

purpose of closing the fishery when the quotas are reached and does not establish any requirements for which a regulatory entity must come into compliance, it is unnecessary to delay for 30 days the effective date of this rule. Therefore, the Assistant Administrator for Fisheries, NOAA, under 5 U.S.C. 553(d)(5), finds good cause not to delay the effective date of this final rule.

The President has directed Federal agencies to use plain language in their communications with the public, including regulations. To comply with this directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this final rule. Such comments should be sent to the Regional Administrator (see **ADDRESSES**).

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

Dated: January 19, 2001.

**Penelope D. Dalton,**

*Assistant Administrator for Fisheries,  
National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 697

[Docket No. 000412106-0363-03; I.D. 032200A]

**RIN 0648-AO02**

#### Atlantic Coastal Fisheries Cooperative Management Act Provisions; Horseshoe Crab Fishery; Closed Area

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to prohibit fishing for horseshoe crabs and limit possession of them in an area in the exclusive economic zone (EEZ) encompassing a 30-nautical mile (nm) radius (in a shape roughly equivalent to a rectangle) seaward from the midpoint of the territorial sea line at the mouth of Delaware Bay. The intent of this final rule is to provide protection for the Atlantic coast stock of horseshoe crab and to promote the effectiveness of the Atlantic States Marine Fisheries Commission's (Commission) Interstate Fishery Management Plan (ISFMP) for horseshoe crab.

**DATES:** Effective March 7, 2001.

**ADDRESSES:** Copies of supporting documents, including an Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA), are available from Richard H. Schaefer, Chief, Staff Office for Intergovernmental and Recreational Fisheries, National Marine Fisheries Service, 8484 Georgia Avenue, Suite 425, Silver Spring, MD 20910. Send comments on any ambiguity or unnecessary complexity arising from the language used in this final rule to the Chief, Staff Office for Intergovernmental and Recreational Fisheries, National Marine Fisheries Service, 8484 Georgia Avenue, Suite 425, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Paul Perra, 301-427-2014.

#### SUPPLEMENTARY INFORMATION:

##### Background

The background and rationale for this final rule were contained in the preamble to the proposed rule, published in the **Federal Register** on October 16, 2000 (65 FR 61135), and are not repeated here. Additional background for this final rule is available and contained in a EA/RIR/FRFA prepared by NMFS. (see **ADDRESSES**).

This final rule prohibits fishing for horseshoe crabs in an area in the EEZ encompassing a 30-nm radius (in a shape roughly equivalent to a rectangle) seaward from the midpoint of the territorial sea line at the mouth of Delaware Bay (closed area); prohibits possessing horseshoe crabs on a vessel with a trawl or dredge while in the closed area; and requires fishermen to return to the water all horseshoe crabs caught in the closed area incidental to any fishing operations, including whelk fishing.

The closed area in the EEZ off Delaware Bay is bounded as follows: (1) on the north by a straight line connecting points 39°14.6'N. lat., 74°30.9'W. long. (3 nm off of Peck Beach, New Jersey) and 39°14.6'N. lat., 74°22.5'W. long.; (2) on the east by a straight line connecting points 39°14.6'N. lat., 74°22.5'W. long. and 38°22.0'N. lat., 74°22.5'W. long.; (3) on the south by a straight line connecting points 38°22.0'N. lat., 74°22.5'W. long. and 38°22.0'N. lat., 75°00.4'W. long. (3 nm off of Ocean City, MD); and (4) on the west by the outermost boundary of state waters.

##### Comments and Responses

Comments were received during three scoping meetings and during the 15-day comment period on the proposed rule.

Scoping meetings on the proposed regulations were held: on September 5, 2000, in Dover, DE; on September 6, 2000, in Cape May, NJ, and on September 7, 2000, in Salisbury, MD. During the scoping meetings, NMFS received 22 comments in favor of the proposed closed area and 14 against. During the 15-day comment period on the proposed rule, NMFS received 58 written comments from the public. In general terms, 54 of the commenters were in favor of the proposed rule, and 4 were opposed to its issuance.

