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ENVIRONMENTAL PROTECTION

NATURAL AND HISTORIC RESOURCES

DIVISION OF FISH AND WILDLIFE

Crab and Lobster Management

Marine Fisheries

Fishery Management in New Jersey

Proposed: March 1, 2021, at 53 N.J.R. 297(a).

Adopted: November 8, 2021, by Shawn M. LaTourette, Commissioner, Department of Environmental Protection.

Filed: November 10, 2021, as R.2021 d.142, **with non-substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 23:2B-1 et seq., 23:3-1 et seq., and 23:3-51 et seq.

DEP Docket Number: 1-21-1.

Effective Date: December 20, 2021, at 53 N.J.R. 2139(a).

Expiration Date: May 11, 2028.

The Department of Environmental Protection (Department) is adopting amendments to N.J.A.C. 7:25-14.4, 14.19, 18.1, 18.5, 18.12, 22.1, 22.3, and 22.7 regarding Marine Fisheries, Crab and Lobster Management, and Fishery Management in New Jersey. Additionally, the Department is adopting new rules at N.J.A.C. 7:25-22.2, 22.3, 22.5, 22.6, 22.8, and 22.9 to establish new management measures for the commercial Atlantic menhaden fishery. As discussed below, the Department is not adopting the proposed amendments at N.J.A.C. 7:25-18.1(c)2 regarding the use of circle hooks in the shark fishery.

The Department is adopting amendments at N.J.A.C. 7:25-14.4 and 14.19 to reduce the number of commercial crab pot/trot line licenses and crab dredge licenses, for both the Delaware Bay and the Atlantic Coast due to a reduction in the number of actively harvesting license holders and allow licensees to transfer those licenses to any person, based upon the number of available licenses.

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Additionally, the Department is adopting amendments at N.J.A.C. 7:25-14.19, 18.1, 18.5, and 18.12 to enable the Commissioner of the Department (Commissioner), with the approval of the New Jersey Marine Fisheries Council (Council), to modify certain fishery management measures by notice to remain in compliance with the mandated fishery management plans, as approved by the Atlantic States Marine Fisheries Commission (ASMFC), the Mid-Atlantic Fishery Management Council (MAFMC), the New England Fishery Management Council, the South Atlantic Fishery Management Council, or the National Marine Fisheries Service (NMFS).

The proposed substantive amendments at N.J.A.C. 7:25-18.1(c)2 are not being adopted. The amendments were proposed to maintain compliance with the NMFS rule requiring the use of non-stainless steel, non-offset, corrodible circle hooks for all anglers targeting sharks. However, the proposed amendments incorporated the NMFS requirements for circle hooks, which apply only to anglers fishing in Federal waters or highly migratory species (HMS) permit holders. Shore-based anglers and other anglers targeting sharks within State waters are not required to obtain an HMS permit. Therefore, the Department determined that adoption of the substantive amendments at N.J.A.C. 7:25-18.1(c)2 would not bring New Jersey into compliance since the amendment would exclude anglers without HMS permits or those fishing in State waters. The two technical changes are still adopted.

Lastly, the Department is making non-substantial, technical changes to the provisions applicable to the recreational harvest of striped bass at N.J.A.C. 7:25-18.1(h)4 to require the use of non-offset circle hooks in all New Jersey waters while recreationally fishing for striped bass with bait to maintain compliance with the ASMFC's Striped Bass Interstate Fishery Management Plan, described further below.

The rule adoption can be viewed or downloaded from the Department's website at <http://www.state.nj.us/dep>.

Summary of Public Comments and Agency Responses:

The following individuals timely submitted comments on the proposal:

1. Robert Belsky
2. Ron Golden
3. Paul Haertel, Jersey Coast Anglers Association
4. Craig McIlrath
5. James McLaughlin
6. Jared O'Neal
7. Zigurds Zingis

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A summary of the timely submitted comments and the Department's responses follows. The number(s) in parentheses after each comment identifies the commenter(s) listed above.

Atlantic Menhaden Fishery

1. COMMENT: The survival of the Atlantic menhaden stock is important. If it declines to critical levels, there will be negative consequences for striped bass, bluefish, and tuna stocks. It would also be disastrous for local recreational and commercial fishing. (1)

2. COMMENT: The proposed new rules and amendments to establish new management measures for the commercial Atlantic menhaden fishery are supported. The preservation of menhaden is critical for all foraging fish. (7)

RESPONSE TO COMMENTS 1 AND 2: The Department acknowledges the comments in support of the proposed amended and new rules. The State is responsible for the effective management of its fishery resources. The Department agrees that sustainable Atlantic menhaden stock levels are an important part of effective fishery management, and, therefore, has prioritized this adoption accordingly.

Striped Bass

3. COMMENT: The proposed amendments requiring the use of non-offset circle hooks while recreationally fishing for striped bass with bait are fully supported. (7)

RESPONSE: The Department acknowledges the comments in support of the proposed amended rules. The Department has proposed amendments at N.J.A.C. 7:25-18.1(h) to require the use of non-offset circle hooks in all New Jersey waters while recreationally fishing for striped bass with bait to maintain compliance with the Striped Bass Interstate Fishery Management Plan.

4. COMMENT: The proposed amendments requiring non-offset circle hooks while recreationally fishing for striped bass with bait are not supported. Curved circle hooks are a better option to prevent gut-hooking a fish. Striped bass are not gut-hooked using a curved circle hook because the fish turn on an angle after grabbing the bait. (2)

RESPONSE: The use of circle hooks by anglers targeting striped bass with bait has been identified as a method to reduce the discard mortality of striped bass in recreational fisheries. When a circle hook begins to exit the mouth of a fish, the shape causes the shaft to rotate towards the point of resistance and the barb is more likely to embed in the jaw or corner of the fish's mouth. Circle hooks can reduce rates of "gut-hooking" and lower the likelihood of puncturing internal organs if the hook is swallowed.

The Department is adopting a definition of "circle hook" that specifies "a non-offset hook where the point is pointed perpendicularly back towards the shank," and "non-offset" as "the point and

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barb are in the same plane as the shank." A circle hook that meets the Department's definition may be used to recreationally fish for striped bass.

5. COMMENT: The Department's proposed definition of bait that would require the use of circle hooks while fishing for striped bass fishing as "any living or dead animal or plant, or parts thereof" is overly restrictive. This would prevent the use of feathers and bucktails on flies and jigs and would also prohibit the use of pork rind. Recently, the ASMFC adopted a broader definition that defined "bait requiring a circle hook" as "any marine or aquatic organism, live or dead, whole or parts thereof" and provides an exemption for any artificial lure with bait [page=2140] attached. The Department is urged to adopt the broader definition of bait, as well as the other requirements that have been mandated by the ASMFC regarding the use of circle hooks for striped bass. (3)

RESPONSE: The Department has considered the ASMFC's modified definition of bait and agrees with the commenter. Accordingly, the Department is making non-substantial, technical changes to comply with the approved ASMFC circle hook implementation plan and guidance requiring release of incidentally-caught striped bass.

In October 2020, the ASMFC's Atlantic Striped Bass Management Board approved a definition of "bait," and it was that definition that was reflected in the notice of proposal at N.J.A.C. 7:25-18.1(h)4 (see 53 N.J.R. 303 for discussion of the proposed amendment and the applicable fishery management plan). Subsequent to the publication of the Department's notice of proposal (see 53 N.J.R. 297(a)), the ASMFC modified its definition of "bait" as "any marine or aquatic organism live or dead, whole or parts thereof" and provided an exemption for any artificial lure with bait attached. The modified definition limits the type of bait requiring the use of a circle hook to marine or aquatic organisms, thereby allowing fishermen to use terrestrial organisms or other organic matter for bait, such as earth worms, or for attractants on artificial lures, such as feathers, bucktails, and pork rind. This modification was in response to public comment regarding differing interpretations of the type of bait that requires the use of a circle hook, as well as concerns that requiring circle hooks for some fishing methods that incorporate bait would be unnecessarily restrictive and provide little conservation benefit. Fishing with artificial lures with attached bait typically does not lead to gut-hooking or an increase in mortality. Additionally, the ASMFC issued guidance in March 2021, encouraging states to require the immediate release of striped bass that are incidentally caught (see http://www.asmfc.org/uploads/file/60b7bf2bStripedBassAddendumVI_Am6_RevisedMay2021.pdf). Thus, the Department is also changing N.J.A.C. 7:25-18.1(h)4 in accordance with ASMFC's March 2021 guidance.

