

ii. Flashing amber lights must be displayed on the inshore and offshore poles of nets or rows of nets, between sunset and sunrise; these lights must be placed at least 10 feet above the mean high water level and must be of sufficient brightness to be visible for at least three miles in all directions (360 degrees) at such times and under such weather conditions as would allow visibility of 10 miles.

10. Submarine pound nets shall be maintained in compliance with the following additional requirements:

i. At least eight fluorescent orange floats, at least 12 inches in diameter, shall be maintained along the length of each net, including the inshore and offshore ends.

ii. The pound net license holder shall maintain a nameplate, not less than 12 inches square, on which shall be legibly marked the identification number of the pound, as assigned by the Department.

11. The license holder must completely remove all pound net poles and stakes, within ten months of the termination of fishing activities.

12. The pound net license holder will be responsible for the cost of pole and/or stake removal, where the Department accepts responsibility for such removal, due to the licensee's failure to comply with 11 above.

Amended by R.1984 d.439, effective October 1, 1984.

See: 16 N.J.R. 1866(a), 16 N.J.R. 2543(b).

Amended by R.1991 d.132, effective March 18, 1991.

See: 23 N.J.R. 37(a), 23 N.J.R. 848(b).

Lighting requirements affecting pound nets increased on (c)9 and (d)9ii.

Amended by R.1994 d.248, effective May 16, 1994.

See: 26 N.J.R. 291(a), 26 N.J.R. 2021(b).

7:25-18.3 Net identification tags

(a) Any identification tag furnished by the Division for a licensed net shall be displayed in a prominent and easily accessible place on such net.

(b) No identification tag furnished by the division may be counterfeited or transferred.

7:25-18.4 Spearfishing

It shall be lawful to take, catch, or kill all species of fish by means of spearfishing, during the respective open season, except for those species of fish specifically protected. For the purpose of this rule, spearfishing shall mean the taking of fish by means of a spear, harpoon, or other missile, or by hand, while completely submerged in the marine waters of the State.

Amended by R.1985 d.609, effective January 7, 1985.

See: 16 N.J.R. 2478(a), 17 N.J.R. 79(a).

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

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

7:25-18.5 General net regulations

(a) No person shall take, catch, kill or attempt to take, catch or kill any fish within the marine waters of the State by any means except in the manner commonly known as angling with hand line or with rod and line unless specifically permitted by statute or regulation.

(b) All stakes used in fyke nets, pound nets, parallel nets or gill nets shall be marked with at least one of the following which shall be placed at least two feet above mean high water and be visible from all sides:

1. Reflectors of not less than two inches in diameter;
2. Reflecting tape not less than two inches in width;
3. Light colored flags not less than two square feet; or
4. Light colored jugs or buoys not less than 12 inches in diameter.

(c) It shall be illegal to catch fish or attempt to catch fish by means of a rod and line or hand line, commonly called angling, within 300 feet of a set (operating) fish net as licensed pursuant to this section.

(d) It shall be illegal to set a fish net as licensed pursuant to this section within 300 feet of any person actively fishing with a rod and line or hand line, commonly called angling.

(e) All nets licensed pursuant to this section must be legibly and indelibly marked with the gear identification number of the owner.

(f) No person shall set, tend, tamper with or damage in any way or remove fish or other organisms from any net requiring a license without having in his possession the numbered license issued to said person which corresponds to the gear identification number marked on such net.

(g) Individuals intending to take fish with a net in the marine waters of this State pursuant to N.J.S.A. 23:5-24.2 shall, as required, apply to the Commissioner for a license and/or permit. To be eligible for a gill net license in 2003, an applicant 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 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 to which he 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 license not purchased by the new entrant will be forfeited. Individuals who applied to the gill net delayed entry program prior to July 13, 2000 and who obtained gill net licenses after the July 13th control date in 2000 or in 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. 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 eighth 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. A person shall not possess, purchase, sell, offer for sale or expose for sale any winter flounder less than 12 inches in length taken by fyke nets during the open season specified in (g)2v above.

viii. The Commissioner, with the approval of the New Jersey Marine Fisheries Council, may modify the fishing seasons and minimum size limits for winter flounder specified at (g)2v and vi above 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 in the Division's commercial regulation publication and the New Jersey Register.

ix. 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 fykes 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 three sixteenth inches bar, inside measurement. This 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.

