

NOTICE OF AGENCY RULE-MAKING ADOPTION

AGENCY: Department of Marine Resources

CHAPTER NUMBER AND TITLE: Chapter 25.98 Electronic Tracking Requirements for Federally Permitted Lobster and Jonah Crab License Holders

ADOPTED RULE NUMBER:
(LEAVE BLANK-ASSIGNED BY SECRETARY OF STATE)

CONCISE SUMMARY:
This rule-making incorporates the requirements in Addendum XXIX (American Lobster) and Addendum IV (Jonah crab) that were approved by the Atlantic States Marine Fisheries Commission (ASMFC) in March 2022. Specifically, for compliance with the Interstate Fisheries Management Plans, this regulation requires all federally-permitted lobster and Jonah crab license holders with commercial trap gear area permits to have approved electronic tracking devices. This requirement applies to all federally-permitted lobster and crab license holders with commercial trap gear for Lobster Conservation Management Areas (LCMAs) 1, 2, 3, 4, 5, and the Outer Cape Cod.

EFFECTIVE DATE:
(LEAVE BLANK-ASSIGNED BY SECRETARY OF STATE)

AGENCY CONTACT PERSON: Deirdre Gilbert
AGENCY NAME: Department of Marine Resources
ADDRESS: 21 State House Station
Augusta, Maine 04333
WEB SITE: <http://www.maine.gov/dmr/rulemaking/>
E-MAIL: dmr.rulemaking@maine.gov
TELEPHONE: (207) 624-6553
FAX: (207) 624-6024
TTY: 207-624-6500 (Deaf/Hard of Hearing)

Please approve bottom portion of this form and assign appropriate MFASIS number.

APPROVED FOR PAYMENT _____	DATE: _____					
FUND	AGENCY	S-UNIT	APP	OBJT	AMOUNT	
010	13A	1120	10	4946	regulations	

Please forward invoice to: Natural Resource Service Center, 155 SHS, Augusta

DEPARTMENT OF MARINE RESOURCES

Chapter 25: LOBSTER AND CRAB REGULATIONS

TITLE INDEX

- 25.01 Lobster Fishing in Waters Adjacent to Criehaven
- 25.02 Definitions
- 25.03 Taking of Lobsters in York River
- 25.04 Lobster Trawl Limits
- 25.05 Lobster Trap Removal
- 25.06 Vessel Ownership
- 25.07 ASMFC Lobster Management Areas and Limitations
- 25.08 Lobster Trap Tag System
- 25.09 Procedure for Issuing Seed Lobster Permits
- 25.10 Lobster Trap Limits Established by Lobster Management Zones
- 25.11 Lobster and Crab Bait Review Process
- 25.12 Alternative Bait Labeling
- 25.15 V-notching Lobsters
- 25.20 Protected Resources (*see Chapter 75*)
- 25.40 Green Crabs
- 25.45 Crab Fishing Limitations
- 25.50 Closed Season Regulation on Fishing for Crabs in Sheepscot River
- 25.55 Closed Season on Fishing for Crabs in Damariscotta River
- 25.60 Closed Season on Fishing for Crabs in Medomak River
- 25.65 Lobster and Crab Closure in Penobscot River
- 25.70 Legal Lobster Tails
- 25.75 Lobster Import/Export Permit
- 25.80 Lobster Trap Construction Regulation
- 25.82 Lobster Trap Maximum Size
- 25.85 Lobster Trap Escape Vent Dimensions
- 25.90 Swans Island Area Lobster Trap Regulation
- 25.93 Management Framework for Limiting Lobster Fishing Effort on a Local or Regional Basis -
Operational Rules
- 25.94 Lobster Management Zones
- 25.95 Monhegan Island Area Lobster Trap Regulation
- 25.96 Lobster Apprentice Program
- 25.97 Management Framework for Island Limited Entry Program
- 25.98 Electronic Tracking Requirements for Federally-Permitted Lobster and Jonah Crab License
Holders

25.98 Electronic Tracking Requirements for Federally-Permitted Lobster and Jonah Crab License Holders

Effective December 15, 2023, the following electronic tracking device requirements apply to all federally permitted lobster and crab license holders, as defined in section A.

