

# DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

## DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 1902 (7 **Del.C.** §1902)

7 **DE Admin. Code** 3755

### PROPOSED

#### REGISTER NOTICE

SAN #2023-10

DOCKET # 2023-R-F-0020

#### 3755 Lobsters (*Homarus americanus*)

1. TITLE OF THE REGULATIONS:

Amend 7 **DE Admin. Code** 3755 Lobsters (*Homarus americanus*).

2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

This action is being proposed to comply with the Atlantic States Marine Fisheries Commission's Addendum XXIX to Amendment 3 to the American Lobster Fishery Management Plan (FMP), which requires all vessels with federal lobster permits to install and maintain an electronic tracking device that will transmit location data while the vessel is in the water. The FMP is requiring the electronic trackers because the trackers are now required by a NOAA Fisheries federal regulation intended to reduce interactions between fishing boats and gear and the endangered North Atlantic Right Whale.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

N/A

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 **Del.C.** §1902

5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL:

N/A

6. NOTICE OF PUBLIC COMMENT:

The hearing record on the proposed changes to 7 **DE Admin. Code** 3755 will be open December 1, 2023. The virtual public hearing will be held on Thursday, December 21, 2023, beginning at 6:00 p.m. The web link to the virtual hearing can be accessed through the DNREC Public Hearings site at <https://dnrec.alpha.delaware.gov/public-hearings/>. If prompted, use Meeting ID: 885 0576 5378 Passcode: 499825. To access the audio-only portion of the virtual hearing, dial (305) 224- 1968 and enter the Meeting ID and Passcode noted above. Closed captioning is available in over 20 languages, including English and Spanish, to attendees via the Zoom platform utilized for all DNREC Public Hearings.

Those wishing to offer verbal comments during DNREC virtual public hearings must pre-register no later than noon on the date of the virtual hearing. The designated page for this Pre-Registration process can be found here: <https://dnrec.alpha.delaware.gov/public-hearings/comments/registration/>

The proposed amendments may be inspected online starting December 1, 2023 at [https://regulations.delaware.gov/services/current\\_issue.shtml](https://regulations.delaware.gov/services/current_issue.shtml), or in-person, by appointment only, by contacting John Clark by phone at 302-739-9914 or by email at [John.Clark@delaware.gov](mailto:John.Clark@delaware.gov).

Public comments will be received until close of business Friday, January 5, 2024. Comments will be accepted in written form via email to [DNRECHearingComments@delaware.gov](mailto:DNRECHearingComments@delaware.gov), or by using the online form at <https://de.gov/dnreccomments>, or by U.S. mail to the following address:

Lisa Vest, Hearing Officer  
DNREC - Office of the Secretary  
89 Kings Highway, Dover, DE 19901

7. PREPARED BY:

John H. Clark

## 3755 Lobsters (*Homarus americanus*)

### 1.0 Lobsters Pot Design

(Penalty Section 7 **Del.C.** §1912)

- 1.1 It is unlawful for any person to set, tend or conduct shellfishing for lobsters with any pot or trap in the waters under the jurisdiction of the State unless said pot or trap has an escape vent, slot or port of not less than two (2) inches by 5 ¾ inches located in the parlor section of each pot or trap, or if a circular escape vent is used in the parlor section of any lobster pot or trap, it is unlawful to use less than two (2) circular vents that are less than 2 5/8 inches inside diameter.
- 1.2 It is unlawful for any person to set, tend or conduct shellfishing for lobsters with any pot or trap, not constructed entirely of wood, excluding heading or parlor twine and the escape vent, that does not contain a ghost panel covering an opening that measures at least 3 ¾ inches by 3 ¾ inches. A ghost panel means a panel, or other mechanism, designed to allow the escapement of lobsters after a period of time if the pot or trap has been abandoned or lost. The panel must be constructed of, or fastened to the pot or trap with, one of the following untreated materials: wood lath, cotton, hemp, sisal or jute twine not greater than 3/16 inch in diameter, or non-stainless, uncoated ferrous metal not greater than 3/32 inch in diameter. The door of the pot or trap may serve as the ghost panel, if fastened with a material specified in this subsection. The ghost panel must be located in the outer parlor(s) of the pot or trap and not the bottom of the pot or trap.
- 1.3 It is unlawful for any recreational or commercial lobster pot fisherman to set, tend or conduct shellfishing for lobsters with a lobster pot or trap with a volume larger than 22,950 cubic inches.

