

6 NYCRR Part 40 - Marine Fish (Striped Bass) - Regulatory Impact Statement

1. Statutory authority:

Environmental Conservation Law (ECL) § 13-0105 directs that it shall be “the policy of the state that the primary principle in managing the state’s marine fishery resource is to maintain the long-term health and abundance of marine fisheries resources and their habitats, and to ensure that [fisheries] are sustained in usable abundance and diversity for future generations.” The legislature further directed that “the management of the state’s transboundary and migratory species shall be consistent with [all] interjurisdictional management plans, interstate or state-federal.”

ECL §§ 11-0303 and 13-0339 authorize DEC to adopt regulations governing Atlantic striped bass including: size limits, catch and possession limits, open and closed seasons, closed areas, restrictions on the manner of taking and landing, and other management measures.

ECL §§ 11-1521 and 13-0347 establish additional provisions for striped bass management in the Hudson River and marine district, respectively.

ECL § 13-0342 authorizes DEC to adopt regulations which require reporting of catch and effort data for all categories of commercial food fish license, including the Commercial Striped Bass Harvester Permit.

2. Legislative objectives:

It is the objective of the above-cited legislation that DEC manages marine fisheries to optimize resource use for recreational and commercial harvesters in a manner that is consistent with federal marine fisheries conservation and management policies including all applicable interstate fishery management plans. These amendments will ensure that New York maintains compliance and consistency with requirements of the Atlantic States Marine Fisheries Commission’s (ASMFC) Interstate Fishery Management Plan (FMP) for Atlantic striped bass.

3. Needs and benefits:

This rule making must be adopted on an emergency basis for the preservation of the general welfare by ensuring that New York State maintains compliance with the requirements of ASMFC’s FMP for Atlantic striped bass. Failure to maintain compliance with this FMP may result in the federal closure of New York State’s Atlantic striped bass fishery. FMPs are designed to promote the long-

term sustainability of managed marine species, preserve the States' marine resources, and protect the interests of both commercial and recreational fishermen.

The proposed new management measures are required by Amendment 7 of ASMFC's FMP for Atlantic striped bass, which is designed to reduce recreational release mortality of striped bass by prohibiting the use of gaffs. To comply with this directive, New York State must amend 6 NYCRR Part 40 to ensure that the State's regulations are consistent with achieving the required gear restriction. Additionally, New York must maintain a commercial tagging program to remain in compliance with the FMP for Atlantic striped bass. Removal of the commercial price cap is necessary to ensure that New York has a functional commercial tagging program that can be supported by the commercial tagging industry. Failure to adopt these regulations immediately as an emergency rule could result in population declines to critical Atlantic striped bass fishery stock which is currently overfished, and the potential closure of New York State's Atlantic striped bass fishery by the federal government due to New York State's failure to comply with mandatory FMP requirements.

4. Costs:

This rule making may impose cost to the recreational fishery, including private recreational fishers, and party and charter boat operators, as they may decide to replace gaffs with additional tools that minimize injury to the fish. Additionally, this rule making will directly impact the commercial fishery, as commercial striped bass harvesters may see an increase in price for commercial tags to match industry standards and current economic conditions. It is expected that the price per tag for 2023 will be \$0.28 per tag, which is a \$0.03 increase from the 2022 price per tag of \$0.25 per tag.

5. Local government mandates:

The proposed rule does not impose any mandates on local governments.

6. Paperwork:

None.

7. Duplication:

The proposed amendment does not duplicate any state or federal requirement.

8. Alternatives:

The ASMFC Management Board voted on and approved unanimously the prohibition of the use of gaffs when fishing for striped bass recreationally. Implementation of any other option would place New York State out of compliance with the FMP.

A “no action” alternative for amending the commercial regulations to keep New York in compliance with ASMFC’s requirement of a commercial tagging program for Atlantic striped bass could result in a closure to the commercial fishery. The current price cap is no longer sustainable in the current economic climate for maintaining a working tagging program. Without a company to supply tags, New York risks being shut down for being out of compliance with the FMP, and potentially causing economic hardship for commercial harvesters. Tags are an essential part in the Department’s ability to regulate the commercial harvest of striped bass in New York.

9. Federal standards:

The amendments to 6 NYCRR Part 40 are in compliance with Amendment 7 of ASMFC’s FMP for Atlantic striped bass. Additionally, the FMP for Atlantic striped bass requires that states with commercial fisheries such as New York maintain a commercial tagging program to regulate harvest.

10. Compliance schedule:

The proposed regulations will take effect immediately upon filing with the Department of State, and regulated parties will be able to immediately comply with the proposed rule. The public will be notified of the changes to the regulations through publication in the State Register, through appropriate news releases, distribution of commercial tag program information via mailings, and through DEC’s website.