A. Definitions

1. Approved Tracking Device means an electronic device that meets all the specifications outlined in Section 3.1 of the Atlantic States Marine Fisheries Commission Addendum XXIX to the American Lobster Fishery Management Plan and which has been approved for use by the Atlantic States Marine Fisheries Commission.
2. Federally permitted lobster and crab fishing license holder means an individual who is eligible for a commercial Maine state license or who is licensed to fish commercially for lobster and crab under 12 MRS 6421 or 12 MRS 6302-A who also holds a federal lobster and crab commercial trap gear permit for any of the Lobster Conservation Management Areas (LCMAs) 1, 2, 3, 4, 5, or the Outer Cape Cod on the vessel identified on their lobster and crab fishing license.

B. Electronic Tracking Device Requirements

1. Prior to their first lobster and crab fishing trip following December 15, 2023, federally permitted lobster and crab fishing license holders are required to install an approved tracking device.
2. Federally permitted lobster and crab fishing license holders are required to certify to the Department of Marine Resources when they have completed the installation of the approved tracking device. To submit their certification, federally permitted lobster and crab fishing license holders must complete an electronic form available through the Department of Marine Resources publicly accessible website.

C. Prohibitions

Unless a federally permitted lobster and crab fishing license holder has made notification to the Department as provided in (E.) the following prohibitions apply.

1. It is unlawful for a federally permitted lobster and crab fishing license holder to fish for, take, possess, or land lobster or Jonah crab taken with trap gear without having an approved tracking device installed aboard the permitted vessel listed on their license.
2. It is unlawful for a federally permitted lobster and crab fishing license holder to remove or have removed the approved tracking device from the permitted vessel listed on their license without written approval from the Department of Marine Resources.
3. It is unlawful for a federally permitted lobster and crab fishing license holder to allow the permitted vessel listed on their license to be operated in the coastal waters of the State without the approved tracking device being powered by an external power source at all

times; an exception to this requirement exists when the vessel is moored or docked at berth.

4. The approved tracking device must remain in an operational condition, minimally powered by an internal battery, when a permitted vessel is docked, moored, or removed from the water. The license holder shall notify the Department of Marine Resources prior to an approved tracking device being rendered inoperative in instances where the permitted vessel is removed from the coastal waters for an extended period of time or for purposes of repairing or replacing an approved tracking device.
5. It is unlawful for a person to tamper with an approved tracking device or device signal; tampering includes any activity that may affect the unit's ability to operate or signal properly or to accurately compute or report the vessel's position. Tampering with an approved tracking device is not considered to occur in circumstances where an approved tracking device is being repaired or replaced provided the license holder has written approval from the Department of Marine Resources.

D. Exemptions

The following federally permitted lobster and crab fishing license holders are exempt from the electronic tracking requirements.

1. A federally permitted license holder who holds a federal commercial trap gear permit that has been placed in confirmation of permit history (CPH), a permit status for when a vessel with limited access permits has sunk, been destroyed, or has been sold to another person without its permit history.
2. A federally permitted license holder who holds a federal lobster commercial trap gear permit that does not fish trap gear at any point in the fishing year (i.e., only fishes other gear under a federal lobster commercial/non-trap permit, charter/party non-trap permit, and/or does not fish any trap gear at any point in the fishing year).

E. Device Failure

In the event of an electronic tracking device failure, a violation of the prohibitions in section (C) shall not exist when the federally permitted lobster and crab fishing license holder makes notification of the failure to the Department by phone, text message, or email prior to beginning a fishing trip with the inoperable device. The license holder must work with the Department in good faith and in a timely manner to restore device operability as soon as possible. It is unlawful for a license holder to begin subsequent fishing trips with an inoperable device without written approval from the Department.

In circumstances where a federally permitted lobster and crab fishing license holder has reported frequent or repeated tracking device failures aboard a permitted vessel, a Marine Patrol Officer, after having given notice to that license holder, may require that license holder to obtain written approval from the Department prior to beginning a fishing trip with an inoperable tracking device.