6. COMMENT: The Department's proposed amendment to require the use of non-offset circle hooks in all New Jersey waters while recreationally fishing for striped bass with bait will not adequately manage the striped bass fishery. A more stringent measure is necessary, such as a requirement to release all striped bass caught on J-hooks. Such a measure would go further by

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requiring the release of all striped bass caught on J-hooks with artificial lures or on J-hooks without bait. The ASMFC Striped Bass Management Board has failed to manage striped bass by incrementally restricting recreational striped bass fishing without successfully managing the stock. Implementing the Department's proposed amendment supposes a J-hook is a more lethal method of fishing. As a result of this supposition, more striped bass are unnecessarily killed. Regardless of how a J-hook gets into a striped bass's internal organs, the result will be mortality. By taking more aggressive measures now, New Jersey can stop the endless meager striped bass recreational fishing regulation restrictions, which have failed miserably. (4)

RESPONSE: The Department has proposed amendments at N.J.A.C. 7:25-18.1(h) to require the use of non-offset circle hooks in all New Jersey waters while recreationally fishing for striped bass with bait to maintain compliance with the Striped Bass Interstate Fishery Management Plan. The use of circle hooks by anglers targeting striped bass with bait has been identified as a method to reduce the discard mortality of striped bass in recreational fisheries. When fishing for striped bass with bait, using circle hooks can reduce rates of "gut-hooking" and lower the likelihood of puncturing internal organs if the hook is swallowed.

When actively fishing with artificial lures, the rate of gut-hooking is lower, regardless of what hook type is used. In accordance with the guidance issued by ASMFC in March 2021 regarding incidental catch, the Department is changing N.J.A.C. 7:25-18.1(h)4 to require that striped bass caught on any unapproved method of take must be returned to the water immediately without unnecessary injury.

7. COMMENT: What is a circle hook? An image of a circle hook is requested for clarification. (5)

RESPONSE: Additional information including a diagram of a circle hook can be viewed on the Department's website at http://www.njfishandwildlife.com/news/2020/circlehook_req.htm.

Crab Management

8. COMMENT: The Department's proposed amendments to reduce the number of commercial crab pot/trot line licenses and crab dredge licenses are concerning. The number of crabbers is down from other years. Taking inactive licenses will push more people out of fishing. People still need the income despite taking certain years off from actively harvesting. It is a concern that licenses will be revoked when additional pots are purchased. (6)

RESPONSE: Crab pot/trot line licenses and crab dredge licenses will not be revoked due to inactivity. In accordance with N.J.A.C. 7:25-14.4, all licenses expire on December 31 of the calendar year for which they were issued, and, therefore, must be renewed annually to maintain ownership. The Department is adopting amendments to reduce the number of inactive commercial crab pot/trot line licenses and crab dredge licenses, for both the Delaware Bay and the Atlantic Coast, to better meet the needs of the fishery and reduce the possibility that the resource will be overfished. The Department defines active crab pot/trot line licensees as those

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who annually harvest 200 or more bushels of hard crabs or 2,000 or more "peeler" crabs (crabs that are molting), and inactive crab pot/trot line licensees as those who annually harvest less than 200 bushels of hard crabs or 2,000 peeler crabs.

The active versus inactive license status thresholds were established by industry advisors to supplement the new transferability rules to non-family members. Industry advisors recommended offering more opportunities for licensees who actively fish to transfer to non-family members. Transferability to non-family members will support the continuation and growth of crab and crab-related businesses.

Federal Standards Statement

N.J.S.A. 52:14B-1 et seq., requires State agency which adopt, readopt, or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a Federal standards analysis. The adopted amendments and new rules are not more stringent than Federal requirements as the requirements are either identical to Federal standards or the Federal government does not have standards applicable to the waters of the State. Therefore, no analysis is required.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*):

SUBCHAPTER 14. CRAB AND LOBSTER MANAGEMENT

7:25-14.4 Commercial licenses for crab pots/trot lines and crab dredges

(a) No individual shall take or attempt to take crabs by any means for the purpose of sale or barter without having in his or her possession his or her valid commercial crab pot/trot lines or crab dredge license issued by the Division pursuant to N.J.S.A. 23:5-35.2. A Delaware Bay commercial crab dredge license is valid to harvest crabs only within that portion of the "Delaware Bay" defined at N.J.A.C. 7:25-14.1 as part of the "crab dredge area." An Atlantic Coast commercial crab dredge license is valid to harvest crabs in all areas defined at N.J.A.C. 7:25-14.1 as the "crab dredge area," except the area defined as the "Delaware Bay."

1. (No change.)

2. No additional crab pot/trot line licenses will be issued until the number of licenses issued decreases below 180 licenses. When the number of issued licenses decreases below this threshold, the Department shall issue the available licenses*,* in accordance with (a)10 below.

3. (No change.)

4. No additional Atlantic Coast commercial crab dredge licenses will be issued until the number of licenses issued decreases below 100 licenses. When the number of issued licenses decreases

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below this threshold, the Department shall issue the available licenses*,* in accordance with (a)10 below.

5. (No change.)

6. No additional Delaware Bay commercial crab dredge licenses shall be issued until the number of licenses issued decreases below 50 licenses. When the number of issued licenses decreases below this threshold, the Department shall issue the available licenses*,* in accordance with (a)10 below.

7. A commercial crab pot/trot line and crab dredge licensee may transfer the right to the license at any time to the license holder's spouse, father, mother, son, daughter, brother, or sister upon application to the Division, provided the license is not pending revocation, suspension, or court action for any violation. In addition, the holder of a valid commercial crab pot/trot line or crab dredge license not pending revocation or court action due to violation of a provision of this subchapter may transfer the license to an individual who is not the licensee's spouse, father, mother, son, daughter, brother, or sister subject to (a)7i through v below, as applicable. The new licensee shall have a license issued in his or her name after payment of the fee specified at (a)8 below.

i. An active crab pot/trot line licensee who has harvested 200 or more bushels of hard crabs or 2,000 or more peeler crabs in the prior year, or an inactive crab pot/trot line licensee who has harvested less than 200 or less bushels of hard crabs or less than 2,000 peeler crabs in the prior year, shall apply to the Department for a transfer of the license to an individual who is not the licensee's spouse, father, mother, son, daughter, brother, or sister by no later than February 28 of the year in which the license holder wishes to transfer the license. If the Department receives 20 or fewer transfer applications from active crab pot/trot line licensees, or five or fewer transfer applications from inactive crab pot/trot line licensees, the Department will proceed with the transfer process for all requests. If the Department receives more than 20 applications from active crab pot/trot line licensees, or more than five applications from inactive crab pot/trot line licensees, the Department will institute the lottery system pursuant to (a)7v below to determine the order in which licensees will be allowed to transfer a license to an individual other than a spouse, father, mother, son, daughter, brother, or sister.

ii. An Atlantic Coast crab dredge licensee may not transfer a license to an individual other than a spouse, father, mother, son, daughter, brother, or sister until the number of available licenses falls below 100 licenses. Once the number of available Atlantic Coast crab dredge licenses falls below 100 licenses, the Department will allow unlimited license transfers of Atlantic Coast crab dredge licenses to any person.

iii. A Delaware Bay crab dredge licensee must apply to the Department for a transfer of the license to an individual who is not the licensee's spouse, father, mother, son, daughter, brother, or sister by no later than February 28 of the year in which the license holder wishes to transfer the license.

