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LAW/RWH

P.L.2013, CHAPTER 74, *approved June 27, 2013*
Assembly, No. 4036 (*Second Reprint*)

1 AN ACT concerning the taking of menhaden for bait and human
2 food, amending P.L.1979, c.199 ¹**【and】** ¹R.S.23:3-51, ¹and
3 R.S.23:3-52,¹ and supplementing Title 23 of the Revised Statutes.
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
7

8 1. Section 73 of P.L.1979, c.199 (C.23:2B-14) is amended to
9 read as follows:

10 73. For purposes of this section, the "act" means and includes all
11 the new sections and amended sections contained herein, all the
12 remaining sections of Title 50 of the Revised Statutes, sections
13 23:3-41, 23:3-46, 23:3-47, 23:3-48, 23:3-51, 23:3-52, 23:5-9, 23:5-
14 16, 23:9-114, 23:9-115 and 23:9-120 of Title 23 of the Revised
15 Statutes, **【and】** sections 1, 2, and 3 of P.L.1941, c.211 (C.23:5-24.1
16 to 23:5-24.3) , and sections 4 through 17 of P.L. , c. (C.)
17 (pending before the Legislature as this bill) .

18 The commissioner may utilize any or all of the following
19 remedies for any violation of this act:

20 a. (1) A person who violates the provisions of this act or of
21 any rule, regulation, license or permit adopted or issued pursuant to
22 this act shall be liable to a penalty of not less than \$300 or more
23 than \$3,000 for the first offense and not less than \$500 or more than
24 \$5,000 for any subsequent offense, unless the commissioner has
25 established an alternate penalty for a specific offense pursuant to
26 paragraph (2) of this subsection.

27 (2) The Commissioner of Environmental Protection, with the
28 approval of the Marine Fisheries Council, may, by regulation,
29 establish a penalty schedule for any specific violation of this act or
30 of any rule or regulation adopted pursuant to this act. No such
31 penalty may be less than \$30 or more than \$100 for the first offense
32 or less than \$50 or more than \$200 for any subsequent offense. Any
33 penalty provided for by this act or by the fee schedule adopted by
34 the commissioner shall be collected in a civil action by a summary
35 proceeding pursuant to the "Penalty Enforcement Law of 1999,"
36 P.L.1999, c.274 (C.2A:58-10 et seq.). The Superior Court or any
37 municipal court shall have jurisdiction to enforce the "Penalty

EXPLANATION – Matter enclosed in bold-faced brackets **【thus】** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AAN committee amendments adopted May 13, 2013.

²Assembly floor amendments adopted May 20, 2013.

1 Enforcement Law of 1999." If the violation is of a continuing
2 nature, each day during which it continues shall constitute an
3 additional, separate and distinct offense.

4 b. (1) A person who violates the provisions of this act or any
5 rule or regulation or any license or permit adopted or issued
6 pursuant to this act shall be liable to the revocation or suspension of
7 any license or permit held by the violator pursuant to this act for
8 such period of time as the court may choose, except when the rule
9 or regulation violated includes a mandatory revocation or
10 suspension schedule in which case that schedule shall determine the
11 period of time of the revocation or suspension.

12 (2) In the case of a person who knowingly violates the
13 provisions of R.S.50:2-11, R.S.50:3-13, R.S.50:4-2 or R.S.50:4-3, or
14 any rule or regulation or any license or permit adopted or issued
15 pursuant thereto, the violator shall be subject to a mandatory
16 revocation or suspension of the license or permit or privilege for the
17 taking of oysters, clams or other shellfish held by the violator, or in
18 the case of a violator without the necessary license or permit the
19 loss of the privilege to take oysters, clams or other shellfish, for a
20 period of three years for a first offense, five years for a second
21 offense, and 10 years for the third and any subsequent offense. For
22 purposes of this paragraph, a knowing violator shall include, but
23 need not be limited to: (a) a person who is the holder of a
24 commercial shellfish license or permit; (b) a person who is the
25 holder of a recreational shellfish license or permit who is in
26 possession of more than the daily recreational shellfish limit; (c) a
27 person without any shellfish license or permit who is in possession
28 of more than the daily recreational shellfish limit; (d) a person who
29 is the holder of a recreational shellfish license or permit who is
30 engaging in shellfish activities with the holder of a commercial
31 shellfish license or permit; or (e) a person without the necessary
32 shellfish license or permit who is engaging in shellfish activities
33 with the holder of a commercial shellfish license or permit.

34 c. If a person violates any of the provisions of this act, or any
35 rule or regulation or any license or permit adopted or issued
36 pursuant to this act, the department may institute a civil action in a
37 court of competent jurisdiction for injunctive relief to prohibit and
38 prevent the violation or violations and the court may proceed in the
39 action in a summary manner.

40 The department is hereby authorized and empowered to
41 compromise and settle any claim for a penalty under this section in
42 such amount in the discretion of the department as may appear
43 appropriate and equitable under all of the circumstances.

44 d. In addition to the penalties prescribed by this section, a
45 person who violates the provisions of R.S.50:2-11, R.S.50:3-13,
46 R.S.50:4-2 or R.S.50:4-3, or any rule or regulation or any license or
47 permit adopted or issued pursuant thereto, shall be subject to the
48 forfeiture of any vessel, vehicle, or equipment used in the

1 commission of the violation. A designated conservation officer of
2 the Department of Environmental Protection, a member of the State
3 Police, or any other law enforcement officer may seize and secure
4 any vessel, vehicle, or equipment used in the commission of such a
5 violation. Upon the seizure of the vessel, vehicle, or equipment, the
6 conservation officer, member of the State Police, or other law
7 enforcement officer shall immediately thereafter institute a civil
8 action to determine if the forfeiture is warranted in the court in
9 which the penalty action was filed pursuant to this section, which
10 court shall have jurisdiction to adjudicate the forfeiture action. The
11 owner or any person having a security interest in the vessel, vehicle,
12 or equipment may secure its release by depositing with the clerk of
13 the court in which the action is pending a bond with good and
14 sufficient sureties in an amount to be fixed by the court, conditioned
15 upon the return of the vessel, vehicle, or equipment to the
16 Department of Environmental Protection upon demand after
17 completion of the court proceeding. The court may proceed in a
18 summary manner and may direct the confiscation of the vessel,
19 vehicle, or equipment by the department for its use or for disposal
20 by sale or public auction. Moneys collected by the department
21 through the sale or public auction of the vessel, vehicle, or
22 equipment shall be used by the Division of Fish and Wildlife for the
23 enforcement of the provisions of this act.

24 (cf: P.L.2003, c.8, s.1)

25

26 2. R.S.23:3-51 is amended to read as follows:

27 23:3-51. a. **[A]** Any person [intending] who intends to take
28 menhaden with a purse seine or shirred [nets in] net from any State
29 waters [in the jurisdiction of this State], including the waters of the
30 Atlantic ocean [.] within three nautical miles of the State coast line
31 [of this State] , shall apply to the commissioner for a [license
32 therefor] Menhaden Purse Seine Fishing Vessel License or a
33 Menhaden Purse Seine Fishing Vessel Operator's License, as
34 appropriate, in accordance with the provisions of this section .
35 **[The commissioner, upon]** Upon receipt of the application and
36 payment of the fee required pursuant to R.S.23:3-52, the
37 commissioner may, [at] in the commissioner's discretion and as
38 prescribed pursuant to sections 2 and 3 of P.L.2010, c.72, issue to
39 the applicant a **[license to take menhaden]** Menhaden Purse Seine
40 Fishing Vessel License or a Menhaden Purse Seine Fishing Vessel
41 Operator's License, as appropriate , except as prohibited [in] by
42 subsection b. of this section. **[The license shall be void after**
43 **December 31 next succeeding its issuance]** A license issued
44 pursuant to this section shall be valid only for the calendar year
45 ²[in] for² which it is issued, and shall be renewed on an annual
46 basis .

1 b. Notwithstanding the provisions of subsection a. of this
2 section, the provisions of P.L. , c. (C.) (pending before the
3 Legislature as this bill, or the provisions of any other law, or any
4 rule or regulation adopted pursuant thereto, to the contrary, the
5 commissioner shall not issue a license for the taking of menhaden,
6 and no person **【may】 shall** take menhaden, **【in】 from** State coastal
7 waters, including the Delaware, Great, Raritan, and Sandy Hook
8 bays, for the purpose of reduction, including the conversion of
9 menhaden to fish meal, oil, **【and】 or** other components.

10 **【c. This act】** This subsection shall not **【affect】** be understood to
11 prohibit the taking of menhaden in State coastal waters for the use
12 as bait for commercial or recreational purposes or in whole frozen
13 form for use as human food .

14 c. (1) The following types of vessels, and their owners or
15 operators, are subject to licensure pursuant to this section:

16 (a) Any purse seine catch vessel that takes menhaden from State
17 waters on an individual trip basis; and

18 (b) Any purse seine carry vessel that works in conjunction with
19 the purse seine catch vessel identified in subparagraph (a) of this
20 paragraph.

21 (2) A menhaden set vessel that participates only in the setting of
22 a purse seine or shirred net in conjunction with a purse seine catch
23 vessel is exempt from licensure pursuant to this section.

24 (3) A license issued pursuant to this section shall remain on
25 board the licensed vessel at all times.

26 (4) The holder of a license issued pursuant to this section shall
27 not use, have on board the licensed vessel, or work in conjunction
28 with any other vessel that uses any type of fishing gear other than a
29 purse seine or shirred net.

30 d. A Menhaden Purse Seine Fishing Vessel License shall be
31 issued in the name of the vessel and the vessel's owner or
32 owner/operator. If the vessel owner is not the operator of the
33 vessel, a Menhaden Purse Seine Fishing Vessel License shall be
34 issued to the vessel owner, as provided in this paragraph, and a
35 separate Menhaden Purse Seine Fishing Vessel Operator's License
36 shall be issued to, and in the name of, the vessel operator, in
37 accordance with the provisions of this section and subsection c. of
38 R.S.23:3-52.

39 e. (1) No vessel licensed pursuant to this section shall be
40 greater than 90 feet in overall length.

41 (2) Whenever a Menhaden Purse Seine Fishing Vessel License
42 is issued for a menhaden purse seine catch vessel pursuant to this
43 section, the licensee shall provide the commissioner with certified
44 baseline data indicating the overall length and horsepower of the
45 vessel. Any upgrade or replacement of a licensed purse seine catch
46 vessel shall be limited to a 10 percent increase in overall vessel
47 length, and a 20 percent increase in horsepower.

1 f. The possession of any fish other than menhaden on a vessel
2 licensed under this section is limited to no more than ²[one percent,
3 by weight, of the amount of menhaden landed] 500 pounds² . The
4 simultaneous possession aboard a vessel of a purse seine or shirred
5 net, menhaden, and any other fish in an amount greater than ²[one
6 percent, by weight, of the amount of menhaden landed] 500
7 pounds² shall be prima facie evidence of a violation of this
8 subsection.

9 g. (1) Before commencing menhaden fishing activities on any
10 given day, a person licensed under this section shall notify the
11 department, by phone or, if applicable and offered by the
12 department, by electronic means, of the intention to fish under this
13 section, and the vessel's intended fishing location. The licensee
14 shall also notify the department, by phone or, if applicable and
15 offered by the department, by electronic means, of any anticipated
16 change in the vessel's fishing location. After a licensee has
17 provided notice to the department of their intention to fish for
18 menhaden pursuant to this section on any particular day, the
19 licensee shall be limited, on that day, to the use of a purse seine or
20 shirred net.

21 (2) Fishing for menhaden pursuant to this section shall be
22 restricted to those areas in the Raritan, Sandy Hook, and Delaware
23 Bays, and in the Atlantic Ocean, which are located at a distance of
24 0.6 nautical miles or more from the New Jersey coastline and the
25 jetties and fishing piers extending therefrom.

26 (3) Fishing for menhaden in the Delaware Bay shall be further
27 restricted to those areas of the Bay that lie south and east of
28 LORAN C line 42850, or to any other area of the Bay, as may be
29 designated by the commissioner.

30 (4) It shall be incumbent upon the vessel operator to determine
31 whether a purse seine or shirred net is likely to drift, during fishing,
32 beyond the fishing boundaries established by this subsection. The
33 drifting of a purse seine or shirred net into any restricted area along
34 the shore or around a jetty or pier while fishing shall constitute a
35 violation of this subsection.

36 h. No person engaged in the act of fishing pursuant to this
37 section shall disturb any: (a) channel designating stakes, markers,
38 or buoys; (b) crab pots, lobster pots, fish pots, or traps; or (c) staked
39 and leased shellfish grounds.

40 (cf: P.L.2010, c.72, s.1)

41

42 3. R.S.23:3-52 is amended to read as follows:

43 23:3-52. **[The]** a. Except as provided by subsection b. of this
44 section, the fees for [issuing a license under sections 23:3-50 and
45 23:3-51 of this Title] a Menhaden Purse Seine Fishing Vessel
46 License, issued pursuant to R.S.23:3-51, shall be as follows:

47 (1) For vessels owned by a resident of New Jersey:

- 1 (a) \$125 for each [essel of] vessel not less than 30 nor more than
2 100 tons in gross tonnage [, owned by residents of New Jersey
3 \$125 00
4 Vessel of] ;
- 5 (b) \$250 for each vessel not less than 100 nor more than 150
6 tons in gross tonnage [, owned by residents of New Jersey
7 250 00
8 Vessel of] ;
- 9 (c) \$400 for each vessel not less than 150 nor more than 175
10 tons in gross tonnage [, owned by residents of New Jersey
11 400 00
12 Vessel of] ;
- 13 (d) \$550 for each vessel not less than 175 nor more than 200
14 tons in gross tonnage [, owned by residents of New Jersey
15 550 00
16 Vessel over] ;
- 17 (e) \$900 for each vessel more than 200 tons in gross tonnage [,
18 owned by residents of New Jersey 900 00
19 Vessel not over] ; and
- 20 (f) \$20 for each vessel up to ²[20] ²30² tons in gross tonnage ,
21 which is used [by residents for taking] to take menhaden for bait
22 purposes only [20 00] ;
- 23 [Vessel of] (2) For vessels owned by non-residents of New
24 Jersey:
- 25 (a) \$450 for each vessel not less than 30 nor more than 100 tons
26 in gross tonnage [, owned or leased by nonresidents of New Jersey
27 450 00
28 Vessel of] ;
- 29 (b) \$700 for each vessel not less than 100 nor more than 150
30 tons in gross tonnage [, owned or leased by nonresidents of New
31 Jersey 700 00
32 Vessel of] ;
- 33 (c) \$1,000 for each vessel not less than 150 nor more than 175
34 tons in gross tonnage [, owned or leased by nonresidents of New
35 Jersey 1,000 00
36 Vessel of] ;
- 37 (d) \$1,150 for each vessel not less than 175 nor more than 200
38 tons in gross tonnage [, owned or leased by nonresidents of New
39 Jersey 1,150 00
40 All vessels over] ; and
- 41 (e) \$1,500 for each vessel more than 200 tons in gross tonnage
42 [, owned or leased by nonresidents of the State of New Jersey 1,500
43 00
44 The fees for vessels] ;
- 45 b. Notwithstanding the provisions of subsection a. of this
46 section to the contrary, if a resident of New Jersey leases a vessel

1 from out of **the** State, **leased** by residents of New Jersey, **the**
 2 vessel licensing fee shall be the same as **the** the fee that is
 3 applicable to a vessel owned or leased by a nonresident **license**
 4 **fees** , as provided by paragraph (2) of subsection a. of this section .

5 **Such gross tonnages** c. The fee for a Menhaden Purse Seine
 6 Fishing Vessel Operator’s License, issued pursuant to R.S.23:3-51,
 7 shall be \$50 for a resident of New Jersey and \$75 for a non-resident
 8 of New Jersey.

9 d. Gross tonnage determinations under this section shall be
 10 **determined by** made using Custom House measurements.

11 e. Any license fees collected pursuant to this section shall be
 12 deposited in the “Marine Fisheries Management Account,”
 13 established pursuant to section 14 of P.L. , c. (C.) (pending
 14 before the Legislature as this bill).

15 (cf: P.L.1975, c.116, s.9)

16

17 4. (New section) As used in R.S.23:3-51, section 3 of
 18 P.L.2010, c.72 (C.23:3-51.1) and sections 4 through 17 of P.L. ,
 19 c. (C.) (pending before the Legislature as this bill):

20 “Bait net” means a net ², including but not limited to a bait seine,
 21 cast net, dip net, lift or umbrella net, or kill pot,² deployed ²**by**
 22 **hand-cast**² for the purpose of taking menhaden to be landed or sold
 23 in the State.

24 “Commissioner” means the Commissioner of Environmental
 25 Protection.

26 “Dealer” means a person who is authorized, by a license issued
 27 pursuant to section 9 of P.L. , c. (C.) (pending before the
 28 Legislature as this bill), to purchase or barter for menhaden landed
 29 in the State, and who is considered a primary buyer of menhaden.

30 “Fishing” means the taking of menhaden from State or federal
 31 waters.

32 “Gill net vessel” means a vessel that is used in the deployment of
 33 a gill net for the purpose of taking menhaden to be landed or sold in
 34 the State.

35 “Menhaden” means a marine fish of the herring family
 36 (*Brevoortia tyrannus*).

37 “Menhaden set vessel” means the smaller of two vessels, often
 38 employed in conjunction with a purse seine catch vessel, and used
 39 as a replacement for the weight of a purse seine to assist in setting
 40 the net.

41 “Pound net vessel” means a vessel that is used in the deployment
 42 of a pound net for the purpose of taking menhaden to be landed or
 43 sold in the State.

44 “Purse seine catch vessel” means a vessel that is used in the
 45 deployment of a purse seine or shirred net for the purpose of taking
 46 menhaden to be landed or sold in the State, and which may work in

1 conjunction with a purse seine carry vessel or menhaden set vessel
2 in the taking of menhaden by purse seine or shirred net.

3 “Purse seine carry vessel” means a vessel that is used to carry
4 and land or sell menhaden that has been taken from State or federal
5 waters, and which works in conjunction with a purse seine catch
6 vessel or menhaden set vessel in the taking of menhaden by purse
7 seine.

8 “Trawl vessel” means a vessel that is used in the deployment of a
9 trawl for the purpose of taking menhaden to be landed or sold in the
10 State.

11

12 5. (New section) a. No person shall land for the purposes of
13 sale or barter, or otherwise sell or barter, 100 pounds or more of
14 menhaden at any time in the State, unless the person is in
15 possession of a Menhaden Landing License which authorizes the
16 person to participate in the directed bait and whole frozen human
17 food fishery for menhaden.

18 b. (1) Any person who intends to land for the purposes of sale
19 or barter, or otherwise sell or barter, 100 pounds or more of
20 menhaden at any time shall submit to the commissioner an
21 application for a Menhaden Landing License. Any license
22 application for a Menhaden Landing License shall be filed with the
23 commissioner prior to the annual deadline established thereby for
24 application submission, and any application received by the
25 commissioner after this deadline shall be denied.

26 (2) A Menhaden Landing License issued pursuant to this
27 subsection shall be valid only for the calendar year ²[in] ²for² which
28 it is issued, and shall be renewed on an annual basis. The failure of
29 a licensee to annually renew a Menhaden Landing License in
30 accordance with established deadlines shall result in forfeiture of
31 the right to obtain a Menhaden Landing License in future years,
32 except as provided by section 6 of P.L. , c. (C.) (pending
33 before the Legislature as this bill).

34 c. (1) The following types of vessels, and their owners or
35 operators, are subject to licensure pursuant to this section:

36 (a) a gill net vessel that is used or is intended to be used to land
37 100 pounds or more of menhaden on an individual trip basis, for the
38 purposes of sale or barter;

39 (b) a pound net vessel that is used or is intended to be used to
40 land 100 pounds or more of menhaden on an individual trip basis,
41 for the purposes of sale or barter;

42 (c) a trawl vessel that is used or is intended to be used to land
43 100 pounds or more of menhaden on an individual trip basis, for the
44 purposes of sale or barter;

45 (d) a vessel that is used or is intended to be used to land, on an
46 individual trip basis, and for the purposes of sale or barter, 100
47 pounds or more of menhaden taken by bait net;

1 (e) a purse seine carry vessel that is used or is intended to be
2 used to land, on an individual trip basis, and for the purposes of sale
3 or barter, 100 pounds or more of menhaden taken from State or
4 federal waters; and

5 (f) a purse seine catch vessel that functions as a purse seine
6 carry vessel and satisfies the requirements of subparagraph (e) of
7 this paragraph.

8 ¹~~[(3)]~~ (2)¹ A purse seine catch vessel that does not function as a
9 purse seine carry vessel is exempt from licensure pursuant to this
10 section. However, the owner or operator of a purse seine carry
11 vessel that works in conjunction with a purse seine catch vessel
12 shall identify the purse seine catch vessel on the landing report
13 prepared thereby.

14 ¹~~[(4)]~~ (3)¹ (a) No purse seine carry vessel or purse seine catch
15 vessel functioning as a purse seine carry vessel shall be licensed
16 pursuant to this subsection to land menhaden taken from State
17 waters, unless the vessel is 90 feet or less in overall length.

18 (b) Nothing in subparagraph (a) of this paragraph shall prohibit
19 the licensure of a purse seine carry vessel or purse seine catch
20 vessel that is greater than 90 feet in overall length, so long as the
21 vessel lands menhaden taken only from federal waters.

22 ¹~~[(5)]~~ (4)¹ A Menhaden Landing License shall be issued by the
23 commissioner in the name of: (a) the vessel and the vessel's owner
24 or operator; or (b) if no vessel will be used in the landing or sale of
25 menhaden, the person applying for the license. If a purse seine
26 carry vessel or a purse seine catch vessel functioning as a purse
27 seine carry vessel is operated by a person who is not the owner of
28 the vessel, the vessel operator shall be licensed separately and apart
29 from the vessel owner.

30 ¹~~[(6)]~~ (5)¹ Any license issued pursuant to this section shall
31 specify the types of gear that may be used by the licensee in the
32 taking of menhaden to be landed thereby.

33 d. The holder of a Menhaden Landing License shall not use,
34 have on board the licensed vessel, or work in conjunction with any
35 other vessel that uses any type of fishing gear other than the type of
36 gear specifically identified in the license.

37 e. A Menhaden Landing License issued pursuant to this section
38 shall remain on board the licensed vessel, or, if no vessel is used, in
39 the possession of the licensee, at all times.

40 f. A person applying for a Menhaden Landing License shall
41 meet the following criteria:

42 (1) In order to obtain a license to land menhaden taken by purse
43 seine, the vessel shall have landed in the State at least 500,000
44 pounds of menhaden during one year between 2009 and 2012,
45 inclusive;

46 (2) In order to obtain a license to land menhaden taken by pound
47 net, the vessel shall have landed in the State at least 100,000 pounds
48 of menhaden during one year between 2009 and 2012, inclusive;

1 (3) In order to obtain a license to land menhaden taken by gill
2 net, the vessel shall have landed in the State at least 10,000 pounds
3 of menhaden during one year between 2009 and 2012, inclusive;

4 (4) In order to obtain a license to land menhaden taken by trawl,
5 the vessel shall have landed in the State at least 200 pounds of
6 menhaden during one year between 2009 and 2012, inclusive; and

7 (5) In order to obtain a license to land menhaden taken by bait
8 net, the person shall have possessed a New Jersey Bait Net License
9 during one year between 2009 and 2012, inclusive. If a person's
10 application for a license to land menhaden taken by bait net is
11 submitted in the year 2014 or thereafter, the commissioner may
12 require the applicant to prove landings and sale of menhaden during
13 the respective years commencing in 2013.

14 g. (1) A resident of the State who is licensed under this section
15 to land menhaden taken by purse seine shall be required to pay an
16 annual fee of \$150. A resident of the State who is licensed under
17 this section to land menhaden taken using any other type of gear
18 shall be required to pay an annual fee of \$50.

19 (2) A non-resident of the State who is licensed under this
20 section to land menhaden taken by purse seine shall be required to
21 pay an annual fee of \$750, or an amount equal to the non-resident
22 fee charged for the landing of menhaden in the non-resident's state,
23 whichever is greater. A non-resident of the State who is licensed
24 under this section to land menhaden taken with any other type of
25 gear shall be required to pay an annual fee of \$250, or an amount
26 equal to the non-resident fee charged for the landing of menhaden
27 in the non-resident's state, whichever is greater.

28 (3) Any license fees collected pursuant to this subsection shall
29 be deposited in the Marine Fisheries Management Account,
30 established pursuant to section 14 of P.L. , c. (C.) (pending
31 before the Legislature as this bill), and shall be dedicated for the
32 purposes of menhaden quota management, menhaden biological
33 monitoring, and menhaden fisheries law enforcement.

34 h. Nothing in this section, in R.S.23:3-51, or in any other law,
35 or rule or regulation adopted pursuant thereto, shall prohibit a
36 person who does not possess a Menhaden Landing License from
37 landing 100 pounds or less of menhaden, at any time, and on any
38 trip or day, provided that the amount of landed menhaden does not
39 exceed 10 percent, by weight, of the total weight of all species
40 landed, sold, or bartered.

41
42 6. (New section) a. A licensee who is eligible for renewal of
43 their Menhaden Landing License may request an extension of time
44 to renew their license in accordance with this section.

45 b. A licensee seeking a license renewal extension shall submit
46 a written application therefor to the commissioner, on a form
47 developed by the commissioner. The application shall include, at a
48 minimum:

- 1 (1) the name of the licensee and licensed vessel, if any;
2 (2) the licensee's Menhaden Landing License number;
3 (3) a detailed explanation as to why the extension is needed,
4 including a statement specifying the type and degree of hardship
5 that prevented the timely renewal of the license, and the hardship
6 that will result to the licensee if the license is not renewed; and
7 (4) any other appropriate documentation as may be necessary to
8 support the application.

9 c. An application for license renewal extension shall be
10 approved if the commissioner determines that:

- 11 (1) by reason of extraordinary hardship or exceptional situation
12 or condition, the licensee was precluded from complying with the
13 renewal requirements;
14 (2) strict compliance with the renewal requirements provided by
15 law would result in exceptional and undue hardship to the licensee;
16 (3) the circumstances supporting the conclusions made in
17 paragraphs (1) and (2) of this subsection were not created by the
18 licensee or persons under the licensee's control; and
19 (4) approval of the extension will not unreasonably interfere
20 with the orderly administration of the directed bait or whole frozen
21 human food fishery for menhaden.

22 d. Within 30 days after receipt of an application for license
23 renewal extension, the commissioner shall approve or deny the
24 application, and shall provide written notice of this determination to
25 the licensee. A licensee whose application for extension is denied
26 may appeal the decision in accordance with the procedure for
27 contested cases under the "Administrative Procedure Act,"
28 P.L.1968, c.410 (C.52:14B-1 et seq.).
29

30 7. (New section) a. Upon application to, and approval by, the
31 department, the holder of a Menhaden Purse Seine Fishing Vessel
32 License, issued pursuant to R.S.23:3-51, or the holder of a
33 Menhaden Landing License, issued pursuant to section ¹~~4~~ ⁵ of
34 P.L. , c. (C.) (pending before the Legislature as this bill),
35 may transfer their license as follows:

- 36 (1) To a replacement vessel when the vessel named in the
37 license is replaced by the licensee; or
38 (2) To a new owner of the vessel named in the license when the
39 vessel is sold or otherwise transferred to another person.

40 b. The following limitations shall apply to any license transfer
41 undertaken pursuant to paragraph (1) of subsection a. of this
42 section:

- 43 (1) a license shall only be transferrable to a replacement vessel
44 that employs the same type of fishing gear identified in the original
45 license.
46 (2) a license that is applicable to a purse seine catch vessel shall
47 only be transferrable to a replacement purse seine catch vessel, and

1 a license that is applicable to a purse seine carry vessel shall only be
2 transferrable to a replacement purse seine carry vessel;

3 (3) a license that is applicable to a purse seine catch vessel or a
4 purse seine carry vessel shall be transferrable to a replacement
5 vessel only if the replacement vessel is not more than 10 percent
6 larger in overall length ²~~or~~ than the originally licensed purse
7 seine catch vessel or 10 percent larger in the² hold capacity of the
8 originally licensed purse seine carry vessel², as measured in cubic
9 feet, and not more than 20 percent more powerful in terms of
10 horsepower, than ²~~the~~ either² originally licensed vessel.

11 c. A person who transfers a license pursuant to paragraph (2)
12 of subsection a. of this section shall no longer be eligible to obtain a
13 Menhaden Landing License based upon the landing history of the
14 vessel being sold.

15 d. An applicant for a license transfer shall submit an
16 application to the commissioner, on a form developed by the
17 commissioner, and no license shall be transferred pursuant to this
18 section without the prior approval of the commissioner.

19 e. A person shall not be eligible for transfer of their license
20 pursuant this section if: (1) their license is pending suspension or
21 has been suspended pursuant to section 15 of P.L. , c. (C.)
22 (pending before the Legislature as this bill); or (2) the licensee is
23 subject to court action for a violation of R.S.23:3-51 or P.L. ,
24 c. (C.) (pending before the Legislature as this bill).

25
26 8. (New section) a. The holder of a Menhaden Landing
27 License shall submit a monthly report to the commissioner, on a
28 form developed by the commissioner. The licensee shall attest to
29 the validity of the information contained in the monthly report, and
30 shall electronically submit the report to the department using a
31 method approved by the commissioner. If no landing, sale, or
32 barter of menhaden occurred during the month, the licensee shall
33 submit a report to that effect.

34 b. The monthly report shall include, at a minimum, the
35 following information, which shall be reported on an individual trip
36 basis:

- 37 (1) the name of the licensee and licensed vessel, if any;
38 (2) the licensee's Menhaden Landing License number;
39 (3) the name of the purse seine catch vessel, if any, which was
40 used in conjunction with the licensed vessel;
41 (4) the total amount, in pounds, of menhaden landed by the
42 licensee or licensed vessel;
43 (5) the total amount, in pounds, of menhaden discarded by the
44 licensee or licensed vessel;
45 (6) the location of harvest;
46 (7) the type of gear used for harvest;
47 (8) the ports used for the landing of menhaden;

1 (9) the date on which, and the dealer to whom, any landed
2 menhaden was sold or bartered by the licensee; and

3 (10) any other information required by the department.

4 c. (1) In addition to any other penalties provided by section 73
5 of P.L.1979, c.199 (C.23:2B-14), by P.L. , c. (C.) (pending
6 before the Legislature as this bill), or by any other law, any licensee
7 who fails to submit a monthly report on or before the 10th day of
8 the month following the month of record shall be subject to a fine
9 of \$50 for a first offense, \$100 for a second offense, and \$200 for
10 any subsequent offense.

11 (2) Any fines collected pursuant to this subsection shall be
12 deposited in the Marine Fisheries Management Account, established
13 pursuant to section 14 of P.L. , c. (C.) (pending before the
14 Legislature as this bill), and shall be dedicated for the purposes of
15 menhaden quota management, menhaden biological monitoring, and
16 menhaden fisheries law enforcement.

17

18 9. (New section) a. No person shall purchase or barter for
19 menhaden landed in the State, as the first point of sale, unless the
20 person is in possession of a Menhaden Dealer License. No
21 menhaden landed in the State shall be sold or traded to any person
22 who is not licensed under this section.

23 b. (1) Any person who intends to purchase or barter for
24 menhaden landed in the State shall submit to the commissioner an
25 application for a Menhaden Dealer License.

26 (2) A Menhaden Dealer License issued pursuant to this
27 subsection shall be valid only for the calendar year ²[in] ²for² which
28 it is issued, and shall be renewed on an annual basis.

29 c. No person shall act as the point of sale for menhaden landed
30 in the State unless the person is in possession of both a Menhaden
31 Landing License, issued pursuant to section 5 of this act, and a
32 Menhaden Dealer License, issued pursuant to this section. Any
33 person in possession of a Menhaden Landing License and not
34 selling menhaden to a licensed Menhaden dealer shall also possess a
35 Menhaden Dealer License, and shall report any sales on a weekly
36 basis, in accordance with the provisions of section 10 of this act.

37 d. The holder of a Menhaden Dealer License, issued pursuant
38 to this section, shall not accept 100 pounds or more of menhaden
39 per day from any person unless that person is in possession of a
40 Menhaden Landing License issued pursuant to section 5 of P.L. ,
41 c. (C.) (pending before the Legislature as this bill).

42 e. (1) A State resident who is licensed as a menhaden dealer
43 pursuant to this section shall be required to pay an annual fee of
44 \$100.

45 (2) A non-resident of the State who is licensed as a menhaden
46 dealer pursuant to this section shall be required to pay an annual fee
47 of \$500, or an amount equal to the non-resident fee charged to a
48 menhaden dealer in the non-resident's state, whichever is greater.

1 (3) Any license fees collected pursuant to this subsection shall
2 be deposited in the Marine Fisheries Management Account,
3 established pursuant to section 14 of P.L. , c. (C.) (pending
4 before the Legislature as this bill), and shall be dedicated for the
5 purposes of menhaden quota management, menhaden biological
6 monitoring, and menhaden fisheries law enforcement.
7

8 10. (New section) a. The holder of a Menhaden Dealer License
9 shall submit a weekly report to the commissioner, on forms
10 developed by the commissioner. The licensee shall attest to the
11 validity of the information contained in the weekly report, and shall
12 electronically submit the report to the department. If no purchase or
13 trade of menhaden occurred during the week, the licensee shall
14 submit a report to that effect. For the purposes of this section, a
15 week shall begin on Sunday and end on Saturday.

16 b. The weekly report shall include, at a minimum, the
17 following information:

18 (1) the name of the licensee;

19 (2) the licensee's Menhaden Dealer License number;

20 (3) the Menhaden Landing License number of each person
21 selling or trading menhaden to the dealer during the preceding
22 week;

23 (4) the total amount, in pounds, of menhaden purchased or
24 traded during the preceding week;

25 (5) the location of harvest for menhaden purchased or traded
26 during the preceding week;

27 (6) the type of gear used for the harvest of menhaden purchased
28 or traded during the preceding week;

29 (7) the date of purchase or trade; and

30 (8) any other information required by the department.

31 c. (1) In addition to any other penalties provided by section 73
32 of P.L.1979, c.199 (C.23:2B-14), by P.L. , c. (C.) (pending
33 before the Legislature as this bill), or by any other law, if a licensed
34 menhaden dealer fails to submit a weekly report, as required by this
35 section, either on or before 12:00 p.m. on the Tuesday following the
36 week of record, the licensee shall be subject to a fine of \$50 for a
37 first offense, \$100 for a second offense, and \$200 for any
38 subsequent offense.

39 (2) Any fines collected pursuant to this subsection shall be
40 deposited in the Marine Fisheries Management Account, established
41 pursuant to section 14 of P.L. , c. (C.) (pending before the
42 Legislature as this bill), and shall be dedicated for the purposes of
43 menhaden quota management, menhaden biological monitoring, and
44 menhaden fisheries law enforcement.
45

46 11. (New section) Removal, from a purse seine, of fish
47 harvested from the waters of the State shall be by brailing or dip net
48 only. No fish pump shall be on board any vessel operating under a

1 license, for the purpose of taking menhaden for bait or human food
2 purposes, unless the pump is completely covered and securely
3 fastened with a brightly colored tarp or other material, and the
4 pump intake or hose is disconnected from the pump and is securely
5 stowed away from the pump so that it is not readily available for
6 use when the vessel is fishing in State waters.

7
8 12. (New section) a. The holder of a Menhaden Purse Seine
9 Fishing Vessel License or a Menhaden Purse Seine Fishing Vessel
10 Operator's License, issued pursuant to R.S.23:3-51, and the holder
11 of a Menhaden Landing License, issued pursuant to section 5 of
12 P.L. , c. (C.) (pending before the Legislature as this bill)
13 shall not throw overboard, or otherwise release from a vessel or its
14 nets into the waters of the State: (1) any quantity of dead fish,
15 except during the course of normal fishing operations; or (2) any
16 refuse, litter, or garbage of any kind.

17 b. Whenever any fish, fish parts, refuse, litter, or garbage of
18 any kind is released during, or as a result of, a menhaden fishing or
19 landing operation, in violation of the provisions of subsection a. of
20 this section, the holder of a Menhaden Purse Seine License or a
21 Menhaden Landing License, as the case may be, shall report the
22 release to the department as soon as possible² and initiate a
23 cleanup of the release within 24 hours thereof, at the licensee's
24 expense, if the release is likely to impact the shoreline.

25 c. In the event that a licensee fails to initiate a cleanup, in
26 accordance with the provisions of subsection b. of this section,
27 within 24 hours after a release begins, the department may conduct
28 or arrange for the cleanup of the release. However, the licensee
29 shall be liable to pay all costs associated with the cleanup, including
30 any administrative costs incurred by the department. Costs imposed
31 pursuant to this subsection may include the costs associated with
32 damages to, or the cleanup of, marine and estuarine waters of the
33 State, or the State's beaches, shorelines, and marshes.

34
35 13. (New section) a. (1) The annual State menhaden catch
36 quota shall be established by the Atlantic States Marine Fisheries
37 Commission. The commissioner may request a quota transfer from
38 other states or regions, in accordance with the administrative
39 procedure outlined by the Atlantic States Marine Fisheries
40 Commission.

41 (2) The commissioner shall divide and allocate the annual State
42 menhaden catch quota as provided in this paragraph. The annual
43 New Jersey menhaden bait quota shall be divided among the
44 various gear types, with the purse seine fishery being allocated 95
45 percent of the quota, and pound nets, gill nets, trawls, and bait nets
46 being allocated the remaining five percent, combined. If the quota
47 for any gear type is exceeded, the overharvested amount shall be
48 deducted from the following year's quota.

1 b. The season for fishing and landing menhaden in the State
2 shall be:

3 (1) January 1 to December 31 for licensees taking menhaden, or
4 landing menhaden taken, by purse seine;

5 (2) January 1 to December 31 for licensees taking menhaden, or
6 landing menhaden taken, by gill net;

7 (3) January 1 to December 31 for licensees taking menhaden, or
8 landing menhaden taken, by pound net;

9 (4) January 1 to December 31 for licensees taking menhaden, or
10 landing menhaden taken, by trawl; and

11 (5) January 1 to December 31 for licensees taking menhaden, or
12 landing menhaden taken, by bait net.

13 c. No person who intends to take menhaden with a purse seine
14 or shirred net shall fish for menhaden in the State:

15 (1) on a Saturday or Sunday;

16 (2) on the days on which a public holiday is officially observed
17 by the State, as declared pursuant to R.S.36:1-1; or

18 (3) at any time, except during the hours from sunrise to sunset.

19 d. (1) The commissioner shall close the menhaden season in
20 the State, for each respective gear type, by giving not less than two
21 days notice of the projected date that the year's quota for that gear
22 type will be landed.

23 (2) If the menhaden season is closed prematurely, the
24 commissioner may reopen the season for a specified period of time,
25 upon no less than two days notice.

26 (3) Any notice required pursuant to this subsection shall be
27 made available for public viewing on the department's Internet
28 website, and shall be issued electronically, via e-mail, to all the
29 holders of a Menhaden Purse Seine Fishing Vessel License, a
30 Menhaden Purse Seine Fishing Vessel Operator's License, a
31 Menhaden Landing License, and a Menhaden Dealer License. Each
32 such licensee shall be required, at the time of licensure, to provide
33 the commissioner with their e-mail address, in order to facilitate the
34 provision of notice pursuant to this section.

35 e. If the season for a particular gear type is closed because the
36 quota amount allocated to that gear type has been harvested and
37 landed: (1) the holder of a Menhaden Landing License for that gear
38 type may continue to land an incidental catch of up to 6,000 pounds
39 of menhaden per day; and (2) the holder of a Menhaden Dealer
40 License may continue to accept from a Menhaden Landing License
41 holder an incidental catch of not more than 6,000 pounds of
42 menhaden per day. The incidental catch allowance authorized by
43 this subsection shall not be applied to the annual menhaden catch
44 quota established by the Atlantic States Marine Fisheries
45 Commission.

46

47 14. (New section) There is established within the General Fund,
48 a separate, dedicated, and non-lapsing account to be known as the

1 “Marine Fisheries Management Account.” This account shall be
2 credited with all revenues received from the issuance of Menhaden
3 Purse Seine Fishing Vessel Licenses and Menhaden Purse Seine
4 Fishing Vessel Operator’s Licenses pursuant to R.S.23:3-51 and
5 R.S.23:3-52, and all revenues received from the issuance of
6 Menhaden Landing Licenses and Menhaden Dealer Licenses
7 pursuant to sections 5 and 9 of P.L. , c. (C. and C.)
8 (pending before the Legislature as this bill). The moneys in the
9 Marine Fisheries Management Account shall be allocated to the
10 Division of Fish and Wildlife, Marine Fisheries Administration
11 within the Department of Environmental Protection, and shall be
12 dedicated for quota management, biological monitoring, and
13 fisheries law enforcement in connection with marine fisheries.
14

15 15. (New section) a. A person who violates any provision of
16 R.S.23:3-51, R.S.23:3-52, or P.L. , c. (C.) (pending before
17 the Legislature as this bill) shall be subject to the penalties
18 prescribed in section 73 of P.L.1979, c.199 (C.23:2B-14). In
19 addition to those penalties, if a licensee: (1) falsifies or
20 misrepresents any information contained in a report submitted
21 pursuant to section 8 of P.L. , c. (C.) (pending before the
22 Legislature as this bill) or section 10 of P.L. , c. (C.)
23 (pending before the Legislature as this bill); (2) fails to report a
24 release as required by section 12 of P.L. , c. (C.) (pending
25 before the Legislature as this bill); or (3) fishes in, or allows a purse
26 seine or shirred net to drift into, any restricted fishing area, as
27 prohibited by subsection g. of R.S.23:3-51, the licensee shall be
28 subject to the following periods of license suspension:

- 29 (1) a 30-day suspension of their license for a first offense;
30 (2) a 60-day suspension of their license for a second offense;
31 and
32 (3) a 180-day suspension of their license for a third or
33 subsequent offense.

34 b. (1) If a license is suspended pursuant to subsection a. of this
35 section, and, for three years thereafter, the licensee does not commit
36 another offense warranting suspension of their license, the initial
37 offense warranting license suspension shall be removed from
38 consideration in determining an applicable term of license
39 suspension for any offense committed by the licensee after that
40 three year period.

41 (2) The forgiveness of prior offenses provided for by this
42 subsection shall apply only to those determinations that pertain to
43 the calculation of applicable license suspension periods. All prior
44 offenses shall be taken into account in the calculation of any
45 monetary penalties provided for by P.L. , c. (C.) (pending
46 before the Legislature as this bill).

47 c. A license suspension imposed pursuant to this section shall
48 be applicable to both the licensee and the licensed vessel, if any,

1 and shall be carried out during the normal season of fishing
2 operations, which extends from May 15 through October 15 of each
3 year. If the duration of a license suspension period is not completed
4 during the current year's normal season of fishing operations, the
5 balance of the license suspension shall be made up during the
6 following year's normal season of fishing operations.

7
8 16. (New section) In order to facilitate enforcement of
9 R.S.23:3-51 and P.L. , c. (C.) (pending before the
10 Legislature as this bill), the operator of, or any other person on
11 board, a vessel that is subject to the provisions of R.S.23:3-51 or
12 P.L. , c. (C.) (pending before the Legislature as this bill),
13 shall immediately comply with the instructions and signals of a law
14 enforcement officer, and shall facilitate the officer's safe boarding,
15 and the inspection by such officer of the vessel, its gear, equipment,
16 catch, and any area where fish may be stored.

17
18 17. (New section) The commissioner may, with the approval of
19 the New Jersey Marine Fisheries Council, modify the requirements
20 of R.S.23:3-51, R.S.23:3-52, and P.L. , c. (C.) (pending
21 before the Legislature as this bill) if such modifications are
22 determined to be necessary either to provide for the optimal
23 utilization of any quotas established for menhaden fishing, or to
24 maintain consistency or State compliance with any menhaden
25 fisheries management plan that has been approved by the Atlantic
26 States Marine Fisheries Commission or ²the Mid-Atlantic Fishery
27 Management Council] any federal fishery management council²
28 and adopted by the National Marine Fisheries Service. In
29 particular, upon authorization of the New Jersey Marine Fisheries
30 Council, and in accordance with the provisions of this section, the
31 commissioner may modify the following provisions of law:

32 a. the qualifications for licensure under R.S.23:3-51, or under
33 section 5 or 9 of P.L. , c. (C. or C.) (pending before
34 the Legislature as this bill), including any fee amounts required for
35 licensure under those sections;

36 b. the qualifications for the transfer of a license under section 7
37 of P.L. , c. (C.) (pending before the Legislature as this
38 bill);

39 c. the license suspension schedule established by section 15 of
40 P.L. , c. (C.) (pending before the Legislature as this bill);

41 d. the specifications applicable to vessel upgrades and
42 replacements, as provided by R.S.23:3-51 or section 7 of P.L. ,
43 c. (C.) (pending before the Legislature as this bill);

44 e. the reporting requirements established by section 8 or
45 section 10 of P.L. , c. (C. or C.) (pending before the
46 Legislature as this bill);

- 1 f. the quota allocation formula established by subsection a. of
2 section 13 of P.L. , c. (C.) (pending before the Legislature
3 as this bill);
4 g. the season for menhaden fishing established by subsection b.
5 of section 13 of P.L. , c. (C.) (pending before the
6 Legislature as this bill); or
7 h. the incidental catch allowance provided by subsection e. of
8 section 13 of P.L. , c. (C.) (pending before the Legislature
9 as this bill), or the allocation of that incidental catch allowance to
10 the State's annual quota.

11

12 18. This act shall take effect immediately.

13

14

15

16

17 Establishes directed bait and human food fishery for menhaden,
18 and clarifies existing law regarding taking of menhaden.

ASSEMBLY, No. 4036

STATE OF NEW JERSEY 215th LEGISLATURE

INTRODUCED APRIL 29, 2013

Sponsored by:

Assemblyman NELSON T. ALBANO

District 1 (Atlantic, Cape May and Cumberland)

Assemblyman BOB ANDRZEJCZAK

District 1 (Atlantic, Cape May and Cumberland)

SYNOPSIS

Establishes directed bait and human food fishery for menhaden, and clarifies existing law regarding taking of menhaden.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning the taking of menhaden for bait and human
2 food, amending P.L.1979, c.199 and R.S.23:3-51, and
3 supplementing Title 23 of the Revised Statutes.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. Section 73 of P.L.1979, c.199 (C.23:2B-14) is amended to
9 read as follows:

10 73. For purposes of this section, the "act" means and includes all
11 the new sections and amended sections contained herein, all the
12 remaining sections of Title 50 of the Revised Statutes, sections
13 23:3-41, 23:3-46, 23:3-47, 23:3-48, 23:3-51, 23:3-52, 23:5-9, 23:5-
14 16, 23:9-114, 23:9-115 and 23:9-120 of Title 23 of the Revised
15 Statutes, **[and]** sections 1, 2, and 3 of P.L.1941, c.211 (C.23:5-24.1
16 to 23:5-24.3) , and sections 4 through 17 of P.L. , c. (C.)
17 (pending before the Legislature as this bill) .

18 The commissioner may utilize any or all of the following
19 remedies for any violation of this act:

20 a. (1) A person who violates the provisions of this act or of
21 any rule, regulation, license or permit adopted or issued pursuant to
22 this act shall be liable to a penalty of not less than \$300 or more
23 than \$3,000 for the first offense and not less than \$500 or more than
24 \$5,000 for any subsequent offense, unless the commissioner has
25 established an alternate penalty for a specific offense pursuant to
26 paragraph (2) of this subsection.

27 (2) The Commissioner of Environmental Protection, with the
28 approval of the Marine Fisheries Council, may, by regulation,
29 establish a penalty schedule for any specific violation of this act or
30 of any rule or regulation adopted pursuant to this act. No such
31 penalty may be less than \$30 or more than \$100 for the first offense
32 or less than \$50 or more than \$200 for any subsequent offense. Any
33 penalty provided for by this act or by the fee schedule adopted by
34 the commissioner shall be collected in a civil action by a summary
35 proceeding pursuant to the "Penalty Enforcement Law of 1999,"
36 P.L.1999, c.274 (C.2A:58-10 et seq.). The Superior Court or any
37 municipal court shall have jurisdiction to enforce the "Penalty
38 Enforcement Law of 1999." If the violation is of a continuing
39 nature, each day during which it continues shall constitute an
40 additional, separate and distinct offense.

41 b. (1) A person who violates the provisions of this act or any
42 rule or regulation or any license or permit adopted or issued
43 pursuant to this act shall be liable to the revocation or suspension of
44 any license or permit held by the violator pursuant to this act for
45 such period of time as the court may choose, except when the rule

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 or regulation violated includes a mandatory revocation or
2 suspension schedule in which case that schedule shall determine the
3 period of time of the revocation or suspension.

4 (2) In the case of a person who knowingly violates the
5 provisions of R.S.50:2-11,R.S.50:3-13, R.S.50:4-2 or R.S.50:4-3, or
6 any rule or regulation or any license or permit adopted or issued
7 pursuant thereto, the violator shall be subject to a mandatory
8 revocation or suspension of the license or permit or privilege for the
9 taking of oysters, clams or other shellfish held by the violator, or in
10 the case of a violator without the necessary license or permit the
11 loss of the privilege to take oysters, clams or other shellfish, for a
12 period of three years for a first offense, five years for a second
13 offense, and 10 years for the third and any subsequent offense. For
14 purposes of this paragraph, a knowing violator shall include, but
15 need not be limited to: (a) a person who is the holder of a
16 commercial shellfish license or permit; (b) a person who is the
17 holder of a recreational shellfish license or permit who is in
18 possession of more than the daily recreational shellfish limit; (c)
19 a person without any shellfish license or permit who is in possession
20 of more than the daily recreational shellfish limit; (d) a person who
21 is the holder of a recreational shellfish license or permit who is
22 engaging in shellfish activities with the holder of a commercial
23 shellfish license or permit; or (e) a person without the necessary
24 shellfish license or permit who is engaging in shellfish activities
25 with the holder of a commercial shellfish license or permit.

26 c. If a person violates any of the provisions of this act, or any
27 rule or regulation or any license or permit adopted or issued
28 pursuant to this act, the department may institute a civil action in a
29 court of competent jurisdiction for injunctive relief to prohibit and
30 prevent the violation or violations and the court may proceed in the
31 action in a summary manner.

32 The department is hereby authorized and empowered to
33 compromise and settle any claim for a penalty under this section in
34 such amount in the discretion of the department as may appear
35 appropriate and equitable under all of the circumstances.

36 d. In addition to the penalties prescribed by this section, a
37 person who violates the provisions of R.S.50:2-11, R.S.50:3-13,
38 R.S.50:4-2 or R.S.50:4-3, or any rule or regulation or any license or
39 permit adopted or issued pursuant thereto, shall be subject to the
40 forfeiture of any vessel, vehicle, or equipment used in the
41 commission of the violation. A designated conservation officer of
42 the Department of Environmental Protection, a member of the State
43 Police, or any other law enforcement officer may seize and secure
44 any vessel, vehicle, or equipment used in the commission of such a
45 violation. Upon the seizure of the vessel, vehicle, or equipment, the
46 conservation officer, member of the State Police, or other law
47 enforcement officer shall immediately thereafter institute a civil
48 action to determine if the forfeiture is warranted in the court in

1 which the penalty action was filed pursuant to this section, which
2 court shall have jurisdiction to adjudicate the forfeiture action. The
3 owner or any person having a security interest in the vessel, vehicle,
4 or equipment may secure its release by depositing with the clerk of
5 the court in which the action is pending a bond with good and
6 sufficient sureties in an amount to be fixed by the court, conditioned
7 upon the return of the vessel, vehicle, or equipment to the
8 Department of Environmental Protection upon demand after
9 completion of the court proceeding. The court may proceed in a
10 summary manner and may direct the confiscation of the vessel,
11 vehicle, or equipment by the department for its use or for disposal
12 by sale or public auction. Moneys collected by the department
13 through the sale or public auction of the vessel, vehicle, or
14 equipment shall be used by the Division of Fish and Wildlife for the
15 enforcement of the provisions of this act.

16 (cf: P.L.2003, c.8, s.1)

17

18 2. R.S.23:3-51 is amended to read as follows:

19 23:3-51. a. **[A]** Any person [intending] who intends to take
20 menhaden with a purse seine or shirred **[nets in] net from** any State
21 waters **[in the jurisdiction of this State]**, including the waters of the
22 Atlantic ocean **[.]** within three nautical miles of the State coast line
23 **[of this State]** , shall apply to the commissioner for a **[license**
24 **therefor]** Menhaden Purse Seine Fishing Vessel License or a
25 Menhaden Purse Seine Fishing Vessel Operator's License, as
26 appropriate, in accordance with the provisions of this section .
27 **[The commissioner, upon]** Upon receipt of the application and
28 payment of the fee required pursuant to R.S.23:3-52, the
29 commissioner may, **[at]** in the commissioner's discretion and as
30 prescribed pursuant to sections 2 and 3 of P.L.2010, c.72, issue to
31 the applicant a **[license to take menhaden]** Menhaden Purse Seine
32 Fishing Vessel License or a Menhaden Purse Seine Fishing Vessel
33 Operator's License, as appropriate , except as prohibited **[in]** by
34 subsection b. of this section. **[The license shall be void after**
35 **December 31 next succeeding its issuance]** A license issued
36 pursuant to this section shall be valid only for the calendar year in
37 which it is issued, and shall be renewed on an annual basis .

38 b. Notwithstanding the provisions of subsection a. of this
39 section , the provisions of P.L. , c. (C.) (pending before the
40 Legislature as this bill, or the provisions of any other law, or any
41 rule or regulation adopted pursuant thereto, to the contrary, the
42 commissioner shall not issue a license for the taking of menhaden,
43 and no person [may] shall take menhaden, **[in]** from State coastal
44 waters, including the Delaware, Great, Raritan, and Sandy Hook
45 bays, for the purpose of reduction, including the conversion of
46 menhaden to fish meal, oil, **[and]** or other components.

1 [c. This act] This subsection shall not [affect] be understood to
2 prohibit the taking of menhaden in State coastal waters for the use
3 as bait for commercial or recreational purposes or in whole frozen
4 form for use as human food .

5 c. (1) The following types of vessels, and their owners or
6 operators, are subject to licensure pursuant to this section:

7 (a) Any purse seine catch vessel that takes menhaden from State
8 waters on an individual trip basis; and

9 (b) Any purse seine carry vessel that works in conjunction with
10 the purse seine catch vessel identified in subparagraph (a) of this
11 paragraph.

12 (2) A menhaden set vessel that participates only in the setting of
13 a purse seine or shirred net in conjunction with a purse seine catch
14 vessel is exempt from licensure pursuant to this section.

15 (3) A license issued pursuant to this section shall remain on
16 board the licensed vessel at all times.

17 (4) The holder of a license issued pursuant to this section shall
18 not use, have on board the licensed vessel, or work in conjunction
19 with any other vessel that uses any type of fishing gear other than a
20 purse seine or shirred net.

21 d. A Menhaden Purse Seine Fishing Vessel License shall be
22 issued in the name of the vessel and the vessel's owner or
23 owner/operator. If the vessel owner is not the operator of the
24 vessel, a Menhaden Purse Seine Fishing Vessel License shall be
25 issued to the vessel owner, as provided in this paragraph, and a
26 separate Menhaden Purse Seine Fishing Vessel Operator's License
27 shall be issued to, and in the name of, the vessel operator, in
28 accordance with the provisions of this section and subsection c. of
29 R.S.23:3-52.

30 e. (1) No vessel licensed pursuant to this section shall be
31 greater than 90 feet in overall length.

32 (2) Whenever a Menhaden Purse Seine Fishing Vessel License
33 is issued for a menhaden purse seine catch vessel pursuant to this
34 section, the licensee shall provide the commissioner with certified
35 baseline data indicating the overall length and horsepower of the
36 vessel. Any upgrade or replacement of a licensed purse seine catch
37 vessel shall be limited to a 10 percent increase in overall vessel
38 length, and a 20 percent increase in horsepower.

39 f. The possession of any fish other than menhaden on a vessel
40 licensed under this section is limited to no more than one percent,
41 by weight, of the amount of menhaden landed. The simultaneous
42 possession aboard a vessel of a purse seine or shirred net,
43 menhaden, and any other fish in an amount greater than one
44 percent, by weight, of the amount of menhaden landed shall be
45 prima facie evidence of a violation of this subsection.

46 g. (1) Before commencing menhaden fishing activities on any
47 given day, a person licensed under this section shall notify the
48 department, by phone or, if applicable and offered by the

1 department, by electronic means, of the intention to fish under this
 2 section, and the vessel's intended fishing location. The licensee
 3 shall also notify the department, by phone or, if applicable and
 4 offered by the department, by electronic means, of any anticipated
 5 change in the vessel's fishing location. After a licensee has
 6 provided notice to the department of their intention to fish for
 7 menhaden pursuant to this section on any particular day, the
 8 licensee shall be limited, on that day, to the use of a purse seine or
 9 shirred net.

10 (2) Fishing for menhaden pursuant to this section shall be
 11 restricted to those areas in the Raritan, Sandy Hook, and Delaware
 12 Bays, and in the Atlantic Ocean, which are located at a distance of
 13 0.6 nautical miles or more from the New Jersey coastline and the
 14 jetties and fishing piers extending therefrom.

15 (3) Fishing for menhaden in the Delaware Bay shall be further
 16 restricted to those areas of the Bay that lie south and east of
 17 LORAN C line 42850, or to any other area of the Bay, as may be
 18 designated by the commissioner.

19 (4) It shall be incumbent upon the vessel operator to determine
 20 whether a purse seine or shirred net is likely to drift, during fishing,
 21 beyond the fishing boundaries established by this subsection. The
 22 drifting of a purse seine or shirred net into any restricted area along
 23 the shore or around a jetty or pier while fishing shall constitute a
 24 violation of this subsection.

25 h. No person engaged in the act of fishing pursuant to this
 26 section shall disturb any: (a) channel designating stakes, markers,
 27 or buoys; (b) crab pots, lobster pots, fish pots, or traps; or (c) staked
 28 and leased shellfish grounds.

29 (cf: P.L.2010, c.72, s.1)

30

31 3. R.S.23:3-52 is amended to read as follows:

32 23:3-52. **【The】** a. Except as provided by subsection b. of this
 33 section, the fees for 【issuing a license under sections 23:3-50 and
 34 23:3-51 of this Title】 a Menhaden Purse Seine Fishing Vessel
 35 License, issued pursuant to R.S.23:3-51, shall be as follows:

36 (1) For vessels owned by a resident of New Jersey:

37 (a) \$125 for each 【essel of】 vessel not less than 30 nor more than
 38 100 tons in gross tonnage 【, owned by residents of New Jersey
 39 \$125 00

40 Vessel of】 ;

41 (b) \$250 for each vessel not less than 100 nor more than 150
 42 tons in gross tonnage 【, owned by residents of New Jersey
 43 250 00

44 Vessel of】 ;

45 (c) \$400 for each vessel not less than 150 nor more than 175
 46 tons in gross tonnage 【, owned by residents of New Jersey
 47 400 00

1 Vessel of] ;
2 (d) \$550 for each vessel not less than 175 nor more than 200
3 tons in gross tonnage [, owned by residents of New Jersey
4 550 00
5 Vessel over] ;
6 (e) \$900 for each vessel more than 200 tons in gross tonnage [,
7 owned by residents of New Jersey 900 00
8 Vessel not over] ; and
9 (f) \$20 for each vessel up to 20 tons in gross tonnage , which is
10 used [by residents for taking] to take menhaden for bait purposes
11 only [20 00] ;
12 [Vessel of] (2) For vessels owned by non-residents of New
13 Jersey:
14 (a) \$450 for each vessel not less than 30 nor more than 100 tons
15 in gross tonnage [, owned or leased by nonresidents of New Jersey
16 450 00
17 Vessel of] ;
18 (b) \$700 for each vessel not less than 100 nor more than 150
19 tons in gross tonnage [, owned or leased by nonresidents of New
20 Jersey 700 00
21 Vessel of] ;
22 (c) \$1,000 for each vessel not less than 150 nor more than 175
23 tons in gross tonnage [, owned or leased by nonresidents of New
24 Jersey 1,000 00
25 Vessel of] ;
26 (d) \$1,150 for each vessel not less than 175 nor more than 200
27 tons in gross tonnage [, owned or leased by nonresidents of New
28 Jersey 1,150 00
29 All vessels over] ; and
30 (e) \$1,500 for each vessel more than 200 tons in gross tonnage
31 [, owned or leased by nonresidents of the State of New Jersey 1,500
32 00
33 The fees for vessels] .
34 b. Notwithstanding the provisions of subsection a. of this
35 section to the contrary, if a resident of New Jersey leases a vessel
36 from out of [the] State, [leased by residents of New Jersey,] the
37 vessel licensing fee shall be the same as [the] the fee that is
38 applicable to a vessel owned or leased by a nonresident [license
39 fees] , as provided by paragraph (2) of subsection a. of this section .
40 [Such gross tonnages] c. The fee for a Menhaden Purse Seine
41 Fishing Vessel Operator's License, issued pursuant to R.S.23:3-51,
42 shall be \$50 for a resident of New Jersey and \$75 for a non-resident
43 of New Jersey.
44 d. Gross tonnage determinations under this section shall be
45 [determined by] made using Custom House measurements.

1 e. Any license fees collected pursuant to this section shall be
2 deposited in the “Marine Fisheries Management Account,”
3 established pursuant to section 14 of P.L. , c. (C.) (pending
4 before the Legislature as this bill).
5 (cf: P.L.1975, c.116, s.9)

6
7 4. (New section) As used in R.S.23:3-51, section 3 of
8 P.L.2010, c.72 (C.23:3-51.1) and sections 4 through 17 of P.L. ,
9 c. (C.) (pending before the Legislature as this bill):

10 “Bait net” means a net deployed by hand-cast for the purpose of
11 taking menhaden to be landed or sold in the State.

12 “Commissioner” means the Commissioner of Environmental
13 Protection.

14 “Dealer” means a person who is authorized, by a license issued
15 pursuant to section 9 of P.L. , c. (C.) (pending before the
16 Legislature as this bill), to purchase or barter for menhaden landed
17 in the State, and who is considered a primary buyer of menhaden.

18 “Fishing” means the taking of menhaden from State or federal
19 waters.

20 “Gill net vessel” means a vessel that is used in the deployment of
21 a gill net for the purpose of taking menhaden to be landed or sold in
22 the State.

23 “Menhaden” means a marine fish of the herring family
24 (*Brevoortia tyrannus*).

25 “Menhaden set vessel” means the smaller of two vessels, often
26 employed in conjunction with a purse seine catch vessel, and used
27 as a replacement for the weight of a purse seine to assist in setting
28 the net.

29 “Pound net vessel” means a vessel that is used in the deployment
30 of a pound net for the purpose of taking menhaden to be landed or
31 sold in the State.

32 “Purse seine catch vessel” means a vessel that is used in the
33 deployment of a purse seine or shirred net for the purpose of taking
34 menhaden to be landed or sold in the State, and which may work in
35 conjunction with a purse seine carry vessel or menhaden set vessel
36 in the taking of menhaden by purse seine or shirred net.

37 “Purse seine carry vessel” means a vessel that is used to carry
38 and land or sell menhaden that has been taken from State or federal
39 waters, and which works in conjunction with a purse seine catch
40 vessel or menhaden set vessel in the taking of menhaden by purse
41 seine.

42 “Trawl vessel” means a vessel that is used in the deployment of a
43 trawl for the purpose of taking menhaden to be landed or sold in the
44 State.

45
46 5. (New section) a. No person shall land for the purposes of
47 sale or barter, or otherwise sell or barter, 100 pounds or more of
48 menhaden at any time in the State, unless the person is in

1 possession of a Menhaden Landing License which authorizes the
2 person to participate in the directed bait and whole frozen human
3 food fishery for menhaden.

4 b. (1) Any person who intends to land for the purposes of sale
5 or barter, or otherwise sell or barter, 100 pounds or more of
6 menhaden at any time shall submit to the commissioner an
7 application for a Menhaden Landing License. Any license
8 application for a Menhaden Landing License shall be filed with the
9 commissioner prior to the annual deadline established thereby for
10 application submission, and any application received by the
11 commissioner after this deadline shall be denied.

12 (2) A Menhaden Landing License issued pursuant to this
13 subsection shall be valid only for the calendar year in which it is
14 issued, and shall be renewed on an annual basis. The failure of a
15 licensee to annually renew a Menhaden Landing License in
16 accordance with established deadlines shall result in forfeiture of
17 the right to obtain a Menhaden Landing License in future years,
18 except as provided by section 6 of P.L. , c. (C.) (pending
19 before the Legislature as this bill).

20 c. (1) The following types of vessels, and their owners or
21 operators, are subject to licensure pursuant to this section:

22 (a) a gill net vessel that is used or is intended to be used to land
23 100 pounds or more of menhaden on an individual trip basis, for the
24 purposes of sale or barter;

25 (b) a pound net vessel that is used or is intended to be used to
26 land 100 pounds or more of menhaden on an individual trip basis,
27 for the purposes of sale or barter;

28 (c) a trawl vessel that is used or is intended to be used to land
29 100 pounds or more of menhaden on an individual trip basis, for the
30 purposes of sale or barter;

31 (d) a vessel that is used or is intended to be used to land, on an
32 individual trip basis, and for the purposes of sale or barter, 100
33 pounds or more of menhaden taken by bait net;

34 (e) a purse seine carry vessel that is used or is intended to be
35 used to land, on an individual trip basis, and for the purposes of sale
36 or barter, 100 pounds or more of menhaden taken from State or
37 federal waters; and

38 (f) a purse seine catch vessel that functions as a purse seine
39 carry vessel and satisfies the requirements of subparagraph (e) of
40 this paragraph.

41 (3) A purse seine catch vessel that does not function as a purse
42 seine carry vessel is exempt from licensure pursuant to this section.
43 However, the owner or operator of a purse seine carry vessel that
44 works in conjunction with a purse seine catch vessel shall identify
45 the purse seine catch vessel on the landing report prepared thereby.

46 (4) (a) No purse seine carry vessel or purse seine catch vessel
47 functioning as a purse seine carry vessel shall be licensed pursuant

1 to this subsection to land menhaden taken from State waters, unless
2 the vessel is 90 feet or less in overall length.

3 (b) Nothing in subparagraph (a) of this paragraph shall prohibit
4 the licensure of a purse seine carry vessel or purse seine catch
5 vessel that is greater than 90 feet in overall length, so long as the
6 vessel lands menhaden taken only from federal waters.

7 (5) A Menhaden Landing License shall be issued by the
8 commissioner in the name of: (a) the vessel and the vessel's owner
9 or operator; or (b) if no vessel will be used in the landing or sale of
10 menhaden, the person applying for the license. If a purse seine
11 carry vessel or a purse seine catch vessel functioning as a purse
12 seine carry vessel is operated by a person who is not the owner of
13 the vessel, the vessel operator shall be licensed separately and apart
14 from the vessel owner.

15 (6) Any license issued pursuant to this section shall specify the
16 types of gear that may be used by the licensee in the taking of
17 menhaden to be landed thereby.

18 d. The holder of a Menhaden Landing License shall not use,
19 have on board the licensed vessel, or work in conjunction with any
20 other vessel that uses any type of fishing gear other than the type of
21 gear specifically identified in the license.

22 e. A Menhaden Landing License issued pursuant to this section
23 shall remain on board the licensed vessel, or, if no vessel is used, in
24 the possession of the licensee, at all times.

25 f. A person applying for a Menhaden Landing License shall
26 meet the following criteria:

27 (1) In order to obtain a license to land menhaden taken by purse
28 seine, the vessel shall have landed in the State at least 500,000
29 pounds of menhaden during one year between 2009 and 2012,
30 inclusive;

31 (2) In order to obtain a license to land menhaden taken by pound
32 net, the vessel shall have landed in the State at least 100,000 pounds
33 of menhaden during one year between 2009 and 2012, inclusive;

34 (3) In order to obtain a license to land menhaden taken by gill
35 net, the vessel shall have landed in the State at least 10,000 pounds
36 of menhaden during one year between 2009 and 2012, inclusive;

37 (4) In order to obtain a license to land menhaden taken by trawl,
38 the vessel shall have landed in the State at least 200 pounds of
39 menhaden during one year between 2009 and 2012, inclusive; and

40 (5) In order to obtain a license to land menhaden taken by bait
41 net, the person shall have possessed a New Jersey Bait Net License
42 during one year between 2009 and 2012, inclusive. If a person's
43 application for a license to land menhaden taken by bait net is
44 submitted in the year 2014 or thereafter, the commissioner may
45 require the applicant to prove landings and sale of menhaden during
46 the respective years commencing in 2013.

47 g. (1) A resident of the State who is licensed under this section
48 to land menhaden taken by purse seine shall be required to pay an

1 annual fee of \$150. A resident of the State who is licensed under
2 this section to land menhaden taken using any other type of gear
3 shall be required to pay an annual fee of \$50.

4 (2) A non-resident of the State who is licensed under this
5 section to land menhaden taken by purse seine shall be required to
6 pay an annual fee of \$750, or an amount equal to the non-resident
7 fee charged for the landing of menhaden in the non-resident's state,
8 whichever is greater. A non-resident of the State who is licensed
9 under this section to land menhaden taken with any other type of
10 gear shall be required to pay an annual fee of \$250, or an amount
11 equal to the non-resident fee charged for the landing of menhaden
12 in the non-resident's state, whichever is greater.

13 (3) Any license fees collected pursuant to this subsection shall
14 be deposited in the Marine Fisheries Management Account,
15 established pursuant to section 14 of P.L. , c. (C.) (pending
16 before the Legislature as this bill), and shall be dedicated for the
17 purposes of menhaden quota management, menhaden biological
18 monitoring, and menhaden fisheries law enforcement.

19 h. Nothing in this section, in R.S.23:3-51, or in any other law,
20 or rule or regulation adopted pursuant thereto, shall prohibit a
21 person who does not possess a Menhaden Landing License from
22 landing 100 pounds or less of menhaden, at any time, and on any
23 trip or day, provided that the amount of landed menhaden does not
24 exceed 10 percent, by weight, of the total weight of all species
25 landed, sold, or bartered.

26

27 6. (New section) a. A licensee who is eligible for renewal of
28 their Menhaden Landing License may request an extension of time
29 to renew their license in accordance with this section.

30 b. A licensee seeking a license renewal extension shall submit
31 a written application therefor to the commissioner, on a form
32 developed by the commissioner. The application shall include, at a
33 minimum:

34 (1) the name of the licensee and licensed vessel, if any;

35 (2) the licensee's Menhaden Landing License number;

36 (3) a detailed explanation as to why the extension is needed,
37 including a statement specifying the type and degree of hardship
38 that prevented the timely renewal of the license, and the hardship
39 that will result to the licensee if the license is not renewed; and

40 (4) any other appropriate documentation as may be necessary to
41 support the application.

42 c. An application for license renewal extension shall be
43 approved if the commissioner determines that:

44 (1) by reason of extraordinary hardship or exceptional situation
45 or condition, the licensee was precluded from complying with the
46 renewal requirements;

47 (2) strict compliance with the renewal requirements provided by
48 law would result in exceptional and undue hardship to the licensee;

1 (3) the circumstances supporting the conclusions made in
2 paragraphs (1) and (2) of this subsection were not created by the
3 licensee or persons under the licensee's control; and

4 (4) approval of the extension will not unreasonably interfere
5 with the orderly administration of the directed bait or whole frozen
6 human food fishery for menhaden.

7 d. Within 30 days after receipt of an application for license
8 renewal extension, the commissioner shall approve or deny the
9 application, and shall provide written notice of this determination to
10 the licensee. A licensee whose application for extension is denied
11 may appeal the decision in accordance with the procedure for
12 contested cases under the "Administrative Procedure Act,"
13 P.L.1968, c.410 (C.52:14B-1 et seq.).
14

15 7. (New section) a. Upon application to, and approval by, the
16 department, the holder of a Menhaden Purse Seine Fishing Vessel
17 License, issued pursuant to R.S.23:3-51, or the holder of a
18 Menhaden Landing License, issued pursuant to section 4 of P.L. ,
19 c. (C.) (pending before the Legislature as this bill), may
20 transfer their license as follows:

21 (1) To a replacement vessel when the vessel named in the
22 license is replaced by the licensee; or

23 (2) To a new owner of the vessel named in the license when the
24 vessel is sold or otherwise transferred to another person.

25 b. The following limitations shall apply to any license transfer
26 undertaken pursuant to paragraph (1) of subsection a. of this
27 section:

28 (1) a license shall only be transferrable to a replacement vessel
29 that employs the same type of fishing gear identified in the original
30 license.

31 (2) a license that is applicable to a purse seine catch vessel shall
32 only be transferrable to a replacement purse seine catch vessel, and
33 a license that is applicable to a purse seine carry vessel shall only be
34 transferrable to a replacement purse seine carry vessel;

35 (3) a license that is applicable to a purse seine catch vessel or a
36 purse seine carry vessel shall be transferrable to a replacement
37 vessel only if the replacement vessel is not more than 10 percent
38 larger in overall length or hold capacity, as measured in cubic feet,
39 and not more than 20 percent more powerful in terms of
40 horsepower, than the originally licensed vessel.

41 c. A person who transfers a license pursuant to paragraph (2)
42 of subsection a. of this section shall no longer be eligible to obtain a
43 Menhaden Landing License based upon the landing history of the
44 vessel being sold.

45 d. An applicant for a license transfer shall submit an
46 application to the commissioner, on a form developed by the
47 commissioner, and no license shall be transferred pursuant to this
48 section without the prior approval of the commissioner.

1 e. A person shall not be eligible for transfer of their license
2 pursuant this section if: (1) their license is pending suspension or
3 has been suspended pursuant to section 15 of P.L. , c. (C.)
4 (pending before the Legislature as this bill); or (2) the licensee is
5 subject to court action for a violation of R.S.23:3-51 or P.L. ,
6 c. (C.) (pending before the Legislature as this bill).

7
8 8. (New section) a. The holder of a Menhaden Landing
9 License shall submit a monthly report to the commissioner, on a
10 form developed by the commissioner. The licensee shall attest to
11 the validity of the information contained in the monthly report, and
12 shall electronically submit the report to the department using a
13 method approved by the commissioner. If no landing, sale, or
14 barter of menhaden occurred during the month, the licensee shall
15 submit a report to that effect.

16 b. The monthly report shall include, at a minimum, the
17 following information, which shall be reported on an individual trip
18 basis:

- 19 (1) the name of the licensee and licensed vessel, if any;
20 (2) the licensee's Menhaden Landing License number;
21 (3) the name of the purse seine catch vessel, if any, which was
22 used in conjunction with the licensed vessel;
23 (4) the total amount, in pounds, of menhaden landed by the
24 licensee or licensed vessel;
25 (5) the total amount, in pounds, of menhaden discarded by the
26 licensee or licensed vessel;
27 (6) the location of harvest;
28 (7) the type of gear used for harvest;
29 (8) the ports used for the landing of menhaden;
30 (9) the date on which, and the dealer to whom, any landed
31 menhaden was sold or bartered by the licensee; and
32 (10) any other information required by the department.

33 c. (1) In addition to any other penalties provided by section 73
34 of P.L.1979, c.199 (C.23:2B-14), by P.L. , c. (C.) (pending
35 before the Legislature as this bill), or by any other law, any licensee
36 who fails to submit a monthly report on or before the 10th day of
37 the month following the month of record shall be subject to a fine
38 of \$50 for a first offense, \$100 for a second offense, and \$200 for
39 any subsequent offense.

40 (2) Any fines collected pursuant to this subsection shall be
41 deposited in the Marine Fisheries Management Account, established
42 pursuant to section 14 of P.L. , c. (C.) (pending before the
43 Legislature as this bill), and shall be dedicated for the purposes of
44 menhaden quota management, menhaden biological monitoring, and
45 menhaden fisheries law enforcement.

46
47 9. (New section) a. No person shall purchase or barter for
48 menhaden landed in the State, as the first point of sale, unless the

1 person is in possession of a Menhaden Dealer License. No
2 menhaden landed in the State shall be sold or traded to any person
3 who is not licensed under this section.

4 b. (1) Any person who intends to purchase or barter for
5 menhaden landed in the State shall submit to the commissioner an
6 application for a Menhaden Dealer License.

7 (2) A Menhaden Dealer License issued pursuant to this
8 subsection shall be valid only for the calendar year in which it is
9 issued, and shall be renewed on an annual basis.

10 c. No person shall act as the point of sale for menhaden landed
11 in the State unless the person is in possession of both a Menhaden
12 Landing License, issued pursuant to section 5 of this act, and a
13 Menhaden Dealer License, issued pursuant to this section. Any
14 person in possession of a Menhaden Landing License and not
15 selling menhaden to a licensed Menhaden dealer shall also possess a
16 Menhaden Dealer License, and shall report any sales on a weekly
17 basis, in accordance with the provisions of section 10 of this act.

18 d. The holder of a Menhaden Dealer License, issued pursuant
19 to this section, shall not accept 100 pounds or more of menhaden
20 per day from any person unless that person is in possession of a
21 Menhaden Landing License issued pursuant to section 5 of P.L. ,
22 c. (C.) (pending before the Legislature as this bill).

23 e. (1) A State resident who is licensed as a menhaden dealer
24 pursuant to this section shall be required to pay an annual fee of
25 \$100.

26 (2) A non-resident of the State who is licensed as a menhaden
27 dealer pursuant to this section shall be required to pay an annual fee
28 of \$500, or an amount equal to the non-resident fee charged to a
29 menhaden dealer in the non-resident's state, whichever is greater.

30 (3) Any license fees collected pursuant to this subsection shall
31 be deposited in the Marine Fisheries Management Account,
32 established pursuant to section 14 of P.L. , c. (C.) (pending
33 before the Legislature as this bill), and shall be dedicated for the
34 purposes of menhaden quota management, menhaden biological
35 monitoring, and menhaden fisheries law enforcement.

36

37 10. (New section) a. The holder of a Menhaden Dealer License
38 shall submit a weekly report to the commissioner, on forms
39 developed by the commissioner. The licensee shall attest to the
40 validity of the information contained in the weekly report, and shall
41 electronically submit the report to the department. If no purchase or
42 trade of menhaden occurred during the week, the licensee shall
43 submit a report to that effect. For the purposes of this section, a
44 week shall begin on Sunday and end on Saturday.

45 b. The weekly report shall include, at a minimum, the
46 following information:

47 (1) the name of the licensee;

48 (2) the licensee's Menhaden Dealer License number;

1 (3) the Menhaden Landing License number of each person
2 selling or trading menhaden to the dealer during the preceding
3 week;

4 (4) the total amount, in pounds, of menhaden purchased or
5 traded during the preceding week;

6 (5) the location of harvest for menhaden purchased or traded
7 during the preceding week;

8 (6) the type of gear used for the harvest of menhaden purchased
9 or traded during the preceding week;

10 (7) the date of purchase or trade; and

11 (8) any other information required by the department.

12 c. (1) In addition to any other penalties provided by section 73
13 of P.L.1979, c.199 (C.23:2B-14), by P.L. , c. (C.) (pending
14 before the Legislature as this bill), or by any other law, if a licensed
15 menhaden dealer fails to submit a weekly report, as required by this
16 section, either on or before 12:00 p.m. on the Tuesday following the
17 week of record, the licensee shall be subject to a fine of \$50 for a
18 first offense, \$100 for a second offense, and \$200 for any
19 subsequent offense.

20 (2) Any fines collected pursuant to this subsection shall be
21 deposited in the Marine Fisheries Management Account, established
22 pursuant to section 14 of P.L. , c. (C.) (pending before the
23 Legislature as this bill), and shall be dedicated for the purposes of
24 menhaden quota management, menhaden biological monitoring, and
25 menhaden fisheries law enforcement.

26

27 11. (New section) Removal, from a purse seine, of fish
28 harvested from the waters of the State shall be by brailing or dip net
29 only. No fish pump shall be on board any vessel operating under a
30 license, for the purpose of taking menhaden for bait or human food
31 purposes, unless the pump is completely covered and securely
32 fastened with a brightly colored tarp or other material, and the
33 pump intake or hose is disconnected from the pump and is securely
34 stowed away from the pump so that it is not readily available for
35 use when the vessel is fishing in State waters.

36

37 12. (New section) a. The holder of a Menhaden Purse Seine
38 Fishing Vessel License or a Menhaden Purse Seine Fishing Vessel
39 Operator's License, issued pursuant to R.S.23:3-51, and the holder
40 of a Menhaden Landing License, issued pursuant to section 5 of
41 P.L. , c. (C.) (pending before the Legislature as this bill)
42 shall not throw overboard, or otherwise release from a vessel or its
43 nets into the waters of the State: (1) any quantity of dead fish,
44 except during the course of normal fishing operations; or (2) any
45 refuse, litter, or garbage of any kind.

46 b. Whenever any fish, fish parts, refuse, litter, or garbage of
47 any kind is released during, or as a result of, a menhaden fishing or
48 landing operation, in violation of the provisions of subsection a. of

1 this section, the holder of a Menhaden Purse Seine License or a
2 Menhaden Landing License, as the case may be, shall report the
3 release to the department and initiate a cleanup of the release within
4 24 hours thereof, at the licensee's expense, if the release is likely to
5 impact the shoreline.

6 c. In the event that a licensee fails to initiate a cleanup, in
7 accordance with the provisions of subsection b. of this section,
8 within 24 hours after a release begins, the department may conduct
9 or arrange for the cleanup of the release. However, the licensee
10 shall be liable to pay all costs associated with the cleanup, including
11 any administrative costs incurred by the department. Costs imposed
12 pursuant to this subsection may include the costs associated with
13 damages to, or the cleanup of, marine and estuarine waters of the
14 State, or the State's beaches, shorelines, and marshes.

15

16 13. (New section) a. (1) The annual State menhaden catch
17 quota shall be established by the Atlantic States Marine Fisheries
18 Commission. The commissioner may request a quota transfer from
19 other states or regions, in accordance with the administrative
20 procedure outlined by the Atlantic States Marine Fisheries
21 Commission.

22 (2) The commissioner shall divide and allocate the annual State
23 menhaden catch quota as provided in this paragraph. The annual
24 New Jersey menhaden bait quota shall be divided among the
25 various gear types, with the purse seine fishery being allocated 95
26 percent of the quota, and pound nets, gill nets, trawls, and bait nets
27 being allocated the remaining five percent, combined. If the quota
28 for any gear type is exceeded, the overharvested amount shall be
29 deducted from the following year's quota.

30 b. The season for fishing and landing menhaden in the State
31 shall be:

32 (1) January 1 to December 31 for licensees taking menhaden, or
33 landing menhaden taken, by purse seine;

34 (2) January 1 to December 31 for licensees taking menhaden, or
35 landing menhaden taken, by gill net;

36 (3) January 1 to December 31 for licensees taking menhaden, or
37 landing menhaden taken, by pound net;

38 (4) January 1 to December 31 for licensees taking menhaden, or
39 landing menhaden taken, by trawl; and

40 (5) January 1 to December 31 for licensees taking menhaden, or
41 landing menhaden taken, by bait net.

42 c. No person who intends to take menhaden with a purse seine
43 or shirred net shall fish for menhaden in the State:

44 (1) on a Saturday or Sunday;

45 (2) on the days on which a public holiday is officially observed
46 by the State, as declared pursuant to R.S.36:1-1; or

47 (3) at any time, except during the hours from sunrise to sunset.

1 d. (1) The commissioner shall close the menhaden season in
2 the State, for each respective gear type, by giving not less than two
3 days notice of the projected date that the year's quota for that gear
4 type will be landed.

5 (2) If the menhaden season is closed prematurely, the
6 commissioner may reopen the season for a specified period of time,
7 upon no less than two days notice.

8 (3) Any notice required pursuant to this subsection shall be
9 made available for public viewing on the department's Internet
10 website, and shall be issued electronically, via e-mail, to all the
11 holders of a Menhaden Purse Seine Fishing Vessel License, a
12 Menhaden Purse Seine Fishing Vessel Operator's License, a
13 Menhaden Landing License, and a Menhaden Dealer License. Each
14 such licensee shall be required, at the time of licensure, to provide
15 the commissioner with their e-mail address, in order to facilitate the
16 provision of notice pursuant to this section.

17 e. If the season for a particular gear type is closed because the
18 quota amount allocated to that gear type has been harvested and
19 landed: (1) the holder of a Menhaden Landing License for that gear
20 type may continue to land an incidental catch of up to 6,000 pounds
21 of menhaden per day; and (2) the holder of a Menhaden Dealer
22 License may continue to accept from a Menhaden Landing License
23 holder an incidental catch of not more than 6,000 pounds of
24 menhaden per day. The incidental catch allowance authorized by
25 this subsection shall not be applied to the annual menhaden catch
26 quota established by the Atlantic States Marine Fisheries
27 Commission.

28
29 14. (New section) There is established within the General Fund,
30 a separate, dedicated, and non-lapsing account to be known as the
31 "Marine Fisheries Management Account." This account shall be
32 credited with all revenues received from the issuance of Menhaden
33 Purse Seine Fishing Vessel Licenses and Menhaden Purse Seine
34 Fishing Vessel Operator's Licenses pursuant to R.S.23:3-51 and
35 R.S.23:3-52, and all revenues received from the issuance of
36 Menhaden Landing Licenses and Menhaden Dealer Licenses
37 pursuant to sections 5 and 9 of P.L. , c. (C. and C.)
38 (pending before the Legislature as this bill). The moneys in the
39 Marine Fisheries Management Account shall be allocated to the
40 Division of Fish and Wildlife, Marine Fisheries Administration
41 within the Department of Environmental Protection, and shall be
42 dedicated for quota management, biological monitoring, and
43 fisheries law enforcement in connection with marine fisheries.

44
45 15. (New section) a. A person who violates any provision of
46 R.S.23:3-51, R.S.23:3-52, or P.L. , c. (C.) (pending before
47 the Legislature as this bill) shall be subject to the penalties
48 prescribed in section 73 of P.L.1979, c.199 (C.23:2B-14). In

1 addition to those penalties, if a licensee: (1) falsifies or
2 misrepresents any information contained in a report submitted
3 pursuant to section 8 of P.L. , c. (C.) (pending before the
4 Legislature as this bill) or section 10 of P.L. , c. (C.)
5 (pending before the Legislature as this bill); (2) fails to report a
6 release as required by section 12 of P.L. , c. (C.) (pending
7 before the Legislature as this bill); or (3) fishes in, or allows a purse
8 seine or shirred net to drift into, any restricted fishing area, as
9 prohibited by subsection g. of R.S.23:3-51, the licensee shall be
10 subject to the following periods of license suspension:

- 11 (1) a 30-day suspension of their license for a first offense;
12 (2) a 60-day suspension of their license for a second offense;
13 and
14 (3) a 180-day suspension of their license for a third or
15 subsequent offense.

16 b. (1) If a license is suspended pursuant to subsection a. of this
17 section, and, for three years thereafter, the licensee does not commit
18 another offense warranting suspension of their license, the initial
19 offense warranting license suspension shall be removed from
20 consideration in determining an applicable term of license
21 suspension for any offense committed by the licensee after that
22 three year period.

23 (2) The forgiveness of prior offenses provided for by this
24 subsection shall apply only to those determinations that pertain to
25 the calculation of applicable license suspension periods. All prior
26 offenses shall be taken into account in the calculation of any
27 monetary penalties provided for by P.L. , c. (C.) (pending
28 before the Legislature as this bill).

29 c. A license suspension imposed pursuant to this section shall
30 be applicable to both the licensee and the licensed vessel, if any,
31 and shall be carried out during the normal season of fishing
32 operations, which extends from May 15 through October 15 of each
33 year. If the duration of a license suspension period is not completed
34 during the current year's normal season of fishing operations, the
35 balance of the license suspension shall be made up during the
36 following year's normal season of fishing operations.

37
38 16. (New section) In order to facilitate enforcement of
39 R.S.23:3-51 and P.L. , c. (C.) (pending before the
40 Legislature as this bill), the operator of, or any other person on
41 board, a vessel that is subject to the provisions of R.S.23:3-51 or
42 P.L. , c. (C.) (pending before the Legislature as this bill),
43 shall immediately comply with the instructions and signals of a law
44 enforcement officer, and shall facilitate the officer's safe boarding,
45 and the inspection by such officer of the vessel, its gear, equipment,
46 catch, and any area where fish may be stored.

1 17. (New section) The commissioner may, with the approval of
2 the New Jersey Marine Fisheries Council, modify the requirements
3 of R.S.23:3-51, R.S.23:3-52, and P.L. , c. (C.) (pending
4 before the Legislature as this bill) if such modifications are
5 determined to be necessary either to provide for the optimal
6 utilization of any quotas established for menhaden fishing, or to
7 maintain consistency or State compliance with any menhaden
8 fisheries management plan that has been approved by the Atlantic
9 States Marine Fisheries Commission or the Mid-Atlantic Fishery
10 Management Council and adopted by the National Marine Fisheries
11 Service. In particular, upon authorization of the New Jersey Marine
12 Fisheries Council, and in accordance with the provisions of this
13 section, the commissioner may modify the following provisions of
14 law:

15 a. the qualifications for licensure under R.S.23:3-51, or under
16 section 5 or 9 of P.L. , c. (C. or C.) (pending before
17 the Legislature as this bill), including any fee amounts required for
18 licensure under those sections;

19 b. the qualifications for the transfer of a license under section 7
20 of P.L. , c. (C.) (pending before the Legislature as this
21 bill);

22 c. the license suspension schedule established by section 15 of
23 P.L. , c. (C.) (pending before the Legislature as this bill);

24 d. the specifications applicable to vessel upgrades and
25 replacements, as provided by R.S.23:3-51 or section 7 of P.L. ,
26 c. (C.) (pending before the Legislature as this bill);

27 e. the reporting requirements established by section 8 or
28 section 10 of P.L. , c. (C. or C.) (pending before the
29 Legislature as this bill);

30 f. the quota allocation formula established by subsection a. of
31 section 13 of P.L. , c. (C.) (pending before the Legislature
32 as this bill);

33 g. the season for menhaden fishing established by subsection b.
34 of section 13 of P.L. , c. (C.) (pending before the
35 Legislature as this bill); or

36 h. the incidental catch allowance provided by subsection e. of
37 section 13 of P.L. , c. (C.) (pending before the Legislature
38 as this bill), or the allocation of that incidental catch allowance to
39 the State's annual quota.

40

41 18. This act shall take effect immediately.

42

43

44

STATEMENT

45

46 This bill would establish a directed bait and human food fishery
47 for menhaden, in accordance with Amendment 2 of the Atlantic
48 States Marine Fisheries Commission's Interstate Fishery

1 Management Plan, and would additionally clarify existing law
2 regarding the taking of menhaden from State waters.

3 In particular, the bill would accomplish the following:

4 1) Define and categorize various menhaden fishing vessels
5 according to the type of fishing gear utilized thereby;

6 2) Establish a statutory distinction between “purse seine catch
7 vessels” – i.e., those vessels engaged in the taking of menhaden
8 from State waters through the use of a purse seine or shirred net –
9 and “purse seine carry vessels” – i.e., those vessels engaged in the
10 landing of menhaden that has been taken from State waters by a
11 purse seine catch vessel;

12 3) Clarify, at R.S.23:3-51, that possession of a menhaden
13 fishing license is required only for a “purse seine catch vessel” or a
14 “purse seine carry vessel,” and is not required for a vessel that uses
15 any other type of fishing gear;

16 4) Rename, as the “Menhaden Purse Seine Fishing Vessel
17 License,” the license issued pursuant to existing law at R.S.23:3-51,
18 and establish a new license under that section of law, to be known
19 as the “Menhaden Purse Seine Fishing Vessel Operator’s License”;

20 5) Clarify that a Menhaden Purse Seine Fishing Vessel License
21 must be issued in the name of the vessel and the vessel owner, and
22 require the issuance of a separate Menhaden Purse Seine Fishing
23 Vessel Operator’s License to a vessel operator who is not the owner
24 of the vessel;

25 6) Establish fishing boundaries and requisite times and dates
26 for fishing undertaken by the holders of menhaden purse seine
27 fishing licenses issued pursuant to R.S.23:3-51;

28 7) Establish a new license, to be known as the “Menhaden
29 Landing License,” and provide for the issuance of a Menhaden
30 Landing License to any vessel that is used, or is intended to be
31 used, to land 100 pounds or more of menhaden for the purpose of
32 sale or barter, on an individual trip basis;

33 8) Establish qualifications for a Menhaden Landing License,
34 which are based on an applicant’s menhaden catch totals in prior
35 years, and the proposed fishing gear to be used in the taking of
36 menhaden to be landed by the license holder;

37 9) Prohibit the holder of a Menhaden Landing License, or a
38 catch vessel working in conjunction therewith, from utilizing any
39 fishing gear other than the type of gear specified in the license.

40 10) Provide for the issuance of a “Menhaden Dealer License” to
41 any person who acts as the first point of sale for purchases or trades
42 menhaden landed in the State; and prohibit the holder of a
43 Menhaden Dealer License from accepting 100 pounds or more of
44 menhaden per day from any person who is not in possession of a
45 Menhaden Landing License.

46 11) Require the issuance of both a Menhaden Landing License
47 and a Menhaden Dealer License to: a) any person who acts as a
48 point of sale for menhaden landed in the State, and b) any holder of

- 1 a Menhaden Landing License who does not sell menhaden to a
2 licensed Menhaden dealer;
- 3 12) Establish a resident and non-resident licensing fee schedule
4 for applicants for a Menhaden Landing License or Menhaden
5 Dealer License;
- 6 13) Establish monthly reporting requirements for holders of
7 Menhaden Landing Licenses, and weekly reporting requirements
8 for holders of Menhaden Dealer Licenses, and establish monetary
9 penalties for untimely report submission (specifically, fines of \$50
10 for a first offense, \$100 for a second offense, and \$200 for any
11 subsequent offense);
- 12 14) Require the annual renewal of all licenses issued pursuant to
13 the bill's provisions, and establish a procedure by which the
14 deadline for Landing License renewal may be extended in certain
15 cases of hardship;
- 16 15) Authorize the holder of a Menhaden Purse Seine Fishing
17 Vessel License or a Menhaden Landing License to apply to the
18 department for transfer of their license to a replacement vessel, in
19 certain specified instances, or to a new owner of the licensed vessel,
20 when the vessel is sold or transferred; and prohibit such transfer of
21 licensure by a licensee whose license is suspended or is pending
22 suspension, or who is subject to court action for a violation of the
23 bill's provisions;
- 24 16) Establish, within the General Fund, a "Marine Fisheries
25 Management Account"; and require all licensing fees and fines
26 collected pursuant to the bill's provisions to be deposited in the
27 account and dedicated for the purposes of quota management,
28 biological monitoring, and marine fisheries law enforcement;
- 29 17) Require the use of a brailing or dip net in the removal of fish
30 from a purse seine or shirred net; prohibit the use of a fish pump for
31 such purposes; and require any fish pump on board a vessel to be
32 appropriately secured and covered during fishing operations;
- 33 18) Prohibit the holder of a a Menhaden Purse Seine Fishing
34 Vessel License, a Menhaden Purse Seine Fishing Vessel Operator's
35 License, or a Menhaden Landing License from releasing into State
36 waters: a) any dead fish, except during the course of normal fishing
37 operations, or b) any refuse, litter, or garbage; require any such
38 license holder to report the release of any refuse, litter, garbage, or
39 dead fish to the department and initiate a cleanup within 24 hours
40 thereof, at the licensee's expense, if the release is likely to affect the
41 shoreline; authorize the department to initiate and complete a
42 cleanup if a licensee fails to do so; and, require the licensee to
43 reimburse the department for all the costs of a department-initiated
44 cleanup;
- 45 19) Require the State to comply with the menhaden catch quota
46 established by the Atlantic States Marine Fisheries Commission
47 (ASMFC), and require the annual bait quota amount to be divided
48 among the various gear types, with the purse seine fishery being

1 allocated 95 percent of the quota, and pound nets, gill nets, trawls,
2 and bait nets being allocated the remaining five percent, combined;

3 20) Establish the season for menhaden fishing as January 1
4 through December 31, prohibit the taking of menhaden with a purse
5 seine or shirred net on a Saturday or Sunday, or on the days on
6 which a public holiday is officially observed by the State, and
7 except during the hours from sunrise to sunset;

8 21) Authorize the closure of the menhaden fishing season, for
9 each gear type, and the reopening of any prematurely closed season,
10 upon two days notice by the Department of Environmental
11 Protection; and

12 22) Authorize the holder of a Menhaden Landing License to
13 land, and the holder of a Menhaden Dealer License to accept from a
14 Landing License holder, an incidental catch of up to 6,000 pounds
15 per day of menhaden, following the close of the official menhaden
16 fishing season, which incidental catch would not be applicable to
17 the annual ASMFC menhaden fishing quota.

18 Any person who violates the bill's provisions, or any provision
19 of R.S.23:3-51 or R.S.23:3-52 (pertaining to the issuance of
20 Menhaden fishing licenses), would be subject to the penalties
21 prescribed in existing fisheries law, at section 73 of P.L.1979, c.199
22 (C.23:2B-14). In addition to those penalties, whenever a licensee:
23 (1) falsifies or misrepresents any information contained in a
24 monthly or weekly report; (2) fails to report a release of garbage or
25 dead fish from a vessel; or (3) fishes in, or allows a purse seine to
26 drift into, any restricted fishing area, the licensee would be subject
27 to a 30-day suspension of their license for a first offense, a 60-day
28 suspension of their license for a second offense, and a 180-day
29 suspension of their license for a third or subsequent offense.

30 If a license is suspended pursuant to the bill's provisions, and,
31 for three years thereafter, the offending licensee does not commit
32 another offense warranting license suspension, the department
33 would be required to remove the original offense warranting license
34 suspension from its consideration in determining an appropriate
35 suspension penalty for any offense committed by that licensee after
36 the three-year period. A licensee who commits more than one
37 offense within a three-year period, however, would not be
38 considered to be a first-time offender regardless of the length of any
39 subsequent period without violation.

40 The Commissioner of Environmental Protection would be
41 authorized, with the approval of the New Jersey Marine Fisheries
42 Council, to modify several of the bill's provisions (including those
43 related to licensure, reporting, quota allocation, catch allowance,
44 and season limits), if such modifications are necessary either to
45 provide for the optimal utilization of any quotas established for
46 menhaden fishing, or to maintain consistency or State compliance
47 with any menhaden fisheries management plan approved by the

- 1 ASMFC or the Mid-Atlantic Fishery Management Council, and
- 2 adopted by the National Marine Fisheries Service.

ASSEMBLY AGRICULTURE AND NATURAL RESOURCES
COMMITTEE

STATEMENT TO
ASSEMBLY, No. 4036

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 13, 2013

The Assembly Agriculture and Natural Resources Committee reports favorably, and with committee amendments, Assembly Bill No. 4036.

As amended by the committee, this bill would establish a directed bait and human food fishery for menhaden, in accordance with Amendment 2 of the Atlantic States Marine Fisheries Commission's Interstate Fishery Management Plan, and it would additionally clarify existing law regarding the taking of menhaden from State waters. In particular, the bill, as amended, would accomplish the following:

1) Define and categorize various menhaden fishing vessels according to the type of fishing gear utilized thereby;

2) Establish a statutory distinction between "purse seine catch vessels" – i.e., those vessels engaged in the taking of menhaden from State waters through the use of a purse seine or shirred net – and "purse seine carry vessels" – i.e., those vessels engaged in the landing of menhaden that has been taken from State waters by a purse seine catch vessel;

3) Clarify, at R.S.23:3-51, that possession of a menhaden fishing license is required only for a "purse seine catch vessel" or a "purse seine carry vessel," and is not required for a vessel that uses any other type of fishing gear;

4) Rename, as the "Menhaden Purse Seine Fishing Vessel License," the license issued pursuant to existing law at R.S.23:3-51, and establish a new license under that section of law, to be known as the "Menhaden Purse Seine Fishing Vessel Operator's License";

5) Clarify that a Menhaden Purse Seine Fishing Vessel License must be issued in the name of the vessel and the vessel owner, and require the issuance of a separate Menhaden Purse Seine Fishing Vessel Operator's License to a vessel operator who is not the owner of the vessel;

6) Establish the season for menhaden fishing as January 1 through December 31;

7) Establish fishing boundaries for fishing undertaken by the holders of menhaden purse seine fishing licenses issued pursuant to R.S.23:3-51, and prohibit menhaden fishing with a purse seine or shirred net on a Saturday or Sunday, on the days on which a public holiday is officially observed by the State, and except during the hours from sunrise to sunset;

8) Establish a new license, to be known as the “Menhaden Landing License,” and provide for the issuance of a Menhaden Landing License to any vessel that is used, or is intended to be used, to land 100 pounds or more of menhaden for the purpose of sale or barter, on an individual trip basis;

9) Establish qualifications for a Menhaden Landing License, which are based on an applicant’s menhaden catch totals in prior years, and the proposed fishing gear to be used in the taking of menhaden to be landed by the license holder;

10) Prohibit the holder of a Menhaden Landing License, or a catch vessel working in conjunction therewith, from utilizing any fishing gear other than the type of gear specified in the license.

11) Provide for the issuance of a “Menhaden Dealer License” to any person who acts as the first point of sale for purchases or trades menhaden landed in the State; and prohibit the holder of a Menhaden Dealer License from accepting 100 pounds or more of menhaden per day from any person who is not in possession of a Menhaden Landing License.

12) Require the issuance of both a Menhaden Landing License and a Menhaden Dealer License to: a) any person who acts as a point of sale for menhaden landed in the State, and b) any holder of a Menhaden Landing License who does not sell menhaden to a licensed Menhaden dealer;

13) Establish a resident and non-resident licensing fee schedule for applicants for a Menhaden Landing License or Menhaden Dealer License, and clarify the existing resident and non-resident licensing fee schedule for purse seine fishing license applicants;

14) Establish monthly reporting requirements for holders of Menhaden Landing Licenses, and weekly reporting requirements for holders of Menhaden Dealer Licenses, and establish monetary penalties for untimely report submission (specifically, fines of \$50 for a first offense, \$100 for a second offense, and \$200 for any subsequent offense);

15) Require the annual renewal of all licenses issued pursuant to the bill’s provisions, and establish a procedure by which the deadline for Landing License renewal may be extended in certain cases of hardship;

16) Authorize the holder of a Menhaden Purse Seine Fishing Vessel License or a Menhaden Landing License to apply to the department for transfer of their license to a replacement vessel, in certain specified instances, or to a new owner of the licensed vessel,

when the vessel is sold or transferred; and prohibit such transfer of licensure by a licensee whose license is suspended or is pending suspension, or who is subject to court action for a violation of the bill's provisions;

17) Establish, within the General Fund, a "Marine Fisheries Management Account"; and require all licensing fees and fines collected pursuant to the bill's provisions to be deposited in the account and dedicated for the purposes of quota management, biological monitoring, and marine fisheries law enforcement;

18) Require the use of a brailing or dip net in the removal of fish from a purse seine or shirred net; prohibit the use of a fish pump for such purposes; and require any fish pump on board a vessel to be appropriately secured and covered during fishing operations;

19) Prohibit the holder of a a Menhaden Purse Seine Fishing Vessel License, a Menhaden Purse Seine Fishing Vessel Operator's License, or a Menhaden Landing License from releasing into State waters: a) any dead fish, except during the course of normal fishing operations, or b) any refuse, litter, or garbage; require any such license holder to report the release of any refuse, litter, garbage, or dead fish to the department and initiate a cleanup within 24 hours thereof, at the licensee's expense, if the release is likely to affect the shoreline; authorize the department to initiate and complete a cleanup if a licensee fails to do so; and, require the licensee to reimburse the department for all the costs of a department-initiated cleanup;

20) Require the State to comply with the menhaden catch quota established by the Atlantic States Marine Fisheries Commission (ASMFC), and require the annual bait quota amount to be divided among the various gear types, with the purse seine fishery being allocated 95 percent of the quota, and pound nets, gill nets, trawls, and bait nets being allocated the remaining five percent, combined;

21) Establish the season for menhaden fishing as January 1 through December 31, prohibit the taking of menhaden with a purse seine or shirred net on a Saturday or Sunday, or on the days on which a public holiday is officially observed by the State, and except during the hours from sunrise to sunset;

22) Authorize the closure of the menhaden fishing season, for each gear type, and the reopening of any prematurely closed season, upon two days notice by the Department of Environmental Protection; and

23) Authorize the holder of a Menhaden Landing License to land, and the holder of a Menhaden Dealer License to accept from a Landing License holder, an incidental catch of up to 6,000 pounds per day of menhaden, following the close of the official menhaden fishing season, which incidental catch would not be applicable to the annual ASMFC menhaden fishing quota.

Any person who violates the amended bill's provisions, or any provision of R.S.23:3-51 or R.S.23:3-52 (pertaining to the issuance of

menhaden purse seine fishing licenses), would be subject to the penalties prescribed in existing fisheries law, at section 73 of P.L.1979, c.199 (C.23:2B-14). In addition to those penalties, whenever a licensee: (1) falsifies or misrepresents any information contained in a monthly or weekly report; (2) fails to report a release of garbage or dead fish from a vessel; or (3) fishes in, or allows a purse seine to drift into, any restricted fishing area, the licensee would be subject to a 30-day suspension of their license for a first offense, a 60-day suspension of their license for a second offense, and a 180-day suspension of their license for a third or subsequent offense.

If a license is suspended pursuant to the amended bill's provisions, and, for three years thereafter, the offending licensee does not commit another offense warranting license suspension, the department would be required to remove the original offense warranting license suspension from its consideration in determining an appropriate suspension penalty for any offense committed by that licensee after the three-year period. A licensee who commits more than one offense within a three-year period, however, would not be considered to be a first-time offender regardless of the length of any subsequent period without violation.

Finally, the bill, as amended, would authorize the Commissioner of Environmental Protection, with the approval of the New Jersey Marine Fisheries Council, to modify several of the bill's provisions (including those related to licensure, reporting, quota allocation, catch allowance, and season limits), if such modifications are necessary either to provide for the optimal utilization of any quotas established for menhaden fishing, or to maintain consistency or State compliance with any menhaden fisheries management plan approved by the ASMFC or the Mid-Atlantic Fishery Management Council, and adopted by the National Marine Fisheries Service.

COMMITTEE AMENDMENTS

The committee amendments make technical corrections to the bill.

fSTATEMENT TO

[First Reprint]

ASSEMBLY, No. 4036

with Assembly Floor Amendments
(Proposed by Assemblyman ALBANO)

ADOPTED: MAY 20, 2013

These floor amendments would:

- 1) make technical and clarifying corrections to the bill;
- 2) clarify that a license is valid only for the calendar year for which it is issued;
- 3) change the by-catch provision from 1 percent by weight of the amount of menhaden landed to no more than 500 pounds;
- 4) correct the tonnage requirement for the \$20 license to include vessels between 20 and 30 tons;
- 5) change the definition of "bait net" to include bait seine, cast net, dip net, lift or umbrella net, or kill pots;
- 6) clarify in section 7 of the bill that a license may be transferred to a replacement vessel only if the replacement vessel is not more than 10 percent larger in overall length than the originally licensed purse seine catch vessel, and 10 percent larger in the hold capacity of the originally licensed purse seine carry vessel;
- 7) require that the requisite notice of a release be reported to the department "as soon as possible;" and
- 8) broaden a reference in the bill from "Mid-Atlantic Fishery Management Council" to "any federal fishery management council" to include management plan modifications approved by any federal council.

LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

ASSEMBLY, No. 4036

STATE OF NEW JERSEY 215th LEGISLATURE

DATED: JUNE 3, 2013

SUMMARY

- Synopsis:** Establishes directed bait and human food fishery for menhaden, and clarifies existing law regarding taking of menhaden.
- Type of Impact:** Increased State cost partially offset by license fees and fines.
- Agencies Affected:** Department of Environmental Protection

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost	Indeterminate – See comments below		
State Revenue	Indeterminate – See comments below		

- The Office of Legislative Services (OLS) cannot quantify the fiscal impact of this bill. No specific information or data is available to estimate the cost of establishing, administering, and enforcing a licensing system for taking menhaden from State waters. However, it is likely that the Department of Environmental Protection (DEP) would incur additional staff and related costs in implementing, administering, and enforcing the provisions of the bill.
- Since the bill requires the department to charge fees for the various licenses needed for the taking of menhaden, the OLS assumes that some costs incurred by the department could be recovered from these license fees. In addition, the fines collected for violation of the bill's provisions could be used to further offset some of the department's expenditures.
- The OLS notes that the bill requires the establishment of a "Marine Fisheries Management Account" within the General Fund and requires all menhaden licensing fees and fines collected pursuant to the bill to be deposited in the account and be used for the purposes of quota management, biological monitoring, and fisheries law enforcement in connection with marine fisheries.

BILL DESCRIPTION

Assembly Bill No. 4036 (2R) of 2013 would establish a directed bait and human food fishery for menhaden, in accordance with Amendment 2 of the Atlantic States Marine Fisheries Commission's (ASMFC) Interstate Fishery Management Plan, and it would additionally clarify existing law regarding the taking of menhaden from State waters. In particular, the bill would accomplish the following:

1) define and categorize various menhaden fishing vessels according to the type of fishing gear utilized;

2) establish a statutory distinction between "purse seine catch vessels" – i.e., those vessels engaged in the taking of menhaden from State waters through the use of a purse seine or shirred net – and "purse seine carry vessels" – i.e., those vessels engaged in the landing of menhaden that have been taken from State waters by a purse seine catch vessel;

3) clarify that possession of a menhaden fishing license is required only for a "purse seine catch vessel" or a "purse seine carry vessel," and is not required for a vessel that uses any other type of fishing gear;

4) rename, as the "Menhaden Purse Seine Fishing Vessel License," the license issued pursuant to existing law and establish a new license under that section of law, to be known as the "Menhaden Purse Seine Fishing Vessel Operator's License";

5) clarify that a Menhaden Purse Seine Fishing Vessel License must be issued in the name of the vessel and the vessel owner, and require the issuance of a separate Menhaden Purse Seine Fishing Vessel Operator's License to a vessel operator who is not the owner of the vessel;

6) establish the season for menhaden fishing as January 1 through December 31;

7) establish fishing boundaries for fishing undertaken by the holders of menhaden purse seine fishing licenses, and prohibit menhaden fishing with a purse seine or shirred net on a Saturday or Sunday, on the days on which a public holiday is officially observed by the State, and except during the hours from sunrise to sunset;

8) establish a new license, to be known as the "Menhaden Landing License," and provide for the issuance of a Menhaden Landing License to any vessel that is used, or is intended to be used, to land 100 pounds or more of menhaden for the purpose of sale or barter, on an individual trip basis;

9) establish qualifications for a Menhaden Landing License, which are based on an applicant's menhaden catch totals in prior years, and the proposed fishing gear to be used in the taking of menhaden to be landed by the license holder;

10) prohibit the holder of a Menhaden Landing License, or a catch vessel working in conjunction therewith, from utilizing any fishing gear other than the type of gear specified in the license;

11) provide for the issuance of a "Menhaden Dealer License" to any person who acts as the first point of sale for purchases or trades of menhaden landed in the State; and prohibit the holder of a Menhaden Dealer License from accepting 100 pounds or more of menhaden per day from any person who is not in possession of a Menhaden Landing License;

12) require the issuance of both a Menhaden Landing License and a Menhaden Dealer License to: a) any person who acts as a point of sale for menhaden landed in the State, and b) any holder of a Menhaden Landing License who does not sell menhaden to a licensed Menhaden dealer;

13) establish a resident and non-resident licensing fee schedule for applicants for a Menhaden Landing License or Menhaden Dealer License, and clarify the existing resident and non-resident licensing fee schedule for purse seine fishing license applicants;

14) establish monthly reporting requirements for holders of Menhaden Landing Licenses, and weekly reporting requirements for holders of Menhaden Dealer Licenses, and establish monetary penalties for untimely report submission;

15) require the annual renewal of all licenses issued pursuant to the bill's provisions, and establish a procedure by which the deadline for Landing License renewal may be extended in certain cases of hardship;

16) authorize the holder of a Menhaden Purse Seine Fishing Vessel License or a Menhaden Landing License to apply to the DEP for transfer of their license to a replacement vessel, in certain specified instances, or to a new owner of the licensed vessel, when the vessel is sold or transferred; and prohibit such transfer of licensure by a licensee whose license is suspended or is pending suspension, or who is subject to court action for a violation of the bill's provisions;

17) establish, within the General Fund, a "Marine Fisheries Management Account" and require all licensing fees and fines collected pursuant to the bill's provisions to be deposited in the account and dedicated for the purposes of quota management, biological monitoring, and marine fisheries law enforcement;

18) require the use of a brailing or dip net in the removal of fish from a purse seine or shirred net; prohibit the use of a fish pump for such purposes; and require any fish pump on board a vessel to be appropriately secured and covered during fishing operations;

19) prohibit the holder of a Menhaden Purse Seine Fishing Vessel License, a Menhaden Purse Seine Fishing Vessel Operator's License, or a Menhaden Landing License from releasing into State waters: a) any dead fish, except during the course of normal fishing operations, or b) any refuse, litter, or garbage; require any such license holder to report the release of any refuse, litter, garbage, or dead fish to the DEP as soon as possible and initiate a cleanup within 24 hours at the licensee's expense if the release is likely to affect the shoreline; authorize the DEP to initiate and complete a cleanup if a licensee fails to do so; and require the licensee to reimburse the DEP for all the costs of the cleanup;

20) require the State to comply with the menhaden catch quota established by the ASMFC, and require the annual bait quota amount to be divided among the various gear types, with the purse seine fishery being allocated 95 percent of the quota, and pound nets, gill nets, trawls, and bait nets being allocated the remaining five percent, combined;

21) authorize the closure of the menhaden fishing season, for each gear type, and the reopening of any prematurely closed season, upon two days notice by the DEP; and

22) authorize the holder of a Menhaden Landing License to land, and the holder of a Menhaden Dealer License to accept from a Landing License holder, an incidental catch of up to 6,000 pounds per day of menhaden, following the close of the official menhaden fishing season, which incidental catch would not be applicable to the annual ASMFC menhaden fishing quota.

Any person who violates the bill's provisions would be subject to the penalties prescribed in the existing fisheries law, and also could be subject to license suspension in certain circumstances.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS cannot quantify the fiscal impact of this bill. No specific information or data is available to estimate the cost of establishing, administering, and enforcing a licensing system for taking menhaden from State waters. However, it is likely that the DEP would incur additional staff and related costs in implementing, administering, and enforcing the provisions of the bill. Since the bill allows the department to charge fees for the various licenses issued by the department, the OLS assumes that some costs incurred by the department could be recovered from these license fees. In addition, the fines collected for violation of the bill's provisions could be used to further offset some of the department's expenditures.

The OLS notes that the bill requires the establishment of a "Marine Fisheries Management Account" within the General Fund and requires all menhaden licensing fees and fines collected pursuant to the bill to be deposited in the account and be used for the purposes of quota management, biological monitoring, and fisheries law enforcement in connection with marine fisheries.

Section: Environment, Agriculture, Energy and Natural Resources

*Analyst: Joseph A. Hroncich
Senior Fiscal Analyst*

*Approved: David J. Rosen
Legislative Budget and Finance Officer*

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

SENATE, No. 2726

STATE OF NEW JERSEY
215th LEGISLATURE

INTRODUCED APRIL 29, 2013

Sponsored by:

Senator JEFF VAN DREW

District 1 (Atlantic, Cape May and Cumberland)

Senator JOSEPH M. KYRILLOS, JR.

District 13 (Monmouth)

SYNOPSIS

Establishes directed bait and human food fishery for menhaden, and clarifies existing law regarding taking of menhaden.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 5/14/2013)

1 AN ACT concerning the taking of menhaden for bait and human
2 food, amending P.L.1979, c.199 and R.S.23:3-51, and
3 supplementing Title 23 of the Revised Statutes.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. Section 73 of P.L.1979, c.199 (C.23:2B-14) is amended to
9 read as follows:

10 73. For purposes of this section, the "act" means and includes all
11 the new sections and amended sections contained herein, all the
12 remaining sections of Title 50 of the Revised Statutes, sections
13 23:3-41, 23:3-46, 23:3-47, 23:3-48, 23:3-51, 23:3-52, 23:5-9, 23:5-
14 16, 23:9-114, 23:9-115 and 23:9-120 of Title 23 of the Revised
15 Statutes, **[and]** sections 1, 2, and 3 of P.L.1941, c.211 (C.23:5-24.1
16 to 23:5-24.3) , and sections 4 through 17 of P.L. , c. (C.)
17 (pending before the Legislature as this bill) .

18 The commissioner may utilize any or all of the following
19 remedies for any violation of this act:

20 a. (1) A person who violates the provisions of this act or of
21 any rule, regulation, license or permit adopted or issued pursuant to
22 this act shall be liable to a penalty of not less than \$300 or more
23 than \$3,000 for the first offense and not less than \$500 or more than
24 \$5,000 for any subsequent offense, unless the commissioner has
25 established an alternate penalty for a specific offense pursuant to
26 paragraph (2) of this subsection.

27 (2) The Commissioner of Environmental Protection, with the
28 approval of the Marine Fisheries Council, may, by regulation,
29 establish a penalty schedule for any specific violation of this act or
30 of any rule or regulation adopted pursuant to this act. No such
31 penalty may be less than \$30 or more than \$100 for the first offense
32 or less than \$50 or more than \$200 for any subsequent offense. Any
33 penalty provided for by this act or by the fee schedule adopted by
34 the commissioner shall be collected in a civil action by a summary
35 proceeding pursuant to the "Penalty Enforcement Law of 1999,"
36 P.L.1999, c.274 (C.2A:58-10 et seq.). The Superior Court or any
37 municipal court shall have jurisdiction to enforce the "Penalty
38 Enforcement Law of 1999." If the violation is of a continuing
39 nature, each day during which it continues shall constitute an
40 additional, separate and distinct offense.

41 b. (1) A person who violates the provisions of this act or any
42 rule or regulation or any license or permit adopted or issued
43 pursuant to this act shall be liable to the revocation or suspension of
44 any license or permit held by the violator pursuant to this act for
45 such period of time as the court may choose, except when the rule

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 or regulation violated includes a mandatory revocation or
2 suspension schedule in which case that schedule shall determine the
3 period of time of the revocation or suspension.

4 (2) In the case of a person who knowingly violates the
5 provisions of R.S.50:2-11,R.S.50:3-13, R.S.50:4-2 or R.S.50:4-3, or
6 any rule or regulation or any license or permit adopted or issued
7 pursuant thereto, the violator shall be subject to a mandatory
8 revocation or suspension of the license or permit or privilege for the
9 taking of oysters, clams or other shellfish held by the violator, or in
10 the case of a violator without the necessary license or permit the
11 loss of the privilege to take oysters, clams or other shellfish, for a
12 period of three years for a first offense, five years for a second
13 offense, and 10 years for the third and any subsequent offense. For
14 purposes of this paragraph, a knowing violator shall include, but
15 need not be limited to: (a) a person who is the holder of a
16 commercial shellfish license or permit; (b) a person who is the
17 holder of a recreational shellfish license or permit who is in
18 possession of more than the daily recreational shellfish limit; (c) a
19 person without any shellfish license or permit who is in possession
20 of more than the daily recreational shellfish limit; (d) a person who
21 is the holder of a recreational shellfish license or permit who is
22 engaging in shellfish activities with the holder of a commercial
23 shellfish license or permit; or (e) a person without the necessary
24 shellfish license or permit who is engaging in shellfish activities
25 with the holder of a commercial shellfish license or permit.

26 c. If a person violates any of the provisions of this act, or any
27 rule or regulation or any license or permit adopted or issued
28 pursuant to this act, the department may institute a civil action in a
29 court of competent jurisdiction for injunctive relief to prohibit and
30 prevent the violation or violations and the court may proceed in the
31 action in a summary manner.

32 The department is hereby authorized and empowered to
33 compromise and settle any claim for a penalty under this section in
34 such amount in the discretion of the department as may appear
35 appropriate and equitable under all of the circumstances.

36 d. In addition to the penalties prescribed by this section, a
37 person who violates the provisions of R.S.50:2-11, R.S.50:3-13,
38 R.S.50:4-2 or R.S.50:4-3, or any rule or regulation or any license or
39 permit adopted or issued pursuant thereto, shall be subject to the
40 forfeiture of any vessel, vehicle, or equipment used in the
41 commission of the violation. A designated conservation officer of
42 the Department of Environmental Protection, a member of the State
43 Police, or any other law enforcement officer may seize and secure
44 any vessel, vehicle, or equipment used in the commission of such a
45 violation. Upon the seizure of the vessel, vehicle, or equipment, the
46 conservation officer, member of the State Police, or other law
47 enforcement officer shall immediately thereafter institute a civil
48 action to determine if the forfeiture is warranted in the court in

1 which the penalty action was filed pursuant to this section, which
2 court shall have jurisdiction to adjudicate the forfeiture action. The
3 owner or any person having a security interest in the vessel, vehicle,
4 or equipment may secure its release by depositing with the clerk of
5 the court in which the action is pending a bond with good and
6 sufficient sureties in an amount to be fixed by the court, conditioned
7 upon the return of the vessel, vehicle, or equipment to the
8 Department of Environmental Protection upon demand after
9 completion of the court proceeding. The court may proceed in a
10 summary manner and may direct the confiscation of the vessel,
11 vehicle, or equipment by the department for its use or for disposal
12 by sale or public auction. Moneys collected by the department
13 through the sale or public auction of the vessel, vehicle, or
14 equipment shall be used by the Division of Fish and Wildlife for the
15 enforcement of the provisions of this act.

16 (cf: P.L.2003, c.8, s.1)

17

18 2. R.S.23:3-51 is amended to read as follows:

19 23:3-51. a. **[A]** Any person [intending] who intends to take
20 menhaden with a purse seine or shirred **[nets in] net from** any State
21 waters **[in the jurisdiction of this State]**, including the waters of the
22 Atlantic ocean **[.]** within three nautical miles of the State coast line
23 **[of this State]** , shall apply to the commissioner for a **[license**
24 **therefor]** Menhaden Purse Seine Fishing Vessel License or a
25 Menhaden Purse Seine Fishing Vessel Operator's License, as
26 appropriate, in accordance with the provisions of this section .
27 **[The commissioner, upon]** Upon receipt of the application and
28 payment of the fee required pursuant to R.S.23:3-52, the
29 commissioner may, **[at]** in the commissioner's discretion and as
30 prescribed pursuant to sections 2 and 3 of P.L.2010, c.72, issue to
31 the applicant a **[license to take menhaden]** Menhaden Purse Seine
32 Fishing Vessel License or a Menhaden Purse Seine Fishing Vessel
33 Operator's License, as appropriate , except as prohibited **[in]** by
34 subsection b. of this section. **[The license shall be void after**
35 **December 31 next succeeding its issuance]** A license issued
36 pursuant to this section shall be valid only for the calendar year in
37 which it is issued, and shall be renewed on an annual basis .

38 b. Notwithstanding the provisions of subsection a. of this
39 section , the provisions of P.L. , c. (C.) (pending before the
40 Legislature as this bill, or the provisions of any other law, or any
41 rule or regulation adopted pursuant thereto, to the contrary, the
42 commissioner shall not issue a license for the taking of menhaden,
43 and no person [may] shall take menhaden, **[in]** from State coastal
44 waters, including the Delaware, Great, Raritan, and Sandy Hook
45 bays, for the purpose of reduction, including the conversion of
46 menhaden to fish meal, oil, **[and]** or other components.

1 [c. This act] This subsection shall not [affect] be understood to
2 prohibit the taking of menhaden in State coastal waters for the use
3 as bait for commercial or recreational purposes or in whole frozen
4 form for use as human food .

5 c. (1) The following types of vessels, and their owners or
6 operators, are subject to licensure pursuant to this section:

7 (a) Any purse seine catch vessel that takes menhaden from State
8 waters on an individual trip basis; and

9 (b) Any purse seine carry vessel that works in conjunction with
10 the purse seine catch vessel identified in subparagraph (a) of this
11 paragraph.

12 (2) A menhaden set vessel that participates only in the setting of
13 a purse seine or shirred net in conjunction with a purse seine catch
14 vessel is exempt from licensure pursuant to this section.

15 (3) A license issued pursuant to this section shall remain on
16 board the licensed vessel at all times.

17 (4) The holder of a license issued pursuant to this section shall
18 not use, have on board the licensed vessel, or work in conjunction
19 with any other vessel that uses any type of fishing gear other than a
20 purse seine or shirred net.

21 d. A Menhaden Purse Seine Fishing Vessel License shall be
22 issued in the name of the vessel and the vessel's owner or
23 owner/operator. If the vessel owner is not the operator of the
24 vessel, a Menhaden Purse Seine Fishing Vessel License shall be
25 issued to the vessel owner, as provided in this paragraph, and a
26 separate Menhaden Purse Seine Fishing Vessel Operator's License
27 shall be issued to, and in the name of, the vessel operator, in
28 accordance with the provisions of this section and subsection c. of
29 R.S.23:3-52.

30 e. (1) No vessel licensed pursuant to this section shall be
31 greater than 90 feet in overall length.

32 (2) Whenever a Menhaden Purse Seine Fishing Vessel License
33 is issued for a menhaden purse seine catch vessel pursuant to this
34 section, the licensee shall provide the commissioner with certified
35 baseline data indicating the overall length and horsepower of the
36 vessel. Any upgrade or replacement of a licensed purse seine catch
37 vessel shall be limited to a 10 percent increase in overall vessel
38 length, and a 20 percent increase in horsepower.

39 f. The possession of any fish other than menhaden on a vessel
40 licensed under this section is limited to no more than one percent,
41 by weight, of the amount of menhaden landed. The simultaneous
42 possession aboard a vessel of a purse seine or shirred net,
43 menhaden, and any other fish in an amount greater than one
44 percent, by weight, of the amount of menhaden landed shall be
45 prima facie evidence of a violation of this subsection.

46 g. (1) Before commencing menhaden fishing activities on any
47 given day, a person licensed under this section shall notify the
48 department, by phone or, if applicable and offered by the

1 department, by electronic means, of the intention to fish under this
2 section, and the vessel's intended fishing location. The licensee
3 shall also notify the department, by phone or, if applicable and
4 offered by the department, by electronic means, of any anticipated
5 change in the vessel's fishing location. After a licensee has
6 provided notice to the department of their intention to fish for
7 menhaden pursuant to this section on any particular day, the
8 licensee shall be limited, on that day, to the use of a purse seine or
9 shirred net.

10 (2) Fishing for menhaden pursuant to this section shall be
11 restricted to those areas in the Raritan, Sandy Hook, and Delaware
12 Bays, and in the Atlantic Ocean, which are located at a distance of
13 0.6 nautical miles or more from the New Jersey coastline and the
14 jetties and fishing piers extending therefrom.

15 (3) Fishing for menhaden in the Delaware Bay shall be further
16 restricted to those areas of the Bay that lie south and east of
17 LORAN C line 42850, or to any other area of the Bay, as may be
18 designated by the commissioner.

19 (4) It shall be incumbent upon the vessel operator to determine
20 whether a purse seine or shirred net is likely to drift, during fishing,
21 beyond the fishing boundaries established by this subsection. The
22 drifting of a purse seine or shirred net into any restricted area along
23 the shore or around a jetty or pier while fishing shall constitute a
24 violation of this subsection.

25 h. No person engaged in the act of fishing pursuant to this
26 section shall disturb any: (a) channel designating stakes, markers,
27 or buoys; (b) crab pots, lobster pots, fish pots, or traps; or (c) staked
28 and leased shellfish grounds.

29 (cf: P.L.2010, c.72, s.1)

30

31 3. R.S.23:3-52 is amended to read as follows:

32 23:3-52. **【The】** a. Except as provided by subsection b. of this
33 section, the fees for 【issuing a license under sections 23:3-50 and
34 23:3-51 of this Title】 a Menhaden Purse Seine Fishing Vessel
35 License, issued pursuant to R.S.23:3-51, shall be as follows:

36 (1) For vessels owned by a resident of New Jersey:

37 (a) \$125 for each 【essel of】 vessel not less than 30 nor more
38 than 100 tons in gross tonnage 【, owned by residents of New Jersey
39 \$125 00

40 Vessel of】 ;

41 (b) \$250 for each vessel not less than 100 nor more than 150
42 tons in gross tonnage 【, owned by residents of New Jersey
43 250 00

44 Vessel of】 ;

1 (c) \$400 for each vessel not less than 150 nor more than 175
2 tons in gross tonnage [, owned by residents of New Jersey
3 400 00
4 Vessel of] ;
5 (d) \$550 for each vessel not less than 175 nor more than 200
6 tons in gross tonnage [, owned by residents of New Jersey
7 550 00
8 Vessel over] ;
9 (e) \$900 for each vessel more than 200 tons in gross tonnage [,
10 owned by residents of New Jersey 900 00
11 Vessel not over] ; and
12 (f) \$20 for each vessel up to 20 tons in gross tonnage , which is
13 used [by residents for taking] to take menhaden for bait purposes
14 only [20 00] ;
15 [Vessel of] (2) For vessels owned by non-residents of New
16 Jersey:
17 (a) \$450 for each vessel not less than 30 nor more than 100 tons
18 in gross tonnage [, owned or leased by nonresidents of New Jersey
19 450 00
20 Vessel of] ;
21 (b) \$700 for each vessel not less than 100 nor more than 150
22 tons in gross tonnage [, owned or leased by nonresidents of New
23 Jersey 700 00
24 Vessel of] ;
25 (c) \$1,000 for each vessel not less than 150 nor more than 175
26 tons in gross tonnage [, owned or leased by nonresidents of New
27 Jersey 1,000 00
28 Vessel of] ;
29 (d) \$1,150 for each vessel not less than 175 nor more than 200
30 tons in gross tonnage [, owned or leased by nonresidents of New
31 Jersey 1,150 00
32 All vessels over] ; and
33 (e) \$1,500 for each vessel more than 200 tons in gross tonnage
34 [, owned or leased by nonresidents of the State of New Jersey 1,500
35 00
36 The fees for vessels] .
37 b. Notwithstanding the provisions of subsection a. of this
38 section to the contrary, if a resident of New Jersey leases a vessel
39 from out of [the] State, [leased by residents of New Jersey,] the
40 vessel licensing fee shall be the same as [the] the fee that is
41 applicable to a vessel owned or leased by a nonresident [license
42 fees] , as provided by paragraph (2) of subsection a. of this section .
43 [Such gross tonnages] c. The fee for a Menhaden Purse Seine
44 Fishing Vessel Operator's License, issued pursuant to R.S.23:3-51,
45 shall be \$50 for a resident of New Jersey and \$75 for a non-resident
46 of New Jersey.

1 d. Gross tonnage determinations under this section shall be
2 **[determined by] made using** Custom House measurements.

3 e. Any license fees collected pursuant to this section shall be
4 deposited in the “Marine Fisheries Management Account,”
5 established pursuant to section 14 of P.L. , c. (C.) (pending
6 before the Legislature as this bill).
7 (cf: P.L.1975, c.116, s.9)

8
9 4. (New section) As used in R.S.23:3-51, section 3 of
10 P.L.2010, c.72 (C.23:3-51.1) and sections 4 through 17 of P.L. , c.
11 (C.) (pending before the Legislature as this bill):

12 “Bait net” means a net deployed by hand-cast for the purpose of
13 taking menhaden to be landed or sold in the State.

14 “Commissioner” means the Commissioner of Environmental
15 Protection.

16 “Dealer” means a person who is authorized, by a license issued
17 pursuant to section 9 of P.L. , c. (C.) (pending before the
18 Legislature as this bill), to purchase or barter for menhaden landed
19 in the State, and who is considered a primary buyer of menhaden.

20 “Fishing” means the taking of menhaden from State or federal
21 waters.

22 “Gill net vessel” means a vessel that is used in the deployment of
23 a gill net for the purpose of taking menhaden to be landed or sold in
24 the State.

25 “Menhaden” means a marine fish of the herring family
26 (*Brevoortia tyrannus*).

27 “Menhaden set vessel” means the smaller of two vessels, often
28 employed in conjunction with a purse seine catch vessel, and used
29 as a replacement for the weight of a purse seine to assist in setting
30 the net.

31 “Pound net vessel” means a vessel that is used in the deployment
32 of a pound net for the purpose of taking menhaden to be landed or
33 sold in the State.

34 “Purse seine catch vessel” means a vessel that is used in the
35 deployment of a purse seine or shirred net for the purpose of taking
36 menhaden to be landed or sold in the State, and which may work in
37 conjunction with a purse seine carry vessel or menhaden set vessel
38 in the taking of menhaden by purse seine or shirred net.

39 “Purse seine carry vessel” means a vessel that is used to carry
40 and land or sell menhaden that has been taken from State or federal
41 waters, and which works in conjunction with a purse seine catch
42 vessel or menhaden set vessel in the taking of menhaden by purse
43 seine.

44 “Trawl vessel” means a vessel that is used in the deployment of a
45 trawl for the purpose of taking menhaden to be landed or sold in the
46 State.

1 5. (New section) a. No person shall land for the purposes of
2 sale or barter, or otherwise sell or barter, 100 pounds or more of
3 menhaden at any time in the State, unless the person is in
4 possession of a Menhaden Landing License which authorizes the
5 person to participate in the directed bait and whole frozen human
6 food fishery for menhaden.

7 b. (1) Any person who intends to land for the purposes of sale
8 or barter, or otherwise sell or barter, 100 pounds or more of
9 menhaden at any time shall submit to the commissioner an
10 application for a Menhaden Landing License. Any license
11 application for a Menhaden Landing License shall be filed with the
12 commissioner prior to the annual deadline established thereby for
13 application submission, and any application received by the
14 commissioner after this deadline shall be denied.

15 (2) A Menhaden Landing License issued pursuant to this
16 subsection shall be valid only for the calendar year in which it is
17 issued, and shall be renewed on an annual basis. The failure of a
18 licensee to annually renew a Menhaden Landing License in
19 accordance with established deadlines shall result in forfeiture of
20 the right to obtain a Menhaden Landing License in future years,
21 except as provided by section 6 of P.L. , c. (C.) (pending
22 before the Legislature as this bill).

23 c. (1) The following types of vessels, and their owners or
24 operators, are subject to licensure pursuant to this section:

25 (a) a gill net vessel that is used or is intended to be used to land
26 100 pounds or more of menhaden on an individual trip basis, for the
27 purposes of sale or barter;

28 (b) a pound net vessel that is used or is intended to be used to
29 land 100 pounds or more of menhaden on an individual trip basis,
30 for the purposes of sale or barter;

31 (c) a trawl vessel that is used or is intended to be used to land
32 100 pounds or more of menhaden on an individual trip basis, for the
33 purposes of sale or barter;

34 (d) a vessel that is used or is intended to be used to land, on an
35 individual trip basis, and for the purposes of sale or barter, 100
36 pounds or more of menhaden taken by bait net;

37 (e) a purse seine carry vessel that is used or is intended to be
38 used to land, on an individual trip basis, and for the purposes of sale
39 or barter, 100 pounds or more of menhaden taken from State or
40 federal waters; and

41 (f) a purse seine catch vessel that functions as a purse seine
42 carry vessel and satisfies the requirements of subparagraph (e) of
43 this paragraph.

44 (3) A purse seine catch vessel that does not function as a purse
45 seine carry vessel is exempt from licensure pursuant to this section.
46 However, the owner or operator of a purse seine carry vessel that
47 works in conjunction with a purse seine catch vessel shall identify
48 the purse seine catch vessel on the landing report prepared thereby.

1 (4) (a) No purse seine carry vessel or purse seine catch vessel
2 functioning as a purse seine carry vessel shall be licensed pursuant
3 to this subsection to land menhaden taken from State waters, unless
4 the vessel is 90 feet or less in overall length.

5 (b) Nothing in subparagraph (a) of this paragraph shall prohibit
6 the licensure of a purse seine carry vessel or purse seine catch
7 vessel that is greater than 90 feet in overall length, so long as the
8 vessel lands menhaden taken only from federal waters.

9 (5) A Menhaden Landing License shall be issued by the
10 commissioner in the name of: (a) the vessel and the vessel's owner
11 or operator; or (b) if no vessel will be used in the landing or sale of
12 menhaden, the person applying for the license. If a purse seine
13 carry vessel or a purse seine catch vessel functioning as a purse
14 seine carry vessel is operated by a person who is not the owner of
15 the vessel, the vessel operator shall be licensed separately and apart
16 from the vessel owner.

17 (6) Any license issued pursuant to this section shall specify the
18 types of gear that may be used by the licensee in the taking of
19 menhaden to be landed thereby.

20 d. The holder of a Menhaden Landing License shall not use,
21 have on board the licensed vessel, or work in conjunction with any
22 other vessel that uses any type of fishing gear other than the type of
23 gear specifically identified in the license.

24 e. A Menhaden Landing License issued pursuant to this section
25 shall remain on board the licensed vessel, or, if no vessel is used, in
26 the possession of the licensee, at all times.

27 f. A person applying for a Menhaden Landing License shall
28 meet the following criteria:

29 (1) In order to obtain a license to land menhaden taken by purse
30 seine, the vessel shall have landed in the State at least 500,000
31 pounds of menhaden during one year between 2009 and 2012,
32 inclusive;

33 (2) In order to obtain a license to land menhaden taken by pound
34 net, the vessel shall have landed in the State at least 100,000 pounds
35 of menhaden during one year between 2009 and 2012, inclusive;

36 (3) In order to obtain a license to land menhaden taken by gill
37 net, the vessel shall have landed in the State at least 10,000 pounds
38 of menhaden during one year between 2009 and 2012, inclusive;

39 (4) In order to obtain a license to land menhaden taken by trawl,
40 the vessel shall have landed in the State at least 200 pounds of
41 menhaden during one year between 2009 and 2012, inclusive; and

42 (5) In order to obtain a license to land menhaden taken by bait
43 net, the person shall have possessed a New Jersey Bait Net License
44 during one year between 2009 and 2012, inclusive. If a person's
45 application for a license to land menhaden taken by bait net is
46 submitted in the year 2014 or thereafter, the commissioner may
47 require the applicant to prove landings and sale of menhaden during
48 the respective years commencing in 2013.

1 g. (1) A resident of the State who is licensed under this section
2 to land menhaden taken by purse seine shall be required to pay an
3 annual fee of \$150. A resident of the State who is licensed under
4 this section to land menhaden taken using any other type of gear
5 shall be required to pay an annual fee of \$50.

6 (2) A non-resident of the State who is licensed under this
7 section to land menhaden taken by purse seine shall be required to
8 pay an annual fee of \$750, or an amount equal to the non-resident
9 fee charged for the landing of menhaden in the non-resident's state,
10 whichever is greater. A non-resident of the State who is licensed
11 under this section to land menhaden taken with any other type of
12 gear shall be required to pay an annual fee of \$250, or an amount
13 equal to the non-resident fee charged for the landing of menhaden
14 in the non-resident's state, whichever is greater.

15 (3) Any license fees collected pursuant to this subsection shall
16 be deposited in the Marine Fisheries Management Account,
17 established pursuant to section 14 of P.L. , c. (C.) (pending
18 before the Legislature as this bill), and shall be dedicated for the
19 purposes of menhaden quota management, menhaden biological
20 monitoring, and menhaden fisheries law enforcement.

21 h. Nothing in this section, in R.S.23:3-51, or in any other law,
22 or rule or regulation adopted pursuant thereto, shall prohibit a
23 person who does not possess a Menhaden Landing License from
24 landing 100 pounds or less of menhaden, at any time, and on any
25 trip or day, provided that the amount of landed menhaden does not
26 exceed 10 percent, by weight, of the total weight of all species
27 landed, sold, or bartered.

28

29 6. (New section) a. A licensee who is eligible for renewal of
30 their Menhaden Landing License may request an extension of time
31 to renew their license in accordance with this section.

32 b. A licensee seeking a license renewal extension shall submit
33 a written application therefor to the commissioner, on a form
34 developed by the commissioner. The application shall include, at a
35 minimum:

36 (1) the name of the licensee and licensed vessel, if any;

37 (2) the licensee's Menhaden Landing License number;

38 (3) a detailed explanation as to why the extension is needed,
39 including a statement specifying the type and degree of hardship
40 that prevented the timely renewal of the license, and the hardship
41 that will result to the licensee if the license is not renewed; and

42 (4) any other appropriate documentation as may be necessary to
43 support the application.

44 c. An application for license renewal extension shall be
45 approved if the commissioner determines that:

46 (1) by reason of extraordinary hardship or exceptional situation
47 or condition, the licensee was precluded from complying with the
48 renewal requirements;

1 (2) strict compliance with the renewal requirements provided by
2 law would result in exceptional and undue hardship to the licensee;

3 (3) the circumstances supporting the conclusions made in
4 paragraphs (1) and (2) of this subsection were not created by the
5 licensee or persons under the licensee's control; and

6 (4) approval of the extension will not unreasonably interfere
7 with the orderly administration of the directed bait or whole frozen
8 human food fishery for menhaden.

9 d. Within 30 days after receipt of an application for license
10 renewal extension, the commissioner shall approve or deny the
11 application, and shall provide written notice of this determination to
12 the licensee. A licensee whose application for extension is denied
13 may appeal the decision in accordance with the procedure for
14 contested cases under the "Administrative Procedure Act,"
15 P.L.1968, c.410 (C.52:14B-1 et seq.).

16

17 7. (New section) a. Upon application to, and approval by, the
18 department, the holder of a Menhaden Purse Seine Fishing Vessel
19 License, issued pursuant to R.S.23:3-51, or the holder of a
20 Menhaden Landing License, issued pursuant to section 4 of P.L. ,
21 c. (C.) (pending before the Legislature as this bill), may
22 transfer their license as follows:

23 (1) To a replacement vessel when the vessel named in the
24 license is replaced by the licensee; or

25 (2) To a new owner of the vessel named in the license when the
26 vessel is sold or otherwise transferred to another person.

27 b. The following limitations shall apply to any license transfer
28 undertaken pursuant to paragraph (1) of subsection a. of this
29 section:

30 (1) a license shall only be transferrable to a replacement vessel
31 that employs the same type of fishing gear identified in the original
32 license.

33 (2) a license that is applicable to a purse seine catch vessel shall
34 only be transferrable to a replacement purse seine catch vessel, and
35 a license that is applicable to a purse seine carry vessel shall only be
36 transferrable to a replacement purse seine carry vessel;

37 (3) a license that is applicable to a purse seine catch vessel or a
38 purse seine carry vessel shall be transferrable to a replacement
39 vessel only if the replacement vessel is not more than 10 percent
40 larger in overall length or hold capacity, as measured in cubic feet,
41 and not more than 20 percent more powerful in terms of
42 horsepower, than the originally licensed vessel.

43 c. A person who transfers a license pursuant to paragraph (2)
44 of subsection a. of this section shall no longer be eligible to obtain a
45 Menhaden Landing License based upon the landing history of the
46 vessel being sold.

47 d. An applicant for a license transfer shall submit an
48 application to the commissioner, on a form developed by the

1 commissioner, and no license shall be transferred pursuant to this
2 section without the prior approval of the commissioner.

3 e. A person shall not be eligible for transfer of their license
4 pursuant this section if: (1) their license is pending suspension or
5 has been suspended pursuant to section 15 of P.L. , c. (C.)
6 (pending before the Legislature as this bill); or (2) the licensee is
7 subject to court action for a violation of R.S.23:3-51 or P.L. , c.
8 (C.) (pending before the Legislature as this bill).

9
10 8. (New section) a. The holder of a Menhaden Landing
11 License shall submit a monthly report to the commissioner, on a
12 form developed by the commissioner. The licensee shall attest to
13 the validity of the information contained in the monthly report, and
14 shall electronically submit the report to the department using a
15 method approved by the commissioner. If no landing, sale, or
16 barter of menhaden occurred during the month, the licensee shall
17 submit a report to that effect.

18 b. The monthly report shall include, at a minimum, the
19 following information, which shall be reported on an individual trip
20 basis:

- 21 (1) the name of the licensee and licensed vessel, if any;
- 22 (2) the licensee's Menhaden Landing License number;
- 23 (3) the name of the purse seine catch vessel, if any, which was
24 used in conjunction with the licensed vessel;
- 25 (4) the total amount, in pounds, of menhaden landed by the
26 licensee or licensed vessel;
- 27 (5) the total amount, in pounds, of menhaden discarded by the
28 licensee or licensed vessel;
- 29 (6) the location of harvest;
- 30 (7) the type of gear used for harvest;
- 31 (8) the ports used for the landing of menhaden;
- 32 (9) the date on which, and the dealer to whom, any landed
33 menhaden was sold or bartered by the licensee; and
- 34 (10) any other information required by the department.

35 c. (1) In addition to any other penalties provided by section 73
36 of P.L.1979, c.199 (C.23:2B-14), by P.L. , c. (C.) (pending
37 before the Legislature as this bill), or by any other law, any licensee
38 who fails to submit a monthly report on or before the 10th day of
39 the month following the month of record shall be subject to a fine
40 of \$50 for a first offense, \$100 for a second offense, and \$200 for
41 any subsequent offense.

42 (2) Any fines collected pursuant to this subsection shall be
43 deposited in the Marine Fisheries Management Account, established
44 pursuant to section 14 of P.L. , c. (C.) (pending before the
45 Legislature as this bill), and shall be dedicated for the purposes of
46 menhaden quota management, menhaden biological monitoring, and
47 menhaden fisheries law enforcement.

1 9. (New section) a. No person shall purchase or barter for
2 menhaden landed in the State, as the first point of sale, unless the
3 person is in possession of a Menhaden Dealer License. No
4 menhaden landed in the State shall be sold or traded to any person
5 who is not licensed under this section.

6 b. (1) Any person who intends to purchase or barter for
7 menhaden landed in the State shall submit to the commissioner an
8 application for a Menhaden Dealer License.

9 (2) A Menhaden Dealer License issued pursuant to this
10 subsection shall be valid only for the calendar year in which it is
11 issued, and shall be renewed on an annual basis.

12 c. No person shall act as the point of sale for menhaden landed
13 in the State unless the person is in possession of both a Menhaden
14 Landing License, issued pursuant to section 5 of this act, and a
15 Menhaden Dealer License, issued pursuant to this section. Any
16 person in possession of a Menhaden Landing License and not
17 selling menhaden to a licensed Menhaden dealer shall also possess a
18 Menhaden Dealer License, and shall report any sales on a weekly
19 basis, in accordance with the provisions of section 10 of this act.

20 d. The holder of a Menhaden Dealer License, issued pursuant
21 to this section, shall not accept 100 pounds or more of menhaden
22 per day from any person unless that person is in possession of a
23 Menhaden Landing License issued pursuant to section 5 of P.L. ,
24 c. (C.) (pending before the Legislature as this bill).

25 e. (1) A State resident who is licensed as a menhaden dealer
26 pursuant to this section shall be required to pay an annual fee of
27 \$100.

28 (2) A non-resident of the State who is licensed as a menhaden
29 dealer pursuant to this section shall be required to pay an annual fee
30 of \$500, or an amount equal to the non-resident fee charged to a
31 menhaden dealer in the non-resident's state, whichever is greater.

32 (3) Any license fees collected pursuant to this subsection shall
33 be deposited in the Marine Fisheries Management Account,
34 established pursuant to section 14 of P.L. , c. (C.) (pending
35 before the Legislature as this bill), and shall be dedicated for the
36 purposes of menhaden quota management, menhaden biological
37 monitoring, and menhaden fisheries law enforcement.

38
39 10. (New section) a. The holder of a Menhaden Dealer License
40 shall submit a weekly report to the commissioner, on forms
41 developed by the commissioner. The licensee shall attest to the
42 validity of the information contained in the weekly report, and shall
43 electronically submit the report to the department. If no purchase or
44 trade of menhaden occurred during the week, the licensee shall
45 submit a report to that effect. For the purposes of this section, a
46 week shall begin on Sunday and end on Saturday.

47 b. The weekly report shall include, at a minimum, the
48 following information:

- 1 (1) the name of the licensee;
 - 2 (2) the licensee's Menhaden Dealer License number;
 - 3 (3) the Menhaden Landing License number of each person
 - 4 selling or trading menhaden to the dealer during the preceding
 - 5 week;
 - 6 (4) the total amount, in pounds, of menhaden purchased or
 - 7 traded during the preceding week;
 - 8 (5) the location of harvest for menhaden purchased or traded
 - 9 during the preceding week;
 - 10 (6) the type of gear used for the harvest of menhaden purchased
 - 11 or traded during the preceding week;
 - 12 (7) the date of purchase or trade; and
 - 13 (8) any other information required by the department.
- 14 c. (1) In addition to any other penalties provided by section 73
- 15 of P.L.1979, c.199 (C.23:2B-14), by P.L. , c. (C.) (pending
- 16 before the Legislature as this bill), or by any other law, if a licensed
- 17 menhaden dealer fails to submit a weekly report, as required by this
- 18 section, either on or before 12:00 p.m. on the Tuesday following the
- 19 week of record, the licensee shall be subject to a fine of \$50 for a
- 20 first offense, \$100 for a second offense, and \$200 for any
- 21 subsequent offense.
- 22 (2) Any fines collected pursuant to this subsection shall be
- 23 deposited in the Marine Fisheries Management Account, established
- 24 pursuant to section 14 of P.L. , c. (C.) (pending before the
- 25 Legislature as this bill), and shall be dedicated for the purposes of
- 26 menhaden quota management, menhaden biological monitoring, and
- 27 menhaden fisheries law enforcement.
- 28
- 29 11. (New section) Removal, from a purse seine, of fish
- 30 harvested from the waters of the State shall be by brailing or dip net
- 31 only. No fish pump shall be on board any vessel operating under a
- 32 license, for the purpose of taking menhaden for bait or human food
- 33 purposes, unless the pump is completely covered and securely
- 34 fastened with a brightly colored tarp or other material, and the
- 35 pump intake or hose is disconnected from the pump and is securely
- 36 stowed away from the pump so that it is not readily available for
- 37 use when the vessel is fishing in State waters.
- 38
- 39 12. (New section) a. The holder of a Menhaden Purse Seine
- 40 Fishing Vessel License or a Menhaden Purse Seine Fishing Vessel
- 41 Operator's License, issued pursuant to R.S.23:3-51, and the holder
- 42 of a Menhaden Landing License, issued pursuant to section 5 of
- 43 P.L. , c. (C.) (pending before the Legislature as this bill)
- 44 shall not throw overboard, or otherwise release from a vessel or its
- 45 nets into the waters of the State: (1) any quantity of dead fish,
- 46 except during the course of normal fishing operations; or (2) any
- 47 refuse, litter, or garbage of any kind.

1 b. Whenever any fish, fish parts, refuse, litter, or garbage of
2 any kind is released during, or as a result of, a menhaden fishing or
3 landing operation, in violation of the provisions of subsection a. of
4 this section, the holder of a Menhaden Purse Seine License or a
5 Menhaden Landing License, as the case may be, shall report the
6 release to the department and initiate a cleanup of the release within
7 24 hours thereof, at the licensee's expense, if the release is likely to
8 impact the shoreline.

9 c. In the event that a licensee fails to initiate a cleanup, in
10 accordance with the provisions of subsection b. of this section,
11 within 24 hours after a release begins, the department may conduct
12 or arrange for the cleanup of the release. However, the licensee
13 shall be liable to pay all costs associated with the cleanup, including
14 any administrative costs incurred by the department. Costs imposed
15 pursuant to this subsection may include the costs associated with
16 damages to, or the cleanup of, marine and estuarine waters of the
17 State, or the State's beaches, shorelines, and marshes.

18

19 13. (New section) a. (1) The annual State menhaden catch
20 quota shall be established by the Atlantic States Marine Fisheries
21 Commission. The commissioner may request a quota transfer from
22 other states or regions, in accordance with the administrative
23 procedure outlined by the Atlantic States Marine Fisheries
24 Commission.

25 (2) The commissioner shall divide and allocate the annual State
26 menhaden catch quota as provided in this paragraph. The annual
27 New Jersey menhaden bait quota shall be divided among the
28 various gear types, with the purse seine fishery being allocated 95
29 percent of the quota, and pound nets, gill nets, trawls, and bait nets
30 being allocated the remaining five percent, combined. If the quota
31 for any gear type is exceeded, the overharvested amount shall be
32 deducted from the following year's quota.

33 b. The season for fishing and landing menhaden in the State
34 shall be:

35 (1) January 1 to December 31 for licensees taking menhaden, or
36 landing menhaden taken, by purse seine;

37 (2) January 1 to December 31 for licensees taking menhaden, or
38 landing menhaden taken, by gill net;

39 (3) January 1 to December 31 for licensees taking menhaden, or
40 landing menhaden taken, by pound net;

41 (4) January 1 to December 31 for licensees taking menhaden, or
42 landing menhaden taken, by trawl; and

43 (5) January 1 to December 31 for licensees taking menhaden, or
44 landing menhaden taken, by bait net.

45 c. No person who intends to take menhaden with a purse seine
46 or shirred net shall fish for menhaden in the State:

47 (1) on a Saturday or Sunday;

1 (2) on the days on which a public holiday is officially observed
2 by the State, as declared pursuant to R.S.36:1-1; or

3 (3) at any time, except during the hours from sunrise to sunset.

4 d. (1) The commissioner shall close the menhaden season in
5 the State, for each respective gear type, by giving not less than two
6 days notice of the projected date that the year's quota for that gear
7 type will be landed.

8 (2) If the menhaden season is closed prematurely, the
9 commissioner may reopen the season for a specified period of time,
10 upon no less than two days notice.

11 (3) Any notice required pursuant to this subsection shall be
12 made available for public viewing on the department's Internet
13 website, and shall be issued electronically, via e-mail, to all the
14 holders of a Menhaden Purse Seine Fishing Vessel License, a
15 Menhaden Purse Seine Fishing Vessel Operator's License, a
16 Menhaden Landing License, and a Menhaden Dealer License. Each
17 such licensee shall be required, at the time of licensure, to provide
18 the commissioner with their e-mail address, in order to facilitate the
19 provision of notice pursuant to this section.

20 e. If the season for a particular gear type is closed because the
21 quota amount allocated to that gear type has been harvested and
22 landed: (1) the holder of a Menhaden Landing License for that gear
23 type may continue to land an incidental catch of up to 6,000 pounds
24 of menhaden per day; and (2) the holder of a Menhaden Dealer
25 License may continue to accept from a Menhaden Landing License
26 holder an incidental catch of not more than 6,000 pounds of
27 menhaden per day. The incidental catch allowance authorized by
28 this subsection shall not be applied to the annual menhaden catch
29 quota established by the Atlantic States Marine Fisheries
30 Commission.

31

32 14. (New section) There is established within the General Fund,
33 a separate, dedicated, and non-lapsing account to be known as the
34 "Marine Fisheries Management Account." This account shall be
35 credited with all revenues received from the issuance of Menhaden
36 Purse Seine Fishing Vessel Licenses and Menhaden Purse Seine
37 Fishing Vessel Operator's Licenses pursuant to R.S.23:3-51 and
38 R.S.23:3-52, and all revenues received from the issuance of
39 Menhaden Landing Licenses and Menhaden Dealer Licenses
40 pursuant to sections 5 and 9 of P.L. , c. (C. and C.)
41 (pending before the Legislature as this bill). The moneys in the
42 Marine Fisheries Management Account shall be allocated to the
43 Division of Fish and Wildlife, Marine Fisheries Administration
44 within the Department of Environmental Protection, and shall be
45 dedicated for quota management, biological monitoring, and
46 fisheries law enforcement in connection with marine fisheries.

1 15. (New section) a. A person who violates any provision of
2 R.S.23:3-51, R.S.23:3-52, or P.L. , c. (C.) (pending before
3 the Legislature as this bill) shall be subject to the penalties
4 prescribed in section 73 of P.L.1979, c.199 (C.23:2B-14). In
5 addition to those penalties, if a licensee: (1) falsifies or
6 misrepresents any information contained in a report submitted
7 pursuant to section 8 of P.L. , c. (C.) (pending before the
8 Legislature as this bill) or section 10 of P.L. , c. (C.)
9 (pending before the Legislature as this bill); (2) fails to report a
10 release as required by section 12 of P.L. , c. (C.) (pending
11 before the Legislature as this bill); or (3) fishes in, or allows a purse
12 seine or shirred net to drift into, any restricted fishing area, as
13 prohibited by subsection g. of R.S.23:3-51, the licensee shall be
14 subject to the following periods of license suspension:

15 (1) a 30-day suspension of their license for a first offense;

16 (2) a 60-day suspension of their license for a second offense;

17 and

18 (3) a 180-day suspension of their license for a third or
19 subsequent offense.

20 b. (1) If a license is suspended pursuant to subsection a. of this
21 section, and, for three years thereafter, the licensee does not commit
22 another offense warranting suspension of their license, the initial
23 offense warranting license suspension shall be removed from
24 consideration in determining an applicable term of license
25 suspension for any offense committed by the licensee after that
26 three year period.

27 (2) The forgiveness of prior offenses provided for by this
28 subsection shall apply only to those determinations that pertain to
29 the calculation of applicable license suspension periods. All prior
30 offenses shall be taken into account in the calculation of any
31 monetary penalties provided for by P.L. , c. (C.) (pending
32 before the Legislature as this bill).

33 c. A license suspension imposed pursuant to this section shall
34 be applicable to both the licensee and the licensed vessel, if any,
35 and shall be carried out during the normal season of fishing
36 operations, which extends from May 15 through October 15 of each
37 year. If the duration of a license suspension period is not completed
38 during the current year's normal season of fishing operations, the
39 balance of the license suspension shall be made up during the
40 following year's normal season of fishing operations.

41

42 16. (New section) In order to facilitate enforcement of
43 R.S.23:3-51 and P.L. , c. (C.) (pending before the
44 Legislature as this bill), the operator of, or any other person on
45 board, a vessel that is subject to the provisions of R.S.23:3-51 or
46 P.L. , c. (C.) (pending before the Legislature as this bill),
47 shall immediately comply with the instructions and signals of a law
48 enforcement officer, and shall facilitate the officer's safe boarding,

1 and the inspection by such officer of the vessel, its gear, equipment,
2 catch, and any area where fish may be stored.

3
4 17. (New section) The commissioner may, with the approval of
5 the New Jersey Marine Fisheries Council, modify the requirements
6 of R.S.23:3-51, R.S.23:3-52, and P.L. , c. (C.) (pending
7 before the Legislature as this bill) if such modifications are
8 determined to be necessary either to provide for the optimal
9 utilization of any quotas established for menhaden fishing, or to
10 maintain consistency or State compliance with any menhaden
11 fisheries management plan that has been approved by the Atlantic
12 States Marine Fisheries Commission or the Mid-Atlantic Fishery
13 Management Council and adopted by the National Marine Fisheries
14 Service. In particular, upon authorization of the New Jersey Marine
15 Fisheries Council, and in accordance with the provisions of this
16 section, the commissioner may modify the following provisions of
17 law:

18 a. the qualifications for licensure under R.S.23:3-51, or under
19 section 5 or 9 of P.L. , c. (C. or C.) (pending before
20 the Legislature as this bill), including any fee amounts required for
21 licensure under those sections;

22 b. the qualifications for the transfer of a license under section 7
23 of P.L. , c. (C.) (pending before the Legislature as this
24 bill);

25 c. the license suspension schedule established by section 15 of
26 P.L. , c. (C.) (pending before the Legislature as this bill);

27 d. the specifications applicable to vessel upgrades and
28 replacements, as provided by R.S.23:3-51 or section 7 of P.L. , c.
29 (C.) (pending before the Legislature as this bill);

30 e. the reporting requirements established by section 8 or
31 section 10 of P.L. , c. (C. or C.) (pending before the
32 Legislature as this bill);

33 f. the quota allocation formula established by subsection a. of
34 section 13 of P.L. , c. (C.) (pending before the Legislature
35 as this bill);

36 g. the season for menhaden fishing established by subsection b.
37 of section 13 of P.L. , c. (C.) (pending before the
38 Legislature as this bill); or

39 h. the incidental catch allowance provided by subsection e. of
40 section 13 of P.L. , c. (C.) (pending before the Legislature
41 as this bill), or the allocation of that incidental catch allowance to
42 the State's annual quota.

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44 18. This act shall take effect immediately.

STATEMENT

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This bill would establish a directed bait and human food fishery for menhaden, in accordance with Amendment 2 of the Atlantic States Marine Fisheries Commission’s Interstate Fishery Management Plan, and would additionally clarify existing law regarding the taking of menhaden from State waters.