Basis Statement:

This rule-making incorporates the requirements in Addendum XXIX (American Lobster) and Addendum IV (Jonah crab) that were approved by the Atlantic States Marine Fisheries Commission (ASMFC) in March 2022. Specifically, for compliance with the Interstate Fisheries Management Plans, this regulation requires all federally-permitted lobster and Jonah crab license holders with commercial trap gear area permits to have approved electronic tracking devices. This requirement applies to all federally-permitted lobster and crab license holders with commercial trap gear for Lobster Conservation Management Areas (LCMAs) 1, 2, 3, 4, 5, and the Outer Cape Cod. The regulation identifies the specific requirements, as well as prohibitions and exemptions to the requirement. The regulation was amended from the original proposal in the following ways:

- It was amended in response to a comment requesting greater clarity regarding the ability of a federally permitted license holder to proceed with a fishing trip in the event of a device failure, and that this will not result in a violation;
- The definition of a “federally permitted lobster and crab fishing license holder” was amended to include a person who is eligible to purchase a commercial license, so that an individual who has not yet purchased their license for the year remains subject to the requirements;
- The definition of a “federally permitted lobster and crab fishing license holder” was amended to specify a commercial license, so that individuals with a federal permit but only a noncommercial lobster license would not be subject to the requirement to have an electronic tracking device.

Summary of Comments:

Notice of this proposed rulemaking appeared on September 13, 2023 in the 5 major daily newspapers as published by the Secretary of State. Also on September 13, 2023 the rule was posted on the DMR website, and electronic messages were sent to individuals who subscribe to DMR notices. The public hearing was held on October 5, 2023 at 5:00 pm in person at the DMR offices at the Marquardt Building, 32 Blossom Lane, Augusta, Maine and remotely via Microsoft Teams. The comment period closed October 16, 2023.

Attendance at the Public Hearing:

Members of the Public	DMR Staff
Virginia Olsen, Matthew Gilley, Alan Poland, Nick Morley, Patrice McCarron, Rebecca Nuzzi, Amalia Harrington, Chris Cash, Ashley, Joseph Fessenden, Anonymous	Commissioner Patrick Keliher, Deputy Commissioner Meredith Mendelson, Deirdre Gilbert, Megan Ware, Jeff Nichols, William DeVoe, Lorraine Morris
<i>Note: The names listed above reflect the information the participant provided when they signed into the remote proceeding. Some</i>	

<i>participants did not provide a last name or other identifying information.</i>	
---	--

Thomas Boudin, submitted via email, September 14, 2023

This requirement will be very costly and put additional burdens on the industry.

Without evidence that rope entanglement is a severe threat to the Whale population I feel this requirement is overkill and very harmful to the Lobster industry that is already being threatened by global warming and other issues.

Is there any research information about the effect of prop strikes on whales?

Andrew Taylor, submitted via email, September 14, 2023

This rule is completely ridiculous , there is really nothing to be gained by this and is yet another great inconvenience to fisherman and senseless cost to the government. I have been fishing for over 40 years and with each of these new rules I'm closer to the end . There is also noththing to be gained by the mandatory reporting that isn't already known also . Seems marine patrol is out there and can tell you where everyone is fishing , it's not a big secret . We also already report landings to dealers . Just redundant info and great inconvenience to fisherman. NO NEED FOR ANY OF THIS!!!!!!

Myles Bierman, submitted via email, September 14, 2023

Good afternoon, as a gulf of maine federal lobsterman I would like to let it be known that I am FIRMLY against any sort of vessel tracking, I believe it to be a serious invasion of privacy. We as fisherman in the state already have daily harvester reporting that show fishing effort and location of said efforts. I am not entirely sure what vessel tracking would accomplish besides be a complete invasion of privacy. Please consider these points, Have a good day
Thank you

Walter Willey, submitted via email, September 14, 2023

Tracking I am not goin to buy a tracking device, I have had my permit since Early 80 , you are asking too much from the fishermen !!!!!!!!!!! If you can see what you have done to our fishing bottom out side side of Crie heaven 😞

Wade Faulkingham, submitted via email, September 15, 2023

No black box tracking system. We don't need big brothers help period.

