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**ENVIRONMENTAL PROTECTION**

**NATURAL AND HISTORIC RESOURCES**

**DIVISION OF FISH AND WILDLIFE**

**Marine Fisheries**

**General Net Regulations**

**Proposed Amendment:** N.J.A.C. 7:25-18.5

**Proposed New Rule:** N.J.A.C. 7:25-18.5A

**Authorized By:** Bob Martin, Commissioner, Department of Environmental Protection.

**Authority:** N.J.S.A. 13:1B-30 et seq., 13:1D-9, 23:1-1 et seq., and 50:1-5 et seq.

**Calendar Reference:** See Summary below for explanation of exception to calendar requirement.

**DEP Docket Number:** 14-14-12.

**Proposed Number:** PRN 2015-015.

Submit comments by April 3, 2015, electronically at [www.nj.gov/dep/rules/comments](http://www.nj.gov/dep/rules/comments).

The Department of Environmental Protection (Department) encourages electronic submittal of comments. In the alternative, comments may be submitted on paper to:

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Gary J. Brower, Esq.

Attn: DEP Docket Number: 14-14-12

Office of Legal Affairs

Department of Environmental Protection

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This rule proposal may be viewed or downloaded from the Department's website at

<http://www.nj.gov/dep/rules>.

The agency proposal follows:

### **Summary**

As the Department has provided a 60-day comment period on this notice of proposal, this notice is exempted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

The Department is proposing amendments to N.J.A.C. 7:25-18.5(g)11 and a new rule at N.J.A.C. 7:25-18.5A to limit the use of lobster, fish, and conch pots on artificial reefs in State waters, including the two existing New Jersey artificial reefs: the Sandy Hook Reef (hereinafter, "Sandy Hook") and the Axel J. Carlson Jr. Reef (hereinafter, "Axel Carlson").

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Construction began on the Sandy Hook Reef in the mid-1980s and the Axel Carlson Reef in the early 1990s. For many years, the State continued to build the reefs by adding demolition debris, old vessels, and other materials. Throughout this time, the State did not limit who could go to the reefs or the activities allowed on the reefs. In 2002, the Marine Fisheries Council, a statutorily created advisory council that, among other things, advises the Department on various issues and management programs related to marine fisheries resources, noted that there were an inordinate number of commercial pots on the reefs, and in 2003 the Department's Division of Fish and Wildlife (Division) issued an advisory alerting commercial potters to place fewer pots on the reefs as the pots were causing damage to the epifauna growing on the reefs and disrupting reef construction activities. The presence of potting gear within artificial reefs can hinder reef construction efforts. Although fishers who utilize potting gear are notified through Division press releases of the deployment locations and construction schedules when the Division is about to construct or add material to a reef, potting gear has been found in these areas on deployment dates. Rather than destroying the potting gear, which can cost upwards of \$1,700 per string of pots, by deploying the construction material on top of the pots, the construction material is deployed to other, less suitable locations that do not have pots in the way.

As the Division continued reef building activities throughout 2004 and 2005, the Division began to receive a higher number of complaints both from commercial potters reporting gear damage from reef building activities and from recreational anglers and sport/scuba divers reporting that the commercial potting gear was severely impeding their recreational activities. The buoys that potters use to identify their strings of pots and the attached bottom runners

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between pots create problems for sport divers and recreational anglers as the divers and the anglers' terminal fishing tackle can get entangled in the potting gear. Additionally, sport/scuba divers assert that the pots detract from the quality of the experience of exploring ship wrecks and the attendant epifauna and marine life.

There are currently 15 reefs in the waters off New Jersey; the State's Sandy Hook and Axel Carlson Reefs, and 13 Federal reefs in waters outside New Jersey's territorial waters (three nautical miles from the shore). In 2005, the Division conducted a study of pot fishing occurring on eight of the artificial reefs off the coast of New Jersey, including the Sandy Hook and Axel Carlson Reefs as well as six of the Federal reefs. This study showed that commercial pot fishing was occurring on both the Sandy Hook and Axel Carlson Reefs and that the Axel Carlson Reef exhibited the highest amount of commercial pots of the eight reefs surveyed.