Comments in favor were submitted by local and national conservation groups, various state agencies, some biomedical companies, and the general public. Comments in opposition to the proposed rule were submitted by organizations representing the fishing industry, by some biomedical companies, and by members of the public. In addition, several companies that use horseshoe crab blood for biomedical purposes and some of the conservation organizations requested a modification to the proposed rule that would allow horseshoe crabs to be harvested in the closed area for biomedical use.

All comments received during the comment period were considered. An additional 38 persons submitted comments within 7 days after the deadline for the comment period. These comments did not raise issues that were not raised by others during the proposed rule comment period or considered by NMFS during the rulemaking process. All but one of these late comments were in favor of the proposed rule. These comments were considered, but are neither identified nor responded to here. Comments received during the comment period are identified and responded to as follows:

**Comment 1:** Several commenters stated that the closed area needs a "sister" law enacted by the state to protect horseshoe crabs from overharvest on beaches.

**Response:** Harvesting on beaches is under the purview of each state which cooperatively manages horseshoe crabs with other states and the Federal government through implementation of the Commission's Fishery Management Plan for Horseshoe Crabs.

**Comment 2:** Twenty-three commenters stated that they wanted the immediate establishment of the proposed closed area.

**Response:** NMFS is establishing the closed area as expeditiously as possible.

**Comment 3:** A commenter was concerned that NMFS would not be able to enforce the requirement that all horseshoe crabs caught in the closed

area incidental to other fishing operations, including whelk fishing, be returned to the water.

*Response:* NMFS intends to work closely with the U. S. Coast Guard to enforce the closed area. This final rule requires fishermen to return immediately to the water any horseshoe crab caught in the closed area regardless of whether the horseshoe crabs were caught on purpose or incidental to any fishing activities, including whelk fishing. This final rule also prohibits the possession of horseshoe crabs by a vessel or a person on a vessel with a trawl or dredge in the closed area. Considering the depths in the closed area, trawls and dredges are the only efficient gears that could be used to catch horseshoe crabs. Therefore, a vessel fishing for whelks would not be able to catch horseshoe crabs in the closed area and put them in their whelk traps.

*Comment 4:* One commenter stated that horseshoe crab limits should be for the entire Delaware Bay and extend offshore to 36-nm. Also, two conservation groups submitted comments that, while they were in favor of the closed area, they would prefer a much larger closed area.

*Response:* The commenter who wanted a 36-nm closure did not explain why it would be critical to expand the closed area to 36-nm. Also, several conservation organizations wanted more area closed to better insure the protection of horseshoe crabs. Delaware Bay waters are managed under the purview of state laws. Federal jurisdiction starts 3 nm out from the mouth of the Delaware Bay. This final rule protects horseshoe crabs in Federal waters within an area encompassing a 30-nm radius of the Delaware Bay. NMFS believes that an area with a 30-nm radius is adequate to protect the majority of horseshoe crabs in the Delaware Bay and reasonably balances the need to protect horseshoe crabs and the need to consider impacts on the fishing industry and the biomedical industry. Extending the closed area would unnecessarily disrupt fishing activities conducted away from the area of concern.

*Comment 5:* Three commenters requested that a notice of the closure be sent to all horseshoe crab and whelk fishermen that take or land horseshoe crabs in the vicinity of the closed area as well as to horseshoe crab and whelk dealers from Delaware through Virginia.

*Response:* In addition to publishing this final rule in the **Federal Register**, which provides notice to all members of the public in accordance with the requirements of the Administrative

Procedure Act, NMFS intends to work closely with the state marine fisheries agencies in the Delaware Bay area to identify and notify those involved in the whelk and horseshoe crab fisheries about the closed area.

*Comment 6:* Eleven commenters stated that they were in favor of some biomedical harvest of horseshoe crabs in the closed area. One commenter stated that scientific collection permits should be issued to authorize the biomedical harvest of horseshoe crabs from the closed area. Six commenters stated that they wanted biomedical companies that now take horseshoe crabs from the proposed closed area to be grandfathered-in so that they may continue to take horseshoe crabs from the closed area. They also stated that no more than the current biomedical harvest should be allowed, and that the biomedical harvest should only be allowed under a provision requiring horseshoe crabs be returned to the ocean after bleeding. One commenter stated that closed area is the only area to obtain horseshoe crabs for the biomedical industry in the fall of the year. Two commenters stated that there should be no exceptions to the ban on horseshoe crab fishing in the closed area for the biomedical industry.

