

HEARING OFFICER'S REPORT

TO: The Honorable Shawn M. Garvin
Cabinet Secretary, Dept. of Natural Resources and Environmental Control

FROM: Theresa Newman, Regulatory Specialist, Office of the Secretary,
Dept. of Natural Resources and Environmental Control

RE: Proposed Regulation Amendments to 7 DE Admin. Code 3200 –
Horseshoe Crabs

DATE: May 4, 2023

I. BACKGROUND AND PROCEDURAL HISTORY:

A public hearing was held on Thursday, March 23, 2023, at 6:00 p.m. via the State of Delaware's WebEx platform by the Department of Natural Resources and Environmental Control ("DNREC," "Department"), to receive comment on proposed regulatory amendments ("Amendments") to 7 DE Admin. Code 3200 – *Horseshoe Crabs* ("Regulation"). Pursuant to 7 *Del. C.* §2701, the Department is proposing amendments to update the annual quota setting process to comply with the Atlantic States Marine Fisheries Commission's ("ASMFC") recently approved Addendum VIII to the *Horseshoe Crab Fishery Management Plan* ("Addendum VIII"). In addition, the Department proposes amendments to the daily possession limit of horseshoe crabs, revises the definition of the legal harvest methods for clarity, defines the circumstances that will require a horseshoe crabs dredge lottery, and modifies the dredge lottery process.

In November 2022, the ASMFC approved Addendum VIII to the *Interstate Fishery Management Plan for Horseshoe Crab*. The purpose of Addendum VIII was to address previous peer-review critiques to include new sources of data and horseshoe crabs' mortality in the revised version of the Adaptive Resource Management (ARM) modeling software and to replace the older ARM modeling software with the new ARM. The ASMFC uses the ARM model software to annually produce bait harvest recommendations for horseshoe crabs. The newest version of the ARM software

incorporates the most recent and reliable information for managing horseshoe crabs with consideration of the migrating shorebird's needs. As Delaware is a member of the ASMFC, the Department is required to adopt through the State's regulatory process, the revisions set forth by Addendum VIII that include updating the annual harvest limit setting process and quotas set for the annual harvest of horseshoe crabs.

The ASMFC sets the annual harvest quota for the Delaware Bay-origin horseshoe crabs, which includes Delaware's quota. The ARM model generated the 2023 harvest quota for Delaware as 164,364 male horseshoe crabs. This number has increased by approximately 2,200 horseshoe crabs that was set for the 2022 harvest quota under Addendum VII of the *Horseshoe Crab Fishery Management Plan*. It is important to note that the above-mentioned 2023 annual quota is set by the ASMFC under Amendment VIII, by which Delaware is adopting.

Additionally, the Department proposes Amendments to clarify sections of the Regulation. The proposed Amendments include revisions to the daily possession limits, the dredge lottery process, and rewording current text.

Currently the daily possession limit is based on volume measurements, using the square footage of collection vehicles used to transport horseshoe crabs. Under the strict quota set for horseshoe crabs, harvesters are required to report a daily count of horseshoe crabs collected. The volume metric used to enforce daily harvest limits does not align with the count that is reported daily, therefore it is complicated to enforce the limit of horseshoe crabs. The proposed Amendments revises the metric used for daily possession limits from a volume count to a numerical count, therefore enhancing enforcement efforts for daily collection of horseshoe crabs.

In addition, the Department's current dredging lottery process is not reflective of the operation of fishery. Language has been added to clarify that lottery dredging will only occur if the quota is not met after the hand harvest fishery closes. This provides clarity to align with the current operation of fishery.

Lastly, the Department has added the term “Take and Reduce to Possession” to clarify the removal of horseshoe crabs with the intent to keep or harvest such species. There are two types of harvest takings, “collect” and “dredge” methods. The collect method is the manual taking of horseshoe crabs from the beach, without the use of any devices. The dredge method uses a mechanical device, such as a dredging vessel, to remove horseshoe crabs from the bottom of the Delaware Bay. Each harvest method is result of the taking of horseshoe crab. To specify that the horseshoe crabs were then kept or harvested, the term “Take and Reduce to Possession” identifies that the horseshoe crabs were removed and kept by the harvester and reduced to possession to harvest.

