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ENVIRONMENTAL PROTECTION

DIVISION OF FISH, AND WILDLIFE

Crab and Lobster Management

Marine Fisheries

Fishery Management in New Jersey

Proposed Amendments: N.J.A.C. 7:25-14.4, 14.19, 18.1, 18.5, 18.12, 22.1, 22.3, and 22.7

Proposed New Rules: N.J.A.C. 7:25-22.2, 22.3, 22.5, 22.6, 22.8 and 22.9

Authorized By: Catherine R. McCabe, Commissioner, Department of Environmental Protection.

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

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

DEP Docket Number: 1-21-1.

Proposal Number: PRN 2021-019.

Submit comments by April 30, 2021, electronically at 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:

Ryan H. Knapick, Esq.

Attn: DEP Docket Number: 1-21-1

Office of Legal Affairs

Department of Environmental Protection

401 East State Street, 7th Floor

Mail Code 401-04L

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PO Box 402

Trenton, NJ 08625-0402

The agency proposal follows:

Summary

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

The Department is proposing amendments and new rules at N.J.A.C. 7:25-22 to establish new management measures for the commercial Atlantic menhaden fishery.

The Department is proposing 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.

The Department is proposing amendments at N.J.A.C. 7:25-14.19 and 18.1, 18.5, and 18.12 to allow 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 State Marine Fisheries Commission (ASMFC), the Mid-Atlantic Fishery

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Management Council (MAFMC), the New England Fishery Management Council, the South Atlantic Fishery Management Council, or the National Marine Fisheries Service.

Lastly, the Department is proposing amendments to the provisions applicable to the recreational harvest of striped bass 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.

Atlantic Menhaden Fishery

The Department is proposing amendments and new rules at N.J.A.C. 7:25-22, regarding the Atlantic menhaden fishery. Atlantic menhaden are small, schooling fish used primarily as bait in many important commercial fisheries, such as the lobster and crab fisheries. Menhaden are also a forage fish for a host of predators, including striped bass, bluefish, and many species of shark and tuna. Menhaden are found in nearshore and inland tidal waters from Florida to Nova Scotia, Canada.

Due to the species' ecological and economic importance, the ASMFC established the Interstate Fishery Management Plan for Atlantic Menhaden in 1981. In 2012, the ASMFC determined that although menhaden was not overfished, overfishing was occurring because the rate of harvest at the time would exceed the biological threshold if conservation measures were not implemented. Subsequently, in December 2012, the ASMFC adopted Amendment 2 to the Interstate Fishery Management Plan for Atlantic Menhaden, which established a coastwide total allowable catch of 170,800 metric tons (mt) to be implemented in commercial fisheries on

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a state-by-state basis, New Jersey was allocated 11.19 percent (see

http://www.asmfc.org/uploads/file/atlanticMenhadenAmendment2_Dec2012.pdf). In 2017,

the ASMFC again revised the coastwide total allowable catch for the 2018 and 2019 commercial fishing years to 216,000 mt, of which New Jersey was allocated 10.87 percent.

In order to monitor New Jersey's menhaden quota, the Department is proposing to require commercial licensees to report the amount of menhaden landed or sold. Additionally, the proposed new rules for menhaden establish who may qualify for certain fishing licenses, including a Menhaden Purse Seine Fishing Vessel License, a Menhaden Purse Seine Fishing Vessel Operator's License, a Menhaden Landing License, or a Menhaden Personal Use and Limited Sale License for vessels or commercial owners and/or operators. The proposed new rules would establish a Menhaden Dealer License, which would be required for the sale or barter of Atlantic menhaden. In addition, the proposed new rules establish penalties for violations, and provisions related to the suspension of a license and the forgiveness of certain violations.

General (N.J.A.C. 7:25-22)

At N.J.A.C. 7:25-22.1, the Department proposes to add whole menhaden that is caught and frozen for consumption by humans as a non-prohibited item, in addition to menhaden used for bait.

The Department is proposing definitions applicable to the taking or landing and selling of menhaden at N.J.A.C. 7:25-22.2. The following definitions are taken from P.L. 2013, c. 74 and

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P.L. 2014, c. 57: “bait net,” “dealer,” “fishing,” “gill net vessel,” “menhaden set vessel,” “pound net vessel,” “purse seine carry vessel,” “purse seine catch vessel,” and “trawl vessel.” The Department is also proposing definitions for “land,” “other authorized gear,” and “purse seine.” As to the definition of “dealer,” because a fisherman can sell or barter menhaden at any point in time, the Department proposes to set the first point of sale as being after the fish has been landed, which is at any time after the fisherman has entered port or has started to offload, or has offloaded, the fish. “Other authorized gear” is proposed to mean the same gear types as listed at N.J.S.A. 23:3-24.2. The Department is proposing to combine the terms “purse seine” and “shirred net” under the definition of “purse seine” and removing the term “shirred net.” Lastly, the Department is proposing to replace the term “permit” with “license” throughout the rules because the term “license” is more accurate in the context of the proposed requirements.

The Department is proposing new N.J.A.C. 7:25-22.3, which requires compliance with the quota set by a fishery management plan approved 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.

The Department is proposing to relocate existing N.J.A.C. 7:25-22.3(c) as new N.J.A.C. 7:25-22.3(a) and include changes consistent with P.L. 2013, c. 74, and with the amendments proposed at N.J.A.C. 7:25-14.19, 18.1, 18.5, and 18.12, as discussed above. The Department is proposing to allow the Commissioner, with the approval of the New Jersey Marine Fisheries Council, to apportion the quota, according to season, gear type, and incidental catch

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allowances by notice. The proposed amendments further allow the Commissioner to change reporting requirements, trip limits, or gear marking requirements on two days' notice by publication in the New Jersey Register, on the Department's website, by email to every menhaden license holder, and in the Department's commercial regulation publication. Similar to the proposed amendments to N.J.A.C. 7:25-14 and 18 discussed above, proposed new N.J.A.C. 7:25-22.3 permits the Department to act promptly to maintain compliance or adjust quota utilization appropriately and, thereby, avoid risking imposition of a Federal moratorium on a fishery for noncompliance.

Proposed new N.J.A.C. 7:25-22.3(b) would allocate 95 percent of the State's quota of menhaden to fishermen who utilize purse seines. The remaining five percent to fishermen who utilize pound nets, wire pound nets, gill nets, trawls, bait nets, or other authorized gear. The proposed new rule also establishes, for all gear types, a fishing season of January 1 through December 31 that will close earlier when the annual allocation for the fishery is projected to be caught prior to December 31. Currently, the season is May 15 through October 31. However, because the overall quota from ASMFC allows for off-season incidental catch of menhaden, the Department is proposing to extend the season to a year-round basis. The Department also proposes an unlimited daily trip limit for all gear types.

The Department is proposing to allow the Commissioner to close and re-open a specific gear type's season upon two days' notice. Because notice will be provided primarily by email, all licensees must provide an email address to the Department.

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Lastly, the Department is proposing new N.J.A.C. 7:25-22.3(f) to allow licensees to harvest, land, and sell menhaden only as incidental catch and only as allowed under an applicable fishery management plan once a gear type's season has been closed. The proposed requirements are consistent to those currently at N.J.S.A. 23:3-51 et seq.

Purse Seine Licenses (N.J.A.C. 7:25-22.4)

The Department is proposing amendments at recodified N.J.A.C. 7:25-22.4. The changes establish two new licenses for fishermen who use purse seine gear. The first is a Menhaden Purse Seine Fishing Vessel License and the other is a Menhaden Purse Seine Fishing Vessel Operator's License, both of which would be issued in the name of the fisherman. The difference between the Menhaden Purse Seine Fishing Vessel License and the Menhaden Purse Seine Fishing Vessel Operator's License is that only an owner of a fishing vessel may apply for the Menhaden Purse Seine Fishing Vessel License, whereas only an operator who is not the owner of the vessel may apply for a Menhaden Purse Seine Fishing Operator's License. In addition, the Department is proposing to modify existing requirements for vessels and owners and/or operators engaged in the purse seine fishery, including limits on the size of a vessel allowed to fish menhaden using purse seines and amendments regarding the use of fish pumps. The Department also proposes to require a fisherman to contact the Department by phone, or by electronic means, prior to fishing for menhaden and declare the fisherman's intent to fish menhaden and provide the location where the fisherman intends to fish. Additionally, a

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fisherman must contact the Department prior to a change of location and provide the new location where the fisherman intends to fish.

The Department is proposing to establish license requirements for purse seine catch vessels, purse seine carry vessels, and menhaden set vessels. A purse seine net is a large fishing net that is circular, has weights at the bottom to hold the net down in the water, and has rings that have a rope or line running through them. At the top of the net there are floats to buoy the top edge of the net at or near the surface of the water. Once the fisherman has determined that the targeted fish has entered the net area, the fisherman pulls the rope or line gathering the bottom of the purse seine to prevent the fish from swimming under the net and escaping. The entire net is then hauled above the catch or carry vessel by a winch, and when the bottom rope or line is relaxed, the fish are deposited into the vessel's hold. A purse seine catch vessel is used in the deployment of the purse seine net; whereas, a purse seine carry vessel works in conjunction with the purse seine catch vessel in receiving the fish and taking them to port for landing. A menhaden set vessel, if utilized, sets the purse seine net.

At proposed new N.J.A.C. 7:25-22.5, a purse seine carry vessel must have a Menhaden Landing License in addition to either a Menhaden Purse Seine Fishing Vessel License or a Menhaden Purse Seine Fishing Vessel Operator's License. A purse seine catch vessel is only required to possess one of the two purse seine fishing vessel licenses unless it also lands menhaden, in which case the vessel must also possess a Menhaden Landing License. A menhaden set vessel is not required to possess either a purse seine fishing vessel license or a Menhaden Landing License since it does not harvest or land menhaden.

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The Department is proposing to delete existing N.J.A.C. 7:25-22.3(a)1 because the reporting requirements for each menhaden license are new and proposed under separate sections for each license. The Department is also proposing to limit the issuance of a Menhaden Purse Seine Fishing Vessel License to holders of valid licenses only. Except for Menhaden Purse Seine Fishing Vessel Operator's Licenses, the menhaden purse seine fishery is a limited entry fishery as licenses are only available to those who already have a license. This amendment is in accordance with P.L. 2010, c. 72, which limits the licenses to those who were involved in the fishery between 2002 and 2009, inclusive of those years, and who remain active in the fishery today. The Menhaden Purse Seine Fishing Vessel Operator's Licenses are not limited in order to provide owners greater flexibility in choosing who operates their vessels. If these licenses were limited, owners would be constrained in their choices for operators of their vessels to those persons currently holding Menhaden Purse Seine Fishing Vessel Operator's Licenses.