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If the Department receives five or fewer transfer applications from Delaware Bay crab dredge licensees, the Department will proceed with the transfer process for all requests. If the Department receives more than five applications from Delaware Bay crab dredge licensees, the Department will institute the lottery system pursuant to (a)7v below to determine the order in which licensees will be allowed to transfer a license to an individual other than a spouse, father, mother, son, daughter, brother, or sister.

iv. Once the number of available crab pot/trot line licenses falls below 180 licenses or the number of available Delaware Bay crab dredge licenses falls below 50 licenses, the Department will allow unlimited license transfers to any person of crab pot/trot line licenses or Delaware Bay crab dredge licenses each calendar year.

v. If the number of license transfer requests to an individual who is not the licensee's spouse, father, mother, son, daughter, brother, or sister exceeds the number at (a)7i or iii above in a calendar year, the Department will institute a lottery and generate a list of licensees based upon the lottery results. Any licensee requesting a transfer of a crab pot/trot line, or crab dredge license will be given the first opportunity to transfer a license in the order in which the licensees are placed on the list.

vi. The Department shall provide notice by first class mail to the licensee at the top of the crab pot/trot line or crab dredge lottery list about the opportunity to transfer a license. It is the responsibility of the applicant to provide the Department with written notification of any change in mailing address. A licensee has 30 days from the postmark date of the notice to respond to the Department.

vii. The Department shall remove an individual's name from the transfer license list if the individual is offered an opportunity to transfer a license under this paragraph, regardless of whether the individual transfers a license or not. Applications for a transfer shall be available from the Department. Only applications that are complete will be considered by the Department. The crab pot/trot line or crab dredge lottery will remain in place until the number of licenses falls below the number of licenses at (a)2 or 6 above, at which time the Department will allow unlimited license transfers to any person.

8.-10. (No change.)

(b)-(f) (No change.)

7:25-14.19 Administrative notice

(a) The Commissioner, with the approval of the New Jersey Marine Fisheries Council, may modify the seasons, annual quota allocation, including modifying gear categories and the quota allocation by gear-type, minimum or maximum size limits, pot and trap limits, trip limits, quotas, possession limits, or reporting requirements in this subchapter by notice in order to maintain compliance with any fishery management plan approved by the Atlantic States Marine Fisheries

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Commission pursuant to 16 U.S.C. § 5104(b) or to maintain consistency with any Mid-Atlantic Fishery Management Council, New England Fishery Management Council, or South Atlantic Fishery Management Council plan adopted by the National Marine Fisheries Service or any plan implemented by the National Marine Fisheries Service. The Commissioner, with the approval of the New Jersey Marine Fisheries Council, may modify the seasons, annual quota allocation, including modifying gear categories and the quota allocation by gear-type, minimum or maximum size limits, pot and trap limits, trip limits, possession limits, or daily, weekly, or monthly reporting requirements in this subchapter by notice in order to provide for the optimal utilization of any quotas specified in this subchapter. Additionally, where seasons, annual quota allocation, including modifying gear categories and the quota allocation by gear-type, minimum or maximum size limits, pot and trap limits, trip limits, possession limits, or daily, weekly, or monthly reporting requirements have been developed in accordance with (a)1 below and differ from those specified in the fishery management plan, but have been approved by the Atlantic States Marine Fisheries Commission, Mid-Atlantic Fishery Management Council, New England Fishery Management Council, South Atlantic Fishery Management Council, and/or the National Marine Fisheries Service through the conservation equivalency process as achieving the same quantified level of conservation for the fishery governed by that plan, such seasons, annual quota allocation, including modifying gear categories and the quota allocation by gear-type, minimum or maximum size limits, pot and trap limits, trip limits, possession limits, or daily, weekly, or monthly reporting requirements may be modified by notice. 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 by filing and publishing a notice of administrative change in the New Jersey Register, on the Department's website, and a notice in the Division's commercial regulation publication or in the New Jersey Marine Digest. 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.

1. Proposed seasons, annual quota allocation, including modifying gear categories and the quota allocation by gear-type, minimum or maximum size limits, pot and trap limits, trip limits, possession limits, or daily, weekly, or monthly reporting requirements to be included in a submission to the Atlantic States Marine Fisheries Commission, Mid-Atlantic Fishery Management Council, New England Fishery Management Council, South Atlantic Fishery Management Council, and/or the National Marine Fisheries Service as being conservationally equivalent to the criteria determined to be eligible for conservation equivalency, as specified in the applicable fishery management plan, shall be established as follows:

i. The Commissioner shall consider the following factors in a conservation equivalency proposal:

(1) The temporal and spatial distributions of the species in State waters;

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- (2) The species' life history characteristics;
- (3) The potential impact on the number of participants able to participate in the fishery;
- (4) The ability of supporting industries to provide necessary services to optimize participation, for example, charter and day-fishing fleet availability;
- (5) Consideration for the open seasons for other recreational and/or commercial fisheries; and
- (6) Enforcement efficiency.

2. The conservation equivalency proposal must be approved by the New Jersey Marine Fisheries Council at a public meeting prior to submission to the Atlantic States Marine Fisheries Commission, Mid-Atlantic Fishery Management Council, New England Fishery Management Council, South Atlantic Fishery Management Council, and/or the National Marine Fisheries Service. Public notice of the meeting, including an agenda, shall be provided on the Department's website at <http://www.nj.gov/dep/fgw/marcncl.htm>. The agenda shall specify that the meeting will include discussion of a potential conservation equivalency proposal.

SUBCHAPTER 18. MARINE FISHERIES

7:25-18.1 Size, season, and possession limits

(a)-(b) (No change.)

(c) A person angling with a hand line or with a rod and line or using a bait net or spearfishing shall not have in his or her possession any species listed below less than the minimum length, nor shall such person take in any one day or possess more than the possession limits as provided below, nor shall such person possess any species listed below during the closed season for that species. Exceptions to this section, as may be provided elsewhere in this subchapter, shall be subject to the specific provisions of any such section. Fish length shall measure from the tip of the snout to the tip of the tail (total length), except as noted below:

Table

(No change.)

1. (No change.)

2. Shark length shall be measured from the tip of the snout to the V-shaped indentation between the two separate tail segments (fork length) forming the caudal fin. Sharks may be harvested in the recreational fishery only by angling with a hand line or rod and reel. The minimum size, open season, ***and*** possession limit*, and gear restrictions]* for shark, as listed at (a) above, shall be the minimum size, open season, ***and*** possession limit*, and gear restrictions]* as determined

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by the National Marine Fisheries Service, as published in the Federal Register and posted at <http://www.fisheries.noaa.gov/rules-and-announcements/notices-and-rules>.

3.-6. (No change.)

(d)-(g) (No change.)

(h) The following provisions are applicable to the recreational harvest of striped bass and striped bass hybrids:

1.-3. (No change)

4. Hook and line fishermen are restricted to the use of non-offset circle hooks while fishing with *[any natural]* bait*[, or any living or dead animal or plant]**.* **Bait is defined as any marine or aquatic organism live or dead, whole***, or parts thereof. ***This restriction shall not apply to an artificial lure with bait attached.*** A circle hook is a non-offset hook where the point is pointed perpendicularly back towards the shank. Non-offset means that the point and barb are in the same plane as the shank. ***Striped bass caught using an unapproved method of take must be returned to the water immediately without unnecessary injury.***

(i)-(o) (No change.)

(p) The Commissioner, with the approval of the New Jersey Marine Fisheries Council, may modify the fishing seasons, size limits, possession limits, and the list of shark species contained within any of the shark groups 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, New England Fishery Management Council, or South Atlantic Fishery Management Council plan adopted by the National Marine Fisheries Service or any plan implemented by the National Marine Fisheries Service. Additionally, where fishing seasons, size limits, possession limits, or the list of shark species contained within any of the shark groups specified in this section have been developed in accordance with (p)1 below and differ from those specified in a fishery management plan and have been approved by the Atlantic States Marine Fisheries Commission, Mid-Atlantic Fishery Management Council, New England Fishery Management Council, South Atlantic Fishery Management Council, and/or the National Marine Fisheries Service through the conservation equivalency process as being estimated to achieve the same quantified level of conservation for the fishery governed by that plan, such fishing seasons, size limits, possession limits, or the list of shark species contained within any of the shark groups specified in this section may be modified by notice. The Department shall provide notice of any such modification in the New Jersey Marine Digest, the New Jersey Register, on the Department's website, through email, when provided, to commercial license holders, 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.