The Department proposes the Amendments to comply with the ASMFC’s Addendum VIII, by updating its commercial horseshoe crabs quota setting process and to revise sections of the Regulation for clarity and consistency of the operations for fishery. The proposed Amendment will keep Delaware's horseshoe crabs harvest quota in compliance with the FMP and assist in preventing overharvest. It should be noted that additional language has been revised in the proposed Amendments to align with general language throughout the Regulation that is outdated.

The Department has the statutory basis and legal authority to act regarding promulgation of the Amendments pursuant to 7 *Del. C.* §2701. The Department published its proposed regulation Amendments in the March 1, 2023, *Delaware Register of Regulations*. Thereafter, the public hearing regarding this matter was held on March 23, 2023. Pursuant to Delaware law, the record remained open for fifteen (15) additional days after the date of the public hearing for receipt of public comment. The hearing record formally closed with regard to public comment at the close of business on April 7, 2023 with a total of two (2) written comments received by the Department during the phase of this proposed regulatory promulgation.

After the record closed, the Department’s Division of Fish and Wildlife staff prepared a Technical Response Memorandum (“TRM”), at the request of this Hearing Officer, attached hereto as Appendix “B”.

It should be noted that all notification and noticing requirements concerning this matter were met by the Department. Proper notice of the hearing was provided as required by law.

II. SUMMARY OF THE PUBLIC HEARING RECORD:

The public hearing record consists of the following documents: (1) a verbatim transcript; (2) nine (9) documents introduced by Department staff at the public hearing held on March 23, 2023 and marked by Hearing Officer Theresa Newman accordingly as Department Exhibits 1-9; and (3) a Technical Response Memorandum (“TRM”). The Department’s person primarily responsible for the drafting and overall promulgation of these proposed Amendments, John Clark, Environmental Program Administrator with the Division of Fish and Wildlife, developed the record with the relevant documents in the Department’s files.

As stated previously, a TRM was provided by the Department’s expert staff. The TRM responds to three comments. The Department provided clarification and acknowledged suggestions to the proposed Amendments. While the suggestions were considered, the Department’s proposed Amendments were not revised. The proposed Amendments do not impose hardships, complications to the current quota or fisheries, and continue to provide the protection of horseshoe crabs from being overfished. The Department finds that the proposed Amendments as submitted on March 1, 2023, are sufficient and should be adopted as written.

Accordingly, the Department’s proposed Amendments are attached hereto as Appendix “A” for the Secretary’s review.

III. RECOMMENDED FINDINGS AND CONCLUSIONS:

Based on the record developed, I find and conclude that the Department has provided appropriate reasoning regarding the need for the proposed regulatory

amendments to 7 DE Admin. Code 3200 – *Horseshoe Crabs*. Accordingly, I recommend promulgation of the same, in the customary manner provided by law.

Further, I recommend the Secretary adopt the following findings and conclusions:

1. The Department has the statutory basis and legal authority to act with regard to this proposed regulatory promulgation, pursuant to 7 *Del. C.* §2701;
2. The Department has jurisdiction under its statutory authority, pursuant to 7 *Del.C.* Chapter 60, to issue an Order adopting these proposed Amendments as final;
3. The Department provided adequate public notice of the initial proposed Amendments and all proceedings in a manner required by the law and regulations, and provided the public with an adequate opportunity to comment on the same, including at the time of the public hearing held on March 23, 2023, and during the 15 days subsequent to the hearing (through April 7, 2023), before making any final decision;
4. Promulgation of the proposed Amendments to 7 DE Admin. Code 3200 – Horseshoe Crabs will enable the Department to: (1) comply with the ASMFC’s Addendum VIII to the *Horseshoe Crab Fishery Management Plan*, by adopting the annual quota setting process using the new ARM model, (2) revise the metrics used to establish the daily possession limit, (3) clarify the definition of the legal harvest methods, (4) define the circumstances that will require a horseshoe crabs dredge lottery, and (5) modify the dredge lottery process;
5. The Department has reviewed the proposed Amendments in the light of the Regulatory Flexibility Act, consistent with 29 *Del.C.* Ch. 104, and has selected Exemption “B2,” as this regulation is not substantially likely to impose additional cost or burdens upon individuals and/or small businesses;