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;

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.

iii. No person shall take more than 35 river herring (alewife and blueback herring in the aggregate) per day with any dip net, cast net, lift or umbrella net or bait seine; and

iv. The simultaneous possession of greater than 35 alewife or blueback herring in the aggregate and any dip net, cast net, lift or umbrella net or bait seine shall constitute prima facie evidence of the violation of this rule.

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;

iii. Drifting gill nets shall be used in the Atlantic Ocean only from February 12 through December 15. Drifting gill nets shall not be used in the Atlantic Ocean within 100 fathoms of the marked channel of any inlet. Drifting gill nets between 2.75 inches stretched mesh and 3.25 inches stretched mesh shall be subject to the permitting and reporting requirements specified in (g)5vii below, and

(1) Shall only be fished within two miles of the MHWL;

(2) Shall only be fished between the hours of sunrise and sunset;

(3) Shall be no higher than eight feet (off the bottom) while fishing; and

(4) A maximum of 200 fathoms per licensed fisherman shall be in the water at any one time;

iv. Drifting gill nets shall be used in the tributaries of Delaware Bay only for the season extending from February 12 through May 15 and July 15 through December 15;

v. Drifting gill nets shall be used in Delaware Bay only from February 12 through December 15, subject to the additional conditions specified in N.J.A.C. 7:25-18.12. For the purpose of this section, that portion of Delaware Bay defined by the New Jersey-Delaware boundary on the west, Loran C27180 on the east, and Loran C42830 on the north, during the period from May 15 through June 15, shall be known as the Brandywine Shoal Restricted Area.

(1) No more than two drifting gill nets shall be permitted to be set or operated within the Brandywine Shoal Restricted Area by any vessel.

(2) No more than one drifting gill net shall be permitted to be set or operated, nor shall any net be left unattended, within the Brandywine Shoal Restricted Area by any vessel at night (from sunset to sunrise) or on any public holiday as specified at N.J.S.A. 36:1-1 or weekend. For the purpose of this section, "unattended" means that set of circumstances where the operator is more than 100 feet from the nearest portion of his net.

vi. The drifting gill net resident fee shall be \$20.00 per net.

vii. Individuals utilizing drifting, staked or anchored gill nets less than 3.25 inches stretched mesh in the Atlantic Ocean or in the Delaware Bay after February 29 in any calendar year shall possess a Gill Net Mesh Exemption Permit.

(1) An individual shall apply annually for the permit.

(2) All permittees shall submit monthly reports of their catch and effort and other information as may be determined by the Department on forms provided by the Department. These reports shall be filed with the Division no later than 10 calendar days after each monthly reporting period. If no fishing activity was conducted under this permit during the month, a report to that effect shall be provided. Gill Net Mesh Exemption permittees 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 15th 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.

(3) If the Division is unable to secure a true, complete monthly report from the permittee by such informal means or the Division has credible evidence that the data on any report is false, the Division shall notify the permittee in writing of the Division's intention to revoke the permittee's Mesh Exemption 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 Mesh Exemption privileges in the interim, effective on a date stipulated in the notice but no sooner than 10 business days after the date of the notice (excluding the date on the notice).

(4) The permittee may request a hearing to contest a proposed revocation of Mesh Exemption 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 Mesh Exemption privileges shall be revoked as of the date stipulated in the notice, without any further action by the Division.

(5) The Division Director may, in his or her sole discretion, stay the suspension of Mesh Exemption privileges pending a hearing on the notice of proposed revocation of Mesh Exemption 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.

(6) The Division shall reinstate Mesh Exemption privileges suspended for late or incomplete reports, but no more than three times 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.

(7) Any permittee who has had a Mesh Exemption privilege revoked shall be disqualified from exercising any privilege associated with a Mesh Exemption permit for 24 months following:

(A) The effective date of an uncontested notice of proposed revocation of privileges;

(B) The date of the Commissioner's Final Decision affirming revocation of Mesh Exemption privileges; or

(C) The filing date of the court order affirming the Commissioner's Final Decision revoking Mesh Exemption privileges, whichever is applicable.

