner, with the approval of the New Jersey Marine Fisheries Council, may modify the size limit, bag limit or season specified in this section by notice in order to provide for the optimal utilization of any quota specified in this section. The Commissioner will review the catch rate in relation to the season quota and, if harvest data indicate that upward adjustments in harvest control measures are warranted to maximize utilization of the available quota within a specific season for a specific fishery, the Commissioner may adjust the above specified control measures to achieve optimal utilization of the total allowable catch. The Department shall publish notice of any such notice in the Division's Fish and Wildlife Digest publication and the New Jersey Register.

New Rule, 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. 2739(a).

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

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

Changed section name from "Striped bass trophy program"; and substantially amended section.

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 (e), inserted "in the name of the vessel owner" following "boat captains"; in (o), inserted ", applicable to both the vessel and the owner," in the second sentence and added the third sentence; added (p).

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

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

In (o), substituted "each" for "the first"; deleted "and a penalty of \$200.00 per fish for each subsequent offense".

Administrative change.

See: 35 N.J.R. 1927(a).

Amended by R.2008 d.15, effective January 7, 2008.

See: 39 N.J.R. 143(a), 40 N.J.R. 126(a).

Rewrote the introductory paragraph of (b); in (b)2, substituted "pursuant to (i) below" for "by public notice in the New Jersey Register"; added (b)3; rewrote (d) and (e); in (f), deleted the last sentence; rewrote (h); in (i), inserted the second and third sentences, and substituted "fish possession" for "bonus" following "his or her"; in (k), substituted "may" for "shall" and "check" for "checking", and inserted "as determined by the Commissioner or his or her designee based upon the available remaining quota and the number of applicants"; in (l), inserted "and via the Division's website at [www.njfishandwildlife.com](http://www.njfishandwildlife.com)"; rewrote (n); and in (p), inserted the second and third sentences.

Administrative change.

See: 47 N.J.R. 1320(a).

**7:25-18.14 Otter and beam trawls**

(a) Vessels greater than 165 feet in length and in excess of 3,000 horsepower shall not fish in the marine waters of this State with an otter or beam trawl nor may any such vessel have an otter or beat trawl available for immediate use while on the marine waters of this State as defined in (b) below.

1. All trawl net doors possessed on the waters of the State of New Jersey must contain the official documentation number or the state registration number of the vessel to whom they belong indelibly branded or stamped in block letters no less than two inches in height on the surface of each door.

i. Trawl doors shall be used only by the vessel which corresponds to the branded or stamped numbers. A vessel may utilize another vessel's trawl doors provided the vessel owner utilizing such doors contacts the Division's Bureau of Law Enforcement at 609-748-2050 in advance and provides the following information: name of owner and vessel borrowing doors, name of owner, vessel and branded or stamped number of borrowed doors. The vessel owner borrowing the trawl doors shall also be responsible for contacting the Bureau of Law Enforcement in advance to indicate when he will begin utilizing his own trawl doors.

(b) No vessel may have available for immediate use any otter or beam trawl while on the marine waters of this State during the hours between sunset and sunrise except on the Atlantic Ocean, at a distance of greater than two miles from the coast line. An otter or beam trawl that conforms to one of the following is considered not "available for immediate use":

1. A net stowed below deck, provided:

i. It is located below the main working deck from which the net is deployed and retrieved;

ii. The towing wires, including the "leg" wires are detached from the net; and

iii. It is fan-folded (flaked) and bound around its circumference;

2. A net stowed and lashed down on deck, provided;

i. It is securely fastened to the deck of the vessel;

ii. The towing wires, including the leg wires are detached from the net; and

iii. It is fan-folded (flaked) and bound around its circumference; or

3. A net is on a reel and is covered and secured; provided:

i. The entire surface of the net is covered with canvas or other similar material and held in place by line bound securely around the entire net in such a manner so that no section of the net is exposed;

ii. The towing wires or towing lines located between the net and the trawl doors shall be completely detached from the trawl doors; and

iii. The cod end closure rope shall be removed from the cod end.

(c) To determine compliance with any established minimum mesh requirement for an otter or beam trawl, the following procedures shall be employed. Stretched mesh sizes are measured by a wedge-shaped gauge having a taper of two centimeters in eight centimeters and a thickness of two and three-tenths millimeters, inserted into the meshes under pressure or pull of five kilograms. The mesh size of the cod end of the net will be the average measurement of any series of 20 consecutive meshes measured at least 10 meshes from the lacings, beginning at the after end and running parallel to the long axis.

