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ENVIRONMENTAL PROTECTION

NATURAL AND HISTORIC RESOURCES

DIVISION OF FISH AND WILDLIFE

Marine Fisheries

General Net Regulations

Adopted Amendment: N.J.A.C. 7:25-18.5

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

Proposed: February 2, 2015, at 47 N.J.R. 315(a).

Adopted: September 30, 2015, by Bob Martin, Commissioner, Department of Environmental Protection.

Filed: October 7, 2015, as R.2015 d.168, **with a non-substantial change** not requiring additional public notice (see N.J.A.C. 1:30-6.3).

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

DEP Docket Number: 14-14-12.

Effective Date: November 2, 2015.

Expiration Date: June 12, 2021.

The Department of Environmental Protection is adopting 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 and the Axel J. Carlson Jr. Reef.

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The amendment and new rule designate specific areas within the two existing artificial reefs in the State’s waters as “full access zones.” Commercial and recreational lobster, fish, and conch potters are limited to placing their pots only in the designated full access zones.

Commercial and recreational anglers and sport/scuba divers continue to have full access to all parts of the reefs, including the designated full access zones. In addition to identifying the full access zones, the amendment 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. The rule includes penalty provisions that impose monetary fines as well as license suspension or revocation for violations.

Summary of Public Comments and Agency Responses:

The following persons timely submitted comments on the proposal:

1. Todd Armstrong
2. Glenn Arthur, New Jersey Council of Dive Clubs
3. J. Baker
4. Frank Belasik
5. Phillip Berman
6. Robert Billerman
7. Carl Blanchard
8. Joseph Bogan
9. William Bolton
10. Robert Chankalian
11. Lenard K. Chew
12. Carol Chupek
13. John Chupek
14. Chris Clancy, Bay Head Shores Fishing Club
15. Anne Dashevsky
16. Lisa Dealy

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17. Vincent DeBari
18. Timothy Doolan
19. Glenn Enders
20. Ron Essig, United States Fish & Wildlife Service
21. Bill Figley
22. Rick Ferrera
23. Adriana Fragola
24. Captain Lindsay Fuller
25. Charles Gaal
26. Mark Gerber
27. Tony Guadagnino, Fish Hawks Saltwater Anglers Club, Lacy
28. Jerome Hates
29. Pat Hedkendorf
30. William Heitzman
31. Tim Higgins
32. Illegible
33. Illegible
34. Paul Jessen
35. Katherine
36. Bertram Kern, Bay Head Shores Fishing Club
37. Joseph Kisty
38. Tom Kowalak
39. James Krauss, Recreational Fishing Alliance – NJ Chapter
40. Rich Lippo
41. Frank Macalik
42. Phil Masters
43. Steve Matthews, Manasquan River Marlin & Tuna Club
44. Scott Mayer
45. Erik Muller
46. Ralph Munsie, Bay Head Shores Fishing Club
47. R.K. Nachman
48. Stephen O'Connor
49. Joseph Oles
50. Joseph Panek
51. Joe Rusin
52. Joe Russella
53. Barbara Sachau
54. Alvaro Salazar
55. Jerry Salzer
56. Walter Skola
57. Charles Stiles, Bay Head Shores Fishing Club
58. Tom Szalus
59. Robert W. Trust Sr.

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- 60. Thomas Visich
- 61. F. Allen Vogel, Shore Aquatic Club
- 62. Kenneth F. Warchal, Manasquan River Marlin & Tuna Club, and Jersey Coast Angler's Association
- 63. Brad Weil
- 64. David Wescott
- 65. Joseph Zagorski
- 66. Jeffrey Zielinski

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.

1. COMMENT: The proposed amendment and new rule are supported. (1-4, 6, 7, 10-13, 15, 16, 21, 23, 26-28, 32-35, 37, 39-43, 45-47, 49-52, 54, 56, 57, 60-64)

RESPONSE: The Department acknowledges the comments in support of the amendment and new rule.

2. COMMENT: Pots on reefs cause the loss of boat anchors and terminal fishing tackle, such as sinkers and hooks. (5, 22, 28, 31, 37, 40, 48, 59)

RESPONSE: The amendment and new rule will significantly reduce the use of pots on the Sandy Hook and Axel Carlson Reefs, which should reduce fishing tackle and anchor losses resulting from entanglement with submerged potting gear. The setting of potting gear will be prohibited on 83.2 percent of the Sandy Hook and Axel Carlson Reefs. The remaining 16.8 percent of these reefs will be designated as full access zones where pots can be set. Anglers who fish in these full access zones should be aware of the potential of losing terminal fishing tackle and anchors because of submerged potting gear.