(8) The Division shall issue a Mesh Exemption permit to an applicant pending resolution of a contested Division proposal to revoke that applicant's Mesh Exemption privilege, but that permittee shall not exercise or enjoy any Mesh Exemption privilege if the Division has already suspended that permittee's Mesh Exemption privilege pending resolution of a proposed revocation until:

(A) The Division Director lifts the suspension of that permittee's Mesh Exemption privileges;

(B) The Commissioner issues a Final Decision reinstating that permittee's Mesh Exemption privileges; or

(C) A court of competent jurisdiction orders reinstatement of that permittee's Mesh Exemption privileges, as the case may be.

6. Staked and anchored gill nets shall be used only in the Atlantic Ocean, Raritan Bay, Sandy Hook Bay, and the Delaware Bay and its tributaries. No unattended, overnight staked or anchored gill net shall be set in the Atlantic Ocean from June 15 through October 31. No unattended, overnight anchored gill net shall be set in Delaware Bay from June 15 through September 30. For the purpose of this section, "unattended" means that set of circumstances where the operator is more than $\frac{1}{2}$ nautical mile (3,040 feet) from the nearest portion of his net. Staked or anchored gill nets shall not be fastened together to form a series of net exceeding 400 fathoms in length from the beginning of the season through May 15 or exceeding 200 fathoms in length beginning May 16 through December 15, subject to the additional conditions specified in N.J.A.C. 7:25-18.12.

i. Separate staked or anchored gill nets or a series of joined staked or anchored gill nets shall not be set closer than 20 fathoms from any other net or series of nets;

ii. Separate staked or anchored gill nets or a series of joined staked or anchored 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 marker. A white float measuring at least eight inches in diameter shall be located approximately 20 feet inside of each end marker;

iii. Staked and anchored gill nets may be used in the Atlantic Ocean for any species except those specifically protected only beginning February 12 through December 15, where individual gill net length shall not exceed 50 fathoms. The smallest mesh of any such net used in the Atlantic Ocean shall not be less than five inches stretched beginning February 12 through February 29 and not less than 3.25 inches stretched beginning March 1 through December 15. Staked or anchored gill nets shall not be used in the Atlantic Ocean within 100 fathoms of the marked channel of any inlet;

iv. Staked and anchored gill nets shall be used only for shad in the Raritan Bay or Sandy Hook Bay and only beginning February 1 through May 15, where individual gill net length shall not exceed 30 fathoms. The smallest mesh of any such net used in Raritan Bay

or Sandy Hook Bay shall not be less than five inches stretched;

v. Staked gill nets may be used in the tributaries of Delaware Bay for any species except those specifically protected only beginning January 1 through May 15 and July 15 through December 15, where individual gill net length shall not exceed 30 fathoms. The mesh of any such net used in the tributaries of Delaware Bay shall not be less than 2.75 inches stretched nor greater than 3.25 inches stretched beginning January 1 through February 29 and no mechanical means shall be utilized to retrieve such net. The mesh of any net shall not be less than 2.75 inches from March 1 through May 15 and July 15 through December 15. No net shall be set across the middle one third of any tributary or the mouth of any tributary, nor shall any net be set in a manner that impedes navigation;

vi. Staked gill nets may be used in Delaware Bay only from February 1 through December 15, except as further defined by statute and/or rule. Individual staked gill net length shall not exceed 30 fathoms. The mesh of any such net used in Delaware Bay shall be 2.75 inches stretched beginning February 1 through February 29 except that staked gill nets of a mesh not less than 2.75 inches stretched or greater than 3.25 inches stretched may be used within one half nautical mile of the MHWL from January 1 through February 29 provided no mechanical means are utilized to retrieve such nets. From March 1 through December 15 the smallest mesh of any staked gill net shall not be less than 3.25 inches stretched except within two nautical miles of the mean high water line where the smallest mesh shall not be less than 2.75 inches stretched and subject to the permitting and reporting requirements specified in (g)5vii above and N.J.A.C. 7:25-18.12. Staked gill nets shall not be used in that portion of Delaware Bay known as the Brandywine Shoal Restricted Area as defined in (g)5v above;

vii. The use of anchored gill nets is permitted in the tributaries of Delaware Bay for any species, except those specifically protected, only beginning January 1 through May 15 and July 15 through December 15, where individual gill net length shall not exceed 30 fathoms. The mesh of any such net used in the tributaries of Delaware Bay shall not be less than 2.75 inches stretched nor greater than 3.25 inches stretched beginning January 1 through February 29 and no mechanical means shall be utilized to retrieve such net. The mesh of any net shall not be less than 2.75 inches from March 1 through May 15 and July 15 through December 15. No net shall be set across the middle one third of any tributary or mouth of any tributary, nor shall any net be set in a manner that impedes navigation;