6. The Department’s proposed regulatory Amendments, as initially published in the March 1, 2023 *Delaware Register of Regulations* as set forth in Appendix “A” hereto, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they should be approved as final regulatory Amendments, which shall go into effect ten days after their publication in the next available issue of the *Delaware Register of Regulations*; and

7. The Department shall submit the proposed Amendments as final regulatory amendments to the *Delaware Register of Regulations* for publication in its next available issue and provide such other notice as the law and regulation require, and the Department determines is appropriate.



Theresa L. Newman
Public Hearing Officer

3200 Horseshoe Crabs

3204 1.0 Definitions

(Penalty Section 7 Del.C. §2705(b))

~~4.0~~ The following definitions shall apply to terms in 7 Del.C. Ch. 27 relative to horseshoe crabs.

4.1 "**Asian Horseshoe Crabs**" shall mean any of the following species *Carcinoscorpius rotundicauda*, *Tachypleus gigas*, and *Tachypleus tridentatus*.

4.2 "**Bait Saving Device**" shall mean any device that when so deployed in or on a pot reduces either the rate at which bait, meaning horseshoe crabs or parts thereof, must be replenished or reduces the number or quantity of horseshoe crabs used as bait.

4.3 "**Collect**" shall mean to take and reduce to possession live horseshoe crabs by ~~any means other than by dredge hand~~ without the aid of manual or mechanical equipment or devices during the times and at the places that horseshoe crab collection is allowed as described in Section 3.

4.4 "**Dispose of said Crabs Properly**" shall mean bury on the beach, incorporate into soil as fertilizer or any other method approved by the Department.

4.5 "**Dredge**" shall mean ~~to use any device used to gather, scrape, scoop, fish for or otherwise take bottom dwelling horseshoe crabs or the act of using a dredge.~~

4.6 "**Personal, Non-Commercial Use**" shall mean to be used as food, fertilizer or bait or otherwise properly disposed without trading, bartering, or selling by one individual to another, or without transporting, shipping, or causing to be transported or shipped, out of state.

"Take and Reduce to Possession" shall mean the removal of any horseshoe crab with the intent to keep or harvest the horseshoe crab.

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

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

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

17 DE Reg. 441 (10/01/13)

3202 2.0 Horseshoe Crabs As Bait In Pots; Conch Pots

(Penalty Section 7 Del.C. §2705(b))

~~4.0~~ 2.1 It shall be unlawful for any person to place more than one-half of a female horseshoe crab or one male horseshoe crab as bait in any type of pot on any one day in the waters of this State.

~~2.0~~ 2.2 It shall be unlawful for any person to fish with a conch pot that is not equipped with a bait saving device, provided that a horseshoe crab or parts thereof are used as bait.

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

3203 3.0 Horseshoe Crab Seasons And Area Closed Harvest Areas ~~To Taking Horseshoe Crabs~~

(Penalty Section 7 Del.C. §2705(b))

~~4.0~~ 3.1 It shall be unlawful for any person to dredge or attempt to ~~collect~~ take and reduce to possession 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~~ take and reduce to possession by means of a dredge female horseshoe crabs.

~~2.0~~ 3.2 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 July 31.

~~3.0~~ 3.3 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 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~~ 3.4 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)

~~3204~~ 4.0 Requirements For Collecting Horseshoe Crabs ~~For Persons Under 16~~

(Penalty Section 7 Del.C. §2705(b))

~~4.0~~ 4.1 It shall be unlawful for any person with a valid horseshoe crab collecting permit to collect any horseshoe crabs as an alternate to a person with a valid commercial eel fishing license.