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3. COMMENT: There should be no potting allowed on any sections of the Sandy Hook or Axel Carlson Reefs. (8, 9, 14, 18, 30, 36, 44, 48, 55, 63, 66)

4. COMMENT: Not only should there be no commercial potting allowed on the reefs, but there should also be no commercial potting allowed within a 250-foot radius around the reefs. (24)

RESPONSE TO COMMENTS 3 AND 4: The new rule represents a compromise reached between commercial and recreational fishing groups and the Department. As discussed in the proposal's Economic Impact statement, both recreational and commercial fishing are important to New Jersey's economy. Of the combined area of the Sandy Hook and Axel Carlson Reefs, 16.8 percent will be open to commercial and recreational fishers utilizing potting gear. Prior to this adoption, commercial and recreational potters had full use of the reefs since the Sandy Hook Reef was constructed in the mid-1980s and the Axel Carlson Reef in the early 1990s. The compromise allows the commercial and recreational potters to continue potting on parts of the reefs, but provides that the majority of the reefs be open only for recreational uses. It is because of this compromise that the Department believes that a 250-foot radius around the reefs where commercial pots cannot be placed is unnecessary. Commercial fishermen have had the use of the reefs for approximately 25 years at the Axel Carlson Reef and approximately 30 years at the Sandy Hook Reef. This compromise allows all user groups some access to the reefs.

5. COMMENT: The penalties for infractions are not sufficient to deter potters from violating the rules, and law enforcement will not be able to enforce the rules. (14, 44, 53)

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6. COMMENT: How can the public report trapping violations, and who is responsible to enforce the regulation? (29)

RESPONSE TO COMMENTS 5 AND 6: The penalties in the rule are the maximum allowed by the statute (see N.J.S.A. 23:2B-14). Violators are also subject to suspension and/or permanent revocation of their lobster, fish, or conch pot license. In the case of tending gear outside a full access zone or outside the hours of sunset and sunrise, a first offense includes a 30-day suspension of the license, and a second offense includes permanent revocation. In the case of deploying gear not marked properly with a buoy or flag, or setting strings with more than 20 pots, a first offense includes a 30-day suspension, a second offense includes a 45-day suspension, and a third offense includes permanent revocation of the license. In the case of not calling in to the Marine Law Enforcement Headquarters two hours prior to deploying or tending gear, the third offense includes a 30-day suspension of the license. The possibility of a license suspension and revocation after three offenses, with the resulting adverse financial consequences for the potter, is a significant additional deterrent.

The Department anticipates that if potting activities that do not comply with the rules are observed, those activities will be reported to the Department's Marine Law Enforcement. Any person can report a violation of the regulation to Marine Law Enforcement. In addition, commercial or recreational fishers who deploy or tend gear within the full access zones are required to notify the Marine Law Enforcement Headquarters two hours prior to doing so. Thus, the Bureau of Marine Law Enforcement will know of any commercial and recreational fishers who will be utilizing potting gear in the full access zones. Although Marine Law Enforcement

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will be patrolling the reefs as they have been since the reefs were created, the Department depends on other fishers and sport divers to be aware of what goes on at the reefs and report any violations to Marine Law Enforcement.

7. COMMENT: The existing reefs are not large enough to accommodate the full access zones. (14)

RESPONSE: The Sandy Hook and Axel Carlson Reefs are two of the largest reefs within New Jersey's artificial reef network, which is comprised of these two State reefs and 13 Federal reefs. The Axel Carlson Reef is the second largest (4.0 square miles) and the Sandy Hook Reef is the fourth largest (1.4 square miles). The three full access zones, two within the Axel Carlson Reef and one within the Sandy Hook Reef, comprise 16.8 percent of the total area of the Sandy Hook and Axel Carlson Reefs. The remaining 83.2 percent of these reefs will be free of potting gear. The full access zones will be the only areas within these reefs where potting gear can be set. In addition, anglers will not be prohibited from utilizing the full access zones.

8. COMMENT: The proposed locations of the full access zones encroach on structures that exist because of private donations. (14)

9. COMMENT: The reefs were funded almost entirely by private donations from recreational fishermen. (3, 8, 9, 19, 25, 30, 42, 44, 55, and 57)

10. COMMENT: The taxes paid by recreational fishermen for bait, fuel, tackle, boat maintenance, and party boat fares all go toward reef building. (17)

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11. COMMENT: Recreational dollars are used to ensure the reefs are available for future generations to enjoy recreational activities. (38)

RESPONSE TO COMMENTS 8 THROUGH 11: There are no areas within the Sandy Hook Reef that encroach upon structures that were sponsored by private donations. On the Axel Carlson Reef, there is one location in the northern full access zone and nine locations in the southern full access zone that contain reef material sponsored by private donations as part of the Division of Fish and Wildlife's Adopt-A-Reef Program. These areas represent only 14.3 percent of the total material that is sponsored by private donations. The remaining 85.7 percent of reef structure sponsored through the Adopt-A-Reef program is in the portion of the reef where potting will be prohibited. Although there are 10 locations sponsored by private donations in the full access zones, donors who sponsored these reef materials will have complete access and will not be excluded from angling or scuba diving there.