viii. The use of anchored gill nets is permitted in the Delaware Bay only from February 1 through De-

ember 15, except as further defined by statute and/or rule. Individual anchored gill net length shall not exceed 30 fathoms. The smallest mesh of any such net used in the Delaware Bay shall not be less than five inches stretched beginning February 1 through February 29 except that anchored gill nets of a mesh not less than 2.75 inches stretched or greater than 3.25 inches stretched may be used within one half mile of the mean high water line from January 1 through February 29 provided no mechanical means are utilized to retrieve such nets. From March 1 through December 15 the smallest mesh of any anchored gill net shall not be less than 3.25 inches stretched except within two nautical miles of the mean high water line where the smallest mesh shall not be less than 2.75 inches stretched and subject to the additional conditions specified in N.J.A.C. 7:25-18.12. Anchored gill nets shall not be used in that portion of the Delaware Bay known as the Brandywine Shoal Restricted Area as defined in (g)5v above;

ix. The staked and anchored gill net resident fee shall be \$3.00 per net.

7. Pound nets shall have a mesh not smaller than two inches stretched and may be used for all species except those specifically protected. These nets shall be used only in Raritan Bay, Sandy Hook Bay, Delaware Bay and the Atlantic Ocean.

i. The pound net season shall begin on February 15 and end on May 15 in the Delaware Bay and begin on January 1 and end on December 31 in all other areas;

ii. The pound net resident fee shall be \$100.00 per net.

8. Wire pound nets shall not extend into the Delaware Bay further than 300 feet from the mean low water mark nor 300 feet from the outside of the flats which fall bare at low water and may be set and used in the Delaware Bay only.

i. The wire pound net season shall begin on March 1 and end on December 31.

ii. The wire pound net resident fee shall be \$25.00 per net.

9. Parallel net may be used to take carp, catfish and suckers only and shall be used only in Delaware Bay and its tributaries. Parallel nets shall have a mesh not smaller than 3.5 inches stretched and not exceed 100 fathoms in length. They shall be set approximately parallel to the shore and only at the low water mark. No net shall be set across any tributary or mouth of any tributary, nor shall any net be set in a manner that impedes navigation.

i. The parallel net season shall begin on September 1 and end on May 31;

ii. The parallel net resident fee shall be \$10.00 per net.

10. Shrimp trawls shall be used for the taking of grass shrimp (*Palaemonetes* spp.) or sand shrimp (*Crangon* spp.) only. Any organisms other than these shrimp taken with a shrimp trawl shall immediately be returned to the waters from which such organisms were taken. The internal opening of the trawl shall have a maximum width of 60 inches and a maximum height of 12 inches. The mesh of the net shall not be greater than one-half inch stretched. No boat shall have more than two trawls working at the same time, and each trawl shall be independently and separately attached to the vessel by a single cable or tow line.

i. The shrimp trawl season shall begin on April 15 and end on December 15;

ii. The shrimp trawl resident fee shall be \$12.00 per net.

11. Lobster or fish pots may be used for the taking of all species except those specifically protected and pursuant to the specific requirements of N.J.A.C. 7:25-14.13 through 14.20 and shall be used only in the Atlantic Ocean, Delaware Bay, Raritan Bay and Sandy Hook Bay except as provided on (g)11ix below.

i. To be eligible for a lobster or fish pot license in 2003, an applicant must provide a copy of a previously valid New Jersey lobster or fish pot license held by the applicant in one of the years from 1995 through h 31, 2002. To be eligible for a lobster or fish pot license in all subsequent years, an applicant must provide a copy of a previously valid lobster or fish pot license held by the applicant from the preceding year.

(1) No additional lobster or fish pot licenses shall be issued until the number of licenses decreases below the number issued in 2003.

(2) Applications for a license shall be available from the Department; and successful applicants shall be chosen by lottery, if necessary, from all completed applications received by the Department. When additional licenses are available, unsuccessful applicants from the previous lottery will be given the first right to the license provided they purchase a license within 30 days of being notified by the Department. Notification by the Department shall be by first class mail. It is the responsibility of the applicant to provide the Department with written notification of any change in mailing address. Once a lottery list is exhausted, the Department shall notify commercial docks and fishing organizations as to the availability of licenses.

