

south by 31°20.3' N. lat.; on the east by 79°49.8' W. long.; and on the west by 79°51.1' W. long.

(xlv) *Artificial Reef—KBY* is bounded on the north by 30°48.6' N. lat.; on the south by 30°46.6' N. lat.; on the east by 81°15.0' W. long.; and on the west by 81°17.4' W. long.

(xlvii) *Artificial Reef—KTK* is bounded on the north by 31°31.3' N. lat.; on the south by 31°29.3' N. lat.; on the east by 80°59.1' W. long.; and on the west by 81°01.5' W. long.

(xlviii) *Artificial Reef—MRY* is bounded on the north by 30°47.5' N. lat.; on the south by 30°45.5' N. lat.; on the east by 81°05.5' W. long.; and on the west by 81°07.8' W. long.

(xlix) *Artificial Reef—SAV* is bounded on the north by 31°55.4' N. lat.; on the south by 31°53.4' N. lat.; on the east by 80°45.2' W. long.; and on the west by 80°47.6' W. long.

(l) *Artificial Reef—SFC* is bounded on the north by 31°00.8' N. lat.; on the south by 30°59.8' N. lat.; on the east by

81°02.2' W. long.; and on the west by 81°03.4' W. long.

(li) *Artificial Reef—WW* is bounded on the north by 31°43.5' N. lat.; on the south by 31°42.2' N. lat.; on the east by 79°57.7' W. long.; and on the west by 79°59.3' W. long.

(2) To determine what restrictions apply in the SMZs listed in § 622.35(e)(1), follow this table:

IN SMZs SPECIFIED IN THE FOLLOWING PARAGRAPHS OF § 622.35	THESE RESTRICTIONS APPLY
(e)(1)(i) through (x), (e)(1)(xx), and (e)(1)(xxii) through (xxxix)	Use of a powerhead to take South Atlantic snapper-grouper is prohibited. Possession of a powerhead and a mutilated South Atlantic snapper-grouper in, or after having fished in, one of these SMZs constitutes <i>prima facie</i> evidence that such fish was taken with a powerhead in the SMZ.
(e)(1)(i) through (xviii) and (e)(1)(xxii) through (li)	Fishing may only be conducted with handline, rod and reel, and spearfishing gear.
(e)(1)(i) through (li)	Use of a sea bass pot or bottom longline is prohibited.
(e)(1)(xii) through (xviii) and (e)(1)(xl) through (li)	Possession of South Atlantic snapper-grouper taken with a powerhead is limited to the bag limits specified in § 622.39(d)(1).
(e)(1)(xix) and (e)(1)(xx)	A hydraulic or electric reel that is permanently affixed to the vessel is prohibited when fishing for South Atlantic snapper-grouper.
(e)(1)(xix) and (e)(1)(xxi)	Use of spearfishing gear is prohibited.

* * * *

4. In § 622.39, paragraph (a)(4) is added to read as follows:

§ 622.39 Bag and possession limits.

(a) * * *

(4) Paragraph (a)(1) of this section notwithstanding, a person aboard a vessel for which a commercial permit for South Atlantic snapper-grouper has been issued must comply with the bag limits specified in paragraph (d)(1) of this section for South Atlantic snapper-grouper taken with a powerhead, regardless of where taken, when such snapper-grouper are possessed in an SMZ specified in § 622.35(e)(1)(xii) through (e)(1)(xviii) or (e)(1)(xl) through (e)(1)(li).

* * * *

§§ 622.17 and 622.41 [Amended]

5. In addition to the amendments set forth above, in 50 CFR part 622, remove the telephone number, "813-570-5344", and add in its place "727-570-5344" in the following places:

(a) Section 622.17(b)(1) introductory text; and

(b) Section 622.41(a)(4) introductory text.

[FR Doc. 00-26359 Filed 10-13-00; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 697

[Docket No. 000824246-0246-01; I.D. 062700F]

RIN 0648-AO33

Horseshoe Crab; Interstate Fishery Management Plans

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

ACTION: Declaration of a moratorium; interim final rule.

