

# DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

## DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Section 2701 (7 Del.C. §2701)

7 DE Admin. Code 3214

### FINAL

Secretary's Order No.: 2013-F-0005

#### 3214 Horseshoe Crab Annual Harvest Limit

Date of Issuance: March 7, 2013

Effective Date of the Amendment: April 11, 2013

#### I. Background:

A public hearing was held on Wednesday, January 23, 2013, at 6:00 p.m. at the DNREC Richardson & Robbins Building Auditorium to receive comment on the Department's proposal to amend 7 **DE Admin. Code 3214**, Horseshoe Crabs – Annual Harvest Limit. The Department is proposing these regulation amendments to establish the basis for setting Delaware's annual sex-specific horseshoe crab allocation(s). Furthermore, this action seeks to establish criteria for closing the fishery in a manner that would minimize the likelihood of exceeding annual quotas.

Horseshoe crabs are managed under an Interstate Fisheries Management Plan ("IFMP") developed and implemented by the Atlantic States Marine Fisheries Commission ("ASMFC"), of which Delaware is fully represented. Addendum VII to the IFMP instituted an Adaptive Resource Management ("ARM") framework for establishing annual horseshoe crab sex-specific quotas in the Delaware Bay Region. The ARM framework transparently incorporates the views of stakeholders along with predictive modeling to assess the potential consequences of multiple, alternative management actions in the Delaware Bay Region. The annual specification process determines the following year's (t + 1) harvest using horseshoe crab data from the previous year (t - 1) and shorebird data from the current year (t). Annual model outputs are reviewed by the ASMFC Technical Committees and Management Board prior to issuing state quota allocations. Should data be unavailable to populate the ARM model, quotas may be set at the Addendum VI levels or the previous year's ARM framework.

This proposed action would also establish measures for closing Delaware's horseshoe crab fishery. Presently, the Department lacks the ability to close the horseshoe crab fishery until landings reach the exact annual harvest limit. This method of closing the fishery fails to adequately consider the timeliness of harvest reporting and delinquent reporting. This has resulted in quota overages in some years. Overages pose a potential risk to horseshoe crab and shorebird resources. Further, overages must be deducted from the following year's quota and, therefore, may disadvantage harvesters or segments of the fishery the following year. Using the most recent landings data to predictively close the fishery upon reaching 95% of quota allocations will minimize the risk of harvest overages.

The Department has the authority to promulgate this proposed regulation amendment, pursuant to 7 **Del.C. §2701**. The proposed amendments to 7 **DE Admin. Code 3214**, Horseshoe Crabs – Annual Harvest Limit, were published in the January 1, 2013 edition of the *Delaware Register of Regulations*. It should be noted that the Department received no comment whatsoever from the public at any time during this promulgation process, nor were any members of the public present at the time of the public hearing on January 23, 2013. Proper notice of the hearing was provided as required by law. Subsequent to the public hearing held on January 23, 2013, the Department's presiding Hearing Officer, Lisa A. Vest, prepared her report and recommendation in the form of a Hearing Officer's Memorandum to the Secretary dated February 20, 2013, and that Report in its entirety is expressly incorporated herein by reference.

#### II. Findings:

The Department has provided sound reasoning with regard to the proposed amendments to 7 **DE Admin. Code 3214**, Horseshoe Crabs – Annual Harvest Limit, as reflected in the Hearing Officer's Memorandum of February 20, 2013, which is attached hereto and expressly incorporated into this Order in its entirety. Moreover, the following findings and conclusions are entered at this time:

1. The Department has jurisdiction under its statutory authority, 7 **Del.C. §2701** to make a determination in this proceeding;
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 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;

5. Promulgation of the aforementioned proposed amendments to 7 DE Admin. Code 3214 will enable Delaware to comply with specific Fishery Management Plans approved by the Atlantic States Marine Fisheries Commission, specifically, to manage horseshoe crabs in accordance with Addendum VII to the FMP, which instituted an Adaptive Resource Management (ARM) framework for establishing annual horseshoe crab sex-specific quotas in the Delaware Bay Region;
6. The aforementioned proposed amendments to 7 DE Admin. Code 3214 will establish the basis for setting Delaware's annual sex-specific horseshoe crab allocation(s) and establish criteria for closing the fishery in a manner to minimize quota overages;
7. Additionally, utilization of Delaware's most recent landings data to predictively close the fishery upon reaching 95% of quota allocations will minimize the risk of harvest overages, which pose a potential risk to horseshoe crab and shorebird resources. Should Delaware's annual horseshoe crab quota allocation be exceeded in any calendar year, the overage must be deducted from the following year's allocation, thus keeping Delaware in compliance with the ASMFC's IFMP for Horseshoe Crab;
8. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary;
9. The Department's proposed regulation, as published in the January 1, 2013 *Delaware Register of Regulations* and set forth within Attachment "A" of the Hearing Officer's Memorandum and attached 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*; and
10. The Department shall submit the proposed regulation as a final regulation to the Delaware Register of Regulation 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 Memorandum dated February 20, 2013 and expressly incorporated herein, it is hereby ordered that the proposed amendments to 7 **DE Admin. Code 3214, Horseshoe Crabs – 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 7 **DE Admin. Code 3214, Horseshoe Crabs – Annual Harvest Limit** will enable Delaware to remain in compliance with the provisions of the Atlantic States Marine Fisheries Commission, Addendum VII, to the Interstate Fishery Management Plan for Horseshoe Crab. Specifically, these regulation amendments will establish the basis for setting Delaware's annual sex-specific horseshoe crab allocation(s) and establish criteria for closing the fishery in a manner to minimize quota overages, in accordance with an Adaptive Resource Management (ARM) framework for establishing annual horseshoe crab sex-specific quotas in the Delaware Bay Region.

Protection of the horseshoe crab here in Delaware is a responsibility which the Department does not take lightly. 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 important interests and public concerns surrounding the same, in furtherance of DNREC's mission of responsible environmental stewardship to ensure the sustainability of Delaware's natural resources for the appreciation and enjoyment of future generations.

Collin P. O'Mara, Secretary

### 3214 Horseshoe Crab Annual Harvest Limit

(Penalty Section 7 **Del.C.** §2705(b))

- 1.0 ~~The annual harvest limits for horseshoe crabs taken and/or landed in the State shall be 400,000 male horseshoe crabs for a period extending from November 1, 2010 through April 30, 2013, or whatever the Atlantic States Marine Fisheries Commission has approved as Delaware's current annual quota. No female horseshoe crabs may be taken/landed at any time determined in accordance with the annual sex-specific allocations identified in Addendum VII to the Atlantic States Marine Fisheries Commission's Interstate Fishery Management Plan for Horseshoe Crab.~~
- 2.0 ~~When the Department has determined that the 95% of an annual sex-specific horseshoe crab quota allocation has been met landed, the Department shall establish, based on recent fishery performance and landings, a date and time to order that component of the horseshoe crab fishery closed, and no further H~~When the Department has determined that the 95% of an annual sex-specific horseshoe crab quota allocation has been met landed, the Department shall establish, based on recent fishery performance and landings, a date and time to order that component of the horseshoe crab fishery closed, and no further H~~Horseshoe crabs of the component specified may not be taken during the remainder of the calendar year once closed by the Department.~~

3.0 Any overage in the State's annual horseshoe crab quota will be subtracted from the following year's horseshoe crab quota allocation.

**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)**

**14 DE Reg. 904 (03/01/11)**

**16 DE Reg. 1082 (04/01/13) (Final)**