(3) The holder of a valid lobster or fish pot license not pending revocation or court action due to violation of provisions of this subchapter may transfer the right to the license at any time, upon application to the Department. The new licensee shall have a license issued in his or her name after payment of the fee specified at (g)11xi below and pursuant to the specific requirements of N.J.A.C. 7:25-14.13 through 14.20.

(4) Applicants for a fish and lobster pot license to recreationally take lobster pursuant to N.J.A.C. 7:25-14.6(a)1iv shall be exempt from this subsection. Fish and lobster pot licenses issued pursuant to N.J.A.C. 7:25-14.6(a)1iv for 2003 and subsequent years shall be used only for the purpose of harvesting not more than six lobster per licensee per day.

(5) Fish and lobster pots issued pursuant to N.J.A.C. 7:25-14.6(a)1iv shall not be included in the total of fish and lobster pot licenses identified in (g)11i(1) above.

ii. All lobster and fish pots shall have a maximum size less than a volume equivalent to 22,950 cubic inches (376,082 cubic cm) when deployed in the waters as specified in (g)11 above, except as provided in (g)11ix below.

iii. Any fish or lobster pot license holder shall have priority in retaining the same license number previously issued to him or her provided that he or she has submitted a license application requesting the previously issued license number prior to March 1 of the current year and that the license number applied for was assigned to an active license not more than two years prior to the application;

iv. Effective January 1, 1986, each fishing vessel subject to this regulation must display its license number on the port and starboard sides of the deckhouse or hull and on an appropriate weather deck so as to be visible from above. The license number affixed to each vessel subject to this paragraph must be of block Arabic numerals at least 10 inches in height and of a color contrasting the background;

v. Effective January 1, 1986, all lobster or fish pots or traps and associated buoys and other gear deployed in the salt waters of this State and not permanently attached to the vessel must be legibly and indelibly marked with one of the following codes of identification:

- (1) The State lobster or fish pot gear identification number; or
- (2) The full name and address of the State lobster or fish pot license holder.

vi. No person other than the license holder shall remove fish or lobsters from any pot or trap. Anyone tending fish or lobster pots or traps after January 1, 1986, shall have in his or her possession the numbered license which corresponds to the gear identification number on the vessel and the gear identification number or name and address affixed to the pots and buoys being tended. The license must be displayed for inspection upon request of any authorized officer. No one shall cut or break the lines or otherwise tamper with or damage any pot, trap, or buoy which he or she does not own;

vii. All lobster and fish pots shall be constructed to include one of the following escape vents in the parlor section of the pot located in such a manner that it would not be blocked or obstructed in normal use by any portion of the pot, associated gear, or the sea floor:

(1) In a fishery in which the possession of lobster on board a vessel or landed from a vessel exceeds 100 lobsters per trip day (based on a 24-hour period) up to a maximum of 500 lobster per trip for trips of five days or longer, the escape vent(s) shall be not less than:

(A) A rectangular portal with an unobstructed opening not less than 1.9375 inches (49.2 mm) by 5.75 inches (146.0 mm). Effective July 1, 2003 the unobstructed opening shall be increased to not less than 2 inches (50.8 mm) by 5.75 inches (146.0 mm); or

(B) Two circular portals with unobstructed openings not less than 2.4375 inches (61.9 mm) in diameter. Effective July 1, 2003 the diameter of the two circular portals shall be increased to not less than 2.5 inches (63.5 mm);

(2) In a fishery in which the possession of more than 100 pounds of scup on board a vessel or landed from a vessel occurs, the escape vent(s) shall be not less than:

(A) A rectangular portal with an unobstructed opening not less than 2.25 inches (57.2 mm) by 2.25 inches (57.2 mm); or

(B) A circular portal with an unobstructed opening not less than 3.1 inches (78.7 mm) in diameter.

(3) In a fishery in which the possession of black sea bass on board a vessel or landed from a vessel occurs, the escape vent(s) shall be not less than:

(A) A square portal with an unobstructed opening not less than 2.0 inches (50.8 mm) by 2.0 inches (50.8 mm);

(B) A rectangular portal with an unobstructed opening not less than 1.375 inches (34.9 mm) by 5.75 inches (146.0 mm); or

(C) A circular portal with an unobstructed opening not less than 2.375 inches (60.3 mm) in diameter.

