



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

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SECRETARY

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Secretary's Order No: 2023-F-0010

RE: Approving Final Amendments to 7 DE Admin. Code 3200 – Horseshoe Crabs

Date of Issuance: May 12, 2023

Effective Date: June 11, 2023

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") pursuant to 7 *Del.C.* §§6006 and 6010, and all other relevant statutory authority, the following findings of fact based on the record, reasons and conclusions are entered as an Order of the Secretary in the above-referenced regulatory proceeding.

Background, Procedural History and Findings of Fact

This Order relates to 7 DE Admin. Code 3200 – *Horseshoe Crabs* ("Regulation"). The Department proposes revisions to the Regulation that will enable the Department to update the annual quota setting process, revise the metrics used to establish the daily possession limit, clarify the definition of the legal harvest methods, define the circumstances that will require a horseshoe crab dredge lottery, and modify the dredge lottery process.

In November 2022, the Atlantic States Marine Fisheries Commission ("ASMFC") approved the *Horseshoe Crab Fishery Management Plan's* Addendum VIII ("Addendum VIII") that updates the modeling software used to produce the annual quota for Horseshoe Crabs. The ASMFC implemented an updated version of the Adaptive Resource Management (ARM) modeling software that incorporates the most recent and reliable information for managing horseshoe crabs with consideration of the migrating shorebird's needs. The data from the ARM software produces an annual bait harvest recommendation for horseshoe crabs. The ASMFC then sets the annual bait harvest recommendations for the Delaware Bay-origin horseshoe crabs, which includes the quota for Delaware.

The ARM model generated the 2023 harvest quota for Delaware as 164,364 male horseshoe crabs. The harvest quota has increased by approximately 2,200 male horseshoe crabs from the 2022 harvest quota that was implemented by Addendum VII of the *Horseshoe Crab Fishery Management Plan*.

As Delaware is a member of the ASMFC, the Department is required to comply with the revisions set forth by Addendum VIII that include updating the quota setting process for the annual harvest of horseshoe crabs by using the new ARM model. Additionally, the Department proposes to revise the metrics used to establish the daily possession limit, clarify the definition of the legal harvest methods, define the circumstances that will require a horseshoe crab dredge lottery, and modify the dredge lottery process.

The Department has established the daily possession limit of horseshoe crabs based upon a volume metric, using the square footage of a vehicle's storage area to determine the amount of horseshoe crabs' collection. Harvesters, however, are required to report a numeric count as the daily harvest of horseshoe crabs collected. The volume metric used to enforce daily harvest limits does not support the daily report requirement that is in a numerical unit metric and causes a challenge for enforcement of the possession limit. To align the numerical metric daily report requirement to the daily possession limit of horseshoe crabs, the Department is revising the daily possession limit to a numerical metric unit.

In addition, the Department has added the term "Take and Reduce to Possession" to provide language to specify the outcome after the removal of the horseshoe crabs. The term "take" covers the act of either collecting or dredging the horseshoe crabs, while "reduce to possession" is the act of keeping the horseshoe crabs. For example, a dredge will "take" both male and female horseshoe crabs, but the female horseshoe crabs must be returned to the water while the male horseshoe crabs are kept or "reduced to possession." The term "Take and Reduce to Possession" is used within 7 DE Admin. Code 3000- *Division of Fish and Wildlife*, to identify and enforce the taking of species, such as horseshoe crabs.

Lastly, the Department's proposed Amendments will align the dredging lottery process to reflect the current fishery operation. Language has been revised to define the circumstances necessary for the dredging lottery process. The dredge lottery will only occur if the annual quota is not met, after the horseshoe crabs season ends. Additionally, the dredge lottery process has been modified to remove the date of January 1, and should the dredge lottery be needed, the Department will announce the date and time. These revisions will allow the Department to better align with the current fishery operation.

The Amendments allow the Department to remain in compliance with the ASMFC, clarify and define the legal harvest methods, modify the horseshoe crabs dredge lottery, and revise outdated language throughout the Regulation. These Amendments will keep Delaware's horseshoe crabs harvest quota in compliance and assist in preventing overharvest. It should be noted that general language throughout the Amendment has been revised to meet the current standard language used throughout the Department's Regulations.

The Department has the statutory basis and legal authority to act with regard to the formal promulgation of these proposed Amendments, pursuant to 7 *Del. C.* §103 (a & b). 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 29 *Del.C.* §10118(a), the hearing record ("Record") remained open for receipt of additional written comment for 15 days following the public hearing. The Record formally closed for comment in this matter at close of business on April 7, 2023, with three (3) written comments received by the Department for the formal promulgation.

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.

Subsequent to the close of the Record, and at the request of presiding Hearing Officer Theresa Newman, the Department's Division of Fish and Wildlife staff prepared a Technical Response Memorandum ("TRM"). The TRM responds to the comments received by the Department in this matter and provides a thorough discussion in response to the suggestions and questions provided by the public.

Following the receipt of the Department's TRM as noted above, the Hearing Officer prepared her Hearing Officer's Report dated May 4, 2023 ("Report"), which expressly incorporated both the Department's proposed Amendments and the TRM into the Record generated in this matter. The Report documents the proper completion of the required regulatory amendment process, establishes the Record, and recommends the adoption of the proposed Amendments as attached to the Report as Appendix "A."

Reasons and Conclusions

Based on the Record developed by the Department's experts in the Division of Fish and Wildlife, and established by the Hearing Officer's Report, I find that the proposed regulatory Amendments to 7 DE Admin. Code 3200 – *Horseshoe Crabs*, are well supported. I further find that the Department's experts fully developed the record to support adoption of these Amendments. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed Amendments be promulgated as final.

The following reasons and conclusions are entered:

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 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. 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 light of the Regulatory Flexibility Act, consistent with 29 *Del.C.* Ch. 104, and believes the same to be lawful, feasible and desirable, and the recommendations as proposed should be applicable to all Delaware citizens equally;

6. The Department's proposed regulatory Amendments, as 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.



For Shawn M. Garvin
Secretary