cocoandjace@aol.com, submitted via email, October 2, 2023

I'm a third generation fisherman from Cushing Maine. I have 5 sons who are planning to be lobsterman one who is 3 yrs old w a play boat and a trap in the yard trying to be like his family. I ask when does this end? You first start w whale regulations we comply w then and still have been zero fault proven yet we are continued to comply w new regulations why? Zero data against us. You then make us report our catch daily when the buyer already does this again why? There

is a new ceiling in effect if we see a reduction in catch out of ventless traps we will have a measure increase again why? Those traps also are no deeper then 35 fathom to my knowledge we all know the waters are warming n the stock is deeper again why? This to me seems like more regulation and more government control on our industry while I think some people may over fish this to me seems no more then days to be used by the government to be put against us. I am opposed to a tracker because every other fishery that has complied w this is now a dying industry. We have complied w everything asked n this is not something we need to do. Why? Because as I stated above my five boys hope to have a living at sea as our whole family has we already report our dealers report DMR can track boats already w no warrant so I see zero advantage for fisherman in this proposal. I hope the Maine lobsterman have a bite on what happens to Maine lobsterman but I'm sure we won't. For you bureaucrats I say this if you keep allowing them to restrict us guess what you'll be the next profession w no job. Maine lobstering will regulate itself it always has if there's no profit we won't go stop regulating us this is more unnecessary regulation

Wade Faulkingham, submitted via email, October 2, 2023

Big brother doesn't need to know every move we make. I would say this garbage we are getting shoved down our throats is due to future closures in the lobster/ crab fisheries. Leave us alone.

Roger Chipman, submitted via email, October 3, 2023

We do not need anything like this we are doing a lot now that another

Kate O, submitted via email, October 5, 2023

I just want to say for one it says I can log on remotely to see the meeting, but it will not give me a link. And you absolutely do not need to have a tracker in anybody's votes. It's not a law it's a rule nobody needs to do it. If it's not a law and nobody will do it. It's absolutely ridiculous.

Virginia Olsen (Stonington), Public Hearing, October 5, 2023

I guess my comment is fishermen are frustrated with looking at gear modifications. Three years later, we've got to pay again. Everything that we catch is costing us more money and we're not able to get it on the other end. So it's a lot of frustration in, you know, looking at gauge changes and vent changes, adding a cell program or a satellite program after the three years which from what I hear it's about three years, they seem to get out of the gear, the unit.

So we would then need to buy a unit on our own and pay for that time. The information that we hold dear is how we fish and where we fish. So just the idea of giving that to somebody else is very difficult to do, especially when we feel like it's going to be used for siting offshore wind and none of us approve of offshore wind. It's just sad that we've come to this point, that we have to go down this route when for hundreds of years Maine has been harvesting sustainably. I feel like we're the gold standard of sustainability, but now doing reports everything we have to do if it takes time, it costs money and we're like we just can't get that out of the other end.

Thank you.

Matthew Gilley, Public Hearing, October 5, 2023

I wanted to echo some of what Ginny said. This is, I've spent my entire life figuring out what I figured out out there. I still don't even have it all figured out. You guys are just asking to hand over a multimillion-dollar business. There's this, there's no way that this can be. I wish we had more money because if we did, we'd sue you in court. This can't be constitutionally legal. I mean, we're being treated like we're criminals at this point. The only people I know that are tracker people are people that have broken the law. We haven't broken any law. And we're gonna be followed everywhere we go now. I mean, I've already doubled it with the reporting, you know, I know I'm gonna deal with it with the vessel tracker thing when I decide to go out there tuna fishing. And then I get a phone call because I don't have a report for that day because I wasn't lobstering out there, I was tuna fishing. It's, like Ginny said. That's more time out of my thing. Out of my day, that's time out of my business. I spend more time at these hearings, and just, we just wanna go fishing and be left alone.

We leave the whales alone. We don't like, it's just so redundant at this point. It's becoming sickening.

I can go on and on, but I'm sure there's others that echo the same sentiments.

Thank you.

Alan Poland (Cushing), Public Hearing, October 5, 2023

There's one word I keep hearing that just aggravates me every day. When I do that report online, compliance. I gotta keep compliant. Compliant. Where are we? China, Russia? What is this? Compliant - always got to be compliant. It's frustrating. I don't tell nobody what to do, but I get told what to do all the time. Do this. Do this. Do this. Do this. Getting old. Well, that's all I got to say, yeah. I've said what I need to say earlier. Good.

