

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Sections 103, 1902, 2701, 2703 and Chapter 15
(7 **Del.C.** §§103, 1902, 2701, 2703 and Ch. 15)
7 **DE Admin. Code** 3203 and 3214

FINAL

Secretary's Order No.: 2008-F-0059

**RE: Proposed Amendments to Delaware's Horseshoe Crab Regulations as follows:
3203 – Seasons and Area Closed to Taking Horseshoe Crabs and 3214 – Horseshoe Crab Annual
Harvest Limit**

Date of Issuance: December 11, 2008

Effective Date of the Amendment: January 11, 2009

I. Background:

A public hearing was held on Monday, November 3, 2008, in the Richardson and Robbins Auditorium of DNREC, 89 Kings Highway, to receive public comment on proposed amendments to Delaware's horseshoe crab regulations, specifically, regarding only Sections 3203 (Seasons and Area Closed to Taking Horseshoe Crabs) and 3214 (Horseshoe Crab Annual Harvest Limit). The Department is proposing regulation amendments designed to be in compliance with the provisions of the Atlantic States Marine Fisheries Commission Addendum V to the Interstate Fishery Management Plan for Horseshoe Crab. These proposed amendments would extend for another year the prohibition on the harvest and landing of all horseshoe crabs in Delaware waters from January 1 through June 7, and prohibit the harvest and landing of female horseshoe crabs for the remainder of the year. During the period of June 8 through December 31, up to 100,000 male horseshoe crabs may be harvested from approved harvest areas in Delaware. These harvest limits may be extended for a second year, according to the provisions of Addendum V, provided the Atlantic States Marine Fisheries Commission elects to do so.

In addition, it is proposed that where beach collecting is presently legal, that beach collecting of horseshoe crabs be allowed to continue until July 31 of each year. Since no harvesting is allowed prior to June 8, and most of the migratory shorebirds that feed on horseshoe crab eggs will have departed from the Delaware Bay by then, there should be no additional impacts to shorebirds from allowing harvesting to extend beyond the last day of June until the end of July. By harvesting only male horseshoe crabs, females would be fully protected and will be available to participate in the annual spawn without being subject to harvest at any point during the year.

Given the much narrower scope of the present proposed amendments to Delaware's Horseshoe Crab Regulations, the public comment received by the Department regarding this matter was greatly reduced from that which was received during previous horseshoe crab regulatory amendment promulgation matters. Nevertheless, public comment was received by the Department, voicing both support and opposition, to these proposed changes to Section 3203 and 3214 of Delaware's existing horseshoe crabs regulations. Environmental groups, as well as individual citizens, forwarded documentation to the Department, which also became part of the record in this case. Proper notice of this hearing was provided, as required by law.

II. Findings:

The Department has provided appropriate reasoning, scientific analysis, and sound conclusions with regard to the drafting of these regulation amendments and consideration of the public comments received, as reflected in the Hearing Officer's Report of December 8, 2008, which is attached and expressly incorporated into this Order. Moreover, the following findings and conclusions are entered at this time:

1. The Department has jurisdiction under its statutory authority to make a determination in this proceeding, to wit: 7 **Del.C.** §103, §1902, §2701 and §2703; and Chapter 15 of 7 **Delaware Code**.
2. The Department provided adequate public notice of the proceeding and the public hearing in a

manner required by the law and regulations.

3. The Department held a public hearing in a manner required by the law and regulations.

4. The Department considered all timely and relevant public comments in making its determination.

5. The Department has reviewed this proposed amendment in the light of the Regulatory Flexibility Act, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally.

6. Formal promulgation of these proposed amendments would update Delaware's current regulations, so that Delaware will be in compliance with Addendum V to the Interstate Fishery Management Plan for Horseshoe Crab, issued by the Atlantic States Marine Fisheries Commission (ASMFC).

7. Once promulgated, this regulation may be extended for an additional year beyond 2009, pending approval by ASMFC.

8. Once promulgated, Delaware will maintain a closed season on the harvest of horseshoe crabs from January 1 through June 7. No horseshoe crabs may be taken during that time period.

9. Beginning June 8, and lasting until the end of the year, up to 100,000 male horseshoe crabs may be taken for purposes of bait reduction, or bait generation, from approved harvest areas in Delaware.

10. No female horseshoe crabs may be taken at any time during the year, including the period when males may be taken.

11. Where beach collecting is presently legal, beach collecting of horseshoe crabs shall be allowed to continue until July 31 of each year.

12. Existing regulations allow dredging of horseshoe crabs beginning July 1 by five permitted dredgers selected by lottery, so both forms of harvesting may continue into July until the harvest quota has been met.

13. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary;

14. The Department's proposed regulation, as published in the October 1, 2008 *Delaware Register of Regulations* and set forth within Attachment "A" hereto, is adequately supported, not arbitrary or capricious, and is consistent with the applicable laws and regulations. Consequently, it should be approved as a final regulation, which shall go into effect ten days after its publication in the next available issue of the *Delaware Register of Regulations*;

15. The Department shall submit the proposed regulation as a final regulation to the *Delaware Register of Regulations* for publication in its next available issue, and shall provide written notice to the persons affected by the Order.

III. Order:

Based on the record developed, as reviewed in the Hearing Officer's Report dated December 8, 2008, and expressly incorporated herein, it is hereby ordered that the proposed amendments to State of Delaware Horseshoe Crab Regulations as follows: 3203 – Seasons and Area Closed to Taking Horseshoe Crabs; and 3214 – Horseshoe Crab Annual Harvest Limit - be promulgated in final form in the customary manner and established rule-making procedure required by law.

IV. Reasons:

The promulgation of the amendments to Delaware's Regulations regarding the harvesting of horseshoe crabs is a reasonable action for the Department to take at this time, as it will bring Delaware into compliance with Addendum V to the Interstate Fishery Management Plan for Horseshoe Crabs, issued by ASMFC. Failure to amend the existing horseshoe crab harvesting regulations would result in federal sanctions being taken against Delaware, including, but not limited to, the federal government closing Delaware's horseshoe crab fishery. Such actions would result in economic detriment to Delaware's fishermen, and therefore it is reasonable to enact these regulatory amendments at this time to prevent such detriments to Delaware's economy from occurring.

Conservation measures with regard to the harvesting of the horseshoe crab began to be applied in Delaware by ASMFC starting in 1999. Over the years subsequent to those measures being implemented, there are data indicating that the horseshoe crab population has stabilized and has begun to increase. The proposed harvest of 100,000 male horseshoe crabs would result in a taking of a very small percentage of this species' overall population, and thus it is believed to not be detrimental to the overall population of this species.

In developing this regulation, the Department has balanced the absolute environmental need for the State of Delaware to promulgate regulations concerning this matter with the economic interests and public concerns

surrounding the same, in furtherance of the policy and purposes of 7 Del.C. §103, §1902, §2701 and §2703, and Chapter 15 of 7 Delaware Code.

David S. Small, acting for John A. Hughes, Secretary

3200 Horseshoe Crabs

(Break In Continuity of Sections)

3203 Seasons And Area Closed To Taking Horseshoe Crabs (Formerly S-51 & HC-3) (Penalty Section 7 **Del.C.** §1912)

1.0 It shall be unlawful for any person to dredge or attempt to collect by means of a dredge horseshoe crabs or parts thereof from any state or federal land owned in fee simple or the tidal waters of this state during a period beginning at 12:01 am on January 1 and continuing through midnight, June 30, next ensuing. After June 30 in any given calendar year, it shall be unlawful to dredge or attempt to collect by means of a dredge female horseshoe crabs.

2.0 It shall be lawful for persons with valid horseshoe crab collecting permits and eel licensees and their alternates to collect adult male horseshoe crabs on Monday through Friday from state owned lands to the east of state road No. 89 (Port Mahon Road) from 12:01 a.m. on June 8 and continuing through midnight on ~~June 30~~ July 31.

3.0 It shall be unlawful for any person to collect or attempt to collect, any horseshoe crabs or parts thereof from any land not owned by the state or federal government during the period beginning at 12:01 a.m. on January 1 and continuing through midnight, June 7, next ensuing. It shall be lawful, during a period beginning at 12:01 a.m. on June 8 and continuing through midnight on ~~June 30~~ July 31, for persons with valid horseshoe crab collecting permits and eel licensees and their alternates to collect male horseshoe crab adults on Mondays through Fridays from such private lands.

4.0 It shall be unlawful for any person to collect or attempt to collect any horseshoe crabs from any land not owned by the State or federal government unless said person has on his or her person written permission, signed by the owner of said land with the owner's address and phone number, indicating the individual to whom permission to collect horseshoe crabs is granted.

1 DE Reg. 1412 (4/1/98)

7 DE Reg. 220 (8/1/03)

10 DE Reg. 1029 (12/01/06)

11 DE Reg. 685 (11/01/07)

12 DE Reg. 975 (01/01/09) (Final)

(Break In Continuity of Sections)

3214 Horseshoe Crab Annual Harvest Limit (Formerly S-62 & HC-14) (Penalty Section 7 **Del.C.** §1912)

1.0 The annual harvest limit for horseshoe crabs taken and/or landed in the State shall be 100,000 male horseshoe crabs for a period of ~~two~~ one years beginning January 1, 2007~~9~~ or whatever the Atlantic States Marine Fisheries Commission has approved as Delaware's current annual quota, whichever number is less. The annual harvest limit of 100,000 male horseshoe crabs may be extended for a second year if approved by the Atlantic States Marine Fisheries Commission. No female horseshoe crabs may be taken/landed at any time.

2.0 When the Department has determined that the annual horseshoe crab quota has been met, the Department shall order the horseshoe crab fishery closed and no further horseshoe crabs may be taken during the remainder of the calendar year.

7 DE Reg. 220 (8/1/03)

10 DE Reg. 1029 (12/01/06)

11 DE Reg. 685 (11/01/07)