The Department is proposing to stipulate that a purse seine fishing vessel license is not required for a menhaden set vessel that only assists with the setting of a purse seine net and does not directly harvest menhaden. Further, licensed purse seine vessels are permitted to work only with other purse seine vessels, and no other gear type is allowed on board a vessel licensed as a Menhaden Purse Seine Fishing Vessel or a Menhaden Purse Seine Fishing Vessel Operator other than purse seine gear. A Menhaden Purse Seine Fishing Vessel License or a Menhaden Purse Seine Fishing Vessel Operator's License must remain on the licensed vessel at all times and must be renewed on an annual basis.

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Proposed new N.J.A.C. 7:25-22.4(b) and (c) outline the application requirements for a Menhaden Purse Seine Fishing Vessel License and a Menhaden Purse Seine Fishing Vessel Operator's License. A complete application for either license must be submitted each year by December 31, and an email address must be submitted with the application, so the Department can provide timely notice to each licensee of season closures, season re-openings, and other information.

Specific to a Menhaden Purse Seine Fishing Vessel License, the Department is proposing to require a purse seine vessel that takes menhaden on an individual trip basis or that works in conjunction with a purse seine catch vessel to be licensed. Proposed new licensure requirements for applicants include attesting to the overall length, horsepower, and, if a purse seine carry vessel, the hold capacity of the vessel. The license requirement includes new limitations to vessel length, engine power, and hold capacity. Specifically, engines can have no more than a 20 percent increase in power and a carry vessel's hold capacity cannot increase by more than 10 percent over the original vessel. Vessels can also be no more than 90 feet in length regardless of any other upgrades. These upgrade restrictions on vessel length, horsepower, and hold capacity are intended to restrict the harvest capacity of the fleet to its current capacity to minimize future overexploitation. To ensure that purse seine carry vessels do not exceed the hold capacity requirements, the Department is proposing to require licensees to certify through one of five approved parties, listed below, to the capacity of the hold.

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The five entities or individuals approved to determine hold capacity are based on the NMFS requirements at 50 CFR 648.4 for the hold capacity of vessels that take mackerel and include: an individual credentialed as a Certified Marine Surveyor with a fishing specialty by the National Association of Marine Surveyors; an individual credentialed as an Accredited Marine Surveyor with a fishing specialty by the Society of Accredited Marine Surveyors; employees or agents of a classification society approved by the United States Coast Guard; a professionally licensed and/or registered Marine Engineer; a Naval architect with a professional engineer license; or the Maine State Sealer of Weights and Measures. The requirements at 50 CFR 648.4 also provide the Maine State Sealer of Weights and Measures as an approved person to certify hold capacity, but the Department is not including this individual in its proposed list of approved parties. Although the NMFS requirements govern a vessel's hold capacity for transporting mackerel, the Department anticipates that these approved parties are capable of calculating hold capacities regardless of which species of fish is being transported.

The new regulation requires that the Menhaden Purse Seine Fishing Vessel License be issued in the name of the vessel and the owner and a Menhaden Purse Seine Fishing Vessel Operator's License be issued in the name of the vessel operator who is not the owner. Similar application requirements are proposed for the Menhaden Purse Seine Fishing Vessel Operator's License, except the operator does not have to submit the name of the vessel and owner of the vessel or attest to the vessel's hold capacity. The Menhaden Purse Seine Fishing Vessel Operator's License is to be issued in the name of the operator only.

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At recodified N.J.A.C. 7:25-22.4(d), the Department is proposing to delete certain penalty provisions because these penalties have been replaced with new penalties pursuant to P.L. 2013, c. 74. Additionally, consistent with the proposed definition of “fishing,” at N.J.A.C. 7:25-22.2, the Department specified marine waters of the State at N.J.A.C. 7:25-22.3(d)1, by adding “within three nautical miles of the State.”

The regulations allowing the transfer of certain licenses from one vessel to another also provide for the upgrade or replacement of vessels within certain limitations. Specifically, the length of a vessel may be increased by no more than 10 percent and 90 feet or less, and the horsepower may be increased no more than 20 percent over the vessel. This proposed amendment allows for the upgrading or replacement of a vessel, as long as the upgraded or replaced vessel is no longer than 90 feet in overall length and the horsepower is increased by no more than 20 percent over the original vessel for a vessel that fished for menhaden in State waters. The amendments provide two methods for upgrading. A fisherman can upgrade his or her vessel one time by either increasing the vessel’s length by 10 percent to a maximum length of 90 feet and/or by increasing the vessel’s engine horsepower by 20 percent. Alternatively, a fisherman could incrementally increase the length of the vessel up to 10 percent greater and/or increase the horsepower of the engine up to 20 percent greater than the original vessel, but at no time may the fisherman increase the vessel’s length to more than 90 feet or the horsepower of the engine by more than 20 percent over the original vessel. In addition to the length and horsepower requirements, the Department is proposing that the hold capacity of a purse seine carry vessel be no more than 10 percent greater than the originally licensed carry vessel. A

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fisherman may upgrade a purse seine carry vessel one time to ten percent greater hold capacity. Alternatively, a fisherman can incrementally increase the hold capacity up to 10 percent greater than the original purse seine carry vessel, but at no time may the fisherman increase a purse seine carry vessel's hold capacity by more than 10 percent over the original vessel. Regardless of whether the fisherman upgrades a purse seine carry vessel's hold capacity by 10 percent larger or some lesser amount, professionals listed above must inspect and measure the hold and certify as to its capacity. There are no restrictions on upgrades for vessels that fish exclusively in Federal waters.

The Department is proposing to allow fish pumps on vessels if the pump and hoses are clearly and completely disconnected from a power source and the pump is not readily available for use. Currently, fish pumps are prohibited onboard any vessel participating in the purse seine fishery in State waters and all fish must be loaded into the hold by hand using dip nets. While dip net usage will still be required for loading menhaden, the Department is proposing that a fish pump may be onboard any vessel fishing in State waters, but it must be rendered inoperable and covered with a secured, brightly colored tarp. A purse seine vessel operating in Federal waters is not prohibited from using a fish pump to load menhaden onto a carry vessel. Thus, the rulemaking includes language allowing for disabled fish pumps to be on purse seine fishing vessels.

Because N.J.S.A. 23:3-51(f) allows purse seine fishermen to possess 500 pounds or less of fish, other than menhaden while fishing for menhaden, this rulemaking includes similarly amended language at recodified N.J.A.C. 7:25-22.4(d)8 and (d)8i. The Department is also

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proposing to remove the restrictions on taking menhaden for bait. Lastly, the Department is proposing to remove a clause regarding a person holding an Atlantic menhaden bait permit, as permits are no longer issued.

At recodified N.J.A.C 7:25-22.4(d)9 and 10, the Department is proposing to amend when dead fish can be thrown back into the water and what fishermen must do if the release of dead fish, garbage, or other refuse is likely to impact the shoreline. The current regulation does not allow any dead fish to be thrown back or otherwise released, and it does not require the notification of the Department's Marine Enforcement Unit of a release. The Department has determined that the proposed amendment is necessary to prevent intentional or unintentional release of fish, garbage, or refuse that may wash up on shore and result in social and/or economic impacts, such as impacts to public health, aesthetics, and shore tourism.

Existing N.J.A.C. 7:25-22.3(b)12 is proposed for deletion because the Department no longer requires a visible sign on purse seine fishing vessels. In the past, the Department required a visible sign ("B") for purse seine vessels fishing for bait versus those fishing for reduction purposes. Fishing for reduction purposes is now prohibited and the sign requirement is no longer necessary.

The Department is amending recodified N.J.A.C. 7:25-22.4(d)12 to require a fisherman who intends to fish for menhaden in State waters to notify the Department's Marine Enforcement Unit and provide the location of the intended fishing activities. If a fisherman declares for fishing in State waters, and then moves into Federal waters, the fisherman must still comply with the Department's rules.

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Landing Licenses and Personal Use or Limited Sale Licenses (N.J.A.C. 7:25-22.5)

The Department is proposing new N.J.A.C. 7:25-22.5 to establish the requirements for Menhaden Landing Licenses and Menhaden Personal Use or Limited Sale Licenses, and N.J.A.C. 7:25-22.6, detailing how certain menhaden fishing and landing licenses may be transferred. The proposed language regarding Menhaden Landing or Personal Use and Limited Sale Licenses is consistent with P.L. 2013, c. 74 and P.L. 2014, c. 57, which modified N.J.S.A. 23:3-51.3, 51.4, 51.6, and 51.10.

Fishermen who hold a Menhaden Purse Seine Fishing Vessel License, a Menhaden Purse Seine Fishing Vessel Operator's License, or a license for other gear types must obtain a Menhaden Landing License to land menhaden for the sale or barter of over 100 pounds. Fishermen using a gill net who wish to land menhaden for personal use and then sell or barter the excess menhaden weighing 500 pounds or less must obtain a Menhaden Personal Use and Limited Sale License, in addition to a fishing license. The requirement for two licenses, one to fish and one to land or sell, is consistent throughout the Marine Fisheries rules at N.J.A.C. 7:25-18.

Proposed new N.J.A.C. 7:25-22.5(a) and (b) will require a Menhaden Landing License if the licensee wishes to land more than 100 pounds of menhaden per day for sale or barter. The proposed new rules will require a Menhaden Personal Use and Limited Sale License in order to land menhaden for personal bait. This license would also be required to sell or barter up to 500 pounds of menhaden per day that is not used for personal bait. Because these fisheries are

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limited entry, fishermen must have landed a certain amount, as specified at N.J.S.A. 23:3-51.3(f), depending on gear type, of menhaden between 2009 and 2012, inclusive, to have obtained a Landing or Personal Use and Limited Sale license pursuant to N.J.S.A. 23:3-51.3(f) and 51.16(e).

The Department is proposing to require that a Menhaden Personal Use and Limited Sale licensee must also have a pot license to catch up to 500 pounds of menhaden for personal use with the authority to sell or barter the remainder. The pot license requirement serves as verification that a licensee is using the menhaden for personal use because the licensee will be presumed to be using menhaden as bait in crab or lobster pots. The Department is also proposing new N.J.A.C. 7:25-22.5(c) to allow a fisherman to take 100 pounds or less of menhaden at any time or on any trip or day, and land and sell or barter the menhaden without a Menhaden Landing or a Menhaden Personal Use and Limited Sale License.

The Department is proposing new requirements for its Menhaden Landing License at N.J.A.C. 7:25-22.5(d) through (k) that are consistent with N.J.S.A. 23:3-51.3 (P.L. 2013, c. 74). The requirements are identical to those for other menhaden licenses, including an application deadline of December 31, a requirement for the provision for an email address, and submission of a license fee. Also proposed are license requirements based on gear type and the amount of menhaden landed or intended to be landed.

Under the proposed new rules for the Menhaden Landing License, a vessel can be no longer than 90 feet overall if the menhaden landed is fished from State waters. If a fisherman intends to fish menhaden in Federal waters, this limitation does not apply. This restriction is

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consistent with the requirements for a purse seine license. Additionally, a menhaden set vessel that only assists with setting a purse seine net and does not fish or land menhaden is exempt from the Menhaden Landing License requirements.

The Department is proposing to issue the Menhaden Landing License in the name of the vessel and owner or operator of the vessel, or, if the license is issued to a purse seine carry vessel or purse seine catch vessel acting as a purse seine carry vessel, and the operator is not the owner, in the name of the vessel. If the license is to be issued to a fisherman using a bait net from the shore, the license shall be issued in the name of the person applying for the license. Because the license shall specify the specific gear type to be used, use of other gear types will not be permitted under this license. The license must be on board the vessel at all times or, if there is no vessel because the fisherman is using a bait net from shore, the licensee must be in possession of the license at all times. These proposed requirements for holders of a Menhaden Landing License will allow the Department's Marine Enforcement Unit to enforce the rules by simply inspecting the license and gear type.

The Department is proposing new N.J.A.C. 7:25-22.5(l), containing the requirements to obtain a Menhaden Personal Use and Limited Sale License. Under the proposed new regulation, only persons who have a valid gill net or pot fishery license and a valid Menhaden Personal Use and Limited Sale License may apply for a Menhaden Personal Use and Limited Sale License. Similar to other menhaden license requirements, the application for a Menhaden Personal Use and Limited Sale License must be submitted to the Department with an email address and the applicable license fee. A licensee holding a Menhaden Personal Use and Limited Sale License

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may only use a gill net and all other gear types are prohibited. Lastly, any menhaden taken with a Menhaden Personal Use and Limited Sale License must be purposed as bait for commercial fishing gear, with the exception of up to 500 pounds per day that may be sold or bartered.

The Department is proposing to require applications for a Menhaden Personal Use and Limited Sale License, or the application for an extension of time to apply, to be filed with the Department by December 31. Failure to do so will result in a license not being issued. This new regulation is proposed in accordance with N.J.S.A. 23:3-51.3(b)(1) and (2).

The Department is proposing new N.J.A.C. 7:25-22.5(n) that allows for an extension of time to renew a Menhaden Landing or Menhaden Personal Use and Limited Sale License. This allows the Department to grant an extension in consideration of a licensee's degree of hardship which prevented the current licensee from applying for the next year's license prior to the December 31 deadline. If the Department does not grant the extension, the fisherman may request an adjudicatory hearing. If, however, the fisherman knows he or she will not be able to renew the license by December 31, the fisherman may file a request for an extension. If the fisherman fails to renew the license or request an extension of time within which to renew the license, the license automatically lapses on January 1.

The Department is proposing new N.J.A.C. 7:25-22.5(o) and (p) to require holders of Menhaden Landing Licenses and Menhaden Personal Use and Limited Sale Licenses to submit monthly reports. The reporting requirements will enable the Department to monitor the total amount of menhaden taken and the amount of menhaden taken by gear type. While dealer reports are exclusively used for quota monitoring, fisherman reports are used to corroborate

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and verify the dealer reports. The Department is proposing reporting requirements on where the menhaden was taken, how much menhaden was discarded, and what port the fisherman landed the menhaden. The proposed requirements will further assist with efforts to track menhaden in the State waters. In turn, this information will allow for the development of regulations that best fit the characteristics of the fishery, based on area specific landings and sales records. The Department is proposing to require fishermen to provide reports following fishing activities by the 10th day of the month.

Lastly, the Department is proposing new N.J.A.C. 7:25-22.5(r), similar to the proposed requirements for a purse seine license, which prohibits holders of Menhaden Landing and Menhaden Personal Use and Limited Sale Licenses from releasing garbage, litter, fish, or fish parts during fishing activities. The proposed new regulation includes requiring Menhaden Landing Licensees who release such litter, garbage, or fish or fish parts to immediately notify the Department's Marine Enforcement Unit. The requirement to notify the Marine Enforcement Unit of a release is not applicable to Menhaden Personal Use and Limited Sale Licensees because the Department has determined that the amount of a possible release for these licensees would be small and will not affect the shoreline. Similar to the Menhaden Purse Seine licensees, Menhaden Landing Licensees must initiate a clean-up of dead fish, within 24 hours of a release that may impact the coastline.

Transfers of Licenses (N.J.A.C. 7:25-22.6)

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The Department is proposing to allow the transfer of certain menhaden licenses at proposed new N.J.A.C. 7:25-22.6. Under the proposed new rule, a Menhaden Purse Seine Fishing License, a Menhaden Landing License, or a Menhaden Personal Use and Limited Sale License may be transferred to the new owner of the vessel or to a replacement vessel or, if a license to use a bait net from shore, to any person. Menhaden Purse Seine Fishing Vessel Operator's Licenses may not be transferred because they are not limited.

Under the proposed new rule, a Menhaden Purse Seine Fishing License, a Menhaden Landing License, or a Menhaden Personal Use and Limited Sale License may only be transferred to a vessel that uses the same gear type as the licensed vessel and in the same manner. For vessels licensed to use purse seine gear, the license may be transferred only to another vessel that uses purse seine gear; if the licensed vessel is used as a purse seine carry vessel, the license may be transferred only to another purse seine carry vessel; and if a purse seine catch vessel's license is transferred, the license may only be transferred to another purse seine catch vessel.

Prior to the passage of P.L. 2013, c. 74 and P.L. 2014, c. 57, the Department issued Menhaden Landing Licenses and Menhaden Purse Seine Fishing Vessel Licenses that allowed fishing vessels to catch, carry, and land menhaden on the same vessel. Because of these historical licenses, the Department is proposing to allow those landing licenses designated as purse seine catch licenses to be transferred. In addition, a license for a purse seine vessel may only be transferred to a new vessel that is no more than 10 percent larger in overall length with an engine of no more than 20 percent greater horsepower; if the vessel is a carry vessel, the vessel receiving the transferred license may have a hold capacity that is no more than 10

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percent larger than the originally licensed vessel. The overall length of vessel receiving the transferred license must be 90 feet or less.

In order to ensure that the hold capacity of a purse seine carry vessel is initially correct, and that the Department can accurately determine whether a new purse seine carry vessel has a hold capacity of 10 percent larger or less than the old purse seine carry vessel, the Department is proposing to require proof of the old vessel's and the new vessel's hold capacities to be submitted at the time of application for transfer of the license when a licensee wants to transfer a purse seine carry vessel license to a new purse seine carry vessel. The Department is proposing to require fishermen to submit a certification from one of the five approved individuals or entities, as described above in Purse Seine Licenses (N.J.A.C. 7:25-22.4), whose certifications the Department will accept when determining hold capacities when submitting a request to transfer a Menhaden Purse Seine Fishing License for a carry vessel.

Under the proposed new rule, a license holder who transfers a Menhaden Landing License or a Menhaden Personal Use and Limited Sale License may no longer qualify for that license based on the landing history of the vessel that is being sold. Both the Menhaden Landing License and Menhaden Personal Use and Limited Sale License may only be obtained for vessels that have landed a certain amount of menhaden, as specified at N.J.S.A. 23:3-51.3(f), prior to the issuance of the license. Once the license and vessel have been transferred, the fisherman can no longer claim that vessel's landings. The landings are attributed to the vessel and stay with the vessel regardless of who owns the vessel.

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The Department is proposing to require license transfer requests to be made and submitted on a form provided by the Department. Licenses will not be transferred if the license holder is currently serving a suspension, has a pending license suspension, or is subject to a court action for a violation. The restriction will ensure that license holders whose licenses are suspended will fully serve the suspension and will be prevented from transfer of the license to another person prior to the suspension, thereby potentially avoiding penalty.

Vessel Boarding (N.J.A.C. 7:25-22.7)

The Department is proposing to recodify N.J.A.C. 7:25-22.4, Vessel Boarding, as 22.7. This section is amended to require all menhaden licensees and every person onboard a licensed vessel that is fishing for menhaden to allow for the safe boarding of their vessels by any law enforcement personnel, comply with the instructions of law enforcement, and allow the inspection of the holds, gear, and catch by law enforcement. The proposed amendments are intended to promote the safety of law enforcement personnel, fishermen, and all persons on the marine waters of New Jersey. The Department is proposing to change “or any other person on board” to “and every person on board” to clarify that every person must equally comply with this requirement. Many times, law enforcement has difficulty with determining who should comply, as people try to avoid the penalties associated with a violation by taking actions, such as discarding fish, hiding fish, hiding gear, and not allowing law enforcement on board the person’s vessel. The Department is also proposing to remove “for the purpose of enforcement of this subchapter,” as that is subsumed in the new language.

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Menhaden Dealer Licenses (N.J.A.C. 7:25-22.8)

The Department is proposing to monitor the overall, and gear specific, menhaden quotas by licensing Menhaden Dealers and requiring them to report menhaden purchases or barter transactions. The reporting of menhaden purchases by dealers along with the reporting of menhaden landings by fishermen will allow the Department to monitor take against the State's overall quota set by the ASMFC and other quotas set by the Commissioner by gear type. The proposed new rule lays out the requirements that anyone who wants to barter or purchase menhaden as a first point of sale must apply for a Menhaden Dealer License, the proper fee must be included, and the license must be renewed every year to be valid. The Department is proposing this language to require that those people who buy menhaden directly from fishermen as a first point of sale must be licensed as dealers. However, the Department is also proposing to require a fisherman who has a Menhaden Landing License or a Menhaden Personal Use and Limited Sale License, and who wishes to barter or sell the menhaden to persons who are not licensed menhaden dealers, to obtain a Menhaden Dealer License. A number of fishermen sell their catch directly to bait and tackle shops or recreational fishermen and this practice has allowed the fishermen to avoid the mandatory reporting that dealers are required to submit to the Division. The Division has only two ways to monitor the take of menhaden: by the reports that fishermen must create and submit when they land menhaden and the reports dealers must create and submit when menhaden is purchased or sold, with the report from dealers containing the information that is used to monitor gear specific quotas. If

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these fishermen, who sell directly to bait and tackle shops or recreational fishermen, never sell their catch to a licensed dealer who reports their purchases, the overall quota or a specific gear type's quota could be exceeded. Requiring these fishermen to also have a dealer license and report their sales ensures that the Division can account for all of the menhaden landed and sold.

The Department is proposing new N.J.A.C. 7:25-22.8(e), (f), and (g), which require Menhaden Dealer Licensees to file reports weekly and provide certain information to the Division about purchases and trades of menhaden. The new regulations also calls for increased fines for the failure to make a report based on whether it is a first, second, third, or subsequent offense. The weekly tally of Menhaden Dealer License reports will be the primary method of tracking gear specific quotas and making projections as to when the Department estimates the menhaden quota will be landed in order to timely close the season for that gear type and prevent overfishing of the resource.

Penalties (N.J.A.C. 7:25-22.9)

The Department is proposing new N.J.A.C. 7:25-22.9 to establish penalties for violations of the provisions at N.J.A.C. 7:25-22. The proposed new rule includes some of the language from existing N.J.A.C. 7:25-22.3 and is based on N.J.S.A. 23:3-51.13. Licenses will be suspended for certain reporting offenses and for a purse seine net drifting into restricted waters. The Department is proposing to mandate the length of a license suspension based on the number of the offenses (first, second, third, or subsequent) with a corresponding increase in the length

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of the suspension. The Department is also proposing new N.J.A.C. 7:25-22.9(c) to allow the Department to exercise its discretion to expunge offenses after three years, if the licensee has not committed any other offenses. However, if a monetary penalty is assessed against a fisherman, prior offenses are counted in calculating the amount of the monetary penalty. To ensure compliance with the proposed rules, a license suspension is proposed to be applied to a licensee and a licensed vessel.

Commercial licenses for crab pots/trot lines and crab dredges

The number of commercial crab pot/trot line licensees and crab dredge licensees who actively harvest crabs has been in decline in New Jersey for a number of years. Because of this decline, the Department is proposing to amend N.J.A.C. 7:25-14.4 to reduce the number of commercial licenses available for crab dredges, in both the Atlantic Coast and Delaware Bay, and for crab pots/trot lines, to better meet the needs of the fishery and reduce the possibility that the resource will be overfished. In addition, the Department is proposing to allow transfers of commercial crab licenses outside the immediate family members currently designated as the only permissible recipients. However, the Department is proposing to limit the number of transfers to persons other than specified family members until the number of licenses in a given fishery is below the specified threshold. By limiting the number of these types of transfers, a licensee who is selling his or her crabbing business will be able to transfer the commercial license to the purchaser of the business, regardless of who that person is in relation to the licensee, without adversely impacting the crab resource.

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Commercial crab pot/trot line licenses

The Department completed an analysis of the average number of commercial crab pot/trot line license holders that reported crab harvests between 2003 and 2012, and a separate analysis for every year since 2012. The average number of license holders who reported crab harvests from 2003 to 2012 was 161, and the average number of licenses with reported harvests for each year after 2012 was 144. Because the Department's calculations are based upon licenses that have reported crab harvests, and not all license holders harvest crab every year, the threshold is intended to account for the licensees who have not reported a harvest in a given year. Further, the Department has found that although the number of licensees who harvest crabs remains consistent at about 140 licensees per year, the licensees who harvest crab in a given year are not always the same licensees. Therefore, the Council and the Department determined that in order to include all current licensees who are actively harvesting crabs, including the licensees who may not harvest crabs in a given year, the new threshold for commercial crab pot/trot line licenses should be 180. The Department has also determined that the number of licenses must be reduced because the crab populations cannot be sustainably fished if all license holders suddenly decided to harvest crabs. The current threshold of 312, the number of licenses sold in 1991, does not reflect the number of current active commercial crab pot/trot line licensees and could result in the overharvesting of the crab resource if every license holder fully utilized the license to harvest crabs.

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Commercial crab dredge licenses

The Department is also proposing to reduce the number of commercial crab dredge licenses for the Delaware Bay and Atlantic Coast. The Department has determined that the average annual number of commercial crab dredge licensees that reported harvested crabs in the years 2014 through 2017 was 47 licensees for the Atlantic Coast, and 22 licensees for the Delaware Bay. The current threshold for Delaware Bay commercial crab dredge licenses is 93, or the number of licenses sold in 1997. The current threshold for the Atlantic Coast commercial crab dredge licenses is 250. The initial threshold for Atlantic Coast commercial crab dredge licenses was set in 1991 at 338, which was reduced to 250 in 2005, due to a lower number of active licensees who reported harvests. Similar to the commercial crab pot/trot line license thresholds, the thresholds for dredge licenses include the number of licensees who report crab harvests in addition to licensees who will not harvest crabs for a year while they target other species. Therefore, the proposed new threshold for Atlantic Coast commercial crab dredge licenses is 100, and the proposed new threshold for Delaware Bay commercial crab dredge licenses is 50. This reduction will reduce the number of people holding licenses who could potentially harvest crabs and, thereby, avoid severely impacting the resource. Further, the Department anticipates that the number of licenses will reduce over time through attrition.

License transfers

In addition to lowering the license thresholds for each fishery, the Department is proposing to limit the transfer of licenses to persons other than specified family members until

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the number of licenses is below the proposed new threshold. Because there are active crab pot/trot line licensees, or those who annually harvest 200 or more bushels of hard crabs or 2,000 or more “peeler” crabs (crabs that are molting), and there are inactive crab pot/trot line licensees, or those who annually harvest less than 200 bushels of hard crabs or 2,000 peeler crabs, the Department has determined that active license holders should have more opportunities to transfer the license to non-family members than an inactive license holder. The Department is proposing to allow active licensees holding crab pot/trot line licenses, as a group, up to 20 transfers in a calendar year, and inactive licensees, as a group, up to five transfers in a calendar year, as long as those transfer applications are submitted to the Department by February 28, or the date by which the Department has received all of the prior year crab harvest data from each licensee. If the number of transfer requests in a given year exceeds 20 for active licensees and five for inactive licensees, the Department will enter the transfer applications into a lottery in order to prioritize the transfer requests. The processing of license transfer applications will continue, at 20 for active licenses and five for inactive licenses, each year until the number of licenses reaches the proposed threshold of 180 licenses. When this threshold is reached, licensees will be allowed to transfer their licenses to non-family members at any time. Licensees may also transfer a license to a spouse, father, mother, son, daughter, brother, or sister at any time.

The Department is proposing to restrict the transfer of Atlantic Coast crab dredge licenses to individuals other than a licensee’s spouse, father, mother, son, daughter, brother, or sister until the number of licenses is below the proposed threshold of 100. The Atlantic Coast crab

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dredge fishery is not as active as the Delaware Bay crab dredge fishery, and licensees cease participation in the fishery at higher rates than in the Delaware Bay fishery. The Department expects that with the high rate of attrition a license will be available for purchase by anyone within a few years. The high rate of attrition will also help reduce the number of license holders to only those who are actively dredging for crabs in the Atlantic coastal waters.

In contrast, there is a low attrition rate among Delaware Bay crab dredge licensees due to high demand. Therefore, the Department is proposing to limit transfers of a Delaware Bay crab dredge license to non-family members to five per year, with or without a lottery, to determine the priority of the processing of the applications.

Administrative notice

Fishery management plans (N.J.A.C. 7:25-14.19 and 18)

The Department is proposing to amend N.J.A.C. 7:25-14.19 and 18.1(p), 18.5(i), and 18.12(r) to allow the Commissioner, with approval of the New Jersey Marine Fisheries Council, to modify certain management measures by notice to either maintain compliance with any fishery management plan approved by the Atlantic State Marine Fisheries Commission (ASMFC) or consistency with any plan approved by 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.

The Marine Fisheries rules establish a procedure for the Commissioner to, under limited circumstances, modify specific management measures, such as fishing seasons, minimum size

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limits, possession limits, and trip limits, that affect specific recreational and/or commercial fisheries through publication of a notice of administrative change in the New Jersey Register, rather than through rulemaking. The purpose of the procedure is to provide the Department with the ability to modify its rules expeditiously, so that when changes are made to Federal or multistate regional fisheries plans, the Department can act promptly to maintain compliance or adjust quota utilization appropriately and, thereby, avoid risking imposition of a Federal moratorium on a fishery for noncompliance, or otherwise disadvantaging New Jersey's fishing industry. The premise for allowing changes by administrative notice is that the Department has negligible discretion to vary from the specific direction embodied in the Federal and regional plans, and that those Federal and regional plans were developed with public comment and input. Additionally, the procedure requires that the Council approve the changes because it has statutory authority pursuant to N.J.S.A. 23:2B-6 to disapprove any marine fisheries rule amendment proposed by the Commissioner.

Currently, the rules implement the measures in fishery management plans approved by the ASMFC or plans approved by the MAFMC as adopted by the National Marine Fisheries Service. The ASMFC oversees and coordinates the management of marine fisheries of states on the Atlantic coast pursuant to the Atlantic Coastal Fisheries Cooperative Management Act. The MAFMC manages marine fisheries in the Federal waters (three to 200 miles from shore) off New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, and North Carolina pursuant to the Magnuson-Stevens Fishery Conservation and Management Act.

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Certain fisheries, such as Spanish mackerel and haddock, are cooperatively managed by other multistate regional fisheries management councils pursuant to the Magnuson-Stevens Fishery Conservation and Management Act. Further, other fisheries are directly managed by the National Marine Fisheries Service. Therefore, the Department is proposing to add fishery management plans approved by the New England Fishery Management Council, the South Atlantic Fishery Management Council, or the National Marine Fisheries Service to the plans for which the Commissioner may modify management measures by notice to maintain compliance and/or consistency.

Management measures (N.J.A.C. 7:25-14.19 and 18)

At N.J.A.C. 7:25-14.19, the Department is proposing to add to the existing management measures: seasons; annual quota allocation, including modification of quota by gear categories and type; application of the incidental and by-catch allowance to the quota; and reporting requirements. In addition, at N.J.A.C. 7:25-18.1(p), the Department is also proposing to remove the term “minimum” regarding size limits because a fishery management plan could alternatively mandate a maximum size limit in a given fishery. Lastly, the Department is proposing to amend N.J.A.C. 7:25-14.19 and 18 to indicate that all notices shall be effective when the Department files the notices, with the Office of Administrative Law, or as specified otherwise in the notice.

Conservation equivalency (N.J.A.C. 14.19, 18.1(p), 18.5(i), and 18.12(r))

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The Department is proposing to allow the Commissioner, with the approval of the New Jersey Marine Fisheries Council, to modify certain management measures by notice if it is determined that the measures are the conservation equivalent to those in a fishery management plan approved. Conservation equivalency, as contemplated by the ASMFC, provides states flexibility to develop alternative regulations that address specific state or regional differences while still achieving the goals and objectives of a given fishery management plan.

Of these plans, several provide the specific conservational equivalents to a fishery management plan a state may consider: some plans do not allow for conservational equivalents to a fishery management plan, whereas others do, and some plans merely provide a quota or an acceptable mortality rate and allow a state to develop all of its own criteria. Even when a plan has set conservation equivalents, a state may develop its own equivalents based on sound science methodologies that keep the state in compliance with the fishery management plan. Conservation equivalency proposals are not required when states adopt more restrictive measures than those under the fishery management plan.

To determine appropriate criteria, the Commissioner must consider the temporal and spatial distribution of the species in the State's waters, the life history characteristics of the species, the potential impact on the number of participants in the fishery and their ability to participate, the ability of supporting industries to provide necessary services to optimize participation, the seasons of other recreational and/or commercial species, and enforcement efficiency.

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Prior to submission to the approving fishery management council and/or National Marine Fisheries Service, the Council must approve the conservation equivalency proposal at a public meeting. Public notice, including an agenda of the meeting, will be posted on the Department's website. The agenda will indicate that the meeting will include discussion of the potential conservation equivalency proposal.

Striped Bass

The Department is proposing to require the use of non-offset circle hooks when fishing with natural bait, or any living or dead animal or plant, or parts thereof, in the recreational striped bass fishery to maintain compliance with Addendum VI of Amendment VI of the Striped Bass Interstate Fishery Management Plan (see

http://www.asmfc.org/uploads/file/5dd447baStripedBassAddendumVI_Amend6_Oct2019.pdf).

Catch and release practices contribute significantly to the overall fishing mortality. The latest assessment assumes nine percent of fish that are released alive die as a result of being caught. In 2019, release mortality was estimated to account for 2,589,045 fish or 47 percent of total striped bass removals. The intent of the requirement is to reduce striped bass discard mortality in the recreational fishery. Circle hooks can reduce rates of "gut-hooking" and lower the likelihood of puncturing internal organs if the hook is swallowed.

Additionally, the Department is proposing to define "circle hook" as "a non-offset hook where the point is pointed perpendicularly back towards the shank," and "non-offset" as "the point and barb are in the same plane as the shank."

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Dusky Sharks

In April 2017, NMFS finalized new shark fishing regulations (see 82 FR 16478), including a requirement for the use of non-offset, non-stainless steel circle hooks whenever a recreational angler is targeting sharks. These new gear requirements were based on the 2016 stock assessment for dusky sharks that determined that this species is overfished and experiencing overfishing. The NMFS is requiring the use of non-offset, non-stainless steel circle hooks in order to reduce fishing mortality for dusky sharks to an acceptable level in an effort to rebuild the stock by the target date, as these types of hooks have been shown to significantly reduce release mortality for this species.

Accordingly, the Department is proposing to amend the recreational shark regulations in order to allow consistency between Federal and State rules and regulations and to reduce the fishing mortality of dusky sharks to the target level of NMFS' Atlantic Highly Migratory Species Fishery Management Plan. In order to respond to these circle hook restrictions and future gear restrictions that may be required by NMFS, the Department is also proposing to include gear restrictions in the list of regulations applicable to State waters that are to be determined by the NMFS, as published in the Federal Register and posted at <https://www.fisheries.noaa.gov/rules-and-announcements/notices-and-rules>.

Social Impact

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This rulemaking establishes new rules at N.J.A.C. 7:25-22 that govern a limited-entry, quota-based commercial menhaden fishery. Although the fishery currently has no quota and menhaden could only be taken from May 15 through October 31, the extension of the season to the entire year somewhat offsets the quota limitation now required by the ASFMC. The long-term viability of the fishery is of the utmost importance, so instituting a limited-entry, quota-based system will ensure the health and vitality of the menhaden population and this, in turn, will benefit fishermen well into the future.

The addition of landing menhaden for human consumption expands the fishery from just taking menhaden for bait. This change allows fishermen to take menhaden for personal consumption, as well as to sell it for human consumption, as long as the fish is in whole form and frozen.

Those vessels and/or individuals that qualify for a Menhaden Landing License and Menhaden Personal Use and Limited Sale License at proposed new N.J.A.C. 7:25-22.5 will experience a significant positive social impact since they will qualify into a lucrative quota based, limited-entry system. The qualifying criteria for the Menhaden Landing License are generous in terms of pounds of menhaden bait landings and years necessary to qualify for the license, thereby making the Menhaden Landing License available to even casual participants in the menhaden fishery. An individual who does not meet the qualifying criteria for a Menhaden Landing License, therefore, is not considered to have been a major contributor in the past to the menhaden fishery, the landings of which formed the basis of New Jersey's allocation of the Atlantic coastal quota. These individuals not qualifying for a Menhaden Landing License due to

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their minimal or non-existent participation in the menhaden bait fishery during the 2009 through 2012 qualifying period may still land and sell, or barter, up to 100 pounds of menhaden per day, as specified at proposed new N.J.A.C. 7:25-22.5(c), and, therefore, will experience a positive social impact despite their lack of past participation in the fishery. Also, with the addition of the Menhaden Personal Use and Limited Sale License, fishermen who harvest menhaden as bait for their own personal use may sell up to 500 pounds per day of the excess menhaden, thereby, allowing fishermen who catch menhaden for personal use as bait, into the fishery without punishing them for landing more menhaden than they need. In fact, allowing them to sell or barter their catch directly to bait and tackle shops and recreational fishermen (as long as they also have a Menhaden Dealer License) allows these fishermen to benefit from their excess take of menhaden.

The Division has determined that there is a need to have hold capacities of vessels used in the menhaden fishery accurately measured in order to determine when a licensee is in compliance with the requirement that a new purse seine carry vessel may not have a hold capacity greater than 10 percent over the original purse seine carry vessel. Although the new vessel may also not have an engine with more than 20 percent greater horsepower than the original vessel or be more than 90 feet in length, there is no need to measure as the horsepower and length are available from the engine and/or vessel manufacturer. At proposed new N.J.A.C. 7:25-22.6(b)4i, the Department lists five approved entities or persons whose certifications regarding measuring hold capacities the Department will accept, based on the NMFS requirements (see 77 FR 71720). By requiring accurate hold capacity calculations, no one

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can “game” the Division by claiming that the original purse seine carry vessel’s hold capacity was greater than in actuality and then obtain a new purse seine carry vessel with a hold capacity greater than 10 percent over the original carry vessel’s hold capacity. By requiring the certification from credentialed persons or entities regarding hold capacity, fishermen can be assured that they are all playing by the same rules and that there is fairness in the industry and when dealing with the Division.

Recipients of a Menhaden Dealer License, described at proposed new N.J.A.C. 7:25-22.8, are a major component of the limited entry, quota-based menhaden fishery and may, with this license, experience additional business in other associated fisheries that rely on menhaden as bait. There are no qualifying criteria for an individual to obtain a Menhaden Dealer License. Anyone who applies for a license and pays the fee may obtain a license.

Since the State’s menhaden quota is allocated to the gear types that landed the menhaden during the qualifying years, the allocation of the quota at proposed new N.J.A.C. 7:25-22.3(b), with 95 percent allocated to the purse seine fishery and five percent to all other gear types combined, will not have a negative social impact on holders of any specific gear type since they are receiving an allocation in proportion to their historical landings.

Proposed new N.J.A.C. 7:25-22.4 and 22.6 will have positive social impacts on those individuals licensed to utilize a purse seine and other gear types in State waters by clarifying the vessel categories and allowing for clearly defined methods of vessel upgrades and transfers that did not previously exist in the rules.

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Proposed amendments and new regulation at recodified N.J.A.C. 7:25-22.4(d)10 and 22.5(r)1 will ensure that a fish spill is immediately reported to the Division's Marine Enforcement Unit, thereby identifying the responsible party for the fish spill and ensuring that it is cleaned up in the most expeditious manner possible. The amendments and new regulation will have a positive social impact because they minimize the possibility of any fish spill remaining in the water or washing ashore. The proposed amendments provide strong incentive to persons responsible for a fish spill to act immediately in reporting and cleaning up a fish spill, since failure to do so will result in a license suspension.

Proposed new N.J.A.C. 7:25-22.3 allows the Commissioner, with the approval of the Marine Fisheries Council, to make more timely changes to the limited-entry, quota-based menhaden fishery. This new rule will have positive social impacts for the menhaden fishery since compliance requirements, implemented in a timely manner, can avert a moratorium on this fishery for failure to comply with management and monitoring requirements.

The Department's proposed amendments at N.J.A.C. 7:25-14.4(a)7 allowing for crab pot/trot line and crab dredge licensees to transfer their licenses to anyone as opposed to certain family members, will allow an employee of a commercial fisherman to buy a fisherman's commercial crabbing business, thereby ensuring the future of the commercial crabbing business, and allow that employee to enter a limited-entry crab fishery. Licensees have been concerned with the unfair exclusion of non-familial crab fishermen and see the existing rules as supporting nepotism instead of allowing a licensee to determine to whom the licensee wants to transfer or sell the licensee's commercial business. In addition, the lottery system proposed at

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N.J.A.C. 7:25-14.4(a)7v will ensure fairness in the transfer of licenses to someone other than a spouse, father, mother, son, daughter, brother, or sister when there are more than 20 active crab pot/trot line license transfer requests, five inactive crab pot/trot line license transfer requests, or five Delaware Bay crab dredge license transfer requests. Licensees have an equal chance of having their transfer request completed by the Department under a lottery system.

The proposed requirement that a crab fisherman can only transfer a license if the licensee has no pending court action of revocation order at N.J.A.C. 7:25-14.4(a)7 allows only law-abiding fishermen to transfer their licenses. Licensees who are under a revocation order or have a license violation pending in court may attempt to transfer the license to someone who has no violations, thereby allowing the crabbing business to continue. The person who received the transferred license could then transfer the license back to the original crab fisherman, and the original crab fisherman could, thereby, avoid the revocation or court action. By requiring that there be no pending revocation order or court action in order to transfer a license, the Department can assure fairness within the crab fisheries and that a licensee who violated the rules will not be allowed to avoid the fines and potential license revocation due to a violation.

The proposed amendments at N.J.A.C. 7:25-14.19, 18.1(p), 18.5(i), and 18.12(r), will allow the Department to modify fishery management measures by notice and maintain consistency throughout the various marine fisheries regulations. The amendments will result in a positive social impact because commercial fishermen, regardless of which fisheries they participate in, will receive notice of any changes by email, through the Department's commercial regulation publication, and through the Department's website. This will help

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fishermen avoid license suspension or revocation and the other penalties associated with violations. In addition, these changes allow the Department to better manage each fishery through the timely closure and, if necessary, timely reopening to ensure the quota is not exceeded, while still allowing the optimal use of available quota in any given year to ensure each marine fishery resource is available in the future.

The proposed amendments at N.J.A.C. 7:25-18.1(h) implement the 2019 Atlantic Striped Bass Interstate Fishery Management Plan's mandate requiring the use of non-offset circle hooks while recreationally fishing for striped bass with bait. The intent of the requirement is to reduce striped bass discard mortality in the recreational fishery. The existing rule requires non-offset circle hooks to be used while fishing in the Delaware Bay and its tributaries during April 1 through May 31. The proposed amendments will result in a positive social impact by simplifying these provisions to require the year-round use of non-offset circle hooks in all State waters while fishing for striped bass. Additionally, projected stock recovery will result in subsequent catch increases in successive years.

Economic Impact

The commercial menhaden fishery is highly valuable both within the State of New Jersey and along the Atlantic coast. From 2016 to 2018, New Jersey fishermen landed an average of over 47.5 million pounds of menhaden resulting in an average of \$15.2 million worth of economic value per year which is up from \$9.9 million per year for the period of 2000 to 2013. Individuals and/or vessels that qualify for a Menhaden Landing License or a Menhaden Personal

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Use and Limited Sale License will experience a significant positive economic impact, since they will qualify into this lucrative quota-based, limited entry system. Individuals who do not qualify for a Menhaden Landing License will not experience a significant negative economic impact, since the qualifying criteria for the Menhaden Landing License are generous in terms of the pounds landed and the years necessary to qualify for the license, thereby making the Menhaden Landing License available to even casual participants in the menhaden fishery. An individual not meeting the qualifying criteria for a Menhaden Landing License had not been a major contributor in the past to the menhaden fishery, the landings of which formed the basis of New Jersey's allocation of the Atlantic coastal quota. Individuals not qualifying for a Menhaden Landing License due to their minimal or non-existent participation in the menhaden fishery during the qualifying years may land and sell, or barter, up to 100 pounds of menhaden per day and will experience economic benefits despite their lack of past participation in the fishery.

In addition, fishermen who take menhaden for use as bait and have a Menhaden Personal Use and Limited Sale License pursuant to proposed new N.J.A.C. 7:25-22.5 will be allowed to take an additional amount of menhaden, not to exceed 500 pounds per day, and sell or barter the extra menhaden, thereby generating revenue these fishermen were previously prevented from realizing.

Proposed new N.J.A.C. 7:25-22.6(b)4i requires all fishermen who wish to transfer a purse seine carry vessel license to a new, larger carry vessel to have the hold capacity measured by one of five listed credentialed persons or entities. Some fishermen will incur costs when

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transferring purse seine catch licenses. However, the cost of obtaining a certification is small, considering the sums spent on large fishing vessels, and the cost is small when compared to ensuring a level playing field within the commercial menhaden fishing industry. Used wood hulled purse seine fishing boats cost around \$50,000, and the high-end steel hulled vessels can cost over \$1.5 million. The cost of a certification from a credentialed person or entity at \$18.00 to \$25.00 per foot is minimal in comparison to the price for a carry vessel. In addition, a fisherman who wants to expand his fishing operations and harvest more fish must pay for the credentialed person's certification; otherwise the fisherman will not be able to expand. It is a one-time cost that will be more than compensated for by the fisherman being able to land more fish more quickly every year.

Recipients of a Menhaden Dealer License will experience a positive economic impact since all Menhaden Landing License and Menhaden Personal Use and Limited Sale License holders must sell all their menhaden to Menhaden Dealer License holders (unless the Menhaden Landing or Menhaden Personal Use and Limited Sale licensee also holds a dealer license). Licensed menhaden dealers are a major component of the menhaden fishery because the State's menhaden quota is monitored through the dealers' weekly reports submitted to the Department. There are no qualifying criteria for an individual to obtain a Menhaden Dealer License. Therefore, any individual may apply for, and obtain, a Menhaden Dealer License. An individual holding a license that allows the licensee to land menhaden and a license to deal menhaden must pay the annual fee for each license and are liable for the reporting

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requirements for each license. These costs are offset by the benefits of participation in the fishery.

Since the State's menhaden quota is allocated to the gear types that landed menhaden during the qualifying years, with 95 percent to the purse seine fishery and five percent to all other gear types combined, the allocation established in proposed new N.J.A.C. 7:25-22.3(b) will have limited economic impact on holders of any specific gear type since they are receiving an allocation in proportion to their historical landings.

The proposed amendment allowing for the landing and sale of incidental catches of menhaden for a particular gear type after the quota amount allocated to that gear type has been harvested and landed will have a positive economic impact. The current allowable incidental catch for menhaden harvested and sold using a specific gear type as set by the ASMFC Fishery Management Plan for Atlantic Menhaden is 6,000 pounds per day. Given the average dockside price of menhaden per pound since 2000, approximately nine cents per pound, licensed menhaden fishermen can currently realize up to an additional \$540.00 per day when they incidentally catch menhaden during a gear-specific closed season while harvesting other species.

The proposed amendments allowing for the sale of Atlantic menhaden in whole frozen form for consumption by humans will have a positive economic impact. Having the ability to sell whole frozen menhaden for human consumption will allow economic flexibility for licensed menhaden dealers as the demand for menhaden fluctuates with the opening and closing of those fisheries that depend on menhaden for bait.

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The proposed amendments and new rules allowing for the transferability of those licenses, will create positive economic impacts to those individuals licensed to utilize a purse seine in State waters. This will facilitate movement of licenses between and among vessels expeditiously, as long as the vessels involved in the upgrades or transfers use the same gear and are within 10 percent of the length, not exceeding 90 feet, with no more than 20 percent more horsepower, and, if a carry vessel, within 10 percent of the hold capacity of the previous vessel.

The proposed amendments at N.J.A.C. 7:25-22.3(b)10 ensure that a fish spill is immediately reported to the Department's Marine Enforcement Unit, thereby identifying the responsible party of the fish spill and ensuring that it is cleaned up as quickly as possible. Dead fish washing ashore, especially during the warm summer months, will have a significant negative economic impact on the shore communities and their contribution to the State's economy. Also, the proposed amendments will provide a strong incentive to fishermen responsible for a fish spill to act immediately in reporting and cleaning up a fish spill, since a failure to do so will result in a license suspension that will have a significant negative economic impact on those fishermen.

Proposed N.J.A.C. 7:25-14.4(a)7 will positively impact a licensed crab fisherman anticipating retirement, or wanting to otherwise divest himself or herself of the commercial crabbing businesses, by making it possible for the licensee to sell the commercial vessels and gear, and transfer the commercial crab license, to a non-family member, in addition to a family member as currently allowed. A non-family member who currently cannot purchase a license

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from the Department would have the opportunity to enter the limited-entry crab fishery by receiving a transferred license from a current commercial crab fisherman, thereby ensuring the future of the crabbing business, the continued employment of the employees of that business, and the continued benefits to the local economy and the State in the form of taxes as the employer and employees spend their earnings. These commercial crab businesses can continue even if there is no spouse, father, mother, son, daughter, brother, or sister interested in taking over the business from the licensee.

The reduction in the number of crab pot/trot line and crab dredge licenses at proposed N.J.A.C. 7:25-14.4(a)2, 4, and 7, will result in less license revenue for the Department. However, the reduction will also result in the need for less manpower and resources to monitor license reporting compliance on behalf of the Department. The Department has calculated that the decrease in commercial license revenue will be approximately \$32,000 per year. New Jersey residents pay \$100.00 per license each year, and out-of-State residents pay \$500.00 per year for each license type (crab pot/trot line license or crab dredge license). The decrease in the number of crab pot/trot line licenses will cost the Department approximately \$13,200 per year, the decrease in the number of Atlantic Coast crab dredge licenses will cost the Department approximately \$15,000 per year, and the decrease in the number of Delaware Bay crab dredge licenses will cost the Department approximately \$4,300 per year for a total loss of approximately \$32,000 in revenue, depending on whether more licenses of New Jersey residents or out-of-State residents lapse. The Department will offset the loss in revenue by a reduction in the number of man-hours required to monitor the various commercial crab

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licensees and their reporting. There will be fewer license applications to process, less report monitoring, and less data entry for the Department staff to handle.

The proposed amendments at N.J.A.C. 7:25-18.1(h) requiring the use of non-offset circle hooks while recreationally fishing for striped bass with natural bait will create a minimal short-term negative economic impact for anglers, while conversely generating a long-term positive impact for the recreational fishing industry stemming from stock recovery and subsequent catch. Circle hooks are commonly utilized by anglers fishing for striped bass with bait. Therefore, this amendment will require anglers targeting striped bass with conventional hooks in the Atlantic Ocean to purchase non-offset circle hooks. According to 2019 estimates from the Marine Recreational Information Program (MRIP), New Jersey anglers caught 3,121,728 striped bass, and took over 3.5 million fishing trips targeting striped bass (primary or secondary target). Additionally, a report by Southwick Associates estimates that New Jersey anglers spent over \$124 million on striped bass fishing tackle in 2016.

Environmental Impact

Amendment 2 to the ASMFC Fishery Management Plan for Atlantic Menhaden established an Atlantic coastal total allowable catch, or quota, for Atlantic menhaden. The most recent benchmark peer reviewed stock assessment for Atlantic menhaden, completed in 2010, showed that overfishing was occurring in the Atlantic menhaden fishery. The ASMFC Atlantic Menhaden Management Board took several actions in response to the overfishing designation. In addition to developing more restrictive biological reference points for future menhaden

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conservation, the Board developed and implemented Amendment 2 guided by an updated stock assessment to end overfishing immediately. The Board developed a coast-wide quota based on a 20 percent reduction to the average landings for the years 2009 through 2011. This quota was implemented in 2013, and allocated on a state-by-state basis based on each state's share of the landings in the three-year base period of 2009 through 2011, inclusive. The 20 percent reduction in the quota was the first step in addressing the unique role of menhaden's ecosystem functions and value by retaining more fish in the water to satisfy menhaden's role as a forage fish while the ASMFC's Atlantic Menhaden Technical Committee, in consultation with other ASMFC Committees, develops ecosystem based biological reference points that more clearly define menhaden's value in the ecosystem. The proposed rulemaking will have significant positive environmental impacts, both for the menhaden resource, as well as all other species that rely on menhaden as food.

Proposed new N.J.A.C. 7:25-22.5, establishing the requirement for a Menhaden Landing License or Menhaden Personal Use and Limited Sale License to participate in the State's menhaden fishery, will have positive environmental impacts because these licenses are part of the system to account for all menhaden landed in the State and ensure that the State's quota is fairly allocated and not exceeded. The other part of the mechanism to account for all menhaden landed and sold is the Menhaden Dealer License. Proposed new N.J.A.C. 7:25-22.8 establishes the requirement for all menhaden landings to be sold to Menhaden Dealer License holders. This license will have a significant positive environmental impact, since the required

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weekly electronic dealer reporting is the other part of the mechanism for monitoring the State's menhaden quota and ensuring it is not exceeded and the resource is not overharvested.

Proposed new N.J.A.C. 7:25-22.3(b) and (c) allocate 95 percent of the quota to fishermen using purse seines and five percent to all other gear types; establish the season for harvesting menhaden by gear type, the daily trip limit for menhaden by gear type; and provide a mechanism to close any gear type's season through electronic notification with notice of two days. These provisions will have significant positive environmental impacts because they ensure that the quota for any gear type is not exceeded. The Commissioner will be able to close a gear type to fishing for menhaden as the quota is close to being reached. Because the Commissioner can exercise this authority, fishermen can maximize the amount of menhaden they take and land without exceeding the quota and harming the long-term sustainability of menhaden in State waters.

Proposed new N.J.A.C. 7:25-22.6(b)3 and 4 allow fishermen to transfer a purse seine catch vessel license or a purse seine carry vessel license to a new purse seine catch or carry vessel and also allow the new carry vessel to have an up to 10 percent greater hold capacity than the original carry vessel. Although this extra capacity would seem to allow a fisherman to harvest a greater amount of menhaden, menhaden quotas are tracked by pounds landed and not by the size of the haul. The greater hold capacity does, however, allow a fisherman to harvest up to the quota faster by landing more fish per trip. Because the quotas are based upon the pounds of menhaden that can be landed while maintaining a biologically sustainable

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population, there is no environmental impact to allowing fishermen to purchase purse seine catch or carry vessels with greater hold capacities.

Similarly, proposed new N.J.A.C. 7:25-22.3(a), allowing for notification of changes by publication in the New Jersey Register, on the Department's website, in the Department's commercial regulation publication, and, most importantly, through an email sent to all license holders, will have significant positive environmental impacts, since it will allow the Commissioner to react expeditiously to changes in the fishery and to notify all license holders more quickly than ever before. This will help prevent the overharvesting of the menhaden quota to avoid depleting the coastwide stock of this environmentally important resource.

The proposed amendments to the caps on the number of commercial crab licenses will have a positive environmental impact. The blue crab population naturally undergoes periodic spikes and declines due to their life history traits, and New Jersey's commercial blue crab landings have reflected these fluctuations. Although blue crabs are prolific breeders, they are sensitive to environmental factors, such as cold, harsh winters, which can lead to high overwintering mortality. The viability of the crab resource has largely depended on the lack of fishing effort by nearly half of the commercial blue crab license holders. The reduction of the total number of licenses, as proposed at N.J.A.C. 7:25-14.4(a)2, 4, and 6, would help ensure that inactive licensees would not start harvesting crabs and overfish the blue crab resource.

The proposed amendments at N.J.A.C. 7:25-14.19, 18.1(p), 18.5(i), and 18.12(r) will have positive environmental impacts. The proposed amendments will allow the Commissioner to make changes by notice to quotas, open and closed seasons, gear restrictions, and required

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reporting, among other criteria, in order to keep the State in compliance with a fishery management plan. These changes are necessary to protect the fishery resources from being overharvested in both the short- and the long-term. This greater flexibility given to the Commissioner will allow the Department to be more responsive to changes to fishery management plans that are developed and updated based on the most current science available regarding the state of the commercial and recreational fisheries.

The proposed rule allowing for the consideration and approval of conservationally equivalent criteria to a fishery management plan will not affect the fishery resource. The conservationally equivalent criteria allow for the maximization of the quota without negatively impacting the fish resource as the conservationally equivalent criteria will only be acceptable if the criteria keeps the State in compliance with a fishery management plan, which is a plan to ensure the future of the species of fish under the management plan.

The proposed amendments at N.J.A.C. 7:25-18.1(h) requiring the use of non-offset circle hooks while recreationally fishing for striped bass with natural bait will have positive environmental impacts by reducing the striped bass discard mortality in the recreational fishery. In 2019, discard mortality accounted for 47 percent of total removals in the Atlantic striped bass fishery. According to 2019 MRIP estimates, New Jersey anglers caught 3,121,798 striped bass, of which 2,708,866 were released. The latest assessment assumes nine percent of fish that are released alive die as a result of being caught. As a result, it is estimated that 243,798 striped bass died from being caught and released by New Jersey anglers in 2019.

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The use of circle hooks by anglers targeting striped bass with natural 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.

Federal Standard Analysis

N.J.S.A. 52:14B-1 et seq., requires State agencies that adopt, readopt, or amend State rules that exceed Federal standards or requirements to include in the rulemaking document a comparison with Federal law. The proposed 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.

Jobs Impact

The proposed new rules at N.J.A.C. 7:25-22 may result in an increase in jobs if the management measures are successful in increasing the Atlantic menhaden spawning stock biomass and preventing overfishing. A robust spawning stock biomass will provide increased fishing opportunities for this species and continue to support jobs in the future.

Similarly, the proposed new rules at N.J.A.C. 7:25-22.3 allow the Commissioner to modify quotas, seasons, incidental catch, and quota allocation by gear type. The changes will

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will help to achieve the optimal utilization of the total allowable catch. The optimal utilization of the annual quota will ensure that current menhaden fishermen remain in the fishery and support the people employed at the commercial docks due to the robust landings.

The proposed new rules at N.J.A.C. 7:25-22.3 and 22.8 will have a positive impact on jobs by establishing a Menhaden Purse Seine Fishing Vessel Operator's License and a Menhaden Dealer License. The Menhaden Purse Seine Fishing Vessel Operator's License allows for a license holder who is otherwise not eligible for a Menhaden Purse Seine Vessel License to operate a menhaden purse seine vessel that is landing menhaden under another fisherman's license. The Menhaden Dealer license allows for anyone who obtains a license to act as the first point of sale for the purchase, sale, and barter of menhaden. These licenses are available to anyone who wishes to apply for them and will allow for employment opportunities for anyone who would like to participate in and benefit from the menhaden fishery.

Proposed new N.J.A.C. 7:25-22.6(b)4i, which requires a credentialed person or entity to certify as to the hold capacity of a purse seine carry vessel or catch vessel, will not create new jobs. The Division currently receives less than five license transfers per year for purse seine carry vessels, which results in the Division receiving less than 10 certifications per year. The Division anticipates that the generation of less than 10 certifications per year can easily be absorbed into a person's or entity's current workload.

The Department has evaluated this rulemaking to determine the impact of the proposed amendments and new rules on jobs. The proposed rulemaking concerns regulatory authority and flexibility afforded to the Commissioner for a number of marine fisheries, including license

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caps and transferability of commercial blue crab licenses, all fisheries with the ability to quickly and easily update the rules by a notice of administrative change, and multiple aspects of managing the Atlantic menhaden fishery under a limited entry, quota-based system.

The proposed reduction in the number of crab pot/trot line and crab dredge licenses, at N.J.A.C. 7:25-14.4(a)2, 4, and 6, is anticipated to have no effect upon the number of jobs in the commercial crab fishery. The licenses will be retired due to attrition. Typically, a license retired through attrition is due to the commercial crab licensee being inactive and either uninterested in transferring the license or unable to find a family member interested in the license. The Department anticipates that no jobs will be lost due to the reduction in the number of licenses.

The proposed transferability of crab licenses to non-family members at N.J.A.C. 7:25-14.4(a)7 will not create nor reduce the number of jobs in the commercial crab fisheries. The proposed rules will ensure that there is no reduction in the number of jobs in the crab fisheries as commercial crab fishermen who wish to sell their businesses can do so to any person and not rely solely upon a family member to be interested in continuing the business.

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 proposed amendments and new rules impact on the agriculture industry. The proposed amendments and new rules apply solely to the marine fishing industry and will have no impact upon the agriculture or aquaculture industries.

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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 rules for reporting, recordkeeping, or other compliance requirements on small businesses.

The amendments and new rules for the menhaden fishery at N.J.A.C. 7:25-22 include requirements for menhaden fishermen to complete reports for fish landed and fish purchased. Fishermen have not had to comply with these reporting requirements before the passage of P.L. 2013, c. 74 and P.L. 2014, c. 57. However, since the statutes upon which the new rules are based were enacted in 2013 and 2014, these reporting requirements are already in place and being met by license holders, regardless of the size of a license holder's business. For example, proposed new N.J.A.C. 7:25-22.5(o) and (p) require the holder of a Menhaden Landing License or a Menhaden Personal Use and Limited Sale License to submit, on forms developed by the Division, monthly reports of their total menhaden landings and sales as part of the newly imposed quota monitoring system. Proposed new N.J.A.C. 7:25-22.8(f) and (g) require the holder of a Menhaden Dealer License to submit weekly reports to the Division detailing the licensees' purchase or barter of Atlantic menhaden. These reports are vital to maintaining compliance with the Interstate Fishery Management Plan for Atlantic Menhaden and the timely submission of these reports has been required by statute since 2013. Therefore, the proposed regulations do not impose any requirements with which license holders are not already in compliance. These provisions apply to an individual licensee and there is no difference in the requirements based upon business size.

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Additionally, proposed new N.J.A.C. 7:25-22.3(f) allows the holder of a Menhaden Landing License or Menhaden Personal Use Limited Sale License to land an incidental catch of menhaden as established by the fishery management plan if the season for a particular gear type is closed because the quota amount allocated to that gear type has been fully harvested and landed. Correspondingly, the holder of a Menhaden Dealer License may continue to accept incidental catch from Menhaden Landing License and Menhaden Personal Use Limited Sale License holders. These provisions apply to an individual Menhaden Landing or Personal Use and Limited Sale Licensee or Menhaden Dealer Licensee and there is no difference in the requirements based upon business size.

The proposed amendments at N.J.A.C. 7:25-22.4(d)7 allow for the retention of a fish pump onboard of a licensed menhaden vessel fishing for menhaden in State waters provided that the pump is completely covered with a tarp that is securely fastened and the intake hose is disconnected from the pump and securely stowed away, so that the pump is not readily available. Under the existing rules, the presence of a fish pump onboard a licensed menhaden vessel fishing for menhaden in State waters constitutes a violation. Fish pumps may legally be used for the removal of fish from a purse seine in Federal waters. The amendments allow those licensed menhaden fishermen with licensed vessels that fish for menhaden in both State and Federal waters to avoid the burdensome and time-consuming process of removing a fish pump from the vessels if the fishermen chose to fish in State waters on a particular day. These provisions apply to individual licensees, regardless of the size of the business.

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Proposed new N.J.A.C. 7:25-22.6(b)4i requires a purse seine fisherman to provide a certification of the hold capacity of a carry vessel that is to be replaced and a certification of the hold capacity of a new, replacement carry vessel as proof the fisherman is not violating the rule that the new carry vessel cannot have more than a 10 percent hold capacity over the old carry vessel. The certification requires the fisherman to hire a credentialed professional and submit the credentialed professional's certification to the Division as proof of the hold capacity of the old carry vessel and the new carry vessel. However, once the hold capacity of a carry vessel has been determined, there is no requirement to have the capacity determined again at any time during the life of the carry vessel, unless modifications are made to the carry vessel. If a fisherman makes modifications to the carry vessel, then the fisherman must once again hire a credentialed professional to obtain a certification as to the hold capacity. The paperwork required to be submitted to the Division is minimal and not burdensome compared to the fact that the fisherman is obtaining a new, larger carry vessel or a carry vessel with a larger hold capacity that will allow the fisherman to harvest and land more menhaden faster. The benefits outweigh any additional paperwork requirements. The certification requirement also ensures fairness and uniformity within the menhaden purse seine fishery industry.

In developing the rulemaking, the Department balanced the need to protect and preserve marine fishery resources against the impact of the rulemaking on small businesses that participate in the various fisheries, including the commercial menhaden fishery, and determined that removing the impact of the proposed rulemaking on small businesses will endanger the protection and conservation of the marine resources. For this reason, and

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because the reporting requirements are not burdensome and fishermen have been meeting the requirements since the laws were enacted in 2013 and 2014, no exemption for small businesses is provided.

The proposed amendments at N.J.A.C. 7:25-14.4(a)7 will reduce the amount of paperwork for a commercial crab fisherman who wishes to transfer a crab license to a non-family member. Currently a fisherman must prove a familial relationship with the transferee through documentation in order to transfer a license to a family member. The proposed amendment will allow a transfer without the required documented proof of a familial relationship when transferring the license to someone who is not a spouse, father, mother, son, daughter, brother, or sister.

Housing Affordability Impact Analysis

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

Smart Growth Development Impact Analysis

Pursuant to N.J.S.A. 52:14B-4, the Department has evaluated this rulemaking to determine the nature and extent of the proposed amendments and new rules on the impact to

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smart growth development. The proposed amendments and new rules apply solely to the marine fishing industry and have no impact on the housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Department has evaluated this rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

Full text of the proposed amendments and new rules follows (additions indicated in boldface **thus**; deletions indicated in brackets [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

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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 [the number issued in 1991 (312) **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 [250] **100** licenses. When the number of issued licenses decreases 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 [the number sold in 1997 (93) **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. [Commercial] **A commercial** crab pot/trot line and crab dredge [licenses are non-transferable except that the holder of a valid license] **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,

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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.

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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. 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

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(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

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(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, [and] 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 Commission pursuant to 16 U.S.C. [§5104(b)] **§ 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, [and] 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**

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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

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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.

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 <https://www.nj.gov/dep/fgw/marcncl.htm>. The agenda

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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] **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 [a] **the** minimum size, open season, [and] possession limit, **and gear**

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restrictions as determined by the National Marine Fisheries Service, as published in the Federal Register and posted at <https://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 [hereby] restricted to the use of non-offset circle hooks while fishing with any natural bait [within the Delaware River or its tributaries from April 1 through May 31 of each year. This restriction shall apply only to hooks of size two and larger and shall not apply to hooks of smaller sizes (such as those normally used for white perch fishing)], **or any living or dead animal or plant, or parts thereof. 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.**

(i) – (o) (No change.)

(p) The Commissioner, with the approval of the New Jersey Marine Fisheries Council, may modify the fishing seasons, [minimum] size limits, [and] 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)] **§ 5104(b)** or to

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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 [publish] provide notice of any such modification in the New Jersey [Fish and Wildlife] **Marine Digest**, [and] the New Jersey Register, [and shall submit a news release to individuals on the Division outdoor writers' mailing list] **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, 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

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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

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Marine Fisheries Service. Public notice of the meeting, including an agenda, shall be provided on the Department's website at <https://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, [and] 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)] **§ 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, 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 in accordance with (i)1 below and differ from those specified in the**

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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

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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;

(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

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Marine Fisheries Service. Public notice of the meeting, including an agenda, shall be provided on the Department's website at <https://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)] **§ 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**

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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 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 [publish] **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**

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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;

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(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 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 <https://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. [FISHERY MANAGEMENT IN NEW JERSEY] **MENHADEN**

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

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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 [which is regulated under N.J.A.C. 7:25-22.3] **or the taking of menhaden in whole form and freezing them for consumption by humans.**

7:25-22.2 [(Reserved)] **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.

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“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.

“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

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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;

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;

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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.

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(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 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

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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-[22.3]**22.4** Taking of Atlantic menhaden [for bait] **utilizing a purse seine**

(a) Persons licensed to fish for, or in any way participate in the fishery for, Atlantic menhaden [(*Brevoortia tyrannus*)] with a purse seine [or shirred net] in the marine waters of New Jersey [pursuant to N.J.S.A. 23:3-51 and N.J.S.A. 23:3-52, may apply between January 1 and March 1 for a permit] **must be in possession of a Menhaden Purse Seine Fishing Vessel License or a Menhaden Purse Seine Fishing Vessel Operator's License** for the purpose of taking Atlantic menhaden for bait [purposes] **or in whole frozen form for consumption by humans** only.

[1. All persons licensed to take Atlantic menhaden for bait purposes only shall keep, on forms furnished by the Division's Bureau of Marine Fisheries, accurate records of the amount and location of Atlantic menhaden harvested. Forms are available from the Trenton Office of the Division, Bureau of Marine Fisheries, 501 East State Street, Third Floor, Trenton, New Jersey 08625. These records shall be filed by the 10th day of each month with the Division's Trenton office. If no Atlantic menhaden were harvested during the month, a report to that effect shall be provided to the Division's Bureau of Marine Fisheries.]

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.

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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.

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;

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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;

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(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

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:

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(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.

[(b)] (d) Persons licensed to fish for Atlantic menhaden with a purse [or shirred net] seine in the marine waters of New Jersey[, for the purpose of taking Atlantic menhaden for bait purposes only], 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. [Drifting] **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.

[i. Any vessel operating under a permit for the purpose of taking Atlantic menhaden for bait purposes outside the legal area of fishing as specified in (b)2 above shall be subject to the following penalties:

(1) A one month permit suspension shall be imposed on the permittee for a first offense.

(2) A two month permit suspension shall be imposed on the permittee for a second offense.

(3) A six month permit suspension shall be imposed on the permittee for a third offense.

ii. A permit suspension applicable to both the vessel and the owner must occur within the normal season of fishing operations which extends from May 15 to October 31 each year.

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iii. If the duration of a permit suspension is not completed during the current year's normal season of fishing operations, the balance of the permit suspension shall be made up during the following year's normal season of fishing operations.

iv. A permit holder incurring a permit suspension who does not incur a second permit suspension for a three year period following the initial violation shall have the first permit suspension removed from consideration in determining a penalty for any subsequent violation.]

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 [or shirred nets] shall not exceed 150 fathoms in length.

5. A person shall not fish **for, or land, menhaden** on Saturdays[,] **and** Sundays[, and]. **A person shall not fish on** the days on which [New Year's Day, Martin Luther King's Birthday, Lincoln's Birthday, Washington's Birthday, Good Friday, Memorial Day, Independence Day,

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Labor Day, Columbus Day, Election Day, Veteran's Day, Thanksgiving Day, Christmas Day are] 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 [permit] **license** for the purpose of taking Atlantic menhaden [for bait purposes], **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, [other than Atlantic menhaden] on a purse seine **licensed** vessel harvesting Atlantic menhaden [for bait] 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 [of any person holding an Atlantic menhaden bait permit] 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[, or any quantity of dead fish] 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 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.**

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10. The licensee is responsible for cleaning up any fish, fish-part, refuse, litter, **or** garbage of any kind [which] **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. [Upon] **If** the licensee[**'s failure**] **fails** to initiate such cleanup within the [24 hour] **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 engaged in fishing for Atlantic menhaden for bait under the provisions of this section shall display, on both sides of the vessel amidship, a yellow capital letter "B" not less than five feet in height on a black square background not less than six feet on a side. For any vessel where the gunnel height is less than eight feet above the waterline at amidship, the ratio of height of the letter "B" to height (or width) of the square black background of the display shall remain in the same proportion, that is, 5:6, but may be reduced in size. In all cases, however, each side of the black background shall be no less than three-quarters of the height of the gunnel at amidship from the waterline.]

[13.] **12.** Any vessel operating under a [permit] **license** for the purpose of taking Atlantic menhaden [for bait purposes] 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

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calling the Division's Marine Enforcement Unit[, Bureau of Law Enforcement] 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.

[14] **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 [for bait purposes].

[15. The annual purse seine quota for the purpose of taking menhaden for bait shall be unlimited.

(c) The Commissioner, with the approval of the New Jersey Marine Fisheries Council, may modify the annual quota or seasons specified in this subchapter by notice in order to maintain consistency 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 plan adopted by the National Marine Fisheries Service. The Commissioner, with the approval of the New Jersey Marine Fisheries Council, may modify the seasons specified in this subchapter by notice in order 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, 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 in the New Jersey Register and in the Division's

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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.]

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:

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**

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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;

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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 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 (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

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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

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.

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(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;

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:

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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

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(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

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;**

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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, including any administrative costs incurred by the Department.

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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

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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.

(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.

(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-[22.4]22.7 Vessel boarding

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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 [for the purpose of enforcement of this subchapter].

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.

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(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 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;**

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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 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:

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- 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.