Conflicts between the commercial potters, and the recreational anglers and sport/scuba divers escalated. Beginning in 2007, efforts were initiated to achieve a compromise between the commercial and recreational groups. As a result of continued efforts after those initial discussions, a compromise was reached by the Department and representatives from the commercial and recreational fishing sectors. The proposed amendments and new rule, which additionally address concerns expressed by the recreational sport/scuba diving community, reflect that compromise and will serve to alleviate conflicts between user groups, which have been caused by gear entanglement and decreased hook and line fishing access on these reefs. Particularly, the Department is proposing to designate specific agreed upon areas within the two existing artificial reefs in the State's waters as "full access zones." Commercial and recreational

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lobster, fish, and conch potters will be limited to placing their pots only in the designated full access zones. Commercial and recreational anglers and sport/scuba divers will continue to have full access to all parts of the reefs, including the designated full access zones.

In determining the boundaries of the proposed full access zones, consideration was given to locations of different types of reef building material to accommodate group preferences (for example, sport/scuba divers enjoy exploring ship wrecks), and to historic commercial fishing areas so as to preserve them to the maximum extent possible. The total combined area of the proposed full access zones within both reefs where commercial and recreational potters can set their gear is 0.91 square miles.

In addition to identifying the full access zones, the proposed amendments and new rule identify specific requirements for setting pots within the full access zones for commercial and recreational lobster, fish, and conch potters. These requirements minimize spatial conflicts between users and enable law enforcement to be more effective. Under the proposed amendments and new rule, commercial and recreational potters setting and tending gear within the full access zones may only do so between sunrise and sunset and must call the Marine Law Enforcement Unit two hours prior to doing so to provide information used by law enforcement to ensure that potters are complying with the rules. Individual pots set in these zones must be marked with a buoy, and a string of pots must have a buoy at both ends of the string for a visual clue as to the owners and locations of the pots. Potters are required to ensure that all buoys are in compliance with the National Oceanic and Atmospheric Administration's regulations on reducing the take of Atlantic Large Whales, Harbor Porpoises, and Bottlenose Dolphins, which

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are proposed to be incorporated by reference. These Federal regulations specify the size, color, and frequency of buoys and flags as well as the types of line that must be utilized when setting out more than one crab pot to protect the species covered by the respective plans. To aid potters in understanding and complying with the Federal requirements, links to the Atlantic Whale Take Reduction Plan, Harbor Porpoise Take Reduction Plan, and the Bottlenose Dolphin Take Reduction Plan have been included in the amendments and new rule. In addition, all strings will be limited to 20 pots as that is the maximum number of pots that can be safely placed and stowed on the Marine Law Enforcement Unit's vessels used in enforcing the rules. Both the buoys and the limitation on the number of pots will aid efforts to ensure that all participants are complying with the rules' requirements.

As provided by statute (see N.J.S.A. 23:2B-14), the Department is proposing specific monetary penalty schedules for violations of the proposed amendments and new rule. The Division's experience has been that some commercial potters will make the strings of pots as long as possible and not mark the strings with buoys in order to maximize their catch and avoid detection by Marine Law Enforcement. The penalties apply based on type of offense and whether it is the first, second, or third offense for the potter against whom the violation is being cited. The offenses are: 1. deploying or tending pots outside a full access zone or deploying or tending after sunset or before sunrise; 2. deploying or tending gear not marked or not properly marked with a buoy or flag or setting strings with more than 20 pots; and 3. failing to call the Marine Law Enforcement Unit prior to deploying pots. The first offense for deploying or tending pots outside a full access zone or deploying or tending pots after sunset or before sunrise is

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proposed to be subject to a \$100.00 penalty and a 30-day license suspension. A second offense carries a \$200.00 penalty and permanent license revocation. The proposed penalties for the offense of deploying or tending gear not marked or not properly marked with a buoy or flag or setting strings with more than 20 pots are a \$100.00 penalty and 30-day license suspension for a first offense, \$200.00 and a 45-day license suspension for a second offense, and \$200.00 and permanent license revocation for a third offense. The offense of failing to call the Marine Law Enforcement Unit prior to deploying pots is proposed to carry fines of \$100.00 for a first offense, \$200.00 for a second offense, and \$200.00 for a third and subsequent offenses as well as a 30-day license suspension. The possibility of a license suspension and the resulting adverse financial consequences for the potter will serve as additional deterrents.