(4) In a fishery in which more than one of the escape vents listed in (g)11vii(1) through (3) above is applicable, the pots shall be constructed with the largest of the applicable escape vents.

viii. All lobster and fish pots shall be constructed to include a ghost panel or other mechanism which is designed to create an opening to allow the escape of lobsters and fish after a pot has been abandoned or lost, and which meets the following specifications:

(1) The opening covered by the panel or created by other approved mechanism shall be located in the outer parlor section(s) of the pot, shall be in a position which allows the unobstructed exit of lobsters or fish from the pot and shall be of the following dimensions:

(A) Not less than 3.75 inches (95.25 mm) by 3.75 inches (95.25 mm), or

(B) Not less than three inches (76.2 mm) by six inches (152.4 mm) when used in a fishery in which the possession of black sea bass on board a vessel or landed from a vessel occurs.

(2) The panel shall be constructed of, or fastened to the pots with, one of the following materials: untreated wood lath; untreated cotton, hemp, sisal or jute twine not greater than $\frac{3}{16}$ inch (4.76 mm) in diameter; non-stainless, ungalvanized, uncoated ferrous metal not greater than $\frac{3}{32}$ inch (2.4 mm) in diameter; or magnesium alloy, timed float release (pop-up device), or similar magnesium alloy fasteners;

(3) The door of the pot may serve as the ghost panel if the door is fastened to the pot with a material specified in (g)11viii(2) above;

(4) The escape vent specified in (g)11vii above may serve as a ghost panel if the escape vent is incorporated into a panel constructed of, or attached to the pot with, a material specified in (g)11viii(2) above, and, upon breakdown of the degradable materials, will create an opening of at least the dimensions specified in (g)11viii(1)(A) and (B) above for the exit of lobster and fish; and

(5) Pots constructed entirely or partially of wood shall be considered to be in compliance with this subparagraph if constructed of wood lath to the extent that deterioration of wooden component(s) will result in an unobstructed opening as specified in (g)11viii(1)(A) and (B) above.

ix. A modified lobster or fish pot may be used for the taking of conchs or whelks in all marine waters of the State including the Atlantic Ocean with the exception of the Newark Bay Complex.

(1) Any such conch pot is defined as a rectangular shaped device no larger than 30 inches on any side; or a cylindrical shaped device not greater than 34 inches in diameter and 30 inches in height. Conch pots must allow for an unobstructed opening on their top surface measuring not less than eight by eight inches square or nine inches in diameter. Conch pots using horseshoe crabs as bait must contain a bait-saving device containing a horseshoe crab or parts of a horseshoe crab as bait which, by design, extends the effective fishing time of the horseshoe crab bait in the water. Conch pots cannot contain a parlor, funnel, or other entrapping mechanism in the interior of the pot. Any similar configuration may be approved for use upon application to the Division and receipt of written approval. Such applications must contain a diagram detailing the shape and dimensions of the requested conch pot configuration.

(2) Conch pots may be tended only from 0400 hours (4:00 A.M.) to 2100 hours (9:00 P.M.).

(3) No conch pot shall be placed in a creek, ditch or tributary less than 50 feet wide at mean low water, in any marked or charted channel or in any man-made lagoon;

x. The lobster or fish pot season shall begin on January 1 and end on December 31;

xi. The resident fee for lobster or fish pots shall be \$100.00 regardless of the number of pots employed.

12. Shad nets for the Hudson River shall be held in place by either stakes or anchors and shall not exceed 200 fathoms in length. The smallest mesh of any shad net shall not be less than five inches stretched.

i. Shad 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 square and suspended at least two feet above the mean high waterline.

ii. Shad nets shall be used in the Hudson River for the taking of shad only.

(h) Nonresident license fees shall be the same as resident fees established in this section if a resident of this State may obtain a license to fish for similar species of fish with similar gear in the nonresident applicant's state for the same fee as a resident of that state. Otherwise, the license fee for a nonresident is 10 times the license fee charged to a resident.

(i) The Commissioner, with the approval of the New Jersey Marine Fisheries Council, may modify seasons, mesh sizes, maximum net lengths, species allowed to be harvested by specific gear types, escape vent sizes, ghost panel sizes and acceptable materials for fastening ghost panels to pot and traps 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 Department shall publish notice of any such modification in the Division's commercial regulation publication and as a notice of administrative change in the New Jersey Register.