~~2.0~~ 4.2 It shall be unlawful for any person under the age of sixteen (16) years to possess any horseshoe crabs unless accompanied by a person who has been issued a valid horseshoe crab scientific collecting, commercial collecting or dredge permit.

3 DE Reg 1092 (2/1/00)

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

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

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

~~3205~~ 5.0 Number Of Persons Accompanying A Person With A Valid Horseshoe Crab Collecting Permit

(Penalty Section 7 Del.C. §2705(b))

~~4.0~~ 5.1 It shall be unlawful for any person with a valid horseshoe crab commercial collecting permit when collecting horseshoe crabs to be assisted by more than three (3) persons under the age of 16 who are not required to have valid horseshoe crab commercial collecting permits.

~~2.0~~ 5.2 It shall be unlawful for any person 16 years of age or older who does not have a valid commercial horseshoe crab collecting permit, to assist any person with a valid commercial horseshoe crab collecting permit in the handling, loading or driving a vehicle used to transport horseshoe crabs collected by said horseshoe crab collecting permittee while within 300 feet of the shoreline of the water from which said horseshoe crabs are collected or the point on shore where said horseshoe crabs are landed from a vessel.

3 DE Reg 1092 (2/1/00)

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

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

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

~~3206~~ 6.0 Possession Limit Of Horseshoe Crabs, Exceptions

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

~~4.0~~ 6.1 Unless otherwise authorized, it shall be unlawful for any person to possess a horseshoe crab, except a person with a validated receipt from a person with a valid horseshoe crab commercial collecting or dredge permit for the number of horseshoe crabs in said person's possession. A receipt shall contain the name, address and signature of the supplier, the date and the number of horseshoe crabs obtained.

~~2.0~~ 6.2 Any person who has been issued a valid commercial eel fishing license by the Department or said person's alternate while in the presence of the licensee, is exempt from the prohibition on the possession of horseshoe crabs, provided said commercial eel fishing licensee has submitted all required reports of his/her and his/her alternate's previous week's harvest of horseshoe crabs with the Department in accordance with Section 10.0 of this regulation ~~Regulation 3210~~. Any person who has been issued a commercial eel fishing license and said person's alternate while in the presence of the licensee, may collect horseshoe crabs by hand without a horseshoe crab commercial collecting permit provided all horseshoe crabs taken are for personal, non-commercial use, as bait for the licensee's eel pots fished in this state.

~~3.0~~ 6.3 It shall be unlawful for any person with a valid commercial eel fishing license to be assisted in collecting horseshoe crabs by any person who is not listed on his commercial eel fishing license as the alternate.

~~4.0~~ 6.4 Any person with both a valid commercial eel fishing license and a valid commercial horseshoe crab collecting permit shall be considered as a commercial horseshoe crab collecting permittee for purposes of enforcing the provisions of **7 Del.C.** Ch. 27 and/or shellfish regulations pertaining to horseshoe crabs.

~~5.0~~ 6.5 It shall be unlawful for any person with a valid commercial eel fishing license to commingle any horseshoe crabs collected either by said commercial eel fishing licensee or by his or her alternate with horseshoe crabs either collected by a person with a valid horseshoe crab dredge permit or by a person with a valid commercial horseshoe crab collecting permit.

~~6.0~~ 6.6 It shall be unlawful for any person with a valid horseshoe crab dredge permit or with a valid commercial horseshoe crab collecting permit to commingle any horseshoe crab dredged or collected by said horseshoe crab dredge permittee or horseshoe crab collecting permittee with horseshoe crabs collected by any person with a valid commercial eel fishing license.

~~7.0~~ 6.7 It shall be unlawful for any person to possess more than ~~300 cubic feet of~~ 3,000 horseshoe crabs except in a stationary cold storage or freezer facility.