SUMMARY: In accordance with the Atlantic Coastal Fisheries Cooperative Management Act (Act), as amended, NMFS, determined, on July 7, 2000, that the Commonwealth of Virginia is not in compliance with Addendum 1 to the Atlantic States Marine Fisheries Commission's (Commission) Interstate Fishery Management Plan (ISFMP) for horseshoe crab and has failed to implement measures necessary for the conservation of the fishery in question. Pursuant to the Act, NMFS hereby declares a Federal moratorium on fishing for horseshoe crabs in Virginia waters and issues regulations prohibiting the possession of horseshoe crabs in Virginia waters and the landing

of horseshoe crabs in Virginia, regardless of where they were caught. The purpose of this action is to support the interstate fishery management system and to encourage the implementation and enforcement of the Commission's ISFMP on horseshoe crabs.

DATES: Effective October 23, 2000.

ADDRESSES: Copies of an Environmental Assessment and Regulatory Impact Review (EA/RIR) are available from Richard H. Schaefer, Chief, Staff Office for Intergovernmental and Recreational Fisheries, NMFS, 8484 Georgia Avenue, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Paul Perra, Staff Office for Intergovernmental and Recreational Fisheries, NMFS, Headquarters 301-427-2014.

SUPPLEMENTARY INFORMATION:

Background

The Atlantic Coastal Fisheries Cooperative Management Act, as amended in 1996 (Act), 16 U.S.C. 5101 *et seq.*, was enacted to support and encourage the development, implementation, and enforcement of the Commission's ISFMPs to conserve and manage Atlantic coastal fishery resources. Section 806 of the Act specifies that, after notification by the Commission that an Atlantic coastal state is not in compliance with an ISFMP of the Commission, the Secretary of Commerce (Secretary) shall make a

finding, no later than 30 days after receipt of the Commission's notification, on: (1) Whether the state has failed to carry out its responsibilities to implement and enforce the Commission's ISFMP; and (2) whether the measures that the state has failed to implement and enforce are necessary for the conservation of the fishery in question. In making such a finding, the Act requires the Secretary to give careful consideration to the comments of the Commission, the Atlantic coastal state found out of compliance by the Commission, and the appropriate Regional Fishery Management Councils. If the Secretary finds that the state is not in compliance with the Commission's ISFMP, and that the measures the state has failed to implement are necessary for the conservation of the fishery, the Secretary must declare a moratorium on fishing in that fishery within the waters of the noncomplying state. The Secretary must specify the moratorium's effective date, which may be any date within 6 months after the declaration of the moratorium, and may issue regulations necessary to implement the moratorium. The Secretary has delegated this decision-making authority to NMFS.

Commission Finding of Noncompliance

Because of concern that the horseshoe crab population may be in the process of being depleted and the need to collect comprehensive information on the horseshoe crab fishery, the Commission adopted an ISFMP to improve data collection programs for horseshoe crabs in 1999. In February 2000, after extensive review of historical information on the fishery, the Commission adopted Addendum 1 to the ISFMP. Addendum 1 to the ISFMP for horseshoe crab is viewed by the Commission as a risk-averse, cooperative State/Federal means of controlling fishing effort on horseshoe crabs. The Commission used average landings over a base period of years to reduce each state's landings for horseshoe crab commercial bait fisheries by 25 percent for the 2000 fishing year. Addendum 1 caps the Atlantic coast state landings in the year 2000 at 2,275,296 horseshoe crabs; the Commonwealth of Virginia is allowed a landings quota of 152,495 horseshoe crabs – a 25-percent reduction from the average calculated using 1995-1997 as the base period.

Rather than implementing the 152,495 horseshoe crab quota by May 1, 2000, Virginia maintained an annual quota of 710,000 horseshoe crabs until July 28, 2000. The Commission found that the Commonwealth of Virginia has not

implemented and is not enforcing the Commission's ISFMP for horseshoe crab because it has failed to establish a quota on commercial horseshoe crab landings of 152,495 horseshoe crabs as specified in Addendum 1. The Commission notified the Secretary of its finding in a letter on June 9, 2000. Since that time, Virginia implemented through emergency regulations on July 28, 2000, an annual quota of 355,000 horseshoe crabs and a requirement for fishermen to use only one-half of a female horseshoe crab or two-halves of a male horseshoe crab in a bait bag if they use horseshoe crabs as bait.