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

Substantially amended.

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

Amended (g)4.

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

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

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

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

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

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

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

Further eligibility qualifications for certain fishing with nets added at (g); specifications regarding the tributaries of the Delaware Bay.
Amended by R.1992 d.449, effective November 16, 1992.

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

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

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

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

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

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

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

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

Administrative correction.

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

Administrative correction.

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

Administrative change.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Administrative change.

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

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

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

Rewrote (g).

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

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

In (g)11ix(1), inserted a new third sentence.

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

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

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

(c) No new Delaware Bay commercial or non-commercial gill net permits shall be issued after August 2, 1991 until the combined number of Delaware Bay commercial and non-commercial gill net permits falls below either 800 for staked or anchored gill nets or 200 for drifting gill nets, except as provided in (c)1 below.

1. Individuals returning from active military service after August 2, 1991, who were on active duty during the application period (June 3, 1991 through August 2, 1991) and who meet the requirements in N.J.A.C. 7:25-18.7(a) or (b) below, shall have 60 days from their date of discharge to apply for a permit to cover the number of licenses for which they qualify, upon submission of official documentation indicating duration of military service and date of discharge and a notarized statement from the applicant that said documentation is accurate.

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

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

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

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

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

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

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

(b) To be eligible for a Type B Delaware Bay commercial gill net permit during the 60-day period following June 3, 1991 allowing the use or possession on the waters of the Delaware Bay or its tributaries of no more than two drifting gill nets and/or up to six staked or anchored gill nets, the applicant shall, as part of the applicant's application for a commercial gill net permit document that the applicant sold a minimum of 5,000 pounds of fish or 250 bushels of crabs or any combination thereof where one bushel of crabs is equal to 20 pounds of fish in any one year from 1985 through 1990.

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

(d) The application period closes April 2, 1993. Therefore, the Commissioner will determine an annual quota of Atlantic sturgeon (in pounds dressed) that may be harvested for each qualified applicant based upon the following:

1. The total allocation for the directed Atlantic sturgeon gill net fishery in 1993 shall equal the 1990 documented dressed weight landings provided by applicants on their applications, to be divided in the following way:

i. Applicants providing documentation of having purchased a minimum of 10 nine-inch or greater stretched mesh gill nets between January 1, 1989 and January 10, 1991 shall receive an equal share of 10 percent of the total gill net allocation, not to exceed 3,000 pounds each or;

ii. Applicants providing documentation of landings of at least 1,000 pounds dressed weight of Atlantic sturgeon during any one of the years 1988, 1989 or 1990 shall receive a minimum base of 3,000 pounds dressed weight plus a percentage of the remaining allocation determined as follows:

(1) Each applicant shall document to the Department the dressed weight of Atlantic sturgeon landed during 1988, 1989, or 1990, whichever year he landed the greatest dressed weight. The Department will divide the individual dressed weight documented by each applicant by the total amount documented by all applicants under this sub-subparagraph (d)1ii(1) to obtain each applicant's percentage of the remaining allocation.

(e) All qualified applicants will receive an "Atlantic Sturgeon Commercial Gill Net Permit" by May 2, 1993 which shall indicate that permittee's annual (calendar year) quota of Atlantic sturgeon that may be commercially harvested.

(f) An Atlantic Sturgeon By-Catch Permit and a harvest quota will be issued to each qualifying applicant who provides documentation of Atlantic sturgeon landed in New Jersey by otter trawl or pound net of at least 1,000 pounds dressed weight during any one of the years 1988, 1989, or 1990. The Atlantic Sturgeon By-Catch shall not exceed 5.8 percent of the State allocation for Atlantic sturgeon. This represents the percentage of Atlantic sturgeon landed in New Jersey by otter trawl and pound net in 1990 as reported by the National Marine Fisheries Service. To qualify for an Atlantic Sturgeon By-Catch Permit, an applicant shall comply with (f)1 through 4 below by March 23, 1995:

1. The applicant shall complete an application, provided by the Department, listing the dressed weight of Atlantic sturgeon he or she landed by otter trawl or pound net during any one of the years 1988, 1989, or 1990, whichever year the applicant landed the greatest dressed weight.

