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ENVIRONMENTAL PROTECTION

NATURAL AND HISTORIC RESOURCES

DIVISION OF FISH AND WILDLIFE

Marine Fisheries

Crab and Lobster Management; Marine Fisheries

Adopted Amendments: N.J.A.C. 7:25-14.4, 14.12, 14.21, 18.1, 18.5 and 18.12

Proposed: July 20, 2015 at 47 N.J.R. 1815(a)

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

Filed: , 2016, as R. 2016 d. , **without changes, but with the proposed amendments at N.J.A.C. 7:25-18.5(g)5iii and (g)6iii not adopted.**

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: 06-15-06

Effective Date:

Expiration Date:

The Department of Environmental Protection is adopting amendments to N.J.A.C. 7:25-14.4, 14.12, 14.21, 18.1, 18.5 and 18.12 regarding Crab and Lobster Management and Marine Fisheries, more specifically, the fisheries for blue crab, tautog, bluefish, black sea bass, and summer flounder. The adopted amendments include changes affecting various gear types and related reporting requirements.

The proposed amendments at N.J.A.C. 7:25-18.5(g)5iii and (g)6iii are not being adopted. The proposed amendments would have limited a licensee to the use of one drifting or staked/anchored gill net, with a mesh size that is four inches or greater when stretched, in the

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Atlantic Ocean from September 1 through December 15 provided the net was tended at all times.

As indicated in the proposal summary, the use of gill nets with a stretched mesh size of four inches or greater for target species inevitably results in non-target fish, including striped bass, also being caught. The Department's proposed changes were intended to minimize the capture and discard of striped bass in the fall when striped bass discard mortality tends to be higher due to warmer water temperatures. However, since the gill nets must be tended at all times during this period (in order that striped bass caught in the net can be released as promptly as possible), the Department has determined that allowing the use of two tended larger-mesh gill nets will avoid overly restricting fishing effort but still minimize the by-catch of striped bass.

The use of gill nets with a stretched mesh size less than four inches does not pose the same threat to striped bass because striped bass do not become ensnared in the smaller mesh. However, the proposed amendments did not clearly indicate that these smaller mesh nets were not subject to the limitations proposed for larger mesh nets and that the smaller mesh nets could still be used during the period of September 1 through December 15.

Accordingly, elsewhere in this issue of the New Jersey Register, the Department is proposing amendments to N.J.A.C. 7:25-18.5(g)5iii and (g)6iii that allow for the use of two gill nets with a stretched mesh size that is four inches or greater in the Atlantic Ocean from September 1 through December 15 and that clarify that gill nets with a stretched mesh size less than four inches may be used in the Atlantic Ocean during this period and are not subject to the limits applicable to the larger mesh size gill nets.

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

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Summary of Public Comments and Agency Responses:

The following persons timely submitted comments on the proposal:

1. Jean Publi
2. Barbara Sachau

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: No person should be allowed to dredge at any time as it is extremely destructive to the environment. If dredging is going to be allowed, the quota should be cut by 50 percent. (1)

RESPONSE: The commercial harvest of crabs using dredges has occurred historically in the Delaware Bay and Atlantic Ocean. The Department's rules specify licensing and other requirements necessary to ensure that harvest through this and other methods is conducted in a manner that does not threaten the sustainability of the resource, including limiting the number of licenses that may be issued. The amendments being adopted at this time clarify that an individual may only hold one license, address how licenses are to be assigned when licenses become available, and address the enforcement of the rules. The amendments do not increase harvest in any way. As stated in the proposal, there is no daily limit for this fishery. Therefore, it is not possible to cut the quota by 50 percent. Through prior rulemaking, the Department has capped the number of Atlantic Coast crab dredge licenses to 250 in order to control participation and fishing pressure in the fishery and, at the same time, maintain a sustainable blue crab

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resource. If it becomes apparent that any harvest method is causing detrimental impacts on the resource and the environment, the Department will take appropriate action.

2. COMMENT: No individual should have more than one license to fish in the Delaware River. The number of licenses allows for overfishing. (1)

RESPONSE: The Department has not made any changes in the number of licenses available to fish in the waters of the Delaware River. The only change the Department is making regarding the Delaware River is moving the upstream boundary line for striped bass to the Calhoun Street Bridge. This change makes this section consistent with the Fish Code wherein the Fish and Game Council has determined that the fresh water boundary is at the Calhoun Street Bridge.