(d) No person shall use any device or method which would have the effect of reducing an established minimum mesh size; provided, however, that chafing gear which does not obstruct the meshes of the top half of the cod end may be attached and net strengtheners may be attached to the cod end of the trawl net if such net strengtheners consist of mesh material similar to the material of the cod end and have a mesh size of at least twice the authorized minimum mesh size.

(e) A vessel or person utilizing a roller rig trawl gear shall not utilize rollers greater than 18 inches in diameter.

(f) The operator of, or any other person aboard, any fishing vessel shall immediately comply with instructions and signals issued by an authorized law enforcement officer and comply with instructions to facilitate safe boarding and inspection of the vessel, its gear, equipment, and catch, for the purpose of enforcement of this section.

(g) Any vessel in the act of fishing, upon being boarded and instructed by an authorized law enforcement officer, shall haul back, or retrieve from the waters for inspection, all gear

being utilized. After being so instructed, the operator of the vessel, or any other person so instructed, shall have a 30 minute time period to commence haul back and shall continue haul back or retrieval at an ordinary rate and without interruption until the gear is on board and available for inspection.

(h) Possession of an otter trawl and doors shall subject said vessel to inspection for compliance with this section by authorized enforcement personnel. Any nets or doors possessed or used in violation of this section shall be subject to forfeiture under authority of N.J.S.A. 23:10-21.

(i) Violation of any section of this subchapter, or any license or order issued pursuant to it, shall subject the violator to the penalties prescribed in N.J.S.A. 23:2B-14, Penalties consist of \$100.00 to \$3,000 for the first offense and \$200.00 to \$5,000 for any subsequent offense.

(j) For the purpose of this section, "land" shall mean to begin offloading fish, to offload fish or to enter port with fish.

(k) The Commissioner, with the approval of the New Jersey Fisheries Council, may modify quotas, mesh sizes, minimum size limits, seasons, trip limits, by-catch allocations and the amount of fish that shall constitute a directed fishery specified in this section by notice in order to maintain compliance with any fishery management plan approved by the Atlantic States Marine Fisheries Commission pursuant to 16 U.S.C. §5104(b) or to maintain consistency with any Mid-Atlantic Fishery Management Council plan adopted by the National Marine Fisheries Service. The Commissioner, with the approval of the New Jersey Marine Fisheries Council, may modify mesh sizes, minimum size limits, seasons, trip limits, by-catch allocations and the amount of fish that shall constitute a directed fishery specified in this section by notice in order to provide for the optimal utilization of any quotas specified in this section. The Commissioner will review the catch rate for a particular species in relation to the season quota and if harvest data indicate that upward adjustments in harvest control measures are warranted to maximize utilization of the available quota within a specific season for a specific fishery, the Commissioner may adjust the above specified control measures to achieve optimal utilization of the total allowable catch. The Department shall publish notice of such modification by filing and publishing in the New Jersey Register and in the Division's commercial regulation publication. All such notices shall be effective when the Department files the notice with the Office of Administrative Law or as specified otherwise in the notice.

(l) Special provisions applicable to the commercial harvest of summer flounder are as follows:

1. The possession of more than 100 pounds of summer flounder during the period of May 1 through October 31 or the possession of more than 200 pounds of summer flounder during the period of November 1 through April 30

on board a vessel or landed from a vessel shall constitute a directed fishery for summer flounder.

2. A person utilizing an otter or beam trawl in the directed fishery for summer flounder shall not use a net of less than 5.5 inches stretched diamond mesh or 6.0 inches minimum stretched square mesh, inside measurement. The mesh size shall be applied throughout the body, extensions and cod end portions of the net upon adoption in the Federal Register of essentially the same criteria. Until such time, the mesh size shall be applied throughout the cod end for at least 75 continuous meshes forward of the terminus of the net. The possession of any net less than the minimum specified above in this paragraph, on board a vessel engaged in a directed fishery for summer flounder is prohibited unless such net is not available for immediate use as defined in (b) above or is one of the following:

i. Vessels fishing in the fly net fishery are exempt from the minimum mesh size requirement. A fly net is a two seam otter trawl with the following configuration:

(1) The net has large mesh webbing in the wings with a stretch mesh measure of eight inches to 64 inches;

(2) The first body (belly) section of the net consists of 35 meshes or more of eight inch stretch mesh webbing or larger; and

(3) In the body section of the net the stretch mesh decreases in size relative to the wings and continues to decrease throughout the extensions to the cod end, which generally has a webbing of two inch stretch mesh.

(m) Special provisions applicable to commercial weakfish and Atlantic croaker fisheries are as follows:

1. The possession of any weakfish or more than 100 pounds of Atlantic croaker on board a vessel or landed from a vessel shall constitute a directed fishery for weakfish or Atlantic croaker.

2. A person shall not possess any weakfish less than 13 inches in length that have been harvested by otter or beam trawl during the period from September 1 through December 31. During the period of January 1 through August 31, the minimum size limit for weakfish harvested by otter or beam trawl is 13 inches in length pursuant to N.J.A.C. 7:25-18.12(a).

3. A person utilizing a beam or otter trawl in a directed fishery for weakfish or Atlantic croaker shall not use a net of less than 3.75 inches stretched diamond mesh or 3.375 inches stretched square mesh, inside measurement, applied throughout the cod end for at least 75 continuous meshes forward of the terminus of the net. The possession of any net less than the minimum mesh specified above in this paragraph on board any vessel in a directed fishery for weakfish or Atlantic croaker is prohibited.

4. A person shall not land more than 100 pounds of weakfish harvested by otter trawl except during the open seasons of January 1 through July 31 and October 13 through December 31. No dealer shall accept more than 100 pounds of weakfish landed in New Jersey taken by otter trawl except during such open seasons.

(n) Special provisions applicable to a directed winter flounder fishery are as follows:

1. The possession of more than 100 pounds of winter flounder on board a vessel or landed from a vessel shall constitute a directed fishery for winter flounder.

2. A person utilizing an otter or beam trawl in a directed fishery for winter flounder shall not use a net of less than 6.5 inches stretched mesh inside measurement applied throughout the cod end for at least 75 continuous meshes forward of the terminus of the net.

3. Except during the open season specified at N.J.A.C. 7:25-18.12(j)1, a vessel with any winter flounder on board shall not have any otter or beam trawl available for immediate use while on the marine waters of this State. An otter or beam trawl that conforms to the provisions at (b)1 through 3 above is considered not "available for immediate use."

(o) Special provisions concerning the harvest of bluefish are as follows:

1. The annual bluefish allocation to the otter trawl fishery shall be 14.7 percent of New Jersey's annual commercial bluefish quota as allocated by the National Marine Fisheries Service.

2. A person shall not land any bluefish by otter trawl except during the open season of January 1 through December 7.

(p) Special provisions applicable to a directed scup fishery are as follows:

1. The possession of more than 500 pounds of scup during the period of November 1 through April 30 and more than 200 pounds of scup during the period of May 1 through October 31 on board a vessel or landed from a vessel shall constitute a directed fishery for scup.

2. A person utilizing an otter or beam trawl in a directed fishery for scup shall not use a net of less than 5.0 inches stretched mesh inside measurement applied for a minimum of 75 continuous meshes forward of the terminus of the net.

i. Nets not large enough to accommodate the number of minimum meshes listed in (p)2 above shall not contain any meshes less than 5.0 inches stretched mesh inside measurement throughout the entire net.

3. The possession of any net with a mesh less than the minimum specified in (p)2 above on board a vessel in a

directed fishery for scup is prohibited unless it is not available for immediate use as defined in (b) above.

(q) Special provisions applicable to a directed black sea bass fishery are as follows:

1. The possession of more than 500 pounds of black sea bass during the period of January 1 through March 31 or more than 100 pounds of black sea bass during the period of April 1 through December 31 on board a vessel or landed from a vessel shall constitute a directed fishery for black sea bass for the purpose of requiring minimum mesh sizes as defined in (q)2 below.

2. A person utilizing an otter or beam trawl in a directed fishery for black sea bass shall not use a net of less than 4.5 inches stretched diamond mesh or 4.0 inches minimum stretched square mesh, inside measurement applied throughout the cod end for at least 75 continuous meshes forward of the terminus of the net. The possession of any net less than the minimum specified in this paragraph on board a vessel in a directed fishery for black sea bass is prohibited unless it is not available for immediate use as defined in (b) above.

i. Nets not large enough to accommodate the number of minimum meshes listed in (q)2 above shall not contain any meshes less than 4.5 inches stretched diamond mesh or 4.0 inches stretched square mesh inside measurement throughout the entire net.