~~8.0~~ 6.8 It shall be unlawful for any person to collect or attempt to collect more than ~~300 cubic feet of~~ 3,000 horseshoe crabs during any 24 hour period beginning at 12:01 AM and continuing through midnight next ensuing.

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

3 DE Reg. 1567 (5/1/00)

3 DE Reg. 1092 (2/1/00)

3 DE Reg. 1567 (5/1/00)

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

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

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

~~3207~~ 7.0 Horseshoe Crab Dredging Restrictions

(Penalty Section 7 Del.C. §2705(b))

~~4.0~~ 7.1 It shall be unlawful for any person to dredge horseshoe crabs in the area in Delaware Bay designated as leased shellfish grounds except on one's own leased shellfish grounds or with permission from the owner of leased shellfish grounds. The area in Delaware Bay designated as leased shellfish grounds is within the boundaries that delineate leasable shellfish grounds and is described as follows: Starting at a point on the "East Line" in Delaware at Loran-C coordinates 27314.50/42894.25 and continuing due east to a point at Loran-C coordinates 27294.08/42895.60 and then 27270.80/42852.83 and then continuing southwest to a point at Loran-C coordinates 27281.31/42803.48 and then continuing west to a point at Loran-C coordinates 27280.75/42795.50 and then in a northerly direction on a line 1000' offshore, coterminous with the existing shoreline to the point of beginning on the "East Line."

~~2.0~~ 7.2 It shall be unlawful for any person, who operates a vessel and has on board said vessel a dredge of any kind, to have on board or to land more than ~~1500~~ 3,000 horseshoe crabs during any 24 hour period beginning at 12:01 a.m. and continuing through midnight next ensuing.

~~3.0~~ 7.3 It shall be unlawful for any person, who operates a vessel and has on board said vessel a dredge of any kind, to have or possess on board said vessel any horseshoe crabs at any time during the period beginning 12:01 a.m. on January 1 and continuing through midnight, June 30, next ensuing.

~~4.0~~ 7.4 It shall be unlawful for any person to land horseshoe crabs taken from the Exclusive Economic Zone unless said person has a valid horseshoe crab dredge permit.

1 DE Reg. 354 (10/1/97)

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

3 DE Reg. 1567 (5/1/00)

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

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

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

~~3208~~ 8.0 Horseshoe Crab Dredge Permit Lottery

(Penalty Section 7 Del.C. §2705(b))

~~4.0 8.1~~ If any of Delaware's annual harvest limit, as defined in Section 14.0 of this regulation, remains unharvested after the collecting season closure date, as defined in Section 3.0 of this regulation, The the Department of Natural Resources and Environmental Control shall hold an annual lottery to select eligible individuals for the five horseshoe crab dredge permits authorized to be issued each year if more than five applications are received by the Department. Applications for an annual ~~commercial~~ horseshoe crab dredge permit shall be accepted by the Department until ~~4:30 PM December 31 or 4:30 PM on the Friday preceding if December 31 is a Saturday or Sunday~~ the deadline set by the Department. If an annual lottery is necessary it shall be conducted at ~~1:00 PM on January 1, or the first work day thereafter, in the Richardson and Robbins Building, 89 Kings Highway, Dover, Delaware~~ on a date and time set by the Department.

~~2.0 8.2~~ To be eligible an applicant for a horseshoe crab dredge permit shall be the current holder of an oyster harvesting license issued by the Department.

2 DE Reg. 1055 (1/1/99)

3 DE Reg. 652 (11/1/99)

5 DE Reg. 1128 (11/1/01)

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

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

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

3209 9.0 Horseshoe Crab Sanctuaries

(Penalty Section 7 Del.C. §2705(b))

~~4.0 9.1~~ All state and federal lands owned in fee simple are horseshoe crab sanctuaries during the period beginning 12:01 a.m. on May 1 through midnight June 30.