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1. Proposed fishing seasons, size limits, possession limits, or the list of shark species contained within any of the shark groups specified in this section to be included in a submission to the Atlantic States Marine Fisheries Commission, Mid-Atlantic Fishery Management Council, New England Fishery Management Council, South Atlantic Fishery Management Council, and/or the National Marine Fisheries Service as being conservationally equivalent to the criteria determined to be eligible for conservation equivalency, as specified in the applicable fishery management plan, shall be established*,* as follows:

i. The Commissioner shall consider the following factors in a conservation equivalency proposal:

- (1) The temporal and spatial distributions of the species in State waters;
- (2) The species' life history characteristics;
- (3) The potential impact on the number of participants able to participate in the fishery;
- (4) The ability of supporting industries to provide necessary services to optimize participation, for example, charter and day-fishing fleet availability;
- (5) Consideration for the open seasons for other recreational and/or commercial fisheries; and
- (6) Enforcement efficiency.

ii. The conservation equivalency proposal must be approved by the New Jersey Marine Fisheries Council at a public meeting prior to submission to the Atlantic States Marine Fisheries Commission, Mid-Atlantic Fishery Management Council, New England Fishery Management Council, South Atlantic Fishery Management Council, and/or the National Marine Fisheries Service. Public notice of the meeting, including an agenda, shall be provided on the Department's website at <http://www.nj.gov/dep/fgw/marcncl.htm>. The agenda shall specify that the meeting will include discussion of a potential conservation equivalency proposal.

(q)-(r) (No change.)

7:25-18.5 General net regulations

(a)-(h) (No change.)

(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, acceptable materials for fastening ghost panels to pots and traps, or reporting requirements 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, New England Fishery Management Council, or South Atlantic Fishery Management Council plan adopted by the National Marine Fisheries

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Service or any plan implemented by the National Marine Fisheries Service. Additionally, where fishing seasons, mesh sizes, maximum net lengths, species allowed to be harvested by specific gear types, escape vent sizes, ghost panel sizes, acceptable materials for fastening ghost panels to pots and traps, or reporting requirements have been developed [page=2143] in accordance with (i)1 below and differ from those specified in the fishery management plan, but have been approved by the Atlantic States Marine Fisheries Commission, Mid-Atlantic Fishery Management Council, New England Fishery Management Council, South Atlantic Fishery Management Council, and/or the National Marine Fisheries Service through the conservation equivalency process as achieving the same quantified level of conservation for the fishery governed by that plan, such fishing seasons, mesh sizes, maximum net lengths, species allowed to be harvested by specific gear types, escape vent sizes, ghost panel sizes, acceptable materials for fastening ghost panels to pots and traps, or daily, weekly, or monthly reporting requirements may be modified by notice. The Department shall provide notice of any such modification in the New Jersey Register, on the Department's website, through email, when provided, to commercial license holders, 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.

1. Proposed fishing seasons, mesh sizes, maximum net lengths, species allowed to be harvested by specific gear types, escape vent sizes, ghost panel sizes, acceptable materials for fastening ghost panels to pots and traps, or reporting requirements to be included in a submission to the Atlantic States Marine Fisheries Commission, Mid-Atlantic Fishery Management Council, New England Fishery Management Council, South Atlantic Fishery Management Council, and/or the National Marine Fisheries Service as being conservationally equivalent to the fishing seasons, mesh sizes, maximum net lengths, species allowed to be harvested by specific gear types, escape vent sizes, ghost panel sizes, acceptable materials for fastening ghost panels to pots and traps, or reporting requirements specified in the applicable fisheries management plan shall be established*,* as follows:

i. The Commissioner shall consider the following factors in determining the fishing seasons, mesh sizes, maximum net lengths, species allowed to be harvested by specific gear types, escape vent sizes, ghost panel sizes, daily, weekly, or monthly reporting requirements, or acceptable materials for fastening ghost panels to pots and traps to be included in a conservation equivalency proposal:

- (1) The temporal and spatial distributions of the species in State waters;
- (2) The species' life history characteristics;
- (3) The potential impact on the number of participants able to participate in the fishery;
- (4) The ability of supporting industries to provide necessary services to optimize participation, for example, charter and day-fishing fleet availability;

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(5) Potential conflicts with the open seasons for other recreational and/or commercial fisheries;
and

(6) Enforcement efficiency.

ii. The conservation equivalency proposal must be approved by the New Jersey Marine Fisheries Council at a public meeting prior to submission to the Atlantic States Marine Fisheries Commission, Mid-Atlantic Fishery Management Council, New England Fishery Management Council, South Atlantic Fishery Management Council, and/or the National Marine Fisheries Service. Public notice of the meeting, including an agenda, shall be provided on the Department's website at <http://www.nj.gov/dep/fgw/marcncl.htm>. The agenda shall specify that the meeting will include discussion of a potential conservation equivalency proposal.

(j)-(m) (No change.)

7:25-18.12 Commercial fishing seasons, quotas, and trip limits

(a)-(q) (No change.)

(r) The Commissioner, with the approval of the New Jersey Marine Fisheries Council, may modify quotas, trip limits, and/or seasons, quota allocation by gear type, as well as gear types and gear restrictions, incidental and by-catch allowance, application of the incidental and by-catch allowance to the quota, or reporting requirements, 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, New England Fishery Management Council, or South Atlantic Fishery Management Council plan adopted by the National Marine Fisheries Service or any plan implemented by the National Marine Fisheries Service. Additionally, where quotas, trip limits and/or seasons, quota allocations by gear type, gear types and gear restrictions, incidental and by-catch allowances, applications of the incidental and by-catch allowances to annual quotas, or reporting requirements have been developed in accordance with (r)1 below that differ from those specified in the fishery management plan, but have been the Atlantic States Marine Fisheries Commission, Mid-Atlantic Fishery Management Council, New England Fishery Management Council, South Atlantic Fishery Management Council, and/or the National Marine Fisheries Service through the conservation equivalency process as achieving the same quantified level of conservation for the fishery governed by that plan, such quotas, trip limits and/or seasons, quota allocations by gear type, gear types and gear restrictions, incidental and by-catch allowances, applications of the incidental and by-catch allowances to annual quotas, or reporting requirements may be modified by notice. The Commissioner, with the approval of the New Jersey Marine Fisheries Council, may modify quotas, trip limits, and/or seasons, quota allocation by gear type, as well as gear types and gear restrictions, incidental and by-catch allowance, application of the incidental and by-catch allowance to the annual quota, or reporting requirements specified in this section, by

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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 provide notice of any such modification in the New Jersey Register, on the Department's website, through email, when provided, to commercial license holders, 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.

1. Proposed quotas, trip limits, and/or seasons, quota allocations by gear type, gear types, gear restrictions, incidental by-catch allowances, applications of the incidental and by-catch allowances to the quota, or reporting requirements to be included in a submission to the Atlantic States Marine Fisheries Commission, Mid-Atlantic Fishery Management Council, New England Fishery Management Council, South Atlantic Fishery Management Council, and/or the National Marine Fisheries Service as being conservationally equivalent to the quotas, trip limits, and/or seasons, quota allocations by gear type, gear types and gear restrictions, incidental by-catch allowances, applications of the incidental and by-catch allowances to the quota, or reporting requirements specified in the applicable fisheries management plan shall be established as follows:

i. The Commissioner shall consider the following factors in determining the quotas, trip limits, and/or seasons, quota allocations by gear type, gear types and gear restrictions, incidental and by-catch allowances, applications of the incidental and by-catch allowances to annual quotas, reporting requirements, and any other management criteria to be included in a conservation equivalency proposal:

(1) The temporal and spatial distributions of the species in State waters;

(2) The species' life history characteristics;

(3) The potential impact on the number of participants able to participate in the fishery;

(4) The ability of supporting industries to provide necessary services to optimize participation, for example, charter and day-fishing fleet availability;

(5) Potential conflicts with the open seasons for other recreational and/or commercial fisheries; and

(6) Enforcement efficiency.

ii. The conservation equivalency proposal must be approved by the New Jersey Marine Fisheries Council at a public meeting prior to submission to the Atlantic States Marine Fisheries

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Commission, Mid-Atlantic Fishery Management Council, New England Fishery Management Council, South Atlantic Fishery Management Council, and/or the National Marine Fisheries Service. Public notice of the [page=2144] meeting, including an agenda, shall be provided on the Department's website at <http://www.nj.gov/dep/fgw/marcncl.htm>. The agenda shall specify that the meeting will include discussion of a potential conservation equivalency proposal.