*Response:* The NMFS trawl survey shows that horseshoe crabs are found both north and south of the closed area during the fall of the year. Only about 10 percent of the horseshoe crabs harvested for the biomedical industry currently come from the closed area. However, given that *Limulus Ameobocyte* Lysate can only be produced from horseshoe crab blood and is essential for detection of bacterial endotoxins in drugs and medical equipment, NMFS agrees that a limited biomedical harvest of horseshoe crabs should be allowed in the closed area. However, since biomedical harvest is for commercial purposes, the use of scientific collection permits is inappropriate. Because both the Commission and NMFS need additional data on the horseshoe crab resource in order to manage it optimally, NMFS believes that the appropriate mechanism for allowing biomedical harvest would be an exempted fishing permit for which any biomedical company could apply. Grandfathering-in biomedical companies with a history of harvesting horseshoe crabs from the closed area would not result in the generation of needed data. Regulations at 50 CFR §§ 600.745 and 697.22 establish the procedures for requesting an exempted fishing permit, as well the procedures and criteria NMFS would use to review and issue an exempted fishing permit.

Using the exempted fishing permit mechanism, NMFS could limit the total biomedical harvest to 10,000 horseshoe crabs annually as recommended by the Commission's Horseshoe Crab Management Board. In addition, NMFS will require that all crabs harvested be returned to the water after bleeding and, for example, that the number of crabs and the locations where they were taken from and returned to the water be reported to NMFS in order to help fulfill data needs.

*Comment 7:* Eighteen commenters stated that the closed area should be designated the Carl N. Shuster Jr. Horseshoe Crab Reserve as proposed by NMFS.

*Response:* NMFS agrees.

*Comment 8:* One commenter stated that the closed area should be closed for 5 years with an option to renew, and 20 commenters stated that the closed area should be established for at least 10 to 15 years.

*Response:* The Commission's Horseshoe Crab Management Board has recommended that the closed area remain in place for at least 5 years. NMFS has not designated an ending date for the closed area, but considers the closure a long-term conservation measure that may be adjusted through rulemaking as more information on the horseshoe crab resource, its ecological role, and the fishery become available.

*Comment 9:* Five commenters stated that a monitoring program should be established to measure the effectiveness of the closed area.

*Response:* NMFS intends to work in cooperation with the states and the Commission through the Commission's technical committee and the stock assessment committee to monitor the effectiveness of the closed area.

*Comment 10:* A commenter stated that NMFS, in its analysis, virtually ignored the substantial economic activity (in the hundreds of millions of dollars) generated by non-consumptive uses of the horseshoe crabs, such as shorebird/horseshoe crab tourism and the use of horseshoe crab by the medical industry.

*Response:* While no detailed economic analysis was done on shorebird/horseshoe crab tourism and the value of the horseshoe crab resource to the medical industry, NMFS agrees that these activities generate substantial economic benefits, and that protection of the horseshoe crab resource through the closed area will ensure the continuation of some of these benefits. NMFS reviewed economic studies that stated that the potential economic benefits for the coastwide biomedical fishery may range up to \$175 million dollars, and that New Jersey's Delaware

Bay shorebird tourism may generate up to \$32 million in gross economic benefits. However, the biomedical estimates included input from Massachusetts and South Carolina where the majority of horseshoe crabs are harvested for biomedical purposes and the shorebird economic study for New Jersey estimated the range of gross economic benefits from \$19 million to \$28 million.

*Comment 11:* Several commenters stated that there is no scientific justification for the closed area and that horseshoe crabs are already sufficiently protected by stringent harvest restrictions.

*Response:* While there is no valid coastwide stock assessment, there are Delaware Bay egg count and spawner surveys, and the State of Delaware's trawl survey that show declining trends in abundance. The scientific peer review of the Commission's horseshoe crab stock assessment cited concern over localized population declines, and recommended a risk-averse horseshoe crab management program. The closed area is part of a risk-averse management program that will help protect the Delaware Bay spawning population of horseshoe crabs. Also, information submitted during the comment period from a horseshoe crab scientist associated with the Virginia Institute of Marine Science provided additional rationale that the closed area protects the juvenile horseshoe crabs in the offshore area and, therefore, closes a significant horseshoe crab management "loop hole" and strengthens the management program for horseshoe crabs.

*Comment 12:* One commenter stated that the proposal will damage tourism because the horseshoe crab population will increase and large numbers of horseshoe crabs will die on the beaches and rot, thereby making beach going activities repulsive.

*Response:* The closed area will help increase the horseshoe crab population and will help provide food for migratory shorebirds. Beach clean up activities could be organized, if an increased population of horseshoe crabs fouls the beaches.

*Comment 13:* One commenter expressed support for the closed area stating that the closure will cause an increase in the number of horseshoe crabs. However, the commenter expressed concern that this would only supply more eggs for sea gulls, and suggested that the number of gulls needs to be reduced or the gulls need to be prevented from feeding on horseshoe crab spawning beaches.

*Response:* The purpose for the closed area is to help protect the horseshoe crab population so that it may fulfill its multiple uses, including providing food for migratory shorebirds and other wildlife. As the number of horseshoe crab spawners increases, more horseshoe crab eggs will be produced and buried on the beaches. This will eventually provide more eggs for birds and more eggs to sustain the horseshoe crab population.

*Comment 14:* Two commenters stated that the closed area is too large and that a smaller area from 5 to 15-nm should be closed initially. One of these commenters also commented that a smaller closure, combined with enhanced monitoring, may show that there is no need to extend the closure to a larger area.

*Response:* Horseshoe crabs have been found as far as 35-nm offshore, and a significant component of the Delaware Bay horseshoe crab population extends out to the continental shelf. Therefore, closing an area from 5 to 15-nm offshore would not be an adequate risk-averse approach to protect the Delaware Bay horseshoe crab population because a good portion of the Delaware Bay population of horseshoe crabs migrate beyond 15-nm of the mouth of the Delaware Bay.

*Comment 15:* A commenter said the closure will negatively affect eel and whelk fishermen through a reduced supply of horseshoe crab and higher horseshoe crab bait prices.

*Response:* Horseshoe crabs may still be harvested outside the closed area. Horseshoe crab bait availability would primarily be a function of harvest quotas enacted by Atlantic coast states. Reduced supply may be made up for by the use of bait bags that can reduce horseshoe crab needs by 50 percent per whelk trap, and thus reduce demand for bait. Also, alternative baits can be used instead of horseshoe crabs, especially in the eel fishery. These factors may cause bait prices to rise or fall depending on their cost and efficiency. However, the impact of any reduced supply or increase in bait prices that results from the closed area is overridden by the overall need to protect the horseshoe crab resource so that it may fulfill its sustainable long-term multiple uses.

*Comment 16:* A commenter stated that the short time period to implement the closure will negatively impact fishermen.

*Response:* The Commission recommended the closed area on February 9, 2000; NMFS published an advance notice of proposed rulemaking regarding the closed area on May 3, 2000 (65 FR 25698); and published the

proposed rule on October 16, 2000 (65 FR 61135). NMFS is proceeding with this final rule because of the need to act in a risk-averse manner to protect the horseshoe crab resource. Concerns over the decline of the Delaware Bay horseshoe crab population and the need to provide migrating shorebirds passing through the Delaware Bay area, many of which are experiencing their own population declines (especially the Red Knot), a plentiful horseshoe crab egg food source, make issuance of the final rule necessary at this time.

*Comment 17:* A commenter stated that no efforts are being made to get artificial bait on the market and that without horseshoe crabs for bait, the whelk and eel fisheries will be devastated.

*Response:* NMFS disagrees. The development of artificial bait to substitute for horseshoe crabs is ongoing at several universities and in industry. NMFS is also helping with a pilot program to manufacture horseshoe crab bait bags that could reduce horseshoe crab bait needs by 50 percent. Eel and whelk vessels should be able to obtain bait under state quotas, which when applied with bait bags may meet their needs. Several substitute baits, such as clam bellies, shrimp heads, and cheese, have been reported through the Commission's October 5, 1999, Alternative Bait Workshop.

*Comment 18:* A commenter stated that NMFS should proceed very carefully because closed areas for one species may be used as a conduit to secure additional regulations on other species and/or gear types.

*Response:* NMFS considers the closed area only as a reserve for horseshoe crabs, and is only restricting the simultaneous possession of horseshoe crabs and gear that could be used to illegally harvest horseshoe crabs in the closed area.

*Comment 19:* There were two comments that stated that prohibiting vessels from having on board all other fishing gear aside from whelk traps makes fishing vessels less efficient.

*Response:* NMFS agrees. NMFS had originally proposed prohibiting all other fishing gear when possessing whelk pots in the closed area. However, based on scoping meetings and the comments received on the proposed rule, it was determined that vessels that fish for whelks with horseshoe crabs operate with different types of fishing gear on board and fish for other species while making whelk fishing trips. NMFS agrees that some other commercial gears, other than whelk pots, should be allowed on vessels that also possess horseshoe crabs. Therefore, the final rule has been modified to prohibit only

trawls or dredges on vessels possessing horseshoe crabs in the closed area.

*Comment 20:* A commenter stated that if trawls and dredges are prohibited on vessels with horseshoe crabs in the closed area, the trawl nets or dredge bags should be allowed to be stowed below deck, and trawl doors should be allowed to remain on the vessel since expensive dockside crane service is required to remove the doors.

*Response:* Due to the difficulty of enforcing a prohibition on fishing for horseshoe crabs in the closed area and a stowage requirement, NMFS believes it is unwise to allow vessels to have the net or bag portion of trawl or dredge gear on board, even if stowed, while also allowing them to possess horseshoe crabs. However, NMFS sees no need to have trawl doors removed from vessels, when the trawl nets or dredge bags are already removed from the vessel.

*Comment 21:* A commenter stated that whelk vessels fishing in the closed area should be allowed to use lobster and fish pots while possessing horseshoe crabs on board.

*Response:* NMFS agrees for the same reasons as cited in comment 19.

*Comment 22:* A commenter stated that vessels shipping horseshoe crabs for bait or biomedical purposes should be allowed to transit the closed area since going around the reserve adds time and expense and impedes interstate commerce.

*Response:* In order to support the enforcement of the closed area, a vessel with a trawl or dredge may not possess horseshoe crabs in the closed area. However, transportation of horseshoe crabs through the closed area is allowed as long as the vessel does not have a trawl or dredge.

*Comment 23:* Two commenters stated that the closed area is unnecessary because the coastwide state-by-state quotas are sufficient to protect horseshoe crabs.

*Response:* The closed area is necessary to give added protection to the Delaware Bay horseshoe crab population, because even though there are individual state quotas, there is no restriction on where horseshoe crabs can be taken in the Federal waters. Without the closed area, vessels from many states could concentrate their fishing in Federal waters near the mouth of the Delaware Bay and, while fishing under quotas intended for other regions, deplete the Delaware Bay horseshoe crab population.

*Comment 24:* NMFS received two comment letters signed by a total of six persons stating that the southern boundary of the closed area should be at the Maryland/Delaware state line,

because vessels harvesting horseshoe crabs off the Maryland coast harvest crabs in the morning, and then fish for other species before returning to port.

*Response:* Moving the southern boundary line of the closed area to the Maryland/Delaware state line would shrink the closed area north to where it no longer would give enough protection to the Delaware Bay horseshoe crab population.

*Comment 25:* A commenter requested that more Federal regulations be implemented to further restrict harvest of horseshoe crabs in Federal waters.

*Response:* NMFS believes that the closed area and the state harvest quotas under the Commission's plan are a good first step in protecting horseshoe crabs. NMFS is preparing a proposed rule to improve on the reporting of the horseshoe crab catch and prevent transfer of horseshoe crabs at sea. As further information becomes available on the horseshoe crab resource and fishery, NMFS will adjust the conservation measures on horseshoe crabs in Federal waters as necessary to protect the horseshoe crab resource and support its competing multiple uses.

