

interference with a contract that is based on the furnishing or use of information in accordance with this section may be brought against—

(i) A motor carrier investigating the information, described in paragraphs (d) and (e) of this section, of an individual under consideration for employment as a commercial motor vehicle driver,

(ii) A person who has provided such information; or

(iii) The agents or insurers of a person described in paragraph (l)(1) or (l)(2) of this section, except insurers are not granted a limitation on liability for any alcohol and controlled substance information.

(2) The protections in paragraph (l) of this section do not apply to persons who knowingly furnish false information, or who are not in compliance with the procedures specified for these investigations.

6. In § 391.51, paragraph (b)(2) is revised to read as follows:

§ 391.51 General requirements for driver qualification files.

* * * * *

(b) * * *

(2) A copy of the response by each State agency concerning a driver's driving record pursuant to § 391.23(a)(1);

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7. Add a new § 391.53 to read as follows:

§ 391.53 Driver Employment History File.

(a) Each motor carrier must maintain records relating to the investigation into the employment history of a new or prospective driver pursuant to paragraphs (d) and (e) of this section. This file must be maintained in a secure location with controlled access.

(1) The motor carrier must ensure that access to this data is limited to those who are involved in the hiring decision or who control access to the data. In addition, the motor carrier's insurer may have access to the data (except the alcohol and controlled substances data) for the purpose of determining whether to include the driver on the carrier's insurance policy.

(2) This data must only be used for the hiring decision.

(b) The file must include:

(1) A copy of the driver's written authorization for the motor carrier to seek information about a driver's drug and alcohol history as required under § 391.23(d).

(2) A copy of the response(s) received to request for information under paragraphs (d) and (e) of § 391.23 from each previous employer, or documentation of a good faith effort to

contact them. The record must include the previous employer's name and address, the date the previous employer was contacted, and the information provided about the driver.

(c)(1) The record for a driver who is hired must be retained for as long as the driver is employed by that motor carrier and for three years thereafter.

(2) The record for a driver who is not hired must be retained for one year.

(d) A motor carrier shall make all records and information in this file available to an authorized representative or special agent of the Federal Motor Carrier Safety Administration or an authorized State or local enforcement agency representative, upon request or as part of any inquiry within the time period specified by the requesting representative.

Issued on: July 11, 2003.

Annette M. Sandberg,
Acting Administrator.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 697

[I.D. 070203E]

Atlantic Coastal Fisheries Cooperative Management Act Provisions; Application for Exempted Fishing Permit (EFP)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of a request for an EFP to harvest horseshoe crabs; request for comments.

SUMMARY: NMFS announces that the Director, Office of Sustainable Fisheries, is considering issuing an EFP to Limuli Laboratories of Cape May Court House, NJ to conduct a third year of an exempted fishing operation otherwise restricted by regulations prohibiting the harvest of horseshoe crabs in the Carl N. Schuster Jr. Horseshoe Crab Reserve (Reserve) located 3 nautical miles (nm) seaward of the mouth of Delaware Bay. NMFS is considering issuing an EFP for the harvest of 10,000 horseshoe crabs for biomedical purposes and requiring as a condition of the EFP the collection of data related to the status of Delaware Bay horseshoe crabs within the Reserve. Therefore, this document invites

comments on the issuance of an EFP to Limuli Laboratories.

DATES: Comments on this action must be received on or before August 1, 2003.

ADDRESSES: Written comments should be sent to John H. Dunnigan, Director, Office of Sustainable Fisheries, NMFS, 1315 East West Highway, Room 13362, Silver Spring, MD 20910. Mark the outside of the envelope "Comments on Horseshoe Crab EFP Proposal." Comments may also be sent via facsimile (fax) to (301) 713-0596. Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Tom Meyer, Fishery Management Biologist, (301) 713-2334.

SUPPLEMENTARY INFORMATION:

Background

The regulations that govern exempted fishing, at 50 CFR 600.745(b) and 697.22 allow a Regional Administrator or the Director of the Office of Sustainable Fisheries to authorize for limited testing, public display, data collection, exploration, health and safety, environmental clean-up and/or hazardous removal purposes, the targeting or incidental harvest of managed species that would otherwise be prohibited. An EFP to authorize such activity may be issued, provided there is adequate opportunity for the public to comment on the EFP application, the conservation goals and objectives of the fishery management plan are not compromised, and issuance of the EFP is beneficial to the management of the species.

The Reserve was established on February 5, 2001 (66 FR 8906), to provide protection for the Atlantic coast stock of horseshoe crabs, and to promote the effectiveness of the Atlantic States Marine Fisheries Commission's (Commission) Interstate Fishery Management Plan (ISFMP) for horseshoe crab. The final rule prohibited fishing for horseshoe crabs in the Reserve and the possession of horseshoe crabs on a vessel with a trawl or dredge aboard while in the Reserve. The rule did not allow for any biomedical harvest or the collection of fishery dependent data. However, in the comments and responses section, NMFS stated that it would consider issuing EFPs for the biomedical harvest of horseshoe crabs from the Reserve.

The biomedical industry collects horseshoe crabs, removes approximately 30 percent of their blood, and returns them alive to the water. Approximately 10 percent do not survive the bleeding process. The blood contains a reagent called Limulus Amebocyte Lysate (LAL)

that is used to test injectable drugs and medical devices for bacteria and bacterial by-products. Presently, there is no alternative to LAL derived from the horseshoe crab.

NMFS manages horseshoe crabs in the exclusive economic zone in close cooperation with the Commission. The Commission's Horseshoe Crab Management Board met on April 21, 2000, and recommended that biomedical companies with a history of collecting horseshoe crabs in the Reserve be given an exemption to continue their historic levels of collection not to exceed a combined harvest total of 10,000 crabs annually. The Commission's Horseshoe Crab Plan Review Team has reported that biomedical harvest of up to 10,000 horseshoe crabs should be allowed to continue in the Reserve given that the resulting mortality should be only about 1,000 horseshoe crabs (10 percent mortality during bleeding process). Also, the Commission's Horseshoe Crab Stock Assessment Committee Chairman recommended that, in order to protect the Delaware Bay horseshoe crab population from over-harvest or excessive collection mortality, no more than a maximum of 20,000 horseshoe crabs should be collected for biomedical purposes from the Reserve. In addition to the direct mortality of horseshoe crabs that are bled, it can be expected that more than 20,000 horseshoe crabs will be trawled up and examined for LAL processing. This is because horseshoe crab trawl catches usually include varied sizes of horseshoe crabs and large female horseshoe crabs are the ones selected for LAL processing. The unharvested horseshoe crabs are released at sea with some unknown amount of mortality, but this mortality is expected to be negligible.

Collection of horseshoe crabs for biomedical purposes from the Reserve is necessary because of the low numbers of horseshoe crabs found in other areas along the New Jersey Coast from July through October and in light of the critical role horseshoe crab blood plays in proper health care. In conjunction with the biomedical harvest, NMFS is considering requiring that scientific data be collected from the horseshoe crabs taken in the Reserve as a condition of receiving an EFP. Since the Reserve was established on February 5, 2001, the only fishery data from this area were collected under EFPs issued to Limuli Laboratories on September 28, 2001, which allowed collections until October 31, 2001, and on August 1, 2002, which allowed collections until October 31, 2002, and under Scientific Research Activity Permits issued to Dr. Jim

Berkson, Virginia Polytechnic Institute and State University's Department of Fisheries and Wildlife Science on September 4, 2001 (for collections from September 1–October 31, 2001) and on September 24, 2002 (for collections from September 24–November 15, 2002). Further data are needed to improve the understanding of the horseshoe crab population in the Delaware Bay area and to better manage the horseshoe crab resource under the cooperative state/Federal management program. The information collected through the EFP will be provided to NMFS, the Commission and to the State of New Jersey.

Results of Previous Year's EFP

Limuli Laboratories applied for an EFP to collect horseshoe crabs for biomedical and data collection purposes from the Reserve, in 2002. The EFP application specified that: (1) The same methods would be used in 2002 as in 2001, (2) 10 percent of the bled horseshoe crabs would be tagged, and (3) there had not been any sighting or capture of marine mammals or endangered species in the trawling nets of fishing vessels engaged in the collection of horseshoe crabs, since 1993. An EFP was issued to Limuli Laboratories on August 1, 2002, which allowed them to collect horseshoe crabs until October 31, 2002, in the Reserve. A total of 1,012 horseshoe crabs were collected for the manufacture of LAL. The horseshoe crabs were collected on 11 dates (4 days in August and 7 days in September), transported to the laboratory for the bleeding operation and inspected for sex, size, injuries and responsiveness. Three to four tows were conducted during each fishing trip with the tows lasting no more than 30 minutes to avoid impacting loggerhead turtles. Horseshoe crabs were unloaded and transported to the laboratory by truck. The average sex ratio for the landings was 0.85 males per females, similar to last year's ratio of 0.88. Horseshoe crabs injured during transport and handling numbered 115 or 11.4 percent of the total while 31 horseshoe crabs or 3.1 percent were noted as unresponsive (presumed dead). Therefore, 866 healthy, uninjured crabs were available for LAL processing. Since large horseshoe crabs, which are generally females, are used for LAL processing, most were females. Of those 866 processed for LAL, 200 female crabs were measured (inter-ocular distances and prosoma widths), weighed, aged, and tagged to establish baseline morphometrics and ages, prior to being released. Healed injuries were found on 21.5 percent of the crabs examined in

2002, compared to 30 percent in 2001. More than half of those injuries were broken or worn telsons. Most of the healed injuries were the result of spawning attachments.

Horseshoe crabs were aged in 6 categories using Dr. Carl N. Schuster Jr.'s criteria of aging by appearance: First year or virgin, young, young/medium, medium, medium/old and old age. In 2002, animals were categorized as five percent virgin females, 68 percent young animals, 25 percent young/medium and medium, combined, and 2 percent medium/old and old, combined. This finding supports the basis for the Reserve which was established to protect young horseshoe crabs. The average measurements for the female horseshoe crabs (no males were measured) were 168.10 mm for the inter-ocular distance, 270.93 mm for the prosoma width and 2.5 kg for weight. These averages are slightly higher than seen in 2001. The horseshoe crabs were rated on an activity scale of from one to three, with three being the most active. The vast majority of the 200 that were observed were active (194), with 185 falling in category two and nine in category three. Only six crabs exhibited no movement on the scale and were rated as one. Tagged crabs were released at the water's edge on Higs Beach, New Jersey. The beach was checked frequently, following release, to ensure the crabs had returned to the water.

A total of 450 horseshoe crabs from the Reserve were tagged and released during 2001 and 2002. Nine of the 200 horseshoe crabs tagged in 2001 have been recovered. Of those, 6 crabs were found alive and 3 were found dead. All but one of the live recoveries occurred during the 2002 spawning season. The 3 crab mortalities may have been a consequence of spawning.

Data collected under the EFP were supplied to NOAA Fisheries, the Commission, and the State of New Jersey.

Proposed EFP

Limuli Laboratories proposes to conduct a third year of the study using the same means and methods used during years one and two, as described below under terms and conditions.

The proposed EFP would exempt two commercial vessels from regulations at 50 CFR 697.7(e), which prohibit fishing for horseshoe crabs in the Reserve described in § 697.23(f)(1) and prohibit possession of horseshoe crabs on a vessel with a trawl or dredge aboard in the same Reserve.

Limuli Laboratories, in cooperation with the State of New Jersey's Division of Fish and Wildlife, submitted an

application for an EFP on June 26, 2003. NMFS has made a preliminary determination that the subject EFP contains all the required information and warrants further consideration. NMFS has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Federal horseshoe crab regulations and the Commission's Horseshoe Crab ISFMP.

Regulations at 50 CFR 600.745(b)(3)(v) authorize NMFS to attach terms and conditions to the EFP consistent with the purpose of the exempted fishery, the objectives of the horseshoe crab regulations and fisheries management plan, and other applicable law. NMFS is considering terms and conditions such as:

(1) Limiting the number of horseshoe crabs collected in the Reserve to no more than 500 per day and to a total of no more than 10,000 per year;

(2) Requiring collection under an EFP to take place over a total of approximately 20 days during the months of July, August, September, and October. Horseshoe crabs are readily

available in harvestable concentrations nearshore earlier in the year, and offshore in the Reserve during July through October;

(3) Requiring a 5 and one-half inch (14.0 cm) flounder net to be used by the vessel to collect the horseshoe crabs. This condition would allow for continuation of traditional harvest gear and adds to the consistency in the way horseshoe crabs are harvested for data collection;

(4) Limiting trawl tow times to 30 minutes as a conservation measure to protect sea turtles, which are expected to be migrating through the area during the collection period, and are vulnerable to bottom trawling;

(5) Restricting the hours of fishing to daylight hours only, approximately from 7:30 a.m. to 5 p.m. to aid law enforcement. NMFS also is considering a requirement that the State of New Jersey Law Enforcement be notified daily when and where the collection will take place; and

(6) Requiring that the collected horseshoe crabs be picked up from the fishing vessels at docks in the Cape May Area and transported to local

laboratories, bled for LAL, and released alive the following morning into Lower Delaware Bay.

Also as part of the terms and conditions of the EFP, for all horseshoe crabs bled for LAL, NMFS is considering a requirement that the EFP holder provide information on sex ratio and daily numbers, and tag 10 percent of the horseshoe crabs harvested. Also, the EFP holder may be required to examine at least 200 horseshoe crabs for:

a. Morphometric data, by sex—*e.g.* interocular (I/O) distance and weight, and

b. Level of activity, as measured by a response or by distance traveled after release on a beach.

Based on the results of this EFP, this action may lead to future rulemaking.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 11, 2003.

John H. Dunnigan,

*Director, Office of Sustainable Fisheries,
National Marine Fisheries Service.*

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