~~2.0 9.2~~ Any land owner(s) may register their land with the Department to be designated as a horseshoe crab sanctuary for a period to be specified by the land owner(s).

~~3.0 9.3~~ It shall be unlawful to collect any horseshoe crabs at any time from a horseshoe crab sanctuary except as provided in subsection 3.2 of this regulation ~~Regulation 3203 section 2.0~~.

1 DE Reg. 354 (10/1/97)

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)

3240 10.0 Horseshoe Crab Reporting Requirements

(Penalty Section 7 Del.C. §2705(b))

~~4.0 10.1~~ It shall be unlawful for any person who has been issued a horseshoe crab dredge permit, a horseshoe crab commercial collecting permit or a commercial eel pot license to not report his/her harvest of horseshoe crabs to the Department on a daily basis. Said daily reports shall not be required to be submitted to the Department during any month said person indicates previously in writing to the Department that he/she will not be harvesting horseshoe crabs. Any person required to submit a daily report on his/her harvest of horseshoe crabs to the Department shall phone in said report within 24 hours

of said harvesting. For purposes of this section, a week shall commence at 12:01AM on Monday and conclude at midnight on Sunday, next ensuing. Said report shall include but not be limited to said person's unique identification number assigned by the Department, the dates and location horseshoe crabs were harvested, the number of horseshoe crabs harvested and the method of harvest of horseshoe crabs. Said report shall be submitted to the Department by telephone by calling a phone number, dedicated by the Department for the reporting of harvested horseshoe crabs, and entering the required data by code or voice as indicated.

~~2.0~~ 10.2 Any person who fails to submit a daily report on his/her harvest of horseshoe crabs to the Department on time shall have his/her permit to dredge or his/her permit or authority to collect horseshoe crabs suspended until all delinquent reports on harvested horseshoe crabs are received by the Department.

~~3.0~~ 10.3 In addition to the requirement to phone in daily catch reports, horseshoe crab collectors and harvesters and commercial eel fishermen are required to compile and file monthly log sheets detailing daily landings of horseshoe crabs on forms supplied by the Department. These forms must be submitted by the 10th day of the month next ensuing. Failure to submit these monthly reports on a timely basis may be cause for horseshoe crab collecting or horseshoe crab dredge permit revocation or non-renewal of said permit the following year; or in the case of a commercial eel licensee, forfeiture of permission to possess or use horseshoe crabs as bait for the remainder of the year.

1 DE Reg 1413 (4/1/98)

3 DE Reg 1567 (5/1/00)

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

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

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

3244 11.0 Horseshoe Crab Commercial Collecting Permit Eligibility And Renewal Requirements

(Penalty Section 7 Del.C. §2705(b))

~~4.0~~ 11.0 The Department may only issue a horseshoe crab commercial collecting permit to a person who makes application for such a permit in calendar year 1998, and who, prior to July 1, 1997, had applied for and secured from the Department at least 2 valid horseshoe crab commercial collecting permits. Any person holding a horseshoe crab commercial collecting permit in 1998 may apply for renewal of their horseshoe crab commercial collecting permit by December 31 each year. If any person holding a horseshoe crab commercial collecting permit from the previous year fails to apply for renewal of their horseshoe crab commercial collecting permit by December 31 in any given calendar year, they forfeit their eligibility to obtain a horseshoe crab commercial collecting permit in subsequent years.

1 DE Reg 1413 (4/1/98)

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

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

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

3242 12.0 Prohibitions; Sale Of Horseshoe Crabs

(Penalty Section 7 Del.C. §2705(b))

~~4.0~~ 12.0 It shall be unlawful for any person who collects or dredges horseshoe crabs, except a person with a valid horseshoe crab commercial collecting permit or a person with a valid horseshoe crab dredge permit, to sell, trade and/or barter or to attempt to sell, trade and/or barter any horseshoe crab.

