

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

3214 Horseshoe Crab Annual Harvest Limit

Secretary's Order No.: 2010-F-0043

Date of Issuance: December 21, 2010
Effective Date of the Amendment: March 11, 2011

I. Background:

A public hearing was held on Wednesday, November 23, 2010, at 7:00 p.m. at the DNREC Richardson & Robbins Building Auditorium to receive comment on proposed amendments to amend 7 **DE Admin. Code** 3214, Horseshoe Crabs – Annual Harvest Limit. The Department is proposing these regulation amendments in order to be in compliance with the provisions of the Atlantic States Marine Fisheries Commission, Addendum VI, to the Interstate Fishery Management Plan for Horseshoe Crab. Failure to comply with said provisions could result in complete closure of a specific fishery in Delaware.

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. The previous addendum (Addendum V) has now expired, and the Horseshoe Management Board has adopted Addendum VI to the IFMP. The development of this newest Addendum was based on input from multiple sources, including the Horseshoe Crab Technical Committee, the Shorebird Technical Committee, Adaptive Research Management Work Group, Horseshoe Crab Advisory Panel, the Horseshoe Crab Stock Assessment Subcommittee, the Stock Assessment Peer Review Panel, and testimony from four public hearings held in Delaware, Maryland, New Jersey and Virginia.

The protocol for horseshoe crab management included in IFMP's Addendum VI is precautionary, due to the uncertainty surrounding the recovery of the Delaware Bay Region population and the importance of the species and its ecological role throughout the region. Addendum VI maintains the existing management for the Delaware Bay Region. Under the provisions of Addendum VI, Delaware's annual quota allocation will remain at 100,000 male-only horseshoe crabs. The Department's proposed amendments to Delaware's existing regulations regarding this species will allow male horseshoe crabs to be harvested from June 8 through December 31, or until Delaware's annual quota is landed. No female horseshoe crabs may be taken and/or harvested at any time. The above provisions for horseshoe crab management here in Delaware will remain in effect through April of 2013, unless changed through another IFMP Addendum prior to that time. It should be noted that, if Delaware's annual horseshoe crab quota allocation is exceeded in any calendar year, the overage is deducted from the following year's quota.

The Department published the proposed regulatory amendments in the November 1, 2010 *Delaware Register of Regulations*. Public comments were received from the public during the pre-hearing phase of this proceeding, as well as at the time of the public hearing held on November 23, 2010. Proper notice of the hearing was provided as required by law.

Subsequent to the public hearing held on November 23, 2010, 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 December 13, 2010, 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 November 23, 2010, 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 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. 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, thus preventing any closures of specific fisheries in Delaware;
7. The aforementioned proposed amendments to 7 **DE Admin. Code** 3214 will extend the effective date of Delaware's annual horseshoe crab quota allocation through April 30, 2013, in accordance with the provisions of Addendum VI to the Atlantic States Marine Fisheries Commission's Interstate Fishery Management Plan for Horseshoe Crab, to wit: the annual harvest limit for horseshoe crabs taken and/or landed in Delaware shall be 100,000 males, for a period extending from November 1, 2010 through April 30, 2013, or whatever the ASMFC has approved as Delaware's current annual quota. No female horseshoe crabs may be taken/landed at any time;
8. Additionally, if Delaware's annual horseshoe crab quota allocation is exceeded in any calendar year, the aforementioned proposed amendments to 7 **DE Admin. Code** 3214 will cause any year's allocation overage to be deducted from the following year's allocation, thus keeping Delaware in compliance with the ASMFC's IFMP for Horseshoe Crab;
9. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary;
10. The Department's proposed regulation, as published in the November 1, 2010 *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 twenty days after its publication in the next available issue of the *Delaware Register of Regulations*; and
11. 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 Memorandum dated December 13, 2010 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 VI, to the Interstate Fishery Management Plan for Horseshoe Crab. As noted above, failure to comply with said provisions 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.

It should also be noted that 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 begun to stabilize. Extending the current annual harvest quota of 100,000 male horseshoe crabs would result in the 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. The estimated stock size in the Delaware Bay Region has increased significantly, from approximately 3 million to 9.6 million females, with exploitation rates down from 15% to 1%. In Delaware Bay proper, the results of the horseshoe crab spawning activity indicate that female spawning activity has remained stable from 1999 through 2009, while male spawning activity has significantly increased through the same time series. The increase in male horseshoe crabs is a good sign of recovery, and it is hoped that the female component of the stock exhibits a similar trend, as these newer year classes begin to mature.

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 limit for horseshoe crabs taken and/or landed in the State shall be 100,000 male horseshoe crabs for a period ~~of one year beginning January 1, 2009 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, ~~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)

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

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