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## **ENVIRONMENTAL PROTECTION**

### **DIVISION OF FISH AND WILDLIFE**

#### **Notice of Administrative Change**

#### **Marine Fisheries**

#### **Modification of American Eel Commercial Regulations and Modification of Commercial Trip Limits for Black Sea Bass and Summer Flounder**

#### **N.J.A.C. 7:25-18.5 and 18.12**

**Take notice** that, pursuant to N.J.A.C. 7:25-18.5(i) and N.J.A.C. 7:25-18.12(p), the Commissioner of the Department of Environmental Protection, with the approval of the New Jersey Marine Fisheries Council (Council) at its November 12, 2015 meeting, has modified the American eel commercial regulations and the commercial trip limits for black sea bass and summer flounder. These actions have been taken to comply with the Atlantic States Marine Fisheries Commission (ASMFC) management plans for American eel, black sea bass, and summer flounder, in addition to the optimal utilization of available quotas and the prevention of excessive harvesting and quota exceedances.

In October 2014, the ASMFC's American Eel Management Board (Board) approved Addendum IV to the Interstate Fishery Management Plan for American Eel which established additional management conditions for the coastwide harvest of American eel. Addendum IV, along with Addendum III which was approved in August 2013, was initiated in response to the 2012 Benchmark American Eel Stock Assessment, which found the American eel population in

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U.S. waters is depleted. The assessment found the stock is at or near historically low levels due to a combination of historical overfishing, habitat loss and alteration, productivity and food web alterations, predation, turbine mortality, changing climatic and oceanic conditions, toxins and contaminants, and disease. Addendum IV is the second phase of the Board's management response to the stock assessment.

American eel have four life stages: leptocephali, glass eel or elver, yellow eel, and silver eel. Because fishermen are permitted to possess American eel that are at least nine inches in length, yellow eel is the life stage primarily harvested in New Jersey. ASMFC determined that the commercial yellow eel fisheries will be regulated through a coastwide catch cap set at 907,671 pounds for 2015, with this cap to be applicable cumulatively to the states and jurisdictions subject to the interstate management plan for American eel. Under Addendum IV of the management plan for American eel, there are two triggers which would result in the coastwide catch cap being replaced with individual quotas for the participating states. Particularly, the alternate management plan involving individual state quotas would be implemented if either the coastwide catch cap is exceeded by more than ten percent in a year (998,438 pounds or more) or the coastwide catch cap is exceeded for two consecutive years. If either trigger is tripped, then there would be automatic implementation of a state-by-state commercial yellow eel quota and New Jersey would be required to implement and monitor a quota of 94,899 pounds. ASMFC mandated that all states ensure that they have the mechanisms available to control harvest should the need for state-by-state quotas be enacted due to these

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triggers. Addendum IV also requires states to implement measures that will control harvest and effort to help constrain landings to the coastwide catch cap.

To comply with the ASMFC mandates, the Council's Eel Committee met in July and September of 2015 to discuss potential options with advisors. The Council determined that license holders should be limited to the use of 300 miniature fykes or pots during fishing, proposed at N.J.A.C. 7-25-18.5(g), to lower the potential for exceeding any quota for the New Jersey commercial yellow eel fishery. The Council also agreed on provisions, proposed at N.J.A.C 7:25-18.12(n), which will align New Jersey's commercial yellow eel quota and fishery closures with ASMFC mandates.

The Mid-Atlantic Fishery Management Council (MAFMC) and the ASMFC Summer Flounder, Scup and Black Sea Bass Board met jointly in August 2015 to discuss black sea bass commercial quotas for 2016. The MAFMC and ASMFC approved a 20 percent increase in the 2016 black sea bass quota relative to the 2015 quota. This results in a preliminary 2016 commercial quota of 537,600 pounds of black sea bass for New Jersey. The Council approved modifying the seasonal trip limits and landing days in order to benefit the various commercial black sea bass gear types and better utilize the seasonal quotas. The current commercial black sea bass trip limits for the fishing season beginning January 1 and ending April 15, codified at N.J.A.C. 7:25-18.12(h)8iii(1), have allowed high harvest rates in past years. Consequently, this fishing season has been closed prior to April 1, which leads to depressed market prices due to an over-supply of fish. To achieve better utilization of the quota and normalize market prices, trip

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limits and landing days are changed as follows: instead of a 1,000-pound trip limit three days per two week period, 1,500 pound trip limit two days per two week period or 3,000 pound trip limit one day per two week period, vessels may land 1,000 pounds two days per two week period or 2,000 pounds one day per two week period.

For similar reasons to those described above for the January 1 to April 15 season, the commercial black sea bass trip limits from April 16 through June 30, codified at N.J.A.C. 7:25-18.12(h)8iii(2), are changed as follows: instead of 1,500 pounds one day per week or 500 pounds three days per week, vessels may land 1,000 pounds one day per week or 500 pounds two days per week.

The commercial black sea bass trip limits from July 1 through September 30 and October 1 through December 31, codified at N.J.A.C. 7:25-18.12(h)8iii(3) and (4), will remain unchanged.

The MAFMC and ASMFC also approved a 29 percent decrease in the 2016 summer flounder quota relative to the 2015 quota. This results in a preliminary 2016 commercial quota of 1,358,069 pounds of summer flounder for New Jersey. Reduced quotas and historic early closures to each season have led to poor market prices due to the high landings during a short period of time. The Council approved the following changes to account for the reduced 2016 quota to better utilize the available resource. The trip limits and landing days for the January-February season will be changed from 2,500 pounds two days per two week period or 5,000

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pound one day per two week period to 1,000 pounds two days per two week period or 2,000 pounds one day per two week period. The trip limits and landing days for the March-April season will be changed from 2,000 pounds two days per week to 500 pounds two days per week or 1,000 pounds one day per week. The May-June and July-August seasons remain unchanged. The trip limits and landing days for the September-October season will be changed from 650 pounds four days per week or 2,500 pounds one day per week to 250 pounds six days per week, 500 pounds three days per week, or 1,500 pounds one day per week. The trip limits and landing days for the November-December season will be changed from 1,000 pounds three days per week or 3,000 pounds one day per week to 500 pounds three days per week or 1,500 pounds one day per week.

These changes will be reflected in the Division of Fish and Wildlife rules at N.J.A.C. N.J.A.C. 7:25-18.5(g), 7:25-18.12(h), 7:25-18.12(i) and 7:25-18.12(n) as indicated below. As required in N.J.A.C. 18.12(p), changes to N.J.A.C. 18.12(h) and (i) shall be published in the New Jersey Register.

**Full text** of the changed rule 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

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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, 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. – 2. (No change.)

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

i. - iv. (No change.)

**v. No license holder shall use more than 300 miniature fykes or pots for the taking of catfish, suckers, killifish and eels.**

Recodify existing (v. – vi.) as **(vi. – vii.)** (No change in text)

4. – 12. (No change.)

(h) – (m) (No change.)

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

(a) - (g) (No change.)

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

1. – 7. (No change.)

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

i. - iii. (No change.)

(1) January 1 - April 15: 38.8 percent, 1,000 pound trip limit and a maximum of **two** [three] days per two week period that a vessel may land black sea bass, **or** 2,000 pound trip limit and a

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maximum of **one** [two] day [s] per two week period that a vessel may land black sea bass [or 3,000 pound trip limit and a maximum of one day per two week period that a vessel may land black sea bass]. The first period shall begin on January 1<sup>st</sup> and end the second Saturday following January 1<sup>st</sup>. Each two week period will run consecutively from Sunday to the second Saturday thereafter.

(2) April 16 - June 30: 20.6 percent, **500** [1,500] pound trip limit and a maximum of **two** [one] days per week that a vessel may land black sea bass, or a **1,000** [500] pound trip limit and a maximum of **one** [three] day[s] per week that a vessel may land black sea bass;

(3) – (4) (No change.)

(5) - (6) (No change.)

iv. - x. (No change.)

9. - 13. (No change.)

(i) The following provisions are applicable to the commercial harvest of summer flounder:

1. (No change.)

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

i. (No change.)

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

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

(2) March - April: 11 percent, **500** [2,000] pound trip limit and a maximum of two days per week that a vessel may land summer flounder, or **1,000 pound trip limit with a maximum of one day per week that a vessel may land summer flounder;**

(3) – (4) (No change)

(5) September - October: 29 percent, **250** [650] pound trip limit and a maximum of **six** [four] days that a vessel may land summer flounder, or **500 pound trip limit with a maximum of three days per week that a vessel may land summer flounder,** except as follows:

(A) A vessel may elect to land summer flounder only one day per week. If such an election is made, the trip limit shall be **1**[2],500 pounds;

(6) November - December: 11 percent, **500** [1,000] pound trip limit and a maximum of three days per week that a vessel may land summer flounder, except as follows:

(A) A vessel may elect to land summer flounder only one day per week. If such an election is made, the trip limit shall be **1,500** [3,000] pounds; and

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(2) - (7) (No change.)

iii. - xiii. (No change.)

3. - 9. (No change.)

(j) – (m) (No change.)

**(n) The following provisions are applicable to the commercial harvest of American eel:**

- 1. The annual American eel harvest quota for New Jersey shall be determined by the Atlantic States Marine Fisheries Commission. All landings of American eel in New Jersey shall be applied to the New Jersey annual American eel quota.**
- 2. Any closure of the American eel fishery by the Atlantic States Marine Fisheries Commission for areas including New Jersey automatically closes all New Jersey waters to the harvest of American eel and to the commercial landings of American eel. The Commissioner, or his or her designee, shall give public notice of any such closure. Public notice shall include posting of a notice on the Department’s website and either an e-mail or first class mail sent to all miniature fyke or pot license holders.**

Recodify existing (n) - (u) as **(o) – (v)** (No change in text.)