Nicholas Morley (Boothbay), Public Hearing, October 5, 2023

I guess my like big thing from all of this is just like if we start getting this data and it's enough, then lets get rid of the harvesting data just if we can make it as easy on us as possible at this point, it seems like everything like exactly he said would comply, comply, comply if the tracking device gets me out of having to report at the end of the day. It's not great, but it's better than where we're at now.

Virginia Olsen, Public Hearing, October 5, 2023

Follow up with one more thing. A lot of us live in island communities and have you know, we go to Vinal Haven. We go to Isle Au Haut, we go to Matinicus, we do that with our families. It just feels like such an invasion of my privacy to know every time I start up that boat that I pay the payments on every month someone else knows what I'm doing. It just feels wrong.

Anonymous, Public Hearing (remote individual who did not provide name), October 5, 2023

I think you guys are going to regret doing this because you have so much bad data with one minute pings. I mean, your lines are going to be squiggly and there's, you know, like that guy says set and drift. I mean, there's all kinds of things going on out there, but that one question I had is, is this actually a law? Because I keep hearing rule, mandate. Those aren't laws, like is this actually a law? And it is it gonna be a law by December 15?

Jeff Putnam, submitted via email, October 8, 2023

Dear Deirdre Gilbert,

I am writing to comment on the proposed rule Chapter 25.98, electronic tracking. I am in favor of electronic tracking for federally permitted lobster boats, but I feel that there has been an omission in the proposed language in regards to the inevitable equipment malfunctions.

My reason for supporting the tracking is that the spatial data benefit lobstermen in the long term ocean planning conversation. We have long stated that the islands and coastal towns maritime heritage depend on access to the waters of the gulf of Maine, this is where we make our living. Offshore wind and conservation groups have used the lack of lobstering data to their advantage in the ocean planning process. Accurate data will be a tool to better our case that we cannot have fishing exclusion areas. I have trialed a tracker for the past year and a half and have found that it is not a burden.

My concern is the rigidity of the language under C: Prohibitions number 3. Tracking has been discussed many times at the various lobster zone and advisory councils over the past few years. At every opportunity, lobstermen have stated that we cannot be prohibited from going lobstering if there is a malfunction with the equipment. Every time this was brought up DMR has agreed and ensured us that we would still be able to fish if the tracker was not operational. I have personally seen boats that are required to have VMS for NGOM or groundfish permits not be able to go out when their federally required boxes stopped working. That is unacceptable for this Maine rule. It is unfortunate that given all of the time DMR has had to plan for this implementation, this was not covered in the language.

Most lobstermen have extensive electronics that we depend on daily, and most of us have had failures in one piece or another. It is no fun to go out when the autopilot stops working, or the chart plotter doesn't turn on, but in general if the fishing is hot we can get by and get the day in. It is inevitable that there will be power failures or hardware failures with the trackers, but we cannot be prohibited from fishing because of it.

The department could have an internal policy that states that if a tracker malfunctions and the Captain emails or leaves a voicemail then there won't be a violation if they do go fishing, but I don't believe that is a strong enough assurance for lobstermen. I think there has to be language included in the rule that allows for a certain number of days per year that we can haul if the tracker is not operational. My recommendation is to include language under D exemptions that states; up to once per quarter, federally permitted lobster and crab fishing license holders may fish for, take, possess, or land lobster without an operational tracking device if they have notified the Department in writing or by phone that the tracker or power supply has malfunctioned. In this instance the license holder will have two business days to have the unit replaced or the power issue fixed.

Thank you for considering this recommendation.