NMFS Determination Regarding Compliance by the Commonwealth of Virginia

On July 7, 2000, based on a careful analysis of all relevant information, and taking into account comments presented by the Commission and the Commonwealth of Virginia, NMFS found that the Commonwealth of Virginia is not in compliance with the Commission's ISFMP for horseshoe crab based on Virginia's failure to implement and enforce the commercial quota specified in Addendum 1, and that the measure Virginia failed to implement and enforce is necessary for the conservation of the horseshoe crab fishery.

Whether Virginia Implemented and is Enforcing Addendum 1

Addendum 1 requires Virginia to implement a quota of 152,495 horseshoe crab by May 1, 2000. Instead, Virginia maintained its 710,000 horseshoe crab annual quota until July 28, 2000, when it reduced its quota to 355,000 horseshoe crabs by emergency regulations. Therefore, Virginia has failed to carry out its responsibility under 16 U.S.C. 5104 to implement and enforce Addendum 1 of the ISFMP for horseshoe crabs.

Whether the Measure is Necessary for Conservation

"Conservation" is defined in the Act as "the restoring, rebuilding, and maintaining of any coastal fishery resource and the marine environment, in order to assure the availability of coastal fishery resources on a long-term basis." The best available scientific information suggests that the horseshoe crab population is at risk of decline. If the population is in decline, the ability to restore, rebuild, and maintain the population to assure the availability of horseshoe crabs on a long-term basis is compromised, especially in light of the fact that horseshoe crabs are extremely vulnerable to overexploitation. They are

easily harvested and breed only once a year after reaching maturity at 10 years of age. Furthermore, all states in the Delaware Bay area – New Jersey, Maryland, Pennsylvania, and Delaware – have reduced horseshoe crab landings in line with Addendum 1, yet Virginia has not. As a result, the fishery has merely shifted landings to Virginia, thereby negating any conservation benefits of the other states' reductions in allowable landings. For these reasons, Virginia's implementation of the quota specified in Addendum 1 is necessary to support the interstate fishery management system designed to promote conservation of coastal fishery resources in a cooperative manner and to allow the Commission to assure the availability of horseshoe crabs on a long-term basis through further study and management measures, rather than risk depletion.

Declaration of a Moratorium and Issuance of Regulations

An Environmental Assessment and Regulatory Impact Review (EA/RIR) were completed to analyze the impacts caused by various alternatives for the implementation of a moratorium and necessary regulations. After a thorough review of the EA/RIR, NMFS is hereby declaring, pursuant to subsection 806(c) of the Act, a Federal moratorium on fishing for horseshoe crabs in Virginia waters and issuing, pursuant to subsection 806(d) of the Act, regulations that contain measures necessary to implement section 806, both to be effective October 23, 2000, unless Virginia is found in compliance with the Commission's ISFMP for horseshoe crabs by that time. The moratorium on fishing for horseshoe crabs includes the statutory prohibitions listed in subsection 806(e) of the Act (16 U.S.C. 5106(e)). Subsection 806(e) states: "During the time in which a moratorium under this section is in effect, it is unlawful for any person to - (1) violate the terms of the moratorium or of any implementing regulation issued under subsection 806(d) of this section; (2) engage in fishing for any species of fish to which the moratorium applies within the waters of the State subject to the moratorium; (3) land, attempt to land, or possess fish that are caught, taken, or harvested in violation of the moratorium or of any implementing regulation issued under subsection (d) of this section; (4) fail to return to the water immediately, with a minimum of injury, any fish to which the moratorium applies that are taken incidental to fishing for species other than those to which the moratorium applies, except as provided by regulations issued under

subsection (d) of this section; (5) refuse to permit any officer authorized to enforce the provisions of this chapter to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of this chapter; (6) forcibly assault, resist, oppose, impede, intimidate, or interfere with any such authorized officer in the conduct of any search or inspection under this chapter; (7) resist a lawful arrest for any act prohibited by this section; (8) ship, transport, offer for sale, sell, purchase, import, or have custody, control or possession of, any fish taken or retained in violation of this chapter; or (9) interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, knowing that such person has committed any act prohibited by this section."