(s)-(y) (No change.)

SUBCHAPTER 22. MENHADEN

7:25-22.1 Taking of Atlantic menhaden for fish meal reduction

The taking of Atlantic menhaden (*Brevoortia tyrannus*) from the marine waters of the State of New Jersey by any means for fish meal reduction is prohibited. This prohibition does not apply to the taking of menhaden for bait or the taking of menhaden in whole form and freezing them for consumption by humans.

7:25-22.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Bait net" means a net including, but not limited to, a bait seine, cast net, dip net, lift or umbrella net, or killi-pot.

"Dealer" means a person who has been issued a Menhaden Dealer License to purchase or barter menhaden landed in the State and who is the first point of sale for the purchase or barter of menhaden.

"Division" means the Division of Fish and Wildlife.

"Fishing" means the taking of menhaden from State or Federal waters.

"Gill net vessel" means a vessel that is used in the deployment of a gill net.

"Land" means to enter port with fish, begin offloading fish, or to offload fish.

"Menhaden set vessel" means the smaller of two vessels, often employed in conjunction with a purse seine catch vessel, used as a replacement for the weight of a purse seine to assist in setting the net.

"Other authorized gear" means the gear types listed at N.J.S.A. 23:5-24.2, and includes haul seines, fyke nets, and wire pound nets, which are licensed for the taking of menhaden.

"Pound net vessel" means a vessel that is used in the deployment of a pound net.

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"Purse seine" means purse seine or shirred net gear.

"Purse seine carry vessel" means a vessel that is used to carry and land or sell menhaden and which works with a purse seine catch vessel or menhaden set vessel.

"Purse seine catch vessel" means a vessel that is used in the deployment of a purse seine, which may work in conjunction with a purse seine carry vessel or menhaden set vessel.

"Trawl vessel" means a vessel that is used in the deployment of a trawl net.

7:25-22.3 Atlantic menhaden annual quota and season

(a) The Commissioner, with the approval of the New Jersey Marine Fisheries Council, may modify the annual quota as determined by the Atlantic States Marine Fisheries Council, seasons, annual quota allocation, including modifying gear categories and the quota allocation by gear-type, incidental catch allowance, application of the incidental catch allowance to the annual quota, reporting requirements, trip limits, or gear marking requirements specified in this subchapter by notice in order to maintain consistency with any fishery management plan approved by the Atlantic States Marine Fisheries Council or to maintain consistency with fishery management plan approved by the Mid-Atlantic Fishery Management Council, the New England Fishery Management Council, or the South Atlantic Fishery Management Council and adopted by the National Marine Fisheries Service to provide for the optimal utilization of any quotas 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, 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, on the Department's website, through email to every menhaden license holder, 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.

(b) The Atlantic menhaden annual quota shall be divided among the various gear types, with the purse seine fishery being allocated 95 percent of the quota, and pound nets, wire pound nets, gill nets, trawls, bait nets, and other authorized gear being allocated the remaining five percent, combined. If the quota for any gear type is exceeded, the overharvested amount shall be deducted from the following year's quota.

1. The season for fishing and landing menhaden in the State shall be:

i. January 1 to December 31 for licensees taking menhaden, or landing menhaden taken, by purse seine;

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ii. January 1 to December 31 for licensees taking menhaden, or landing menhaden taken, by gill net;

iii. January 1 to December 31 for licensees taking menhaden, or landing menhaden taken, by pound net or wire pound net;

iv. January 1 to December 31 for licensees taking menhaden, or landing menhaden taken, by trawl;

v. January 1 to December 31 for licensees taking menhaden, or landing menhaden taken, by bait net; and

vi. January 1 to December 31 for licensees taking menhaden, or landing menhaden taken, by other authorized gear not otherwise specified above.

2. The daily trip limits during the open season for menhaden in the State shall be:

i. The daily trip limit shall be unlimited for licensees taking menhaden, or landing menhaden taken, by purse seine;

ii. The daily trip limit shall be unlimited for licensees taking menhaden, or landing menhaden taken, by gill net;

iii. The daily trip limit shall be unlimited for licensees taking menhaden, or landing menhaden taken, by pound net or wire pound net;

iv. The daily trip limit shall be unlimited for licensees taking menhaden, or landing menhaden taken, by trawl;

v. The daily trip limit shall be unlimited for licensees taking menhaden, or landing menhaden taken, by bait net; and

vi. The daily trip limit shall be unlimited for licensees taking menhaden, or landing menhaden taken, by other authorized gear not otherwise specified above.

(c) The Department shall close the menhaden season for each respective gear type, by giving not less than two days' notice of the projected date that the year's quota for that gear type will be landed.

(d) If the Commissioner, or his or her designee, has closed the season and if unanticipated events result in the quota not being landed by the projected date stated in the closure notice, then the Commissioner, or his or her designee, may reopen the season for a specified period of time upon two days' public notice.

(e) Public notice shall be provided by a posting on the Department's website and by email sent to all licensees under this subchapter. Each licensee shall, at the time of licensure, provide the

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Department with the licensee's email address to facilitate the provision of notice pursuant to this section.

(f) If the season for a particular gear type is closed because the quota amount allocated to that gear type has been harvested and landed, then:

1. The holder of a Menhaden Landing License for that gear type or the holder of a Menhaden Personal Use and Limited Sale License may continue to land an incidental catch as established by the Atlantic States Marine Fisheries Commission, or by the Mid-Atlantic Fishery Management Council, the New England Fishery Management Council, or the South Atlantic Fishery Management Council, as adopted by the National Marine Fisheries Service;

2. The holder of a Menhaden Dealer License may continue to accept incidental catch from the holder of a Menhaden Landing License or the holder of a Menhaden Personal Use and Limited Sale License, as established by a fishery management plan for menhaden; and

3. The incidental catch allowance shall be applied to the annual menhaden catch quota as provided by a fishery management plan for menhaden.

7:25-22.4 Taking of Atlantic menhaden utilizing a purse seine

(a) Persons licensed to fish for, or in any way participate in the fishery for, Atlantic menhaden with a purse seine in the marine waters of New Jersey must be in possession of a Menhaden Purse Seine Fishing Vessel [page=2145] License or a Menhaden Purse Seine Fishing Vessel Operator's License for the purpose of taking Atlantic menhaden for bait or in whole frozen form for consumption by humans only.

1. A Menhaden Purse Seine Fishing Vessel License may only be issued to an owner and a vessel that have a valid Menhaden Purse Seine Fishing Vessel License from the previous year.

2. A menhaden set vessel that participates only in the setting of a purse seine in conjunction with a purse seine catch vessel is exempt from licensure.

3. A licensee shall not use, have on board the licensed vessel, or work in conjunction with any other vessel that uses any type of fishing gear other than purse seine.

4. A license issued pursuant to (b) and (c) below shall remain on board the licensed vessel at all times.

5. A license is good for one calendar year and the licensee must reapply every year for a license. Failure to renew a Menhaden Purse Seine Fishing Vessel License shall result in forfeiture of the license.

(b) Menhaden Purse Seine Fishing Vessel Licenses shall be issued only to vessels and owners who have a valid Menhaden Purse Seine Fishing Vessel License.

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1. The following types of vessels and owners that intend to take menhaden must obtain a Menhaden Purse Seine Fishing Vessel License:

i. A purse seine catch vessel that takes menhaden from State waters on an individual trip basis; and

ii. Any purse seine carry vessel that works in conjunction with the purse seine catch vessel except for a menhaden set vessel.

2. To obtain a license, an applicant must:

i. Complete the application form each year and submit it by December 31 in the year the license to be replaced is valid;

ii. Provide an email address to receive notifications from the Department;

iii. Submit the correct fee, based upon the gross tonnage of a vessel using Custom House measurements, as follows:

(1) For a New Jersey resident, excluding a New Jersey resident who leases a vessel from out-of-State:

(A) \$ 125.00 for each vessel not less than 30 nor more than 100 tons in gross tonnage;

(B) \$ 250.00 for each vessel not less than 100 nor more than 150 tons in gross tonnage;

(C) \$ 400.00 for each vessel not less than 150 nor more than 175 tons in gross tonnage;

(D) \$ 550.00 for each vessel not less than 175 nor more than 200 tons in gross tonnage;

(E) \$ 900.00 for each vessel more than 200 tons in gross tonnage; and

(F) \$ 20.00 for each vessel up to 300 tons in gross tonnage, which is used to take menhaden for bait purposes only;

(2) For a non-resident, including a New Jersey resident who leases a vessel from out-of-State:

(A) \$ 450.00 for each vessel not less than 30 nor more than 100 tons in gross tonnage;

(B) \$ 700.00 for each vessel not less than 100 nor more than 150 tons in gross tonnage;

(C) \$ 1,000 for each vessel not less than 150 nor more than 175 tons in gross tonnage;

(D) \$ 1,150 for each vessel not less than 175 nor more than 200 tons in gross tonnage; and

(E) \$ 1,500 for each vessel more than 200 tons in gross tonnage; and

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iv. Submit the name of the vessel and the name of the vessel's owner. If the vessel owner is not the operator, then the vessel owner shall apply for a Menhaden Purse Seine Fishing Vessel License and the vessel operator shall apply for a Menhaden Purse Seine Fishing Vessel Operator's License pursuant to (c) below.

3. A license shall be issued in the name of the owner and the vessel.

4. When a holder of a Menhaden Purse Seine Fishing Vessel License wishes to increase or decrease the vessel's length or the engine's horsepower or, if a carry vessel, the vessel's hold capacity, whether at the time of license application, when transferring the license pursuant to N.J.A.C. 7:25-22.6, or any time, the licensee must submit:

i. Documentation attesting to the overall length and horsepower of the vessel; and

ii. If the vessel is a purse seine carry vessel, submit a certification of the hold capacity as determined by one of the following:

(1) An individual credentialed as a Certified Marine Surveyor with a fishing specialty by the National Association of Marine Surveyors;

(2) An individual credentialed as an Accredited Marine Surveyor with a fishing specialty by the Society of Accredited Marine Surveyors;

(3) Employees or agents of a classification society approved by the United States Coast Guard;

(4) A professionally licensed and/or registered Marine Engineer; or

(5) A Naval Architect with a professional engineer license.

(c) Menhaden Purse Seine Fishing Vessel Operator's Licenses shall be issued as follows:

1. Only a vessel operator who is not the owner may apply for a Menhaden Purse Seine Fishing Vessel Operator's License;

2. To obtain a license, an applicant must:

i. Complete the application form each year and submit it by December 31;

ii. Provide an email address to receive notifications from the Department; and

iii. Submit a fee of \$ 50.00 if the applicant is a New Jersey resident, or a fee of \$ 75.00 if the applicant is a non-resident; and

3. A license shall be issued in the name of the vessel operator only.

(d) Persons licensed to fish for Atlantic menhaden with a purse seine in the marine waters of New Jersey, shall be subject to the following:

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1. Fishing, for the purpose of this section, shall be defined as having a purse seine in the marine waters of this State within three nautical miles of the State coastline.
2. Fishing shall be restricted to not closer than 0.6 nautical miles of any point along the shore, jetties, or fishing piers in the Atlantic Ocean, in the portion of the Delaware Bay south and east of LORAN C line 42850, and in Raritan Bay and Sandy Hook Bay. It will be incumbent upon the captain of a purse seine vessel to determine the possibility of drifting inside the limit while fishing, before setting his or her net. The drifting of a purse seine into the restricted area along the shore or around the jetty or pier while fishing shall be considered a violation of this subchapter.
3. The maximum length overall of any vessel fishing under the provisions of this section shall be 90 feet as reported on the vessel's Coast Guard documentation. A licensee may increase a carry vessel's hold capacity up to 10 percent, and increase any purse seine vessel's horsepower by up to 20 percent and/or increase the overall length up to 10 percent, as long as the overall length of the vessel is 90 feet or less. The increased capacity, horsepower, or length may be achieved by upgrading the vessel or replacing the vessel with a new vessel. The increases may be made one time during the life of the vessel or a licensee may incrementally increase a vessel's capacity, horsepower, and/or length over the life of the vessel, as long as the overall increases do not exceed 10 percent for the hold capacity, 20 percent for the horse power, and 10 percent for the length, as long as the vessel is 90 feet or less at all times.
4. Purse seine shall not exceed 150 fathoms in length.
5. A person shall not fish for, or land, menhaden on Saturdays and Sundays. A person shall not fish on the days on which a public holiday is officially observed by the State of New Jersey.
6. (No change.)
7. Removal of fish from the purse seine shall be by brailing or dip net only. No fish pump shall be on board any vessel operating under a license for the purpose of taking Atlantic menhaden, unless the pump is completely covered and securely fastened with a brightly colored tarp, and the pump intake or hose is disconnected from the pump and is securely stowed away from the pump, so that it is not readily available for use when the vessel is fishing in State waters.
8. The possession of more than 500 pounds of any fish other than Atlantic menhaden, as defined at N.J.S.A. 23:2B-3e, on a purse seine licensed vessel harvesting Atlantic menhaden is prohibited.
 - i. The simultaneous possession of Atlantic menhaden and more than 500 pounds of any other fish, as defined at N.J.S.A. 23:2B-3e, and a purse seine, aboard a licensed vessel or any vessel conducting menhaden fishing operations, shall constitute prima facie evidence of the violation of this subchapter.
9. No refuse, litter, or garbage of any kind shall be thrown overboard or released from the vessel or its net(s). Dead fish shall not be thrown [page=2146] overboard or otherwise released from

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the vessel or its net(s), except for an incidental amount of dead fish that results during the course of fishing operations. The licensee shall immediately notify the Division's Marine Enforcement Unit at (609) 748-2050 of a release of dead fish.

10. The licensee is responsible for cleaning up any fish, fish-part, refuse, litter, or garbage of any kind that is released during any fishing operation or as a result of a fishing operation and must initiate such cleanup no later than 24 hours after the release begins. If the licensee fails to initiate such cleanup within the 24-hour period, the Department may conduct or arrange for the performance of the cleanup. In addition to any other penalties and remedies provided by law, the licensee shall be liable for all costs associated with such cleanup, including any administrative costs incurred by the Department. Such cleanup shall include, but not be limited to, the marine and estuarine waters of the State and adjacent beaches, shorelines, and marshes.

11. (No change.)

12. Any vessel operating under a license for the purpose of taking Atlantic menhaden shall be required to notify the Department of the intent to fish for menhaden and the intended fishing location of the vessel. The notification shall be made by calling the Division's Marine Enforcement Unit at (609) 748-2050, or if made available by the Department, by electronic means, prior to fishing in State waters and prior to change of location.

13. No vessel or person shall fish or utilize any other gear type in the same day it has called in and declared that it is fishing for menhaden.

7:25-22.5 Menhaden Landing and Personal Use and Limited Sale licenses

(a) No person shall land for the purposes of sale or barter, or otherwise sell or barter, more than 100 pounds of menhaden at any time in the State, unless the person is in possession of a Menhaden Landing License that authorizes the person to participate in the directed bait and whole frozen human food fishery for menhaden.

(b) Any person who intends to take menhaden from State waters for personal use as bait using a gill net, with the option to sell or barter 500 pounds or less in excess of the amount needed by the person for bait per day, shall obtain a Menhaden Personal Use and Limited Sale License pursuant to (l) below.

(c) Nothing in this section shall prohibit a person who does not possess a Menhaden Landing License or a Menhaden Personal Use and Limited Sale License from landing 100 pounds or less of menhaden for sale or barter, at any time, and on any trip or day.