Sincerely yours,
Jeff Putnam

Carl Guyton, submitted via email, October 10, 2023

hi there im writing in regards to the "trackers" you are trying to mandate me to have on my vessel. Firstly this mandate is completely 100% unconstitutional!!!!!!! second mandating me to give up my business proprietary information to a government authority without a warrant is unprecedented third other than figuring out exactly where i go and where i place my traps what will you gain from this i am already required to report daily where i fish. This is an absolute intrusion into my privacy on the flip side i firmly believe all government employees should be required to have an ankle monitor on at all times so that the public can have some accountability from rouge gov employees

Michael Gagnon, submitted via email, October 12, 2023

Here we go again. The government complains of massive deficits and they go out of thee way to waist more money. I'm a72 year lobsterman with a federal permit attached to my boat. I don't lobster in federal waters federal waters I don't even lobster outside of the exemption zone. I have very few years of lobstering left in me. I kept the permit in order to enhance the value of my boat. You well know that with all the failed ideas that have been presented to us in the last few have done nothing to change the mortality of Right whales considering there hasn't been any in the Gulf of Maine. We have jut started to report every trip location, landings, buoy, end lines, old shell, new shell , even soak times its absolutely ridiculous. You have succeeded to devaluate our permits and our lobster boat values by more than fifty percent. We thank you for that. If you are so concerned about putting us out of business why don't you just buy us out. The Biden administration not long ago just released six billion dollars to Iran. go figure and look what there using it for now. I'm only trying to supplement my retirement income and big brother just keeps on taking. I'm positive that I'm far from the only Maine lobsterman in my predicament. In closing why put so much burden on our ability to keep our heads above water financially when you are inventing a cure for a non existent malady. What a waist time, money, and effort.

Michael A. Gagnon

Chip Johnson, submitted via email, October 13, 2023

Hello.

I do not think tracking data given to gov officials at all times is anywhere near appropriate, or legal for that matter. The line has been crossed with this one. This is the United States of America. This type of thing is over reach, too much has already slipped by to date. This data will be used for driving agendas contrary to fishing and feeding Americans, and keeping a local economy alive. Yes I have heard all the excuses. This communist move lines right up with all the rest of the Anti Capitalist and Anti Independent agendas of late. Read the Constitution and you will understand.

Chip Johnson

Jarod Bray, submitted via email, October 14, 2023

You should allow lobsterman to call into state or federal departments and declare “not fishing” if they are not using their permit. That would stop them from having to use the tracker if they don't intend to be offshore for the year. The lobsterman should be allowed to reverse that decision given an appropriate amount of time.

I hope the tracker doesn't need to be on 24/7 and only needs to be powered up when the boat is on. I have several friends with VMS who end up with dead batteries in the winter when they don't use their boat for weeks.

-Jarod Bray

Bob Jr., submitted via email, October 14, 2023

These tracking devices are totally unnecessary! A violation of privacy. It's government overreach. Would they like it if we put trackers on their cars or on their persons to make sure they're going to work at their federal job on our tax dollars? They might hit an endangered owl with their car on their way to work ! Haha totally ignorant . It's not good for a Maine !!! It's more government control on Maine fisherman to try and shut us down like they've been doing. I strongly protest against it ! Not good for a Maine!

Thomas Bell, submitted via email, October 14, 2023

I am writing in opposition to the proposed rule, making federal lobster/crab fishing vessels required to have a tracking device.

This rule feels completely unnecessary considering the same information on vessel activity is available now via 100% reporting requirements.

This seems like regulation redundancy that is unwarranted for a fishery that is already being battered from every angle.

I know this is basically a done deal, but I hope this is taken into consideration.

Thank you

Sincerely,
Thomas W. Bell
B.S. Maine Maritime Academy '14
Vessel Operations & Technology
454 South Gouldsboro Road
Gouldsboro, ME 04607
(207) 479-1720
thomas.bell1280@gmail.com

Darren Turner, submitted via email, October 14, 2023

Dear Deirdre,

Please add these comments to the public hearing for Chapter 25.98, Tracking of Federally Permitted Lobster and Jonah Crab License Holders:

This proposal is unnecessary. It will not save whales. It is another expensive program for tax payers. And is most likely a violation of privacy and unconstitutional.

There is no justification for tracking vessels in the lobster fishery. The recent court case ruling (MLA/State of Maine vs NMFS), stated that the NMFS used data that was not in line with reality. Why should we give them more information to twist and use against us. The judicial system is a check and balance on your power and has already ruled the agency can and will abuse power by manipulating data to support their agenda. The NMFS did not even follow the law (ESA) when developing right whale regulations. ASMFC and Maine should back off this issue and not pass this tracking rule.

I have dealt with tracking systems before and they are a nuisance. I'm sure all of you bureaucrats would not like to deal with checking in and being tracked every day you go to work.

Darren Turner

badpenny.ew@gmail.com, submitted via email, October 15, 2023

I'm actually in disbelief that lobstering has actually come down being watched by the government all the time you're on your boat. I can't believe that this is even legal since I do more than just lobster outside of 3 miles in MY boat that I worked and paid for. Makes me sick that I will be watched while scalloping, tuna fishing, pogy fishing and recreational fishing. How is any of that anybody else's business? Especially the state and federal government? This is the biggest pile of b.s. i have heard yet. Best way I can think of to make people feel like criminals is to treat them as such. What is next? Ankle bracelets? Chips for I.d.? How about some serial numbers tattooed on the forearm? If at all possible I will be consulting a lawyer to seek compensation for the loss of my rights as a u.s. citizen. Congratulations on making me hate a job I used to love.

DMR Response to Comments

Concerns on Cost of the Device and Data Plan:

Several commenters stated their concerns on the cost of the electronic tracking device and data plan. In March 2022, the Department was allocated \$4 million through a congressional appropriation to assist with the expenses related to the use of trackers. The Department used these funds to purchase Particle TrackerOne vessel tracking devices, and three years of cellular data service for all federally permitted lobster and crab fishing license holders. It is possible there could be additional funds available in the future, but at this time a minimum of three years of costs associated with this requirement will be covered for permit holders. Costs are relatively modest for this type of system, with the tracking unit currently costing approximately \$150 and

the annual data plan costing ~\$130 per participant. Requirements to allow for monitoring of vessel movements (e.g. VMS) is very common in other federally managed species, and it is typically the responsibility of the permit holder to cover those costs.

Unnecessary Data Collection:

Several commenters stated that these data are not necessary, and the requirement to provide it represents government overreach. This requirement was established in the Atlantic States Marine Fisheries Commission (ASMFC) Addendum XXIX to the Lobster Fishery Management Plan (FMP). States are required to maintain compliance with the FMP. A finding of non-compliance jeopardizes a state's ability to engage in interstate commerce for that species. In addition, there will be a federal regulation establishing this same requirement for federal permit holders.

The reason for this requirement is to collect high resolution spatial and temporal data to characterize effort in the federal American lobster and Jonah crab fisheries for management and enforcement needs. These data will improve stock assessment, inform discussions and management decisions related to protected species and marine spatial planning, and enhance offshore enforcement. Several commenters expressed that the fishery is not impacting whales, and should not have to submit to this requirement. The data collected is intended to help the Department better represent the industry in management discussions and ensure that any management measures are appropriately targeted. The lack of spatial data for this fishery is currently a challenge in representing the industry in management discussions.

These data are better resolution than the spatial data currently provided through harvester reports, so are not duplicative of data that the Department is already receiving. As this system is implemented, the Department will be looking for opportunities to streamline harvester reporting in consideration of the spatial data provided through the trackers, as suggested in one comment.

Invasion of Privacy and Confidentiality:

Several commenters stated that where and how they fish is proprietary data. The Department understands this position, but it is a common requirement of federal fisheries permitting to provide spatial data associated with the vessel activities for management and enforcement purposes. The Atlantic Coastal Cooperative Statistics Program (ACCSP) maintains the confidentiality of trip and location data that have been submitted to ACCSP via API. Data is accessible to the appropriate state or federal entities with confidential data access. The spatial information collected through the electronic tracking devices is designated as confidential through Maine law and regulation.

Lobster Fishing vs. Other Activities/Fishing:

Several commenters stated their concern of having the electronic tracking device continuing to collect data during times they are fishing for other species, or activities not related to lobstering. The ping rate of the electronic tracking device while the vessel is underway (1 ping per minute) allows the ability to distinguish between different activities such as a vessel steaming or setting/hauling traps. While the vessel is at berth and no longer moving, the ping rate will switch

to one ping every six hours. In addition, there are reporting requirements for other fisheries. The harvester reports will allow the Department to determine days at sea and which fishery was targeted. It is important to note that given the volume of data produced by this requirement, these data will typically be used in aggregate analyses, and the Department would use harvester reports to exclude tracking data from non-fishing days.