The measures in this rule, which are necessary to implement section 806, are: (1) a prohibition on the possession of horseshoe crabs in Virginia waters regardless of where they are caught, and (2) a prohibition on landing horseshoe crabs in Virginia regardless of where they are caught. These measures are necessary to implement section 806, because they enable the effective enforcement of the statutory prohibitions on fishing for horseshoe crabs within Virginia waters and on landing and possessing horseshoe crabs caught in violation of the moratorium. Because enforcement agents enforcing the moratorium in Virginia waters would be unable to determine whether a horseshoe crab was caught in Virginia waters or in the EEZ and brought into Virginia waters, it is necessary to prohibit the possession of any horseshoe crabs in Virginia waters and the landing of horseshoe crabs in Virginia, regardless of where they were caught.

If the Commonwealth of Virginia implements and enforces measures bringing them into compliance, the Secretary will publish an appropriate announcement in the **Federal Register** rescinding the moratorium and this rule with respect to the Commonwealth of Virginia.

The agency is implementing the moratorium immediately because Virginia most likely has already exceeded its quota. Landings data from 1999 show that 152,495 horseshoe crabs – the equivalent of Virginia's quota for year 2000 under Addendum 1 – were landed by the first week in May 1999. Assuming the same rate of landings applies in 2000 as in 1999, Virginia has most likely landed more horseshoe crabs than its allocation under Addendum 1 by this time. Further, in anticipation of the declaration of a

moratorium on fishing for horseshoe crabs in Virginia waters, fishermen may have increased horseshoe crab landings in Virginia over the past couple months since the Commission voted to find Virginia out of compliance. As a result, there is reason to believe that the horseshoe crab landings rate in 2000 is higher than it was in 1999.

Classification

This declaration of a moratorium and rule are consistent with section 806 of the Atlantic Coastal Fisheries Cooperative Management Act.

The Assistant Administrator for Fisheries, NOAA (AA), finds that providing prior public notice and opportunity for comment is contrary to the public interest. Providing prior notice and opportunity for comment would be contrary to the public interest, because Virginia most likely has already exceeded its quota. Landings data from 1999 show that 152,495 horseshoe crabs – the equivalent of Virginia's quota for year 2000 under Addendum 1 – were landed by the first week in May 1999. Assuming the same rate of landings applies in 2000 as in 1999, Virginia has most likely landed more horseshoe crabs than its allocation under Addendum 1 by this time. Further, in anticipation of the declaration of a moratorium on fishing for horseshoe crabs in Virginia waters, fishermen may have increased horseshoe crab landings in Virginia over the past couple months since the Commission voted to find Virginia out of compliance. As a result, there is reason to believe that the horseshoe crab landings rate in 2000 is higher than it was in 1999. Given the fact that Virginia most likely has landed its horseshoe crab quota already, providing prior notice and opportunity for comment would be contrary to the public interest because it would allow Virginia to continue to land more horseshoe crabs than what should be its quota under Addendum 1, thereby frustrating achievement of conservation goals in Addendum 1. Therefore, the AA, under 5 U.S.C. 553(b)(B), finds that good cause exists to waive the requirement for prior notice and opportunity for comment.

Because Virginia most likely has already landed the equivalent number of horseshoe crabs as its quota under Addendum 1, given last year's landing rate, the AA finds that it is contrary to the public interest to delay for 30 days the effectiveness of this moratorium and this rule. Therefore, the AA, under 5 U.S.C. 553(d)(3), finds that good cause exists not to delay for 30 days the effective date of this rule. However, because fishermen need time to return

to port or leave Virginia waters if they have horseshoe crabs on board, the AA is delaying the effectiveness of the moratorium and this rule until October 23, 2000.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

Federalism Summary Impact Statement

The Act does not explicitly preempt state law. Rather, section 806 of the Act provides clear evidence that Congress intended the Secretary to have the authority to preempt state law. That authority has been delegated from the Secretary to the NMFS. NMFS has met the special requirements for preemption under section 4 of Executive Order 13132. The agency, in declaring a moratorium on fishing for horseshoe crabs and issuing this interim final rule, has restricted the preemption of state law to the minimum level necessary to achieve the objectives of the statute. As described in the following text, NMFS notified the Commonwealth of Virginia of the possibility of a moratorium and met with state officials to discuss the issues involved.