(r) Special provisions concerning the harvest and possession of American eel are as follows:

1. American eel may be taken by otter trawl except any American eel taken by otter trawl from September 1 through December 31 shall not be retained and must be immediately returned to the water.

New Rule, R.1993 d.56, effective January 19, 1993.  
 See: 24 N.J.R. 4249(a), 25 N.J.R. 303(a).  
 Amended by R.1994 d.44, effective January 18, 1994.  
 See: 25 N.J.R. 2167(a), 26 N.J.R. 353(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 Change.  
 See: 27 N.J.R. 2390(b).  
 Administrative Correction.  
 See: 27 N.J.R. 3420(a).  
 Administrative Correction.  
 See: 27 N.J.R. 3420(b).  
 Administrative Change.  
 See: 27 N.J.R. 4916(c).  
 Emergency amendment R.1996 d.299, effective May 31, 1996 (to expire July 30, 1996).  
 See: 28 N.J.R. 3182(a).  
 Administrative Change.  
 See: 28 N.J.R. 3786(a).  
 Adopted concurrent proposal, R.1996 d.392, effective July 24, 1996.  
 See: 28 N.J.R. 3182(a), 28 N.J.R. 3956(a).  
 Administrative change.  
 See: 28 N.J.R. 4784(a).  
 Amended by R.1996 d.587, effective December 16, 1996 (operative January 1, 1997).

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

Substantially amended section.

Administrative correction.

See: 29 N.J.R. 600(a).

Omitted recodification to (j)12v from a prior recodification corrected.

Administrative change.

See: 29 N.J.R. 1308(c).

In (j), changed the minimum length of summer flounder harvested in a commercial fishery from 13 inches to 14 inches.

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

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

Amended internal section references throughout; inserted new (j) and (k), recodified former (j) through (n) as (l) through (p), and deleted former (o) and (p); in (l)3, inserted ". Until such time, the mesh size shall be" and deleted provisions relating to forfeiture of privilege of owners and vessels to land summer flounder of less than 14 inches upon violation of restrictions; in (m)3, (m)4, (n)4, and (o)2, deleted reference to modification by the Commissioner of the open season or mesh size; in (p)1, inserted "during the period ... October 31"; in (p)2, substituted "4.5 inches" for "4.05 inches"; and added (p)3 through (p)12.

Administrative correction.

See: 29 N.J.R. 3251(a).

In (l)2, increased size of summer flounder from 13 to 14 inches; and in (p)4 and 5, substituted "November 1 through December 31" for "November 1 through October 31".

Amended by R.1998 d.40, effective January 5, 1998.

See: 29 N.J.R. 4595(a), 30 N.J.R. 226(a).

Inserted (q)3 and (r).

Administrative change.

See: 30 N.J.R. 1402(b).

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

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

In (l)12, deleted "by June 30, 1993 for use of otter trawls, pound nets, gill nets or scallop dredges or" following "application" in i, and substituted a reference to fresh product for a reference to fish product in the introductory paragraph of iii.

Administrative change.

See: 31 N.J.R. 1084(a).

Amended by R.2000 d.10, effective January 3, 2000.

See: 31 N.J.R. 2555(a), 32 N.J.R. 48(a).

Rewrote (a), (l) and (p); and in (r), added 4 and 5.

Administrative change.

See: 32 N.J.R. 2230(a).

Administrative change.

See: 32 N.J.R. 4107(a).

Administrative change.

See: 33 N.J.R. 45(a), 45(b).

Administrative change.

See: 33 N.J.R. 1209(b).

Administrative change.

See: 33 N.J.R. 1914(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 (l), rewrote 4, 5, 9 and 11; in (m), inserted references to Atlantic croaker throughout; rewrote (p); in (q), rewrote 3.

Administrative correction.

See: 33 N.J.R. 3740(a).

Administrative change.

See: 33 N.J.R. 3740(b).

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).

In (l)5i(3), inserted "directed fishery" after "all"; in (l)11, inserted a new sentence after "(l)6 above"; in (m) introductory paragraph substituted "commercial" for "directed"; in (m)4, substituted "more than 150 pounds of" for "any"; in (q)1, inserted "for the purpose of requiring minimum mesh sizes as defined in (q)2 below" after "sea bass"; deleted (q)3.

Administrative change.

See: 35 N.J.R. 709(b).

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

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

Rewrote the section.

Administrative change.

See: 37 N.J.R. 589(c).

Administrative change.

See: 37 N.J.R. 3696(a).

Amended by R.2008 d.15, effective January 7, 2008.

See: 39 N.J.R. 143(a), 40 N.J.R. 126(a).

In (k), inserted "or to maintain consistency with any Mid-Atlantic Fishery Management Council plan adopted by the National Marine Fisheries Service", and inserted the second and third sentences.

Administrative change and correction.

See: 42 N.J.R. 789(a).

Administrative change and correction.

See: 46 N.J.R. 212(b).

## 7:25-18.15 Atlantic sturgeon management

An individual shall not take or attempt to take, possess or land any Atlantic sturgeon in the State.

New Rule, R.1993 d.77, effective February 16, 1993.

See: 24 N.J.R. 205(a), 25 N.J.R. 689(a).

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

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

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.2005 d.413, effective November 21, 2005.

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

Deleted (b)-(o); rewrote former (a) and removed designation.

## 7:25-18.16 Horseshoe crab (*Limulus polyphemus*)

(a) An individual shall not catch, take, or attempt to catch or take, land or possess horseshoe crabs from any beach or shoreline or from the marine waters of this State unless such individual has in his or her possession a valid permit to take horseshoe crabs issued by the Commissioner of Environmental Protection. Subject to the limitations of this section, including any quotas specified in (d) below, any individual who wishes to harvest horseshoe crabs may be eligible to obtain a permit by completing an application available from the Division of Fish and Wildlife, Bureau of Marine Fisheries, PO Box 400, Trenton, N.J. 08625-0400. The following persons, in the following circumstances, are not subject to this section:

1. Property owners, tenants or agents of property owners may, at any time, remove dead horseshoe crabs from their property for purposes of disposal. No sale, trade, or barter of horseshoe crabs is permitted under this paragraph.

2. Persons collecting horseshoe crabs for strictly scientific purposes only and operating under the terms and conditions specified by a required scientific collecting permit issued pursuant to N.J.S.A. 23:4-52 by the Administrator of the Marine Fisheries Administration within the Division.

3. Individuals in possession of a valid New Jersey miniature fyke or a valid New Jersey lobster or fish pot license and in possession of bona fide written documentation that the horseshoe crabs were obtained from a legal source.

(b) An individual is eligible for a horseshoe crab permit if the individual in each of two calendar years during the period of January 1, 1993 through May 29, 1997:

1. Possessed a valid New Jersey miniature fyke or lobster or fish pot license;
2. Possessed a valid New Jersey horseshoe crab permit; and
3. Reported landings of horseshoe crabs in New Jersey as verified by the Department on the basis of the reports submitted by the individual to the Department as required under this section since May 3, 1993.

(c) Horseshoe crab permits shall be nontransferable except that a horseshoe crab permit holder may transfer the right to the horseshoe crab permit at any time to the permittee's spouse, father, mother, son or daughter upon application to the Division. No permit shall be transferred without the prior determination by the Department that the transfer complies with this subsection.

(d) The annual horseshoe crab harvest quota for New Jersey from May 15, 2006 to December 31, 2007 shall be zero or as modified by the Commissioner pursuant to (h) below. Thereafter, the annual horseshoe crab harvest quota for New Jersey shall be no more than 150,000 or as modified by the Commissioner pursuant to (h) below. All landings of horseshoe crabs in New Jersey shall be applied to the New Jersey annual horseshoe crab quota.

1. The season for horseshoe crabs shall be April 1 through April 30 and June 8 through August 15. No person shall harvest or take any horseshoe crabs, dead or alive, during the period May 1 through June 7.
2. The Commissioner, or his or her designee, shall close the season for the commercial horseshoe crab fishery upon four days public notice of the projected date the annual quota shall be caught. Public notice shall include letters by first class mail to all New Jersey Horseshoe Crab Permit holders.
3. If the Commissioner, or his or her designee, closes the season prematurely because of unanticipated environmental events resulting in the quota not being landed by the projected date and at least one month remains in the current season, then the Commissioner, or his or her designee, may reopen the season for a specified period of time upon four days public notice. Public notice shall be made as specified in (d)2 above.
4. If the quota for any year is exceeded, the amount over harvested will be deducted from the following year's annual quota.

5. Beginning in 2001, the Department shall notify the previous year's holders of New Jersey Horseshoe Crab Permits of the current year's annual quota no later than January 31 of the year to which the annual quota applies.

Notification shall be by first class mail to the previous year's permit holders.

(e) A person shall not harvest horseshoe crabs from the beaches and the adjacent waters and uplands within 1,000 feet of the bayfront mean high water line in that portion of Delaware Bay extending from the Cape May Canal in Cape May County to Stow Creek in Cumberland County at any time. Additionally, a person shall not harvest horseshoe crabs from the beaches and shoreline and the adjacent waters and uplands in the back bay area near Thompson's Beach bordered by, but not including, Adlers Ditch and Riggins Ditch in Cumberland County.

(f) An individual shall not harvest or land horseshoe crabs that have been taken by any method other than by hand harvest. The use of any implement (nets, rakes, spears, shovels, forks, etc.) to assist hand harvest is prohibited. Hand harvest is permitted in areas other than specified in (e) above only on Tuesdays and Thursdays during the season established under (d) above.

(g) It shall be illegal to possess horseshoe crabs on any vessel while having in possession any harvest gear except miniature fykes, conch pots, lobster pots, fish pots or minnow pots. The simultaneous possession of horseshoe crabs and any other harvest gear except those listed shall be prima facie evidence of a violation of this section.

(h) The Commissioner, with the approval of the New Jersey Marine Fisheries Council, may modify the annual quota and/or season in this section by notice in order to maintain and/or to come into compliance with any fishery management plan approved by the Atlantic States Marine Fisheries Commission pursuant to 16 U.S.C. § 5104(b). The Department shall publish notice of any such modification by filing a notice of administrative change with the Office of Administrative Law for publication in the New Jersey Register and publishing notice of the modification in the Division's commercial regulation publication. All such notices shall be effective when the Department files the notice with the Office of Administrative Law or as specified otherwise in the notice.

(i) All horseshoe crab permit holders shall telephone the Division's designated telephone number for horseshoe crab harvest each Friday during the horseshoe crab season and report the number of horseshoe crabs harvested during the previous week. If no horseshoe crabs were harvested during the previous week, a telephone report to that effect shall be provided. Any person harvesting horseshoe crabs shall also provide monthly reports within five working days following the end of the reported month to the Department on forms supplied to the permit holder. The monthly report shall include the number of horseshoe crabs harvested, the area of collection and any other information as the Department may deem necessary for management of the horseshoe crab resource. If no horseshoe crabs were harvested during the month, a report to that effect shall be provided. The permittee

shall be personally responsible for guaranteeing the timely delivery of reports to the Division as well as the accuracy of all information contained therein. The Department may demand that a permittee provide proof of the truth of any data contained in any report submitted to the Division under this program. If the permittee fails to file a true, complete monthly report with the Division by the fifth day of any month, the Division, in its discretion, may contact the permittee by the most expeditious method available in order to secure a complete report.

(j) 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 suspension or revocation of the permittee's horseshoe crab harvesting privileges, according to the following procedures:

1. The Division shall notify the permittee in writing of the Division's intention to revoke the permittee's horseshoe crab harvesting privilege for the reasons stipulated in the notice, effective 20 business days after the date on the written notice (excluding the date on the notice) and of the Division's suspension of the permittee's horseshoe crab harvesting privileges in the interim, effective on a date

stipulated in the notice but not sooner than 10 business days after the date of the notice (excluding the date on the notice).

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.

Public Notice: Horseshoe crabs.

See: 37 N.J.R. 4074(a), 50666(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).

Requirement in N.J.A.C. 7:25-18.16(b) to report landings of horseshoe crabs means that the permit applicant must have reported that he or she actually landed horseshoe crabs during two years within the designated timeframe, and a report of "no landings" does not fulfill the regulatory requirement Cox v. N.J. Dep't of Env'tl. Prot., OAL Dkt. No. EFG 08159-03S, 2006 N.J. AGEN LEXIS 224, Final Decision (February 21, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 9) adopted, which concluded, based on credibility determinations, that a horseshoe crab permit

applicant had not shown that he had mailed a statement of horseshoe crabs landed for one of the two calendar years required under N.J.A.C. 7:25-18.16(b). The application was rejected despite his contention that he had mailed the report, nearly nine years prior. *Cox v. N.J. Dep't of Env'tl. Prot.*, OAL Dkt. No. EFG 08159-03S, 2006 N.J. AGEN LEXIS 224, Final Decision (February 21, 2006).

### 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.