*Comment 26:* Four commenters requested that NMFS implement better reporting requirements regarding the horseshoe crab harvest and prevent transfer-at-sea of horseshoe crabs.

*Response:* NMFS is in the process of developing a proposed rule that would implement better reporting requirements and prohibit transfers-at-sea of horseshoe crabs in the EEZ by Federal horseshoe crab fishery permit holders, regardless of whether they are in the EEZ or state waters.

*Comment 27:* Several commenters stated that NMFS should also recognize the role that horseshoe crabs and their eggs play in providing food for marine finfish and shellfish, and marine mammals.

*Response:* NMFS acknowledges that horseshoe crab eggs and horseshoe crabs are a food source for numerous marine animals, including shorebirds, sea turtles, finfish, crabs, and mollusks.

*Comment 28:* A commenter stated that the economic impacts cited for the value of horseshoe crabs as bait in the proposed rule totally ignored the true economic impact to eel, catfish, and whelk fishermen.

*Response:* NMFS in its analysis of the proposed rule cited economic values for the eel and whelk fisheries (the value of horseshoe crab bait for the catfish fishery is uncertain), and recognized that the availability of horseshoe crab bait will affect the eel and whelk fisheries. However, the major impact on horseshoe crab bait availability and

price is through state commercial horseshoe crab quotas, which have limited the coastwide take of horseshoe crabs by 25 percent or more. While the closed area may make it less efficient to collect horseshoe crabs, it is not a major factor in limiting the availability of horseshoe crab to the eel, catfish, and whelk fishermen. NMFS acknowledges that there may be some minor impacts to the eel, catfish, and whelk fishermen due to the closed area, but was unable to quantify those impacts.

### Changes from the Proposed Rule

In response to comments received during the three scoping meetings and during the 15-day comment period for the proposed rule, the following changes were made:

In § 697.2, although definitions for trawl and dredge are listed in § 600.10, they are added to § 697.2 to make the regulations easier to understand and follow.

In § 697.2, the definitions for whelk and whelk trap are removed because paragraph (f)(2) under § 697.23 no longer uses either term.

In § 697.23, paragraph (f)(2), the paragraph has been rewritten to take out the reference to whelk traps and applies the prohibition on the possession of horseshoe crabs to any vessel or person on a vessel with a trawl or dredge. In the proposed rule, no commercial fishing gear except whelk traps were allowed on board if a vessel or person was in possession of horseshoe crabs. See response to comment 20 for more details.

In response to the removal of the definition for horseshoe crabs in § 697.2 and paragraph (e)(1) and (2) of § 697.7 due to the removal of another rule (65 FR 64896, October 31, 2000), the following changes were made:

In § 697.2, the definition for horseshoe crab is added.

In § 697.7, paragraph (e)(3) through (5), were redesignated (e)(1) through (3).

Additional background for this final rule is available and contained in a EA/RIR/FRFA prepared by NMFS (see ADDRESSES).

### Classification

The Assistant Administrator for Fisheries, NOAA (AA) has determined that these actions are compatible with the effective implementation of the Commission's coastal FMP and consistent with the national standards of the Magnuson-Stevens Fishery Conservation and Management Act. NMFS prepared a FRFA that describes the impact of this final rule on small entities. A summary of the FRFA follows:

This final rule is published under the authority of section 803 of the Atlantic Coastal Fisheries Cooperative Management Act. The purpose of the rule is to improve cooperative management of the Atlantic coast horseshoe crab *Limulus polyphemus* and provide protection to the Delaware Bay population of horseshoe crabs to support conservation of the resource and help assure an adequate supply of horseshoe crab eggs for migrating shorebirds as well as an adequate supply of horseshoe crabs for bait and medical purposes over time. The need for the closed area is explained in the preamble to this final rule and is not repeated here. This final rule is estimated to affect 19 fishing vessels, all of which are small businesses; effects on them are expected to be minor. Of these 19 vessels, 9 target horseshoe crabs directly and 10 land horseshoe crabs caught incidentally while targeting other species.