The AA wrote to the Governor of Virginia notifying him of the Commission's non-compliance determination, and the possibility that a moratorium may be declared, and offering him an opportunity to meet and present comments on these issues. In response, the Virginia Secretary of Natural Resources requested a meeting with the Secretary. On July 3, 2000 Virginia's representatives met with Deputy Secretary Robert Mallett and NOAA personnel.

Virginia representatives stated that the Commonwealth is managing the horseshoe crab fishery responsibly and noted that Virginia has implemented a number of strong conservation regulations on horseshoe crabs within its waters. They stated that the quota reduction required by Addendum 1 to the Commission's ISFMP for horseshoe crabs could not be implemented by the Virginia Marine Resources Commission (VMRC), because it did not meet Virginia's standards on preventing overfishing, achieving optimum yield, using the best scientific and biological information, managing interrelated stocks, and allocating fishing privileges among user groups with which VMRC's fisheries regulations must be consistent. They submitted a memorandum from VMRC stating that it could not ignore the mandates of Virginia law and implement a quota that may negatively

affect their whelk/conch (whelk) fishery.

Virginia's representatives further stated that the state legislature could act to implement the quota, but it is out of session until January 2001. They also noted that VMRC is in the process of requiring that bait bags be used in the Virginia whelk fishery and that the bait bag requirement should cut Virginia's need for horseshoe crabs in half. They also suggested that once the bait bag regulation goes in place, and if the Commission allowed unused horseshoe crab quota from other states to be transferred to Virginia, these actions should meet Virginia's bait needs without Virginia taking more than its Commission-allotted quota.

The Virginia representatives further said that under the ISFMP, Virginia is the only state to experience what it believes to be severe economic impact. Virginia has the market for horseshoe crab, which is used as bait in the Virginia eel and whelk/conch fisheries. Bait for these fisheries was shipped into Virginia, but since other states have restricted landings, Virginia's horseshoe crab landings have gone up. Virginia representatives felt that the state should not be found out of compliance. But if it is found out of compliance, it should be allowed time for the state legislature to act. Alternatively, Virginia believes that the moratorium should not go into effective until the entire coastwide quota for the ISFMP is exceeded.

On July 11, the AA informed Virginia that NMFS agrees with the Commission that Virginia is not in compliance with the ISFMP, and found that the measures Virginia has failed to implement for horseshoe crab management are necessary for conservation. In order to come back into compliance, Virginia must take action to reduce its commercial horseshoe crab fishery in line with the ISFMP. In response to Virginia's comments about the timing of a moratorium and the pending implementation of further horseshoe regulations by Virginia, and in light of the amount of horseshoe crabs most likely already landed in Virginia over its Addendum 1 quota, NMFS believes it is inadvisable to wait for the state legislature to address the issue in 2001 in a regular session. Also, any difficulties Virginia faces in light of Virginia State law and legislative scheduling do not override the Federal government's responsibility to implement Federal law. If Virginia is found in compliance by October 23, 2000, the moratorium and this rule will be rescinded. If Virginia is found in compliance after that date, the

moratorium will be lifted and the rule repealed.

Coastal Zone Management Act (CZMA)

Substantive Considerations

The CZMA requires that "[e]ach Federal agency activity within or outside the coastal zone that affects any land or water use or natural resource of the coastal zone shall be carried out in a manner which is consistent to the maximum extent practicable with the enforceable policies of approved State management programs." (16 U.S.C. 1456(c)(1)(A)). NMFS reviewed the list of policies contained in Executive Order 23 (1998) on the Virginia Coastal Resources Management Program, the United States Department of Commerce Final Environmental Impact Statement and the Virginia Coastal Resources Management Program (reprinted in 1994), a summary of the regulatory programs that comprise Virginia's coastal program, which included the Virginia Code citations for the legal authorities.

According to Chapter III of the United States Department of Commerce Final Environmental Impact Statement and the Virginia Coastal Resources Management Program, dated July 1985 and reprinted in 1994, the Fisheries Management Regulatory Program, which is part of Virginia's coastal management program, contains the following applicable policy and citation:

It shall be the goal of fisheries management within the Commonwealth of Virginia to conserve and enhance finfish and shellfish resources, and to preserve and promote both commercial and recreational fisheries, and, thereby, to maximize food production and recreational opportunities. The marine resources of the Commonwealth shall be managed for their maximum benefit and long-term use by present and future generations. The fishery management plans prepared and implemented according to law shall also have as a goal the preservation of the Commonwealth's exclusive right to manage the fisheries within its territorial jurisdiction.

Fishery management shall be based on the best scientific, economic, biological, and sociological information available, shall be responsive to the needs of interested and affected citizens, shall promote efficiency in the utilization of the resources, and shall draw upon all available capabilities in carrying out research, administration, management, and enforcement. (§ 28.1-23.1).

United States Department of Commerce Final Environmental Impact Statement and the Virginia Coastal Resources Management Program, Chapter III, July 1985, reprinted in 1994, at III-2. This policy was certified by the Attorney General's Office of Virginia as being enforceable. However, this policy

appeared at Virginia Code §28.1-23.1, which was repealed in 1992.

Nevertheless, NMFS finds that the Federal moratorium action is consistent to the maximum extent practicable with the enforceable policies of Virginia's approved coastal zone program. The Act states that upon finding that (1) a State has failed to implement and enforce a coastal fishery management plan and (2) the measures the State has failed to implement and enforce are necessary for the conservation of the fishery in question, the Secretary must declare a moratorium on fishing in the fishery in question. (16 U.S.C. 1506(c).) Once the factual findings are made, the Secretary does not have the discretion to decline to declare a moratorium. Nor does he have the discretion to modify the acts listed in §5106(e) that are prohibited during a moratorium. The Secretary does have the discretion to issue regulations necessary to implement the moratorium, and in this case, he has chosen to exercise that discretion. However, these two regulations make the moratorium enforceable; without them the declaration of a moratorium effectively would be meaningless, given that most horseshoe crabs landed in Virginia are caught outside of Virginia waters. According to the CZMA regulations, "consistent to the maximum extent practicable" describes the requirement for Federal activities affecting the coastal zone of States with approved management programs to be "fully consistent with such programs unless compliance is prohibited based on the requirements of existing law applicable to the Federal agency's operations." (15 CFR §930.32(a).) Because the Secretary lacks discretion under the Act in declaring a moratorium and identifying the main prohibited acts during the moratorium, the Secretary's action is consistent to the maximum extent practicable with Virginia's approved coastal management program. To the extent the Secretary's action is inconsistent with the enforceable policies of Virginia's approved coastal zone program, full consistency is prohibited by the requirements of the Act.

Even if the requirements of the Act did not prohibit consistency with the enforceable policies of Virginia's approved coastal management program, and assuming the policy formerly at Virginia Code §28.1-23.1 is an enforceable policy of Virginia's approved coastal management program, while also noting the standards for fishery management in Virginia Code §28.2-203, NMFS determines that this action is consistent to the maximum extent practicable. The goal of this

action is to support Addendum 1 to the Commission's ISFMP for horseshoe crab, which addresses concerns about localized depletion of horseshoe crabs by conserving and enhancing the horseshoe crab resource through a state by state quota system. Virginia is a participating member of the Commission, which acts under the authority of the Act, and has full knowledge of the moratorium provision in that statute. Therefore, this moratorium action is consistent with Virginia's desire to preserve the Commonwealth's exclusive right to manage fisheries within its jurisdiction to the same extent to which Virginia has retained such a right in light of its voluntary participation in the Commission.

While horseshoe crabs are neither finfish nor shellfish, but arthropods closely related to arachnids, they are a marine organism for which there is a fishery. NMFS' support of Addendum 1 through this non-allocative moratorium action is designed to prevent overfishing and assure achievement of optimum yield for a variety of user groups, which include the medical industry and commercial fishermen. The best available scientific information suggests that the horseshoe crab population is at risk of decline. If the population is in decline, the Commission's ability to restore, rebuild, and maintain the population to assure the availability of horseshoe crabs on a long-term basis is compