

6 NYCRR Part 40 - Marine Fish - Regulatory Impact Statement

1. Statutory authority:

Environmental Conservation Law (ECL) § 13-0105 directs the Department of Environmental Conservation (DEC) to manage New York State's marine fishery resources to preserve their long-term abundance for future generations. ECL § 13-0338 (4) grants DEC authority to adopt regulations for sharks including: catch and possession limits, restrictions on the manner of taking and landing, and requirements on the amount and type of fishing effort and gear, provided that such regulations are consistent with Atlantic States Marine Fisheries Commission and federal fishery management plans.

2. Legislative objectives:

It is the objective of the above-cited legislation that DEC regulates the utilization and allocation of available fishery resources to maintain healthy stocks and habitats by adopting restrictions on the manner of taking and landing, and requirements concerning the amount and type of fishing effort and gear used. The proposed regulations are designed to protect shark species which are illegal to take or to possess by recreational anglers under 6 NYCRR Section 40.7 while maintaining recreational resource opportunities for shore-based anglers targeting legal species.

3. Needs and benefits:

A New York Times article (Salama) published on September 6, 2020, highlighted concerns that the department was aware of the growing trend on Long Island of illegal shark fishing from shore. Interest in shore-based shark fishing from anglers and conservation groups has been increasing in recent years. It is unlawful for a recreational angler to take or to possess shark species which are not listed in 6 NYCRR Section 40.7(c)(1). These species are also listed in the proposed new 40.7(c)(11) and are referred to as "prohibited" shark species for recreational fishing.

The majority of shark species caught while shore-based fishing in New York are dusky, sandbar, and sand tiger. These are all prohibited species which are illegal to take or to possess. Dusky and sand tiger sharks are both listed as "High Priority Species of Greatest Conservation Need" in the New York State Wildlife Action Plan. These species are experiencing a population decline or have identified threats that may put them in jeopardy and are in need of timely management intervention or they are likely to reach critical population levels in New York. The International Union

for Conservation of Nature has listed sandbar and dusky sharks as “endangered” species and sand tiger sharks as “critically endangered” due to population declines and long expected recovery times. Additionally, both sand tiger sharks and dusky sharks are listed as “species of concern” under the U.S. Endangered Species Act. Under the Endangered Species Act, “species of concern” are commonly declining or appear to be in need of concentrated conservation actions. These amendments are intended to protect prohibited dusky, sandbar, and sand tiger sharks consistent with requirements of the Atlantic States Marine Fisheries Commission (ASMFC) and NOAA Fisheries. The proposed amendments will establish certain gear restrictions to enhance law enforcement’s ability to protect sharks and will require new handling and release methods to improve both shark and angler safety.

Draft proposed regulations were presented to the Marine Resources Advisory Council (MRAC) meeting on March 8, 2022. At a later date, DEC staff met separately with the two MRAC members who represent recreational anglers, as well as representative of the Long Island Beach Buggy Association (LIBBA) and the New York Coalition for Recreational Fishing (NYCRF), who combined represent over 5,500 recreational anglers in New York, to discuss how to best implement rules to protect sharks while minimizing impacts to legitimate shore anglers. In response to these meetings, the proposed gear restrictions were modified - proposed hook widths were increased, and a maximum metal leader length was substituted for a complete prohibition for shore anglers. These modifications to the proposed rules should afford protections to sharks and further limit the impact to legitimate shore-based anglers fishing for striped bass and bluefish.

Citations:

- Salama, Jordan. “Drone, Hooks and Blood: Secrets of the Shark Fisherman of Long Island.” *New York Times*, 6 September 2020, <https://www.nytimes.com/2020/09/06/nyregion/shark-catchers-long-island.html>. Accessed 25 February 2022.

4. Costs:

DEC anticipates minimal costs to recreational anglers. Costs to anglers could include the purchase of a device used to quickly remove as much tackle and fishing gear as possible to release sharks (under \$30), costs associated with purchasing smaller hooks and alternative leaders (\$5 – \$20 per tackle item).

5. Local government mandates:

The proposed rule would not impose any mandates on local government.

6. Paperwork:

The proposed rule would not impose any new reporting requirements.

7. Duplication:

The proposed rule would not duplicate any state or federal requirement.

8. Alternatives:

No action (*Status quo*) – This alternative is not recommended because it would allow the illegal taking of prohibited shark species to continue. Action is needed to enable DEC’s law enforcement staff to protect prohibited shark species so that these populations can recover and for other reasons discussed above under “Needs and Benefits.”

9. Federal standards:

The proposed rule does not exceed any minimum federal standards.

10. Compliance schedule:

Compliance with the proposed rule would be required upon the effective date of the rule. The public would be notified of the changes to the regulations through appropriate news releases, by DEC Delivers (emails), and through DEC’s website.