(d) A person with a valid Menhaden Landing License who intends to land for the purposes of sale or barter, or otherwise sell or barter, more than 100 pounds of menhaden at any time shall obtain a Menhaden Landing License as follows:

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1. The licensee must:

- i. Complete the application form each year and submit it by December 31;
- ii. Provide an email address to receive notifications from the Department; and
- iii. Submit the correct fee as follows:

(1) The fee for a New Jersey resident using a purse seine is \$ 150.00;

(2) The fee for a New Jersey resident using a gear type other than a purse seine is \$ 50.00;

(3) The fee for a non-resident using a purse seine is \$ 750.00 or an amount equal to the non-resident fee charged for the landing of menhaden in the non-resident's state, whichever is greater; or

(4) The fee for a non-resident using a gear type other than a purse seine is \$ 250.00 or an amount equal to the non-resident fee charged for the landing of menhaden in the non-resident's state, whichever is greater.

(e) The following types of vessels, and their owners or operators, must obtain a Menhaden Landing License prior to landing any menhaden:

1. A gill net vessel that is used, or is intended to be used, to land more than 100 pounds of menhaden on an individual trip basis, for the purposes of sale or barter;

2. A pound net vessel that is used, or is intended to be used, to land more than 100 pounds of menhaden on an individual trip basis, for the purposes of sale or barter;

3. A trawl vessel that is used, or is intended to be used, to land more than 100 pounds of menhaden on an individual trip basis, for the purposes of sale or barter;

4. A vessel that is used, or is intended to be used, to land, on an individual trip basis, and for the purposes of sale or barter, more than 100 pounds of menhaden taken by bait net or other authorized gear;

5. A purse seine carry vessel that is used, or is intended to be used, to land, on an individual trip basis, and for the purposes of sale or barter, more than 100 pounds of menhaden taken from State or Federal waters; and

6. A purse seine catch vessel that functions as a purse seine carry vessel and that is used, or is intended to be used, to land, on an individual trip basis, and for the purposes of sale or barter, more than 100 pounds of menhaden taken from State or Federal waters.

(f) A purse seine catch vessel that does not function as a purse seine carry vessel is exempt from licensure as a Menhaden Landing vessel. However, the owner or operator of a purse seine carry

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vessel that works in conjunction with a purse seine catch vessel shall identify the purse seine catch vessel on the landing report.

(g) No purse seine carry vessel or purse seine catch vessel functioning as a purse seine carry vessel shall hold a Menhaden Landing License to land menhaden taken from State waters, unless the vessel is 90 feet or less in overall length. Nothing **[in]* *at** (a) above shall prohibit the licensure of a purse seine carry vessel or purse seine catch vessel that is greater than 90 feet in overall length, as long as the vessel lands menhaden taken only from Federal waters.

(h) A Menhaden Landing License shall be issued:

1. In the name of the vessel and the vessel's owner or operator. If a purse seine carry vessel or a purse seine catch vessel functioning as a purse seine carry vessel is operated by a person who is not the owner of the vessel, the vessel operator shall be licensed separately and apart from the vessel owner; or

2. For bait net licensees, if no vessel will be used in the landing or sale of menhaden, in the name of the person applying for the license.

(i) Any Menhaden Landing License issued pursuant to this section shall specify the types of gear that may be used by the licensee in the taking of menhaden to be landed thereby.

(j) The holder of a Menhaden Landing License shall not use, have on board the licensed vessel, or work in conjunction with any other vessel that uses any type of fishing gear other than the type of gear specifically identified in the license.

(k) A Menhaden Landing License shall remain on board the licensed vessel, or, if no vessel is used, in the possession of the licensee at all times.

(l) A person with a valid Menhaden Personal Use and Limited Sale License who intends to use a gill net to take menhaden from State waters for personal use as bait, with the option to sell or barter 500 pounds or less in excess of the amount needed by the person for bait per day, shall obtain a Menhaden Personal Use and Limited Sale License and comply with the following:

1. The applicant shall hold a valid gill net license and a pot fishery license;

2. The applicant must:

i. Complete the application form each year and submit it by December 31;

ii. Provide an email address to receive notifications from the Department; and

iii. Submit the correct fee as follows:

(1) The fee for a New Jersey resident using a purse seine is \$ 150.00;

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(2) The fee for a New Jersey resident using a gear type other than a purse seine is \$ 50.00;

(3) The fee for a non-resident using a purse seine is \$ 750.00 or an amount equal to the non-resident fee charged for the landing of menhaden in the non-resident's state, whichever is greater; or

(4) The fee for a non-resident using a gear type other than a purse seine is \$ 250.00 or an amount equal to the non-resident fee charged for the landing of menhaden in the non-resident's state, whichever is greater;

3. A person who is issued a Menhaden Personal Use and Limited Sales License may only take menhaden with a gill net. The use of any other gear type is prohibited; and

[page=2147] 4. Except for the excess 500 pounds or less that may be sold or bartered, the licensee shall only make personal use of menhaden as bait for the licensee's commercial fishing pots and shall not use menhaden for any other purpose.

(m) A Menhaden Landing License and Menhaden Personal Use and Limited Sale License issued pursuant to this section shall be valid only for the calendar year for which it is issued and shall be renewed on an annual basis. The failure of a licensee to annually renew a Menhaden Landing License or a Menhaden Personal Use and Limited Sale License by December 31 in the year the license is valid shall result in forfeiture of the right to obtain such a license in future years, except as provided at (n) below.

(n) A licensee who is eligible for renewal of the licensee's Menhaden Landing License or Menhaden Personal Use and Limited Sale License may request an extension of time to renew the license.

1. A licensee seeking a license renewal extension shall complete and submit the application to the Department at:

Division of Fish and Wildlife
PO Box 420
Trenton, NJ 08625

2. The application shall:

i. Include the name of the licensee and licensed vessel, if any;

ii. Include the licensee's Menhaden Landing License or Menhaden Personal Use and Limited Sale License number;

iii. Include a detailed explanation as to why the extension is needed, including a statement specifying the type and degree of hardship that prevented the timely renewal of the license, and the hardship that will result to the licensee if the license is not renewed;

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iv. Include any other appropriate documentation as may be necessary to support the application; and

v. Be submitted by no later than December 31 in the year the license would be valid if purchased by December 31.

3. An application for license renewal extension shall be approved if the Department determines that:

i. By reason of extraordinary hardship or exceptional situation or condition, the licensee was precluded from complying with the renewal requirements;

ii. Strict compliance with the renewal requirements provided by law would result in exceptional and undue hardship to the licensee;

iii. The circumstances supporting the conclusions made at (n)3i and ii above were not created by the licensee or persons under the licensee's control; and

iv. Approval of the extension will not unreasonably interfere with the orderly administration of the directed bait or whole frozen human food fishery for menhaden.

4. Within 30 days after receipt of a completed application for an extension of a license renewal, the Department shall approve or deny the application, and shall provide written notice of this determination to the licensee. A licensee whose application for extension is denied may appeal the decision by submitting an adjudicatory hearing request to the Department at the address listed below, with a copy to the Division of Fish and Wildlife at the address at (n)1 above:

Office of Legal Affairs

New Jersey Department of Environmental Protection

Mail Code 401-04L

PO Box 402

Trenton, New Jersey 08625-0402

Attention: Adjudicatory Hearing Requests

(o) The holder of a Menhaden Landing License or Menhaden Personal Use and Limited Sale License shall complete and submit, on or before the 10th day of the month, the monthly report electronically or on a form to the Department at:

Nacote Creek Marine Fisheries Office

PO Box 418

Port Republic, NJ 08241

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The licensee shall attest to the validity of the information contained in the monthly report. If no landing, sale, or barter of menhaden occurred during the month, the licensee shall submit a report to that effect to the Division.

(p) The monthly report shall include, at a minimum, the following information, which shall be reported on an individual trip basis:

1. The name of the licensee and licensed vessel, if any;
2. The licensee's Menhaden Landing License or Menhaden Personal Use and Limited Sale License number;
3. The name of the purse seine catch vessel, if any, which was used in conjunction with the licensed vessel;
4. The total amount, in pounds, of menhaden landed by the licensee or licensed vessel;
5. The total amount, in pounds, of menhaden discarded by the licensee or licensed vessel;
6. The location of harvest;
7. The type of gear used for harvest;
8. The ports used for the landing of menhaden;
9. The date on which, and the dealer to whom, any landed menhaden was sold or bartered by the licensee; and
10. Any other information required by the Division.