The Department is also proposing to make how certain previous violations are taken into account in setting the period of suspension for subsequent violations of the rules consistent with similar provisions applicable to certain other marine fisheries violations (see, for example, N.J.A.C. 7:25-14.20(h)4 and 18.1(f)3ix). Particularly, the Department is proposing that a license holder incurring a license suspension under proposed N.J.A.C. 7:25-18.5A(e)1, 2, or 3 who does not incur a second suspension under the same paragraph for a three-year period will have the first suspension removed from consideration in determining the license suspension period for a subsequent violation subject to penalty under that paragraph. For example, under proposed N.J.A.C. 7:25-18.5A(e)2, the license of any license holder who incurs three violations relating to deploying or tending improperly marked gear, setting strings with more than 20 pots, or using buoys, flags, or strings not meeting applicable NOAA requirements is permanently revoked,

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regardless of the amount of time that has elapsed between violations. However, in accordance with proposed N.J.A.C. 7:25-18.5A(f), if that license holder does not commit another violation subject to penalty under N.J.A.C. 7:25-18.5A(e)2 for three years, the Department will remove one license suspension from consideration when determining future license suspensions to avoid permanent revocation for violations that may occur many years apart. However, the subsection makes it clear that a licensee who commits more than one violation penalized under the same paragraph of N.J.A.C. 7:25-18.5A(e) within a three-year period will only be allowed to have one violation withdrawn from consideration under this provision as a result of being violation-free for three years. The licensee who has more than one violation penalized under the same paragraph of N.J.A.C. 7:25-18.5A(e) within a three-year period will not be considered a first time offender as a result of operation of this provision.

This provision does not affect the monetary penalties applicable to violations of the rules; all violations are taken into account for that purpose.

### **Social Impact**

The proposed amendments and new rule limiting the use of lobster, fish, and conch pots on the Sandy Hook and Axel Carlson Reefs to the full access zones will have positive and negative social impacts.

The positive social impact will be the resultant increased unobstructed access to the Sandy Hook and Axel Carlson Reefs for recreational anglers and sport/scuba divers. Significant portions of these reefs will be free of pots and associated bottom runners that ensnare terminal

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tackle while drift fishing. Sport/scuba divers will have unrestricted access to sunken vessels, reef balls, army tanks, and other deployed reef structure that in the past may have been inundated with pots. In addition, the amendments and new rule limit the number of pots per string to 20 and require buoys at each end of a string. For the reasons explained in the Economic Impact statement below, restricting strings to 20 pots is not an undue hardship for commercial potters and ultimately will reduce the number of pots within these zones. Recreational anglers who drift fish across the full access zones will be able to use the two buoys at each end of a pot string as a visual clue on the direction the string of pots was set. With this information, anglers can set up drifts to avoid losses of terminal tackle on submerged pots and the associated bottom runners. Ultimately, the proposed amendments and new rule will serve to increase the quality of recreational angling and sport/scuba diving experience.

Although, in comparison to fish and conch potting, commercial and recreational lobster potting is minimal on the reefs located in State marine waters, potential negative outcomes may include a slight decline in commercial harvest by potters being restricted to smaller areas within these reefs. There may also be competition for space between potters that may cause some potters to move further offshore to new grounds. Increased fuel costs associated with some potters moving further offshore and a decline in harvest may decrease market availability of lobster, conch, and demersal fish (that is., bottom feeding fish) such as black sea bass and tautog, which are also caught using pots, that ultimately could translate to higher prices for consumers.

### **Economic Impact**

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The proposed amendments and new rule limiting the use of lobster, fish, and conch pots to the full access zones on the Sandy Hook and Axel Carlson Reefs will have positive and negative economic impacts for recreational and commercial potters. New Jersey's artificial reefs, including the 13 Federal reefs located off the coast of New Jersey, are extremely popular with anglers and sport/scuba divers, contributing to the State's economy through tourism and jobs. Estimates on the number of anglers in New Jersey are between 500,000 and 1.4 million. The anglers take more than six million fishing trips a year bringing in more than \$640 million in sales annually, and are directly responsible for 10,000 jobs in recreational fishing industries; the sales include more than \$242 million in tax revenues, including \$165 million in State and local taxes. New Jersey's commercial fisheries bring in more than \$1 billion to the State's economy, which supports nearly 15,000 private sector jobs. New Jersey's commercial fishing industry ranks seventh in the nation for the amount of retail sales. The Cape May and Wildwood fishing ports rank fifth in the nation for commercial landings, and Point Pleasant and Atlantic City rank in the top half of all commercial ports nationwide for commercial landings. The primary commercial fishery occurring on New Jersey's reefs is American lobster, even though the catch from the State reefs is only 2.5 percent of the overall State harvest. The total commercial harvest of lobster from along the coast of New Jersey averages 629,727 pounds annually with an average dockside value of \$2.5 million.

Under the proposed amendments and new rule, recreational anglers will have unobstructed access to significant sections of the Sandy Hook and Axel Carlson Reefs. There are nearly 600 charter boats and 80 party boats in New Jersey that contribute a substantial economic

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benefit to the State. In the latest recreational use survey performed by the Department, it was determined that nearly 50 percent of the fishing trips by New Jersey's head boats (boats that charge "by the head") and charter boats sailed to New Jersey's artificial reefs, where a variety of species such as summer flounder, black sea bass, tautog, scup, and cunner were caught. In addition, New Jersey's substantial for-hire charter boat fleet and private sport/scuba diving industry make the artificial reefs their destination, and the Department counted 3,000 annual trips made by sport/scuba divers to the State's artificial reefs. The unobstructed access to these sections of the Sandy Hook and Axel Carlson Reefs should result in an increase in angler catch rates and a higher quality experience for both anglers and sport/scuba divers. Ultimately this will result in increased trips to these reefs and subsequent increased economic benefits to local bait and tackle stores, party and charter boats, and dive shops that cater to fishing and diving clientele.

Prior to the construction of the Sandy Hook and the Axel Carlson Reefs (1984 and 1991, respectively), commercial lobster fishing was occurring in these areas. In an analysis performed by the Division of Fish and Wildlife in 2006 on lobster landings in Federal and State waters utilizing trip reports from the National Marine Fisheries Service (NMFS) and port of landing data, results indicated that between 1995 and 2006, 95 percent of commercial lobster landings were from Federal waters and five percent were from State waters. In this analysis, port of landing data was used as a proxy to determine how many pounds of lobsters were landed from the Sandy Hook and Axel Carlson Reefs. Results showed that only 2.5 percent of the total

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lobster landings in New Jersey may have come from the Sandy Hook and Axel Carlson Reefs with an estimated market value of \$48,000.

In addition to information indicating that only a small percentage of total landings of American lobsters are attributable to harvest from the two reefs in State waters, even for those harvesters taking from the reefs only minor negative economic impacts are expected because commercial potters will not be completely excluded from these reefs. However, competition for space may occur as potting efforts intensify in the full access zones. Commercial potters accustomed to fishing these reefs in their entirety may seek out new grounds possibly further offshore. This may lead to increased costs for fuel, potential loss of wages, potential lost productivity, and, therefore, a smaller harvest. Commercial fishers who utilize hook and line gear to catch demersal fish species such as tautog and black sea bass will not be affected by the proposed amendments and new rule. However, fishers who use pots to catch demersal fish will have to move their pots off the reefs to locations possibly further offshore.

There will be a minor economic impact for commercial potters as a result of the limit on the number of pots per string being set at 20. In 2005, the Division conducted a survey of fishermen and calculated that the mean number of pots per string was 22. Because law enforcement can only safely stow 20 pots on its boats, any additional pots per string would be cut off by law enforcement and left abandoned on the reefs. Law enforcement vessels have winches that can only handle the weight of 20 pots, and the size of the vessels used by law enforcement can safely carry only 20 pots without getting swamped by the water due to the weight of the pots forcing the vessel deeper into the water than is safe. The Division acknowledges that the cutting

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of pots from a string that has more than 20 pots could contribute to the ghost pot issue on the reefs and is proposing these amendments and new rule to prevent the problem. Therefore, the number of pots per string has been limited to 20. Restricting the number of pots per string to 20 is not expected to impose an economic hardship on fishermen and may in fact prevent the loss of pots that must be abandoned on the reef as a consequence of law enforcement's checking pot strings to ensure compliance with the rules.

The proposed amendments and new rule include penalty provisions and a "forgiveness" provision that will allow the Division to reduce the number of suspensions incurred by a potter by one where the potter has had no additional violations that are punishable under the same paragraph of N.J.A.C. 7:25-18.5A(e) in a three-year period. By forgiving a violation after three years of no violations, the potter would only serve the first offense suspension even though the violation would be a second violation for the potter had the first offense not been removed. The potter also would not have to serve a longer suspension. A suspension can cause a greater adverse economic impact to a potter than a monetary penalty as the potter cannot fish and therefore cannot realize income from fishing during the suspension.

The aspects of the proposed amendments and new rule that specify location of the artificial reefs and the full access zones have no economic impact.

### **Environmental Impact**

The proposed amendments and new rule limiting the use of lobster, fish, and conch pots on the Sandy Hook and Axel Carlson Reefs to the full access zones will have only positive

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environmental impacts. Significant sections of the Sandy Hook and Axel Carlson Reefs will be for angling only. Epifauna that has colonized the reefs will no longer be damaged by the setting and subsequent retrieval of pots. Additionally, the occurrence of abandoned or “ghost pots” that continue to catch and kill fish and American lobster and entangle other marine life will be less prevalent within these reefs due to a restriction in the amount of pots. The occurrence of abandoned pots will also be less prevalent by limiting the number of pots on a string to 20, which is the number of pots law enforcement can safely stow on its boats. If the number of pots per string were set higher, law enforcement would be forced to cut off the pots over 20 and leave them on the reef as abandoned pots that would then trap and kill fish and other marine life. The proposed amendments and new rule limiting the string to 20 pots will address this problem and avoid the Division potentially having to purchase new vessels that can safely stow and winches that can pull up more than 20 pots.

### **Federal Standard Statement**

The proposed amendments and new rule are not more stringent than Federal requirements as the Federal government does not have standards applicable to the waters of the State.

### **Jobs Impact**

The proposed amendments and new rule will have a positive jobs impact. Increased unobstructed access to the Sandy Hook and Axel Carlson Reefs for individual boat owners, and party, charter, and dive boats will result in an increase in frequency of recreational trips and

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possibly increased catch rates. The resultant economic benefits to bait and tackle stores, and party, charter and dive boats will ensue, which may result in job creation.

Limiting the setting of lobster, conch, and fish pots on the State's reefs to the full access zones only may cause a decline in commercial landings. However, commercial potters can move to new grounds where these potential losses could be offset. The Department does not anticipate any loss of commercial fishing jobs due to the proposed amendments and new rule.

### **Agriculture Industry Impact**

Pursuant to N.J.S.A. 52:14B-4(a)2, the Department has evaluated this rulemaking to determine the nature and extent of the impact of the proposed amendments and new rule on the agriculture industry. The proposed amendments and new rule apply solely to the marine fishing industry and will have no impact upon the agriculture or aquaculture industry.

### **Regulatory Flexibility Analysis**

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has reviewed the proposed amendments and new rule for reporting, recordkeeping, or other compliance requirements on small businesses. The proposed amendments and new rule apply to commercial and recreational potters.

Some commercial potters may qualify as small businesses under the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments and new rule require that all potters provide basic information to the Marine Law Enforcement Unit prior to

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deploying and tending pots and require that buoys be attached to individual pots or attached at the beginning and end of each string of pots. The proposed amendments and new rule also identify the boundaries of full access zones and specify requirements for setting commercial and recreational pots within full access zones and limit the number of pots allowed per string at 20. These requirements apply uniformly to all businesses using pots in order to eliminate conflicts between anglers, sport/scuba divers, and potters and are consistent with Federal regulations pertaining to the use of fish, conch, and lobster pots in Federal waters.

### **Housing Affordability Impact Analysis**

Pursuant to N.J.S.A. 52:14B-4 and 4.1b, the Department has evaluated this rulemaking to determine the nature and extent of the impacts of the proposed amendments and new rule on housing affordability. The proposed amendments and new rule apply solely to the marine fishing industry and will have no impact on the average costs associated with housing.