The reefs were initially and are continually built using funds generated by the Federal excise tax and State matching funds through the Wildlife and Sport Fish Restoration Program, and donations of material from public agencies such as the U.S. Army Corps of Engineers (USACE), in addition to private donations of materials (such as vessels that are sunk on the reefs), and private donations of money through the Adopt-A-Reef or Memorial Reef programs. The Federal excise tax is collected on fuel, tackle, and other sporting related purchases and is disbursed to the State as a part of the Wildlife and Sport Fish Restoration Program. The Federal excise tax is 75 percent of that program's funding, and the State must come up with a 25 percent match. The State match has been provided through labor to build reef balls and donations of

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material. The Federal excise tax money returned to the State historically has been approximately \$250,000 per year and pays for the material to construct reef balls, the monitoring of the program, and other costs associated with deploying material on the reefs. The majority of the material deployed on the reefs comes from donations from agencies such as USACE, which has donated large rocks from USACE's dredging operations. The commenters are correct that the excise taxes recreational users have paid have been used in building the reefs; however, the bulk of the donated reef material has come from donations of rock from USACE.

12. COMMENT: The proposal should also include a restriction for commercial dredgers (that is, trawl nets, surf clam dredgers, and the like) that would not allow them to use their dredges on the reefs because the reefs can be damaged by the dredges. (24)

RESPONSE: Commercial dredges are not used on the reefs because the reefs have too many protrusions and rock piles that would ensnare the dredges.

13. COMMENT: The language in the proposal stating that the reefs are open to all recreational and commercial activities leaves the reefs open to such activities as sand and gravel mining, gill netting, and aquaculture development. (20)

RESPONSE: Recreational and commercial activities are subject to all applicable Federal and State laws. For example, for any sand mining to be conducted in State waters, permits are required from the Department's Division of Land Use Regulation as well as the U.S. Army Corps of Engineers. As to anchored gill nets, they would become entangled in the protrusions and rock piles, so fishermen do not use them on the reefs. Fishermen who use drifting gill nets

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may set their gill nets over the reefs because drifting nets do not become entangled in the reefs and do not interfere with the recreational use of the reefs.

14. COMMENT: At N.J.A.C. 7:25-18.5A(d)1i, the clause “when within an artificial reef” is unnecessary as full access zones are always within artificial reefs. (20)

RESPONSE: The Department agrees with the commenter and on adoption is deleting the phrase as redundant.

15. COMMENT: The use of “or” in the phrase “used, left, deployed, or tended” in N.J.A.C. 7:25-18.5A(d)1 creates a loophole that allows the fishing of pots overnight. (20)

16. COMMENT: The words “use, leave, deploy, or tend,” or their past tense, are used multiple times in the rule to refer to commercial potting activities. These multiple verbs create confusion on what activities are actually not allowed. For example, there are penalties described in N.J.A.C. 7:25-18.5A(e) for “deployment or tending” of gear, but not for “using or leaving” gear. Alternatively, the words “using or leaving” gear should be added to the penalties. (20)

RESPONSE TO COMMENTS 15 AND 16: Once deployed or left on the reefs during daylight hours, pots may remain on the reefs thereafter, including overnight. It would not be practical for fishermen to have to place and remove fishing pots the same day. The pots must remain in place for a reasonable span of time in order for the target organisms to enter and be caught in the pots.

17. COMMENT: Because of overfishing and use of pots on the reefs, the pots are destroying the reefs themselves which were built with private dollars. (65)

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RESPONSE: Reefs sustain damage in a number of ways, including from crab and lobster pots scraping the reefs and damaging the epifauna growing on the reefs. The limitation of where pots can be placed on the reefs will greatly assist with preventing epifauna destruction due to pots. The Department notes, however, that anchors used by commercial and recreational anglers also damage the epifauna on the reefs, but that activity is allowed as the damage is minor compared to the damage caused by pots.

Reefs need to be constantly maintained and reconstructed, not because of damage from potting activities, but because of natural decay and settling. The Department's reef building activities have been ongoing since the reefs were initially constructed and will continue as long as the State has the resources to build the reefs. Reefs in other states or in Federal waters where pots are not allowed also degrade and need to be rebuilt on an ongoing basis. See the Response to Comment 9 for an explanation of the funding sources for New Jersey reef building efforts.

18. COMMENT: The reefs are being overfished by commercial fishermen. (17)

19. COMMENT: Commercial fishermen haul large numbers of fish from the reefs leaving no fish for the recreational fishermen who use rod and reel. (58)

RESPONSES TO COMMENTS 18 AND 19: The Department has no evidence that the reefs are being overfished by commercial fishermen. Commercial fishermen are subject to regulations that establish quotas, seasons, and gear restrictions. The purpose of the quotas and other restrictions is to manage fisheries resources to avoid overfishing and depletion.

Federal Standards Statement

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The amendment 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.

Full text of the adoption follows (deletion from proposal indicated in brackets with asterisks *[thus]*):

7:25-18.5A Artificial reefs

(a)-(c) (No change from proposal.)

(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. (No change from proposal.)

2.-3. (No change from proposal.)

(e)-(f) (No change from proposal.)