Tracking Device Technical Concerns:

Several commenters stated concerns that they will be prohibited from fishing if their electronic tracking device malfunctions. In preparation to meet this requirement, the Department began a pilot program to test the functionality of these types of trackers in the Maine lobster fishery in 2019. To date, we have worked with 25 fishermen to test devices and learn what problems can occur. Based on that work, we believe that the trackers should generally be reliable, provided they are consistently connected to the external power source.

In addition, the Department has established a hotline and email that will be monitored daily. In the event there are technical difficulties with the electronic tracking device, a fisherman can call, text or email this hotline to notify Department staff of their device's issue. It has never been the Department's intent that a fisherman be prohibited from fishing if their device malfunctions through no fault of their own. The rule has been amended from the original proposal to clearly specify that this situation will not result in a violation for the permit holder, provided they notify the Department and work in good faith with Department staff to have the device restored to operability.

If a fisherman expects the tracking device to be powered down due to not fishing and or the vessel needs to be removed from the water for maintenance, the Department has developed a form for fisherman to fill out that will be provided on the Department's website. "Powered down" is defined as the electronic tracking device not receiving external power from the vessel for longer than 1 month.

Rule-Making Fact Sheet

(5 M.R.S., §8057-A)

AGENCY: Department of Marine Resources

NAME, ADDRESS, PHONE NUMBER OF AGENCY CONTACT PERSON:

Deirdre Gilbert, Department of Marine Resources, 21 State House Station, Augusta, Maine 04333-0021 Telephone: (207) 624-6553; web address: <http://www.maine.gov/dmr/rulemaking/>

CHAPTER NUMBER AND RULE: Chapter 25.98 Electronic Tracking Requirements for Federally Permitted Lobster and Jonah Crab License Holders

STATUTORY AUTHORITY: 12 MRS 6171

DATE AND PLACE OF PUBLIC HEARING(S): October 5, 2023: 5:00 pm in person at the DMR offices at the Marquardt Building, 32 Blossom Lane, Augusta, Maine and remotely via Microsoft Teams. Remote Access information is posted to the DMR's website under "Meetings"

COMMENT DEADLINE: October 16, 2023

PRINCIPAL REASON(S) OR PURPOSE FOR PROPOSING THIS RULE: [*see* §8057-A(1)(A)&(C)] This rule is proposed to ensure compliance with Addendum XXIX (American Lobster) and Addendum IV (Jonah crab) that were approved by the Atlantic States Marine Fisheries Commission (ASMFC) in March 2022. Specifically, for compliance with the Interstate Fisheries Management Plans, this regulation would require all federally-permitted lobster and Jonah crab license holders with commercial trap gear area permits to have electronic tracking devices. This requirement extends to all federally-permitted license holders with commercial trap gear for Lobster Conservation Management Areas (LCMAs) 1, 2, 3, 4, 5, and the Outer Cape Cod.

IS MATERIAL INCORPORATED BY REFERENCE IN THE RULE? ___YES_X___ NO [§8056(1)(B)]

ANALYSIS AND EXPECTED OPERATION OF THE RULE: [*see* §8057-A(1)(B)&(D)] Maine lobster and crab fishing license holders who also hold a federal permit to fish for lobster and Jonah crab with trap gear will be required to install and keep operational an approved tracking device.

BRIEF SUMMARY OF RELEVANT INFORMATION CONSIDERED DURING DEVELOPMENT OF THE RULE (including up to 3 primary sources relied upon) [*see* §§8057-A(1)(E) & 8063-B]: ADDENDUM XXIX TO AMENDMENT 3 TO THE AMERICAN LOBSTER FISHERY MANAGEMENT PLAN; ADDENDUM IV TO THE JONAH CRAB FISHERY MANAGEMENT PLAN and input from Maine Marine Patrol.

ESTIMATED FISCAL IMPACT OF THE RULE: [*see* §8057-A(1)(C)]

Enforcement of these proposed amendments will not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.