**2 DE Reg 1898 (04/01/99)**

**10 DE Reg. 1034 (12/01/06)**

**23 DE Reg. 217 (09/01/19)**

### 2.0 Lobsters Pot Season And Limits

Penalty Section 7 **Del.C.** §1912)

- 2.1 Except as provided in subsections 2.1.1 and 2.1.2, it is unlawful to set or tend lobster pots or to take and reduce to possession or attempt to take and reduce to possession lobsters during the period February 1 through March 31.
  - 2.1.1 A person with a valid Commercial Lobster Pot License may remove lobster gear from the water during the period February 1 through February 14; however, no lobsters may be reduced to possession.
  - 2.1.2 A person with a valid Commercial Lobster Pot License may set lobster gear during the period March 25 through March 31; however, the gear cannot be tended and no lobsters may be reduced to possession.
- 2.2 It is unlawful for any person who has a valid Commercial Lobster Pot License to harvest lobsters in the waters under the jurisdiction of the State on any Sunday.
- 2.3 It is unlawful for any person who has a valid Commercial Lobster Pot License to set, tend or use in any manner in excess of fifty (50) lobster pots for the taking of lobsters in the waters under the jurisdiction of the State.
- 2.4 It shall be unlawful for any person, licensed to catch or land lobsters for commercial purposes in this State, who uses gear or methods other than pots or traps outside the jurisdiction of this State, to land more than 100 lobsters per day for each day at sea during the same trip, up to a maximum of 500 lobsters per trip for trips 5 days or longer.

**2 DE Reg. 1898 (04/01/99)**

**23 DE Reg. 217 (09/01/19)**

### 3.0 V-notched Lobsters

(Penalty Section 7 **Del.C.** §1912)

- 3.1 It is unlawful for any person to possess a V-notched female lobster. V-notched female lobster means any female lobster bearing a V-notch, a straight-sided triangular cut with or without setal hairs at least 1/8 inch in depth and tapering to a sharp point, in the flipper (uropod) next to the right of center flipper (telson) as viewed from the rear of the female lobster with the underside (ventral side) facing down.
- 3.2 Any person that catches an egg-bearing female lobster shall notch it as outlined in subsections 3.2.1 through 3.2.5.
  - 3.2.1 The notch shall be made on the flipper (uropod) immediately to the right of the central flipper (telson) as viewed from the rear of the lobster with the underside (ventral side) facing down.
  - 3.2.2 The notch shall be made by means of a sharp bladed instrument.
  - 3.2.3 The notch shall be made at least ¼ inch in width along the outer margin of the flipper.

3.2.4 The notch shall taper to a sharp point at least ½ inch deep.

3.2.5 The lobster shall be immediately returned to the water upon completion of the notch.

3.3 It is unlawful to possess a female lobster that is mutilated in a manner that could hide, obscure or obliterate a V-notch.

**2 DE Reg. 1898 (04/01/99)**

**11 DE Reg. 1662 (06/01/08)**

**23 DE Reg. 217 (09/01/19)**

#### **4.0 Electronic Tracking Devices**

##### **4.1 Definitions**

The following words and terms, when used in this regulation, have the following meanings unless the context clearly indicates otherwise:

**"Electronic Tracking Device"** means an electronic device approved by the Atlantic States Marine Fisheries Commission and used to track vessel location and collect and transmit this spatial data to the Division in compliance with Addendum XXIX to the Interstate Fishery Management Plan for American Lobster and Addendum IV to the Interstate Fishery Management Plan for Jonah Crabs.

**4.2** An electronic tracking device shall be installed and activated prior to beginning a lobster fishing trip with pot gear onboard by a Delaware commercial lobster pot licensee operating any vessel named on a NOAA Fisheries limited access lobster permit, pursuant to 50 CFR § 697.4, to fish trap gear for lobsters and Jonah crabs in the Exclusive Economic Zone. All permit holders shall sign a written affidavit confirming the electronic tracking device has been installed.

**4.3** The electronic tracking device shall remain onboard the vessel and powered on at all times when the vessel is in the water.

**2 DE Reg. 1898 (04/01/99)**

**11 DE Reg. 1662 (06/01/08)**

**23 DE Reg. 217 (09/01/19)**

**27 DE Reg. 410 (12/01/23) (Prop.)**