There are no reporting, record keeping or other similar compliance requirements in this final rule. No other Federal rules duplicate or conflict with the proposed action.

Six alternatives were examined when the rule was proposed. They were: Alternative 1 - no action; Alternative 2 - a closed area using a radius of 30-nm, prohibition on possession of horseshoe crabs; Alternative 3A - a rejected proposed preferred alternative that would close an area encompassing a 30-nm radius off the mouth of Delaware Bay to horseshoe crab fishing, and allow limited possession of horseshoe crabs in the closed area by whelk vessels with no other commercial fishing gear except whelk traps; Alternative 4 - a closed area using a radius of 15-nm, prohibition on possession of horseshoe crabs; Alternative 5 - a closed area using a radius of 15-nm, limited possession of horseshoe crabs by whelk fishermen; and Alternative 6 - a closed area using a radius of 60-nm, limited possession of horseshoe crabs by whelk fishermen.

NMFS had originally proposed Alternative 3A (prohibition on fishing for horseshoe crabs but allowed possession of horseshoe crabs by fishing vessels with no commercial fishing gear other than whelk traps on board in the closed area). However, based on scoping meetings and the comments received on the proposed rule, it was determined that vessels that fish for whelks using horseshoe crabs as bait operate with different types of fishing gear on board and fish for other species while making whelk fishing trips. NMFS agrees that some other commercial gears, other than whelk pots, should be allowed on vessels that also possess horseshoe crabs

and fish in the closed area. Therefore, the rule has been modified as stated below in Alternative 3.

Alternative 3, the selected, preferred alternative closes an area encompassing a 30-nm radius off the mouth of Delaware Bay to horseshoe crab fishing, and prohibits possession of horseshoe crabs by a vessel or by a person on a vessel with a trawl or dredge. This allows vessels that have horseshoe crabs on board in the closed area to fish for other species with a variety of gears, but not trawls or dredges. The rationale for allowing such activity is based on the fact that trawls or dredges are most likely the only gears that would be used to harvest horseshoe crabs at depths such as those in the closed area. Therefore, for enforcement purposes, they are not allowed on vessels that also possess horseshoe crabs in the closed area. However, other gears aside from trawls or dredges are not as capable of catching horseshoe crabs and pose little risk to the enforcement of the closed area. Also, based on public comment, trawl doors may be left on vessels possessing horseshoe crabs in the closed area. This relieves fishermen of the cost of removing the doors if they wish to possess horseshoe crabs in the closed area. These modifications to the proposed rule provide some economic relief to the fishing fleet while not compromising the conservation goals of the action. The preferred alternative was selected because it was the best approach to preventing overfishing of the horseshoe crab resource off Delaware Bay while minimizing adverse economic impacts on fishing vessels.

The six other alternatives were rejected for the following reasons:

Alternative 1, the no action alternative, may result in future reductions in ex-vessel revenues, tourism revenues, and revenues from the biomedical industry if taking no action results in a decline in the horseshoe crab resource off Delaware Bay. Alternative 2, which would close an area encompassing a 30-nm radius off of mouth of Delaware Bay to horseshoe crab fishing and prohibit possession of horseshoe crabs, would prevent vessels from fishing for whelks in the closed area by prohibiting them from taking horseshoe crabs as bait into the closed area. Alternative 4, which closes an area encompassing a radius of 15-nm and prohibits possession of horseshoe crabs, was rejected because it did not provide adequate protection for horseshoe crabs and would have prevented the whelk fishery from continuing in the closed area. Alternative 3A was rejected because it would have unnecessarily prevented

vessels with horseshoe crabs on board from fishing in the closed area for other species with gears that are not likely to catch horseshoe crabs. Alternative 5, a closed area using a radius of 15-nm with limited possession of horseshoe crabs, was rejected because it did not provide adequate protection for horseshoe crabs and would have prevented vessels with horseshoe crabs on board from fishing in the closed area for other species with gears that are not likely to catch horseshoe crabs. Alternative 6, a closed area using a radius of 60-nm while allowing limited possession of horseshoe crabs, was rejected because it would have closed more area than needed to protect the Delaware Bay horseshoe crab resource, and thus unnecessarily negatively effected fishing vessels. A copy of the FRFA is available from NMFS (see **ADDRESSES**).