Licensees are permitted to hold separate licenses to harvest different species of fish and for different types of fishing gear. To prevent overfishing, the Department implements a number of different methods, including quotas for some fisheries, a limitation on the number of fishing licenses issued, daily harvest amount limits, and different seasons and size limits for fishing harvests. The Department issues licenses for specific types of fishing gear, and permits for the harvest of particular species. The reporting requirements associated with these licenses and permits assist the Department in monitoring fish harvests and ensure overfishing is not occurring.

3. COMMENT: In N.J.A.C. 7:25-14.12(c) and 18.5(g)3vii, there should be no automatic expungement after 18 months of a crime. Government is too easy on crime and enforcement is low. There is too much stealing going on, and once a crime is on someone's record, it should stay there. (1)

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RESPONSE: The nullification of an offense as allowed under N.J.A.C. 7:25-14.12(c) and 18.5(g)3vii is only for reporting offenses. The Department has determined, in consideration of situations that might reasonably explain a past failure to report (such as a period of illness when the licensee failed to report that no harvest occurred), that for this limited class of offense it is appropriate to forgive a past violation that has not been repeated because of the potential hardship that could result from offenses occurring many years apart. The Department agrees that the illegal taking of fish, for example, is a much more serious offense and one for which nullification is not available.

4. COMMENT: The fines in N.J.A.C. 7:25-18.1 are too low and should be set at \$250 for each fish illegally taken. (1)

RESPONSE: The penalties set out in N.J.A.C. 7:25-18.1(g) are increasing only for tautog from \$30.00 to \$100.00 per tautog illegally taken. This change increases the amount of the penalty by over 300 percent for tautog. Additionally, under the applicable statute, \$100.00 is the maximum penalty allowed for a first offense that can be included in a penalty schedule adopted by the Department, with the concurrence of the Marine Fisheries Council. See N.J.S.A. 23:2B-14a(2).

5. COMMENT: The four-day notice as provided in N.J.A.C. 7:25-18.12(b)11, 18.12(c)11ii, 18.12(c)11iv, and 18.12(i)2v should remain as is. The Commissioner has always been able to deal with a four-day notice, and people should make plans if they cannot deal with the four-day notice. (1)

RESPONSE: The notice provided under the provisions cited by the commenter provides for a period during which fish may continue to be harvested after public notice of a closure has been

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issued due to imminent exhaustion of the annual quota for that fishery. As indicated in the proposal summary, the shorter notice period will allow the Commissioner to react more quickly when it appears the quota is being approached. The ability to respond more quickly will allow the Commissioner to ensure that overharvest does not occur, while making it possible to more closely achieve optimal take. The change from the four-day notice to two-day notice allows the Department to better ensure that the quota is not exceeded.

6. COMMENT: The MAFMC and ASMFC quotas are too large and are unsustainable. If a quota is not taken it should be left and not taken in the next year. Fish stocks need time to reproduce.

(1)

RESPONSE: The MAFMC (Mid-Atlantic Fishery Management Council) and ASMFC (Atlantic States Marine Fisheries Commission) set quotas to ensure the long-term health and sustainability of marine fish populations. The Department provides information regarding various fish species to these entities, and these entities utilize information collected along the entire Atlantic coast to determine the size and distribution of fish populations, including harvest amounts, prior to setting quotas to ensure that the populations are sustainable.

If a quota is not reached in a given year, it is not added to the following year's quota. This is why the reduction in the four-day notice to two-day notice provision is important as it allows fishermen to maximize their take under the current year's quota. If, however, the bluefish quota is exceeded, N.J.A.C. 7:25-18.12(b)5 provides that the following year's quota is reduced by the overage. This section provides the same protection through the quota system for bluefish that is already in the rules elsewhere for other fish species.

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7. COMMENT: Commercial fishermen are allowed to overfish and catch other species in their nets killing them. This creates an environmental hazard to all marine species. We need to make sure that all marine life sustains itself and is not available just for the profit of commercial fishermen. (2)

RESPONSE: As stated above in response to Comment 6, quotas are established based on fish population information collected along the entire Atlantic coast to ensure the long-term health and sustainability of marine fish populations. Commercial fishermen are not allowed to exceed the quota for any given species. If the quota is exceeded in any given year, the quota is reduced in the following year to account for these overages. There are various provisions intended to minimize by-catch (catching non-targeted species) and discards (fish not retained and returned to the water) in commercial fisheries, including restrictions on when certain fisheries may be conducted, limits on mesh size and number, and requiring the tending of gill nets in certain circumstances.

Federal Standards Statement

The proposed amendments 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.

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

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SUBCHAPTER 14. CRAB AND LOBSTER MANAGEMENT

7:25-18.5 General net regulations

(a) – (f) (No change from proposal.)

(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, 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 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. 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. – 4. (No change from proposal.)

5. Drifting gill nets shall be used only in the Atlantic Ocean, Delaware Bay, and the tributaries of Delaware Bay. The smallest mesh of any drifting gill net shall be not less than five

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inches stretched from February 12 through February 29. Except as provided in (g)5iii below for drifting gill nets in the Atlantic Ocean, from March 1 through December 15 the smallest mesh of any drifting gill net in the Delaware Bay, the tributaries of Delaware Bay and in the Atlantic Ocean within two nautical miles of the mean high water line shall not be less than 2.75 inches stretched; for areas of the Atlantic Ocean not within two nautical miles of the mean high water line, the smallest mesh of any drifting gill net shall not be less than 3.25 inches stretched mesh during this period. Drifting gill nets are subject to the permitting and reporting requirements specified in (g)5vii below and in N.J.A.C. 7:25-18.12. These nets shall not individually exceed 200 fathoms in length. Individual drifting gill nets shall not be fastened together to form a series of nets exceeding 400 fathoms in length beginning February 12 through May 15 or exceeding 200 fathoms in length beginning May 16 through December 15. Drifting gill nets may be used for all species except those specifically protected.

i. – ii. (No change.)

iii. Drifting gill nets shall be used in the Atlantic Ocean only from February 12 through December 15. Drifting gill nets shall not be used in the Atlantic Ocean within 100 fathoms of the marked channel of any inlet. *[From September 1 through December 15, a licensee may only utilize either one drifting or one staked/anchored gill net. The drifting or staked/anchored gill net utilized shall have a mesh size that is four inches or greater stretched mesh and shall be tended at all times. For the purpose of this subparagraph, “tended” means an operator shall be no more than one-half nautical mile (3,040 feet) from the nearest portion of the net and the net must be fully brought into the boat within five hours of the initial set.]* Drifting gill nets between 2.75

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inches stretched mesh and 3.25 inches stretched mesh shall be subject to the permitting and reporting requirements specified in (g)5vii below, and

(1) – (4) (No change.)

iv. – vii. (No change.)

6. Staked and anchored gill nets shall be used only in the Atlantic Ocean, Raritan Bay, Sandy Hook Bay, and Delaware Bay and its tributaries. No unattended, overnight staked or anchored gill net shall be set in the Atlantic Ocean from June 15 through October 31. No unattended, overnight anchored gill net shall be set in Delaware Bay from June 15 through September 30. For the purpose of this section, “unattended” means that set of circumstances where the operator is more than ½ nautical mile (3,040 feet) from the nearest portion of his or her net. Staked or anchored gill nets shall not be fastened together to form a series of net exceeding 400 fathoms in length from the beginning of the season through May 15 or exceeding 200 fathoms in length beginning May 16 through December 15, subject to the additional conditions specified in N.J.A.C. 7:25-18.12.

i. – ii. (No change.)

iii. Staked and anchored gill nets may be used in the Atlantic Ocean for any species except those specifically protected only beginning February 12 through December 15, where individual gill net length shall not exceed 50 fathoms. The smallest mesh of any such net used in the Atlantic Ocean shall not be less than five inches stretched beginning February 12 through February 29 and not less than 3.25 inches stretched beginning March 1 through December 15. *[From September 1 through December 15, a licensee may utilize either one drifting or one staked/anchored gill net subject to the requirements at (g)6 above with a mesh size that is four

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inches or greater stretched mesh, provided the gill net is tended at all times. For the purpose of this subparagraph, “tended” means an operator may be no more than one-half nautical mile (3,040 feet) from the nearest portion of the net and the net must be fully brought into the boat within five hours of the initial set.]* Staked or anchored gill nets shall not be used in the Atlantic Ocean within 100 fathoms of the marked channel of any inlet;

iv. – ix. (No change.)

7. – 12. (No change.)

(h) – (m) (No change.)

Based on consultation with Staff, I hereby certify that the above statements, including the Federal Standards Statement addressing the requirements of Executive Order 27 (1994), permit the public to understand accurately and plainly the purposes and expected consequences of these adopted amendments. I hereby authorize the adoption of these amendments.

Date

Bob Martin, Commissioner