2. The applicant shall attach documented proof of the dressed weight of Atlantic sturgeon harvested by otter

trawl or pound net during any one of the years 1988, 1989, or 1990, whichever year the applicant landed the greatest dressed weight. Such proof shall consist of one or more of the following:

i. Weigh-out slips totaling the dressed weight harvested;

ii. A notarized statement from the applicant and the purchaser(s) attesting to the dressed weight harvested (records must be verifiable based upon inspection of the purchaser's business records);

iii. Other documentation similar to that specified in (f)2ii above may be accepted at the discretion of the Department.

3. The application period closes March 23, 1995.

4. By April 22, 1995, each qualified applicant will receive an "Atlantic Sturgeon By-Catch Permit" which shall indicate that permittee's annual (calendar year) harvest quota of Atlantic sturgeon that may be landed.

(g) The Department will issue serially numbered Atlantic sturgeon possession tags to each Atlantic sturgeon commercial gill net and by-catch permittee based upon the permittee's annual harvest quota percentage established pursuant to (d) and (f) above and an equivalent average weight per fish landed as determined through average weigh-out landing verifications. No person shall reuse or alter any tag, or use a broken tag. All unused tags must be returned to the Department by January 15 of the following year. Tags will be issued for each calendar year by February 15.

(h) An Atlantic sturgeon commercial gill net or Atlantic sturgeon by-catch permittee who takes and possesses an Atlantic sturgeon of legal size shall tag such sturgeon with a numbered tag issued by the Department. Such tag shall be attached and securely locked at the nape of the fish once such fish has been dressed and prior to tending another piece of gear. All Atlantic sturgeon not tagged or of less than the legal minimum size shall be returned uninjured to the water immediately.

(i) The possession of Atlantic sturgeon of a length less than 60 inches or a dressed length less than 36 inches is prohibited. Dressed length is the length of an Atlantic sturgeon after the entire head, collar, tail and viscera have been removed.

(j) All Atlantic Sturgeon Commercial Gill Net and Atlantic Sturgeon By-Catch Permit holders shall have their permit on their person at all times when engaged in any phase of harvesting, transporting, selling or possessing Atlantic sturgeon.

(k) All Atlantic sturgeon harvested under the Atlantic Sturgeon Commercial Gill Net Permit or Atlantic Sturgeon By-Catch Permit shall be landed in New Jersey.

(l) All permittees shall be required to complete annual reports on forms supplied by the Department. The annual 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 January 15 of the next subsequent calendar year at the following address:

Division of Fish and Wildlife
Atlantic Sturgeon Program
PO Box 418
Port Republic, NJ 08241-0418

1. The annual report shall include:

i. The daily harvest and sale of Atlantic sturgeon (in pounds dressed) and possession tag number for each fish landed;

ii. The buyer(s) name;

iii. Name(s) and address(es) of the permit holder(s) who landed an Atlantic sturgeon that was tagged with the permittee's transferred possession tag;

iv. The cumulative total of Atlantic sturgeon (in pounds dressed) landed at the end of the year;

v. Weigh out slips or sales receipts verifying the amount (in pounds dressed) of Atlantic sturgeon sold; and

vi. Any other requested information pertinent to management of the Atlantic sturgeon resource including catch/effort data, length and sex data, by-catch data, and tagging information from a representative size range of Atlantic sturgeon.

(m) Adjustments in individual allocation for any calendar year subsequent to 1993 may be made annually by the Department, based upon recommendations of the Atlantic States Marine Fisheries Commission, annual commercial landings data from the National Marine Fisheries Service and an individual's historical harvest performance. If no such adjustment is made, each permittee's quota shall remain at the previous year's amount.

(n) Research personnel from the Department shall be allowed to sail aboard any permitted vessel at any time.

(o) Any person or permittee 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:

1. Failure to submit the application within 45 days of the effective date of this section or to attach the required documentation to the application will result in the denial of the permit.

2. Falsification or misrepresentation of any information on the application including documentation provided to verify the amount of Atlantic sturgeon harvested or number and size of gill nets purchased shall result in the denial or revocation of the permit in addition to any civil or criminal penalties prescribed by law.

3. Failure to comply with the provisions of (a), (h), or (l) above shall subject the violator to suspension or revocation of the Atlantic Sturgeon Commercial Gill Net Permit or the Atlantic Sturgeon By-Catch Permit.

4. Prior to the suspension or 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.

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).

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. 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 prohibition.

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 shall be no more than 150,000 horseshoe crabs 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.

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.)

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.