This final rule has been determined to be significant for purposes of Executive Order 12866.

The President has directed Federal agencies to use plain language in their communication with the public, including regulations. To comply with this directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this final rule. Such comments should be sent to the Chief, Staff Office for Intergovernmental and Recreational Fisheries (see **ADDRESSES**).

#### List of Subjects in 50 CFR Part 697

Fisheries, Fishing, Intergovernmental relations.

Dated: January 19, 2001.

**Penelope D. Dalton,**

*Assistant Administrator for Fisheries,  
National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR chapter VI, part 697, is amended as follows:

#### **PART 697—ATLANTIC COASTAL FISHERIES COOPERATIVE MANAGEMENT**

1. The authority citation for part 697 continues to read as follows:

**Authority:** 16 U.S.C. 1851 note; 16 U.S.C. 5101 *et seq.*

2. In § 697.2, the definitions for “Dredge,” “Horseshoe crab,” and “Trawl” are added alphabetically to read as follows:

##### **§ 697.2 Definitions.**

\* \* \* \* \*

*Dredge* means a gear consisting of a mouth frame attached to a holding bag constructed of metal rings or mesh.

\* \* \* \* \*

*Horseshoe crab* means members of stocks or populations of the species *Limulus polyphemus*.

\* \* \* \* \*

*Trawl* means a cone or funnel-shaped net that is towed through the water, and can include a pair trawl that is towed simultaneously by two boats.

\* \* \* \* \*

3. In § 697.7, paragraph (e) is added to read as follows:

**§ 697.7 Prohibitions.**

\* \* \* \* \*

(e) Atlantic Coast Horseshoe Crab fishery. In addition to the prohibitions set forth in § 600.725 of this chapter, it is unlawful for any person to do any of the following:

(1) Fish for horseshoe crabs in the Carl N. Shuster Jr. Horseshoe Crab Reserve described in § 697.23(f)(1).

(2) Possess horseshoe crabs on a vessel with a trawl or dredge in the closed area described in § 697.23(f)(1).

(3) Fail to return to the water immediately without further harm, all horseshoe crabs caught in the closed area described in § 697.23(f)(1).

4. In § 697.22, the introductory paragraph and paragraph (a)(1) are revised to read as follows:

**§ 697.22 Exempted fishing.**

The Regional Administrator may exempt any person or vessel from the requirements of this part for the conduct of exempted fishing beneficial to the management of the American lobster, weakfish, Atlantic striped bass, Atlantic sturgeon, or horseshoe crab resource or fishery, pursuant to the provisions of § 600.745 of this chapter.

(a) \* \* \*

(1) Have a detrimental effect on the American lobster, Atlantic striped bass, weakfish, Atlantic sturgeon, or horseshoe crab resource or fishery; or

\* \* \* \* \*

5. Section 697.23, paragraph (f) is added to read as follows:

**§ 697.23 Restricted gear areas.**

\* \* \* \* \*

(f) Carl N. Shuster Jr. Horseshoe Crab Reserve. (1) No vessel or person may fish for horseshoe crabs in the area known as the Carl N. Shuster Jr.

Horseshoe Crab Reserve bounded as follows:

(i) On the north by a straight line connecting points 39°14.6'N. lat., 74°30.9'W. long. (3 nm off of Peck Beach, NJ) and 39°14.6'N lat., 74°22.5'W. long.

(ii) On the east by a straight line connecting points 39°14.6'N. lat., 74°22.5'W. long. and 38°22.0'N. lat., 74°22.5'W. long.

(iii) On the south by a straight line connecting points 38°22.0'N. lat., 74°22.5'W. long. and 38°22.0'N. lat., 75°00.4'W. long. (3 nm off of Ocean City, MD).

(iv) On the west by the outermost boundary of state waters.

(2) No vessel or person on a vessel with a trawl or dredge may possess horseshoe crabs in the area described in paragraph (f)(1) of this section.

(3) Horseshoe crabs caught in the area described in paragraph (f)(1) of this section must be returned immediately to the water without further harm.

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