### **Smart Growth Development Impact Analysis**

Pursuant to N.J.S.A. 52:14B-4 and 4b, the Department has evaluated this rulemaking to determine the nature and extent of the impact of the proposed amendments and new rule on smart growth development. The proposed amendments and new rule apply solely to the marine fishing industry and will have no impact on housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan.

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

7:25-18.5 General net regulations

(a) - (f) (No change)

(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 net license they held in any one calendar year between January 1, 1997, and July 13, 2000. To be eligible for a gill net license in all subsequent years, an applicant must provide a copy of a previously valid gill net license held by the applicant from the preceding year. Individuals must purchase the maximum number of gill net licenses to which they are entitled annually. Any licenses not purchased will be forfeited. The holder of a valid gill net license not pending revocation or court action due to violation of provisions of this subchapter may transfer the right to purchase all of the gill net licenses he or she is entitled to purchase to another individual at any time, upon notification to the Department. The new licensee shall have a license(s) issued in his or her name after payment of the fee specified in (g)5vi or (g)6ix below. Any licenses not purchased by the new entrant will be forfeited. Individuals who applied to the gill net delayed entry program prior to July 12,

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2000, and who obtained gill net licenses after the July 13th control date in 2000 or 2001 or who obtained gill net licenses or are eligible to obtain gill net licenses in 2002, will be restricted to purchase a maximum of two drifting and/or six staked or anchored gill net licenses. Any licenses not purchased in any year will be forfeited. Availability of Delaware Bay Gill Net Permits shall be determined pursuant to N.J.A.C. 7:25-18.6 through 18.11. Upon receipt of the application, and the prescribed license fee, the Commissioner may, in his or her discretion, issue single season licenses and/or permits as specified for each net type for the taking of fish with nets only as follows:

1. – 10. (No change)

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. 7:25-14.3 through 14.20 and shall be used only in the Atlantic Ocean, Delaware Bay, Raritan Bay, and Sandy Hook Bay except as provided in **N.J.A.C. 7:25-18.5A** or (g)11ix below.

i. – viii. (No change.)

ix. A modified lobster or fish pot may be used for the taking of conchs or whelks and spider crabs in all marine waters of the State including the Atlantic Ocean with the exception of the Newark Bay Complex **and except as provided in N.J.A.C. 7:25-18.5A.**

(1)-(3) (No change.)

x. – xi. (No change.)

12. (No change.)

(h) – (m) (No change.)

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

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

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

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

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

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SE Corner	40 20.880'	73 55.880'
SW Corner	40 20.880'	74 56.600'

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

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

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

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

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

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

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

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

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

**i. In an area designated as a full access zone under this section when within an artificial reef; and**

**ii. Between sunrise and sunset.**

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

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

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

**3. Two hours' notice shall be provided to the Marine Law Enforcement Unit by calling (609) 748-2050 prior to any lobster, fish, or conch pot being deployed. The notice shall include the operator's name; vessel name; license number for the lobster, fish, and conch pots or traps being tended; date, time, and port of landing; and on what reef and in what zone the pots will be deployed.**

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

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

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

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

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

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

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

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

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

**i. First offense: \$100.00 penalty.**

**ii. Second offense: \$200.00 penalty.**

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

**(f) In calculating the period of suspension or revocation applicable pursuant to (e) above, the number of previous suspensions imposed pursuant to (e)1, 2, or 3 above, respectively, shall be reduced by one for each three-year period in which the license holder does not commit any other violation subject to penalty and/or suspension or revocation under the same paragraph in (e) above. If more than one suspension is imposed under the same paragraph (for example, two violations subject to (e)2 above) within a three-year period, only one of those suspensions may be forgiven under this subsection. Therefore, a license holder who incurs more than one suspension under a single paragraph of (e) above within a three-year period shall not be considered a first offender under this subsection regardless of the length of any subsequent period without violation. Any reduction in suspensions as provided in this subsection applies only to the determination of the period of suspension. All prior suspensions shall be taken into account in calculating monetary penalties in accordance with section (e) above.**