1 DE Reg. 1413 (4/1/98)

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

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

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

~~3243~~ 13.0 Collecting Horseshoe Crabs At Night, Prohibited

(Penalty Section 7 Del.C. §2705(b))

~~4.0~~ 13.0 It shall be unlawful for any person with a valid commercial eel fishing license to collect horseshoe crabs between sunset and sunrise.

3 DE Reg. 1092 (2/1/00)

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

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

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

~~3244~~ 14.0 Horseshoe Crab Annual Harvest Limit

(Penalty Section 7 Del.C. §2705(b))

~~4.0~~ 14.1 The annual harvest limits for horseshoe crabs taken or landed in the State shall be determined in accordance with the annual sex-specific allocations specified by the Atlantic States Marine Fisheries Commission's Horseshoe Crab Management Board in compliance with identified in Addendum VII VIII to the Atlantic States Marine Fisheries Commission's Interstate Fishery Management Plan for Horseshoe Crab.

~~2.0~~ 14.2 When the Department has determined that 95% of an annual sex-specific horseshoe crab quota allocation has been 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. Horseshoe crabs of the component specified may not be taken during the remainder of the calendar year once closed by the Department.

~~3.0~~ 14.3 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)

~~3245~~ 15.0 Horseshoe Crab Harvest Moratorium

Repealed

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

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

~~3246~~ 16.0 Prohibition on Possession or Use of Asian Horseshoe Crabs

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

~~4.0~~ 16.0 It is unlawful to possess or use as bait Asian horseshoe crabs or parts thereof without written authorization from the Director of the Division of Fish and Wildlife.

17 DE Reg. 441 (10/01/13)



STATE OF DELAWARE
**DEPARTMENT OF NATURAL RESOURCES AND
 ENVIRONMENTAL CONTROL**

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To: Theresa Newman, Regulatory Specialist

From: John H. Clark, Fisheries Section Administrator

Subject: Technical Response to public comments received regarding 7 DE Admin. Code 3200 Horseshoe Crabs

The Fisheries Section has considered the public comments received regarding the proposed amendments to 7 DE Admin. Code 3200 Horseshoe Crabs and determined that the proposed amendments should be approved as written. Three comments were received, one spoken and two written, and the comments focused on several parts of the regulation:

Does the revised definition of collect (“Collect” means to take live horseshoe crabs by hand without the aid of manual or mechanical equipment or devices during the times and at the places that horseshoe crab collection is allowed as described in Section 3.0.) prohibit the use of a wheelbarrow to transport the HSC off the beach?

No, the revised definition only refers to the actions of the collector during the taking of the individual horseshoe crabs from the beach. The collector is allowed to place such horseshoe crabs into a wheelbarrow, cart, small boat or other conveyance for transport them off the beach.

The proposed amendments to the regulation establish a daily possession limit of 3,000 HSC. The regulation restricting the use of helpers (Section 5.2: It shall be unlawful for any person 16 years of age or older who does not have a valid commercial horseshoe crab collecting permit, to assist any person with a valid commercial horseshoe crab collecting permit in the handling, loading or driving a vehicle used to transport horseshoe crabs collected by said the horseshoe crab collecting permittee while within 300 feet of the shoreline of the water from which said the horseshoe crabs are collected or the point on shore where said the horseshoe crabs are landed from a vessel.) should be replaced with a regulation allowing each horseshoe crab hand collecting permit holder up to two adult helpers.

The commenter’s point is well taken in that, by restricting the number of horseshoe crabs a collector can take in a day by means of the possession limit, the advantage to a permitted collector of having one or two adult helpers is also limited as the three

working together may be much more efficient at collecting horseshoe crabs, but they are still restricted to one daily limit. However, the Fisheries Section considers revising the submitted proposed amendments further to make this revision unnecessary for the following reasons. First, those with commercial hand collecting permits have successfully harvested Delaware's entire horseshoe crab quota in three of the past five years and were only prevented from harvesting the entire quota in the other two years by the lack of horseshoe crabs on the beaches caused by the mismatch between the hand harvest season and the horseshoe crab spawn, not a lack of help, providing strong evidence that the current regulation is not restricting hand collection. Second, commercial horseshoe crab is a closed fishery with a limited number of commercial hand collecting permits. When the state has closed individual commercial fisheries to new entrants in order to limit fishing effort to prevent overharvest and, for quota-managed species, ensure that enough quota was available to each of the limited number of license/permit holders to make the license/permit viable economically, the assumption was that the license/permit holder would transfer the license to a new eligible entrant to the fishery when the license/permit holder was no longer physically able to fish for the species. By allowing unlicensed adults to assist a horseshoe crab hand collecting permit holder, the permit holder can pay others to collect the permit holder's daily horseshoe crab limit and thus the permit holder will have an incentive to hold on to the permit indefinitely and deny access to the fishery to a new entrant. The law already makes accommodation for a license/permit holder who is physically unable to fish due to illness or injury as that license/permit holder can provide a medical excuse signed by a doctor to the Fisheries Section and the Section will then provide a special permit allowing another individual to fish that license/permit.

The proposed amendments to the regulation that change the possession limit in Section 6.7 do not alter the restrictions on possessing more than the daily possession limit (It shall be unlawful for any person to possess more than 3,000 horseshoe crabs except in a stationary cold storage or freezer facility.). This Section will make it difficult for harvesters who want to hold more than one daily possession limit before going to a dealer and for a dealer that does not have cold storage or a freezer. There should be a daily storage limit of 6,000, an exemption for dealers from a possession limit, and a 2% overage allowance for miscounting the daily limit.

The commenter raises a potential problem for some horseshoe crab hand collecting and dredge permit holders and dealers, but the proposed solution would create major enforcement problems for the Natural Resource Police (NRP) if permit holders are allowed to possess more than a daily limit. NRP will not be able to verify if a permit holder holding 6,000 horseshoe crabs at home collected them in two days as required by the regulation or took them all in one day in violation of the regulation. As stated in response to the previous comment, Delaware's record of filling its horseshoe crab quota over the past many years demonstrates that the daily possession limit (the proposed change to 3,000 per day is similar to the number of horseshoe crabs in the current 300 cubic feet per day) has not prevented the permit holders from harvesting the quota,

which reinforces that the commenter's requested revision is not only a potential enforcement problem but unnecessary for the success of this fishery. An exemption for dealers is a good suggestion but is precluded by Delaware Code at present. Seafood dealers/buyers are not defined in Code pertaining to shellfish in general or horseshoe crabs specifically, so NRP has no documentation to determine if someone with more than a daily possession limit of horseshoe crabs but no cold storage or freezer is a dealer. However, it must be mentioned once again that Delaware's record of filling its horseshoe crab quota over the past many years demonstrates that this restriction on horseshoe crab dealers/buyers is not hindering the fishery. Charging a horseshoe crab permit holder with a violation for having more than the daily limit of horseshoe crabs, as with most other daily possession limits for commercial fisheries, should be at NRP discretion. Mandating an allowable overage amount in the regulation will only encourage some permit holders to take some or all the daily 2% overage.

The proposed amendments should be revised to prohibit dredge fishing for horseshoe crabs because dredging is destructive to the crabs and their habitat.

Dredge fishing for horseshoe crabs is permitted by 7 Delaware Code § 2703; therefore, a prohibition on dredging cannot be imposed by regulation unless required by the Atlantic States Marine Fisheries Commission's Interstate Fisheries Management Plan for Horseshoe Crab.

The proposed amendments should be revised to impose a harvest moratorium.

The commercial harvest of horseshoe crabs is permitted by 7 Delaware Code Chapter 27; therefore, a harvest moratorium cannot be imposed by regulation unless required by the Atlantic States Marine Fisheries Commission's Interstate Fisheries Management Plan for Horseshoe Crab.

We appreciate the thoughtful comments submitted on the proposed amendments. However, we believe the proposed amendments are the only revisions necessary to Delaware's horseshoe crab regulation at this time and should be adopted as written.