(q) Any licensee who fails to submit a monthly report on or before the 10th day of the month following the month of record shall be subject to a fine of \$ 50.00 for a first offense, \$ 100.00 for a second offense, and \$ 200.00 for any subsequent offense.

(r) No refuse, litter, or garbage of any kind shall be thrown overboard or released from the vessel or its net(s). Dead fish shall not be thrown overboard or otherwise released from the vessel or its net(s), except incidental amounts of dead fish released during fishing operations. The licensee shall immediately notify the Division's Marine Enforcement Unit at (609) 748-2050 of a release.

1. Menhaden Landing licensees are responsible for cleaning up any fish, fish-part, refuse, litter, or garbage of any kind that is released during any fishing operation or as a result of a fishing operation and must initiate such cleanup no later than 24 hours after the release begins.
2. If the licensee fails to initiate such cleanup within the 24-hour period, the Department may conduct or arrange for the performance of the cleanup. In addition to any other penalties and remedies provided by law, the licensee shall be liable for all costs associated with such cleanup,

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including any administrative costs incurred by the Department. Such cleanup shall include, but not be limited to, the marine and estuarine waters of the State and adjacent beaches, shorelines, and marshes.

7:25-22.6 Transferability of certain licenses

(a) Upon application to and approval by the Division, the holder of a Menhaden Purse Seine Fishing Vessel License, a Menhaden Landing License, or a Menhaden Personal Use and Limited Sale License may transfer the license as follows:

1. To a replacement vessel when the vessel named in the license is replaced by the licensee;
2. To a new owner of the vessel named in the license when the vessel is sold or otherwise transferred to another person; or
3. If the Menhaden Landing licensee uses a bait net and has no vessel, to any person.

(b) The following limitations shall apply to a license transfer:

1. A license shall only be transferrable to a replacement vessel that employs the same type of fishing gear identified in the original license;
2. A license that is applicable to a purse seine catch vessel, including the Menhaden Landing License designated as a purse seine-catch, shall only be transferrable to a replacement purse seine catch vessel, and a license that is applicable to a purse seine carry vessel shall only be transferrable to a replacement purse seine carry vessel;
3. A license that is applicable to a purse seine catch vessel or a purse seine carry vessel shall be transferrable to a replacement vessel only if the replacement vessel is not more than 10 percent larger in overall length and has an engine no more than 20 percent more powerful in terms of horsepower, than the originally licensed vessel.
4. A license that is applicable to a purse seine carry vessel shall be transferrable to a replacement carry vessel only if the replacement carry vessel has a hold capacity no more than 10 percent larger than the originally licensed carry vessel.
 - i. Hold capacity for both the current carry vessel and the new carry vessel shall be determined by one of the persons or entities listed at N.J.A.C. 7:25-22.4(b)2vi. Proof of the hold capacity shall be in the form of a certification and shall be submitted to the Division at the time of application for a license transfer.

[page=2148] (c) A person who transfers a Menhaden Landing License or Menhaden Personal Use and Limited Sale License shall no longer be eligible to obtain a Menhaden Landing License or a Menhaden Personal Use and Limited Sale License based upon the landing history of the vessel being sold.

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(d) An applicant for a license transfer shall complete and submit the application to the Department at the address provided at N.J.A.C. 7:25-22.5(o), and no license shall be transferred without the prior approval of the Department.

(e) A license shall not be eligible for transfer if:

1. The license is pending suspension or has been suspended; or
2. The licensee is subject to court action for a violation.

7:25-22.7 Vessel boarding

The operator of, or any other person on board, a fishing vessel subject to this subchapter, shall immediately comply with the instructions and signals issued by any law enforcement officer and facilitate a safe boarding and inspection of the vessel, its gear, equipment, catch, and any area where fish may be stored.

7:25-22.8 Menhaden Dealer License

(a) No person shall purchase or barter for menhaden landed in the State, as the first point of sale, unless the person is in possession of a Menhaden Dealer License. No menhaden landed in the State shall be sold or traded to any person who is not licensed under this section.

(b) Any person who intends to purchase or barter for menhaden landed in the State shall complete and submit an application for a Menhaden Dealer License to the Division. A Menhaden Dealer License issued pursuant to this section shall be valid only for the calendar year for which it is issued and shall be renewed on an annual basis.

1. An applicant shall:

- i. Complete the application form each year and submit it by December 31;
- ii. Provide an email address to receive notifications from the Department; and
- iii. Submit the correct fee*,* as follows:

(1) The fee for a New Jersey resident is \$ 100.00; or

(2) The fee for a non-resident is \$ 500.00 or an amount equal to the non-resident fee charged to a non-resident in the non-resident's state, whichever is greater.

(c) A person shall not act as a first point of sale for menhaden prior to the menhaden being landed. A person shall not act as the first point of sale for menhaden landed in the State unless the person is in possession of a Menhaden Landing or Menhaden Personal Use and Limited Sale License, and a Menhaden Dealer License. Any person in possession of a Menhaden Landing License or a Menhaden Personal Use and Limited Sale License and not selling landed menhaden

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to a licensed Menhaden dealer shall also possess a Menhaden Dealer License and shall report any sales on a weekly basis.

(d) The holder of a Menhaden Dealer License, issued pursuant to this section, shall not accept 100 pounds or more of menhaden per day from any person, unless that person is in possession of a Menhaden Landing License or a Menhaden Personal Use and Limited Sale License.

(e) The holder of a Menhaden Dealer License shall complete and submit the weekly report form either electronically or on a form provided by the Division to the Division at the address provided at N.J.A.C. 7:25-22.5(o). The licensee shall attest to the validity of the information contained in the weekly report. If no purchase or trade of menhaden occurred during the week, the licensee shall submit a report to that effect to the Department. For the purposes of this section, a week shall begin on Sunday and end on Saturday.

(f) The weekly report shall include, at a minimum, the following information:

1. The name of the licensee;
2. The licensee's Menhaden Dealer License number;
3. The Menhaden Landing License number of each person selling or trading menhaden to the dealer during the preceding week;
4. The total amount, in pounds, of menhaden purchased or traded during the preceding week;
5. The location of harvest for menhaden purchased or traded during the preceding week;
6. The type of gear used for the harvest of menhaden purchased or traded during the preceding week;
7. The date of purchase or trade; and
8. Any other information required by the Department.

(g) If a licensed menhaden dealer fails to submit a weekly report either on or before noon on the Tuesday following the week of record, the licensee shall be subject to a fine of \$ 50.00 for a first offense, \$ 100.00 for a second offense, and \$ 200.00 for any subsequent offense.

7:25-22.9 Penalties

(a) A person who violates any provision of this section shall be subject to the penalties provided at N.J.S.A. 23:2B-14.

(b) In addition to the penalties at N.J.S.A. 23:3-14, if a licensee falsifies or misrepresents any information contained in a report submitted to the Division, fails to report a release, fails to

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initiate a clean-up of a release, or fishes in, or allows a purse seine to drift into, any restricted fishing area, the licensee shall be subject to the following periods of license suspension:

1. A 30-day suspension of the license for a first offense;
2. A 60-day suspension of the license for a second offense; and
3. A 180-day suspension of the license for a third or subsequent offense.

(c) In calculating the period of suspension applicable pursuant to (b) above, the number of previous suspensions imposed shall be reduced by one for each three-year period in which the license holder does not commit any other violation subject to the suspension schedule at (b) above. If more than one suspension is imposed 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 within a three-year period shall not be considered a first offender under this subsection regardless of the length of any subsequent period without a violation.

(d) The forgiveness of prior offenses provided for by this section shall apply only to those determinations that pertain to the calculation of applicable license suspension periods. All prior offenses shall be taken into account in the calculation of any monetary penalties.

(e) A license suspension imposed pursuant to this section shall be applicable to both the licensee and the licensed vessel, if any.