

## Regulatory Impact Statement

### 1. Statutory authority:

Environmental Conservation Law (ECL) section 13-0342 authorizes the Department of Environmental Conservation (Department) to adopt regulations requiring the reporting of catch, effort, area fished, gear used, bycatch, and volume and value of product purchased from fishermen by holders of all categories of food fish, lobster, crab; and food fish and crustacea dealers and shippers licenses; and party and charter vessel licenses.

ECL section 13-0329(16) authorizes the Department to adopt regulations for Atlantic States Marine Fisheries Commission (ASMFC) Areas One, Two, Three, Four, Five, and Outer Cape Cod to implement conservation measures that affect landings of lobsters, pursuant to the recommendations of the respective Area's Lobster Conservation Management Team as required by the Interstate Fishery Management Plan (FMP) for American Lobster adopted by ASMFC.

### 2. Legislative objectives:

The objective of the legislation cited above (ECL 13-0342) is to authorize the Department to collect pertinent information concerning fishing activities from state licensed commercial fishermen, food fish and crustacea dealers and shippers, and party and charter boat businesses. The information submitted by licensed harvesters and food fish and crustacea dealers and shippers is used by the Department, the New England Fishery Management Council, Mid-Atlantic Fishery Management Council, ASMFC, and National Oceanographic and Atmospheric Administration (NOAA) Fisheries to develop, implement and monitor fishery management strategies. The information is also used in fishery quota distributions, ocean use analyses, fishery economic studies, and scientific research. It is the intent of the above cited legislation that the Department be provided with the appropriate fishery

information needed to develop and implement suitable fishery management measures that promote prudent and sustainable utilization of the marine resources within the state's marine waters.

The objective of the legislation cited above (ECL 13-0329) is to authorize the Department to adopt regulations that implement conservation measures that affect the landings of lobster and that are required by ASMFC.

### 3. Needs and benefits

This rulemaking consolidates and clarifies existing regulations that require and manage the reporting of fishing and purchasing activities by fishermen and seafood dealers. These regulations are already in place in Parts 40, 44, and 50. This rulemaking unifies these rules in a single place in the proposed Part 38. One of the purposes of this rule is to make the requirements for reporting fishing activities easier for the public to find and understand.

This rulemaking will also update state reporting regulations to be consistent with NOAA Fisheries federal reporting regulations for party and charter (for-hire) boat license holders. The new regulations would require party and charter boat license holders to submit fishing trip reports online within 48 hours of the end of the fishing trip. This rulemaking will ensure that state reporting regulations are consistent with federal rules that require online submission of trip reports.

This rulemaking will ensure that New York remains in compliance with the ASMFC FMPs for American lobster and Jonah crab by implementing the requirement for the use of electronic tracking devices on lobster vessels in certain federal waters. Electronic tracking devices are used to collect high resolution spatial and temporal data to characterize fishing effort in the federal American lobster and Jonah crab fisheries. These data will improve the precision of spatial data, provide fishery effort data (details on vertical buoy lines), and aid in determining risk reduction efforts to protect the endangered North Atlantic right whale. These data will also provide information for marine spatial

planning for offshore wind and aquaculture planning projects. Addendum XXIX to ASMFC's American Lobster FMP and Addendum IV to the Jonah Crab FMP require New York State to adopt regulations requiring the use of electronic tracking devices on lobster vessels in certain federal waters by December 15, 2023. The Department should adopt this rulemaking as soon as possible to maintain compliance with the ASMFC FMPs.

4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule:

There are no new costs to holders of food fish, crab, or food fish and crustacea dealer and shipper from this proposed amendment. These regulated parties are already subject to reporting requirements in existing regulations. There may be some costs to party and charter boat license holders to comply with the requirement to submit vessel trip reports online to the Atlantic Coastal Cooperative Statistics Program if the party and charter boat license holder does not have computer, cell phone, tablet, or access to the internet. Devices used to access the internet range in price from \$40 for a tablet to \$1,500 for a well set up computer or laptop. Internet access plans range in price from \$25 to \$100 per month. New York State party and charter boat license holders who also hold federal permits must submit vessel trip reports online under federal regulations and therefore would not incur any new costs.

There are some potential costs for New York State based lobster trap permit holders since they will be required to install an electronic tracking device on their fishing vessel. Eleven active federal lobster trap permit holders have New York as their principal port; eight of them fish in areas where electronic devices will be required. The other three permit holders fish in an area exempt from the requirement for tracking devices. Estimated costs for cellular based tracking devices range from

\$150 to \$650 for the initial purchase of the tracking unit, and annual data service plans that would meet the proposed tracking requirements range from \$191 to \$420 per year. Last year, Congress appropriated \$89,000 to New York State to defray the costs of the tracking devices and necessary cellular data account (costs for the cellular account will be defrayed three years). ASMFC will provide outreach and assistance to New York State licensed federal lobster trap permit holders in applying for and receiving the funding. Under federal regulations, any lobster trap permit holder fishing in non-exempt federal waters will be required to install a tracking device on their vessel. Therefore, New York permit holders will not incur any costs above and beyond costs already incurred by compliance with the federal regulations.

(b) Costs to agency, the state and local governments for the implementation and continuation of the rule:

The Department will incur limited costs associated with the implementation and administration of these rules, including the costs relating to notifying license holders of the new rules.

There are no new costs to state government resulting from this action.

There will be no costs to local governments.

5. Local government mandates:

This rulemaking imposes no mandates on local governments.

6. Paperwork.

This rulemaking does not impose any new reporting requirements. Fishing reporting requirements have been in effect since 2004. This rule consolidates and clarifies already existing rules.

7. Duplication:

This rule does not duplicate any already existing rule. NOAA Fisheries does require federally permitted fishermen to submit fishing trip reports however, the Department does not require most federal permitted fishermen to submit trip reports.

8. Alternatives:

No Action Alternative - If the Department does not promulgate this draft rule, the reporting requirements for state commercial fishermen, food fish and crustacea dealers/shippers and party and charter boat businesses will continue to be vague and duplicated in several places in regulations. In addition, the current state reporting regulations no longer conform to current federal regulations. Furthermore, the Department must adopt the use of electronic tracking devices on federally permitted lobsters vessels by December 15, 2023, to remain in compliance with Addendum XXIX to the American Lobster FMP and Addendum IV to the Jonah Crab FMP (both from ASMFC). The no action alternative was rejected.

9. Federal standards:

These amendments to 6 NYCRR are in compliance with the fishery data collection standards set by the Atlantic Coastal Cooperative Statistics Program. These amendments are also compliant with ASMFC FMPs.

10. Compliance schedule:

Affected license and permit holders will be notified by mail, email, text messaging, through appropriate news releases, and on the Department's website of the changes to the regulations. The proposed regulations will take effect upon filing the Notice of Adoption with the Department of State after the 60-day public comment period. Holders of federal lobster trap pots permits must have the required electronic tracking device aboard their fishing vessels no later than December 15, 2023.