In particular, the bill would accomplish the following:

- 1) Define and categorize various menhaden fishing vessels according to the type of fishing gear utilized thereby;
- 2) Establish a statutory distinction between “purse seine catch vessels” – i.e., those vessels engaged in the taking of menhaden from State waters through the use of a purse seine or shirred net – and “purse seine carry vessels” – i.e., those vessels engaged in the landing of menhaden that has been taken from State waters by a purse seine catch vessel;
- 3) Clarify, at R.S.23:3-51, that possession of a menhaden fishing license is required only for a “purse seine catch vessel” or a “purse seine carry vessel,” and is not required for a vessel that uses any other type of fishing gear;
- 4) Rename, as the “Menhaden Purse Seine Fishing Vessel License,” the license issued pursuant to existing law at R.S.23:3-51, and establish a new license under that section of law, to be known as the “Menhaden Purse Seine Fishing Vessel Operator’s License”;
- 5) Clarify that a Menhaden Purse Seine Fishing Vessel License must be issued in the name of the vessel and the vessel owner, and require the issuance of a separate Menhaden Purse Seine Fishing Vessel Operator’s License to a vessel operator who is not the owner of the vessel;
- 6) Establish fishing boundaries and requisite times and dates for fishing undertaken by the holders of menhaden purse seine fishing licenses issued pursuant to R.S.23:3-51;
- 7) Establish a new license, to be known as the “Menhaden Landing License,” and provide for the issuance of a Menhaden Landing License to any vessel that is used, or is intended to be used, to land 100 pounds or more of menhaden for the purpose of sale or barter, on an individual trip basis;
- 8) Establish qualifications for a Menhaden Landing License, which are based on an applicant’s menhaden catch totals in prior years, and the proposed fishing gear to be used in the taking of menhaden to be landed by the license holder;
- 9) Prohibit the holder of a Menhaden Landing License, or a catch vessel working in conjunction therewith, from utilizing any fishing gear other than the type of gear specified in the license.
- 10) Provide for the issuance of a “Menhaden Dealer License” to any person who acts as the first point of sale for purchases or trades menhaden landed in the State; and prohibit the holder of a Menhaden Dealer License from accepting 100 pounds or more of

1 menhaden per day from any person who is not in possession of a
2 Menhaden Landing License.

3 11) Require the issuance of both a Menhaden Landing License
4 and a Menhaden Dealer License to: a) any person who acts as a
5 point of sale for menhaden landed in the State, and b) any holder of
6 a Menhaden Landing License who does not sell menhaden to a
7 licensed Menhaden dealer;

8 12) Establish a resident and non-resident licensing fee schedule
9 for applicants for a Menhaden Landing License or Menhaden
10 Dealer License;

11 13) Establish monthly reporting requirements for holders of
12 Menhaden Landing Licenses, and weekly reporting requirements
13 for holders of Menhaden Dealer Licenses, and establish monetary
14 penalties for untimely report submission (specifically, fines of \$50
15 for a first offense, \$100 for a second offense, and \$200 for any
16 subsequent offense);

17 14) Require the annual renewal of all licenses issued pursuant to
18 the bill's provisions, and establish a procedure by which the
19 deadline for Landing License renewal may be extended in certain
20 cases of hardship;

21 15) Authorize the holder of a Menhaden Purse Seine Fishing
22 Vessel License or a Menhaden Landing License to apply to the
23 department for transfer of their license to a replacement vessel, in
24 certain specified instances, or to a new owner of the licensed vessel,
25 when the vessel is sold or transferred; and prohibit such transfer of
26 licensure by a licensee whose license is suspended or is pending
27 suspension, or who is subject to court action for a violation of the
28 bill's provisions;

29 16) Establish, within the General Fund, a "Marine Fisheries
30 Management Account"; and require all licensing fees and fines
31 collected pursuant to the bill's provisions to be deposited in the
32 account and dedicated for the purposes of quota management,
33 biological monitoring, and marine fisheries law enforcement;

34 17) Require the use of a brailing or dip net in the removal of fish
35 from a purse seine or shirred net; prohibit the use of a fish pump for
36 such purposes; and require any fish pump on board a vessel to be
37 appropriately secured and covered during fishing operations;

38 18) Prohibit the holder of a a Menhaden Purse Seine Fishing
39 Vessel License, a Menhaden Purse Seine Fishing Vessel Operator's
40 License, or a Menhaden Landing License from releasing into State
41 waters: a) any dead fish, except during the course of normal fishing
42 operations, or b) any refuse, litter, or garbage; require any such
43 license holder to report the release of any refuse, litter, garbage, or
44 dead fish to the department and initiate a cleanup within 24 hours
45 thereof, at the licensee's expense, if the release is likely to affect the
46 shoreline; authorize the department to initiate and complete a
47 cleanup if a licensee fails to do so; and, require the licensee to

1 reimburse the department for all the costs of a department-initiated
2 cleanup;

3 19) Require the State to comply with the menhaden catch quota
4 established by the Atlantic States Marine Fisheries Commission
5 (ASMFC), and require the annual bait quota amount to be divided
6 among the various gear types, with the purse seine fishery being
7 allocated 95 percent of the quota, and pound nets, gill nets, trawls,
8 and bait nets being allocated the remaining five percent, combined;

9 20) Establish the season for menhaden fishing as January 1
10 through December 31, prohibit the taking of menhaden with a purse
11 seine or shirred net on a Saturday or Sunday, or on the days on
12 which a public holiday is officially observed by the State, and
13 except during the hours from sunrise to sunset;

14 21) Authorize the closure of the menhaden fishing season, for
15 each gear type, and the reopening of any prematurely closed season,
16 upon two days notice by the Department of Environmental
17 Protection; and

18 22) Authorize the holder of a Menhaden Landing License to
19 land, and the holder of a Menhaden Dealer License to accept from a
20 Landing License holder, an incidental catch of up to 6,000 pounds
21 per day of menhaden, following the close of the official menhaden
22 fishing season, which incidental catch would not be applicable to
23 the annual ASMFC menhaden fishing quota.

24 Any person who violates the bill's provisions, or any provision
25 of R.S.23:3-51 or R.S.23:3-52 (pertaining to the issuance of
26 Menhaden fishing licenses), would be subject to the penalties
27 prescribed in existing fisheries law, at section 73 of P.L.1979, c.199
28 (C.23:2B-14). In addition to those penalties, whenever a licensee:
29 (1) falsifies or misrepresents any information contained in a
30 monthly or weekly report; (2) fails to report a release of garbage or
31 dead fish from a vessel; or (3) fishes in, or allows a purse seine to
32 drift into, any restricted fishing area, the licensee would be subject
33 to a 30-day suspension of their license for a first offense, a 60-day
34 suspension of their license for a second offense, and a 180-day
35 suspension of their license for a third or subsequent offense.

36 If a license is suspended pursuant to the bill's provisions, and,
37 for three years thereafter, the offending licensee does not commit
38 another offense warranting license suspension, the department
39 would be required to remove the original offense warranting license
40 suspension from its consideration in determining an appropriate
41 suspension penalty for any offense committed by that licensee after
42 the three-year period. A licensee who commits more than one
43 offense within a three-year period, however, would not be
44 considered to be a first-time offender regardless of the length of any
45 subsequent period without violation.

46 The Commissioner of Environmental Protection would be
47 authorized, with the approval of the New Jersey Marine Fisheries
48 Council, to modify several of the bill's provisions (including those

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1 related to licensure, reporting, quota allocation, catch allowance,
2 and season limits), if such modifications are necessary either to
3 provide for the optimal utilization of any quotas established for
4 menhaden fishing, or to maintain consistency or State compliance
5 with any menhaden fisheries management plan approved by the
6 ASMFC or the Mid-Atlantic Fishery Management Council, and
7 adopted by the National Marine Fisheries Service.

SENATE ENVIRONMENT AND ENERGY COMMITTEE

STATEMENT TO

SENATE, No. 2726

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 20, 2013

The Senate Environment and Energy Committee favorably reports Senate Bill No. 2726 with committee amendments.

As amended by the committee, this bill would establish a directed bait and human food fishery for menhaden, in accordance with Amendment 2 of the Atlantic States Marine Fisheries Commission's Interstate Fishery Management Plan, and it would additionally clarify existing law regarding the taking of menhaden from State waters. In particular, the bill, as amended, would accomplish the following:

1) Define and categorize various menhaden fishing vessels according to the type of fishing gear utilized thereby;

2) Establish a statutory distinction between "purse seine catch vessels" – i.e., those vessels engaged in the taking of menhaden from State waters through the use of a purse seine or shirred net – and "purse seine carry vessels" – i.e., those vessels engaged in the landing of menhaden that has been taken from State waters by a purse seine catch vessel;

3) Clarify, at R.S.23:3-51, that possession of a menhaden fishing license is required only for a "purse seine catch vessel" or a "purse seine carry vessel," and is not required for a vessel that uses any other type of fishing gear;

4) Rename, as the "Menhaden Purse Seine Fishing Vessel License," the license issued pursuant to existing law at R.S.23:3-51, and establish a new license under that section of law, to be known as the "Menhaden Purse Seine Fishing Vessel Operator's License";

5) Clarify that a Menhaden Purse Seine Fishing Vessel License must be issued in the name of the vessel and the vessel owner, and require the issuance of a separate Menhaden Purse Seine Fishing Vessel Operator's License to a vessel operator who is not the owner of the vessel;

6) Establish the season for menhaden fishing as January 1 through December 31;

7) Establish fishing boundaries for fishing undertaken by the holders of menhaden purse seine fishing licenses issued pursuant to R.S.23:3-51, and prohibit menhaden fishing with a purse seine or shirred net on a Saturday or Sunday, on the days on which a public

holiday is officially observed by the State, and except during the hours from sunrise to sunset;

8) Establish a new license, to be known as the “Menhaden Landing License,” and provide for the issuance of a Menhaden Landing License to any vessel that is used, or is intended to be used, to land 100 pounds or more of menhaden for the purpose of sale or barter, on an individual trip basis;

9) Establish qualifications for a Menhaden Landing License, which are based on an applicant’s menhaden catch totals in prior years, and the proposed fishing gear to be used in the taking of menhaden to be landed by the license holder;

10) Prohibit the holder of a Menhaden Landing License, or a catch vessel working in conjunction therewith, from utilizing any fishing gear other than the type of gear specified in the license.

11) Provide for the issuance of a “Menhaden Dealer License” to any person who acts as the first point of sale for purchases or trades menhaden landed in the State; and prohibit the holder of a Menhaden Dealer License from accepting 100 pounds or more of menhaden per day from any person who is not in possession of a Menhaden Landing License.

12) Require the issuance of both a Menhaden Landing License and a Menhaden Dealer License to: a) any person who acts as a point of sale for menhaden landed in the State, and b) any holder of a Menhaden Landing License who does not sell menhaden to a licensed Menhaden dealer;

13) Establish a resident and non-resident licensing fee schedule for applicants for a Menhaden Landing License or Menhaden Dealer License, and clarify the existing resident and non-resident licensing fee schedule for purse seine fishing license applicants;

14) Establish monthly reporting requirements for holders of Menhaden Landing Licenses, and weekly reporting requirements for holders of Menhaden Dealer Licenses, and establish monetary penalties for untimely report submission (specifically, fines of \$50 for a first offense, \$100 for a second offense, and \$200 for any subsequent offense);

15) Require the annual renewal of all licenses issued pursuant to the bill’s provisions, and establish a procedure by which the deadline for Landing License renewal may be extended in certain cases of hardship;

16) Authorize the holder of a Menhaden Purse Seine Fishing Vessel License or a Menhaden Landing License to apply to the department for transfer of their license to a replacement vessel, in certain specified instances, or to a new owner of the licensed vessel, when the vessel is sold or transferred; and prohibit such transfer of licensure by a licensee whose license is suspended or is pending suspension, or who is subject to court action for a violation of the bill’s provisions;

17) Establish, within the General Fund, a “Marine Fisheries Management Account”; and require all licensing fees and fines collected pursuant to the bill’s provisions to be deposited in the account and dedicated for the purposes of quota management, biological monitoring, and marine fisheries law enforcement;

18) Require the use of a brailing or dip net in the removal of fish from a purse seine or shirred net; prohibit the use of a fish pump for such purposes; and require any fish pump on board a vessel to be appropriately secured and covered during fishing operations;

19) Prohibit the holder of a a Menhaden Purse Seine Fishing Vessel License, a Menhaden Purse Seine Fishing Vessel Operator’s License, or a Menhaden Landing License from releasing into State waters: a) any dead fish, except during the course of normal fishing operations, or b) any refuse, litter, or garbage; require any such license holder to report the release of any refuse, litter, garbage, or dead fish to the department and initiate a cleanup within 24 hours thereof, at the licensee’s expense, if the release is likely to affect the shoreline; authorize the department to initiate and complete a cleanup if a licensee fails to do so; and, require the licensee to reimburse the department for all the costs of a department-initiated cleanup;

20) Require the State to comply with the menhaden catch quota established by the Atlantic States Marine Fisheries Commission (ASMFC), and require the annual bait quota amount to be divided among the various gear types, with the purse seine fishery being allocated 95 percent of the quota, and pound nets, gill nets, trawls, and bait nets being allocated the remaining five percent, combined;

21) Authorize the closure of the menhaden fishing season, for each gear type, and the reopening of any prematurely closed season, upon two days notice by the Department of Environmental Protection; and

22) Authorize the holder of a Menhaden Landing License to land, and the holder of a Menhaden Dealer License to accept from a Landing License holder, an incidental catch of up to 6,000 pounds per day of menhaden, following the close of the official menhaden fishing season, which incidental catch would not be applicable to the annual ASMFC menhaden fishing quota.

Any person who violates the amended bill’s provisions, or any provision of R.S.23:3-51 or R.S.23:3-52 (pertaining to the issuance of menhaden purse seine fishing licenses), would be subject to the penalties prescribed in existing fisheries law, at section 73 of P.L.1979, c.199 (C.23:2B-14). In addition to those penalties, whenever a licensee: (1) falsifies or misrepresents any information contained in a monthly or weekly report; (2) fails to report a release of garbage or dead fish from a vessel; or (3) fishes in, or allows a purse seine to drift into, any restricted fishing area, the licensee would be subject to a 30-day suspension of their license for a first offense, a 60-

day suspension of their license for a second offense, and a 180-day suspension of their license for a third or subsequent offense.

If a license is suspended pursuant to the amended bill's provisions, and, for three years thereafter, the offending licensee does not commit another offense warranting license suspension, the department would be required to remove the original offense warranting license suspension from its consideration in determining an appropriate suspension penalty for any offense committed by that licensee after the three-year period. A licensee who commits more than one offense within a three-year period, however, would not be considered to be a first-time offender regardless of the length of any subsequent period without violation.

Finally, the bill, as amended, would authorize the Commissioner of Environmental Protection, with the approval of the New Jersey Marine Fisheries Council, to modify several of the bill's provisions (including those related to licensure, reporting, quota allocation, catch allowance, and season limits), if such modifications are necessary either to provide for the optimal utilization of any quotas established for menhaden fishing, or to maintain consistency or State compliance with any menhaden fisheries management plan approved by the ASMFC or the Mid-Atlantic Fishery Management Council, and adopted by the National Marine Fisheries Service.

The committee amendments:

- (1) make technical corrections to the bill;
- (2) clarify that a license is valid only in the calendar year for which it is issued;
- (3) change the by-catch provision from 1 percent by weight of the amount of menhaden landed to no more than 500 pounds;
- (4) correct the tonnage requirement for the \$20 license to include vessels between 20 and 30 tons;
- (5) change the definition of "bait net" to include bait seine, cast net, dip net, lift or umbrella net, or kill pots;
- (6) clarify in section 7 of the bill, that a license may be transferred to a replacement vessel only if the replacement vessel is not more than 10 percent larger in overall length than the originally licensed purse seine catch vessel, and 10 percent larger in the hold capacity of the originally licensed purse seine carry vessel;
- (7) require that the requisite notice of a release be reported to the department "as soon as possible;" and
- (8) broaden a reference in the bill from "Mid-Atlantic Fishery Management Council" to "any federal fishery management council" to include management plan modifications approved by any federal council.

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

SENATE, No. 2726

STATE OF NEW JERSEY 215th LEGISLATURE

DATED: JUNE 3, 2013

SUMMARY

- Synopsis:** Establishes directed bait and human food fishery for menhaden, and clarifies existing law regarding taking of menhaden.
- Type of Impact:** Increased State cost partially offset by license fees and fines.
- Agencies Affected:** Department of Environmental Protection

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost	Indeterminate – See comments below		
State Revenue	Indeterminate – See comments below		

- The Office of Legislative Services (OLS) cannot quantify the fiscal impact of this bill. No specific information or data is available to estimate the cost of establishing, administering, and enforcing a licensing system for taking menhaden from State waters. However, it is likely that the Department of Environmental Protection (DEP) would incur additional staff and related costs in implementing, administering, and enforcing the provisions of the bill.
- Since the bill requires the department to charge fees for the various licenses needed for the taking of menhaden, the OLS assumes that some costs incurred by the department could be recovered from these license fees. In addition, the fines collected for violation of the bill's provisions could be used to further offset some of the department's expenditures.
- The OLS notes that the bill requires the establishment of a "Marine Fisheries Management Account" within the General Fund and requires all menhaden licensing fees and fines collected pursuant to the bill to be deposited in the account and be used for the purposes of quota management, biological monitoring, and fisheries law enforcement in connection with marine fisheries.

BILL DESCRIPTION

Senate Bill No. 2726 (1R) of 2013 would establish a directed bait and human food fishery for menhaden, in accordance with Amendment 2 of the Atlantic States Marine Fisheries Commission's (ASMFC) Interstate Fishery Management Plan, and it would additionally clarify existing law regarding the taking of menhaden from State waters. In particular, the bill would accomplish the following:

1) define and categorize various menhaden fishing vessels according to the type of fishing gear utilized;

2) establish a statutory distinction between "purse seine catch vessels" – i.e., those vessels engaged in the taking of menhaden from State waters through the use of a purse seine or shirred net – and "purse seine carry vessels" – i.e., those vessels engaged in the landing of menhaden that have been taken from State waters by a purse seine catch vessel;

3) clarify that possession of a menhaden fishing license is required only for a "purse seine catch vessel" or a "purse seine carry vessel," and is not required for a vessel that uses any other type of fishing gear;

4) rename, as the "Menhaden Purse Seine Fishing Vessel License," the license issued pursuant to existing law and establish a new license under that section of law, to be known as the "Menhaden Purse Seine Fishing Vessel Operator's License";

5) clarify that a Menhaden Purse Seine Fishing Vessel License must be issued in the name of the vessel and the vessel owner, and require the issuance of a separate Menhaden Purse Seine Fishing Vessel Operator's License to a vessel operator who is not the owner of the vessel;

6) establish the season for menhaden fishing as January 1 through December 31;

7) establish fishing boundaries for fishing undertaken by the holders of menhaden purse seine fishing licenses, and prohibit menhaden fishing with a purse seine or shirred net on a Saturday or Sunday, on the days on which a public holiday is officially observed by the State, and except during the hours from sunrise to sunset;

8) establish a new license, to be known as the "Menhaden Landing License," and provide for the issuance of a Menhaden Landing License to any vessel that is used, or is intended to be used, to land 100 pounds or more of menhaden for the purpose of sale or barter, on an individual trip basis;

9) establish qualifications for a Menhaden Landing License, which are based on an applicant's menhaden catch totals in prior years, and the proposed fishing gear to be used in the taking of menhaden to be landed by the license holder;

10) prohibit the holder of a Menhaden Landing License, or a catch vessel working in conjunction therewith, from utilizing any fishing gear other than the type of gear specified in the license;

11) provide for the issuance of a "Menhaden Dealer License" to any person who acts as the first point of sale for purchases or trades of menhaden landed in the State; and prohibit the holder of a Menhaden Dealer License from accepting 100 pounds or more of menhaden per day from any person who is not in possession of a Menhaden Landing License;

12) require the issuance of both a Menhaden Landing License and a Menhaden Dealer License to: a) any person who acts as a point of sale for menhaden landed in the State, and b) any holder of a Menhaden Landing License who does not sell menhaden to a licensed Menhaden dealer;

13) establish a resident and non-resident licensing fee schedule for applicants for a Menhaden Landing License or Menhaden Dealer License, and clarify the existing resident and non-resident licensing fee schedule for purse seine fishing license applicants;

14) establish monthly reporting requirements for holders of Menhaden Landing Licenses, and weekly reporting requirements for holders of Menhaden Dealer Licenses, and establish monetary penalties for untimely report submission;

15) require the annual renewal of all licenses issued pursuant to the bill's provisions, and establish a procedure by which the deadline for Landing License renewal may be extended in certain cases of hardship;

16) authorize the holder of a Menhaden Purse Seine Fishing Vessel License or a Menhaden Landing License to apply to the DEP for transfer of their license to a replacement vessel, in certain specified instances, or to a new owner of the licensed vessel, when the vessel is sold or transferred; and prohibit such transfer of licensure by a licensee whose license is suspended or is pending suspension, or who is subject to court action for a violation of the bill's provisions;

17) establish, within the General Fund, a "Marine Fisheries Management Account" and require all licensing fees and fines collected pursuant to the bill's provisions to be deposited in the account and dedicated for the purposes of quota management, biological monitoring, and marine fisheries law enforcement;

18) require the use of a brailing or dip net in the removal of fish from a purse seine or shirred net; prohibit the use of a fish pump for such purposes; and require any fish pump on board a vessel to be appropriately secured and covered during fishing operations;

19) prohibit the holder of a Menhaden Purse Seine Fishing Vessel License, a Menhaden Purse Seine Fishing Vessel Operator's License, or a Menhaden Landing License from releasing into State waters: a) any dead fish, except during the course of normal fishing operations, or b) any refuse, litter, or garbage; require any such license holder to report the release of any refuse, litter, garbage, or dead fish to the DEP as soon as possible and initiate a cleanup within 24 hours at the licensee's expense if the release is likely to affect the shoreline; authorize the DEP to initiate and complete a cleanup if a licensee fails to do so; and require the licensee to reimburse the DEP for all the costs of the cleanup;

20) require the State to comply with the menhaden catch quota established by the ASMFC, and require the annual bait quota amount to be divided among the various gear types, with the purse seine fishery being allocated 95 percent of the quota, and pound nets, gill nets, trawls, and bait nets being allocated the remaining five percent, combined;

21) authorize the closure of the menhaden fishing season, for each gear type, and the reopening of any prematurely closed season, upon two days notice by the DEP; and

22) authorize the holder of a Menhaden Landing License to land, and the holder of a Menhaden Dealer License to accept from a Landing License holder, an incidental catch of up to 6,000 pounds per day of menhaden, following the close of the official menhaden fishing season, which incidental catch would not be applicable to the annual ASMFC menhaden fishing quota.

Any person who violates the bill's provisions would be subject to the penalties prescribed in the existing fisheries law, and also could be subject to license suspension in certain circumstances.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS cannot quantify the fiscal impact of this bill. No specific information or data is available to estimate the cost of establishing, administering, and enforcing a licensing system for taking menhaden from State waters. However, it is likely that the DEP would incur additional staff and related costs in implementing, administering, and enforcing the provisions of the bill. Since the bill allows the department to charge fees for the various licenses issued by the department, the OLS assumes that some costs incurred by the department could be recovered from these license fees. In addition, the fines collected for violation of the bill's provisions could be used to further offset some of the department's expenditures.

The OLS notes that the bill requires the establishment of a "Marine Fisheries Management Account" within the General Fund and requires all menhaden licensing fees and fines collected pursuant to the bill to be deposited in the account and be used for the purposes of quota management, biological monitoring, and fisheries law enforcement in connection with marine fisheries.

Section: Environment, Agriculture, Energy and Natural Resources

*Analyst: Joseph A. Hroncich
Senior Fiscal Analyst*

*Approved: David J. Rosen
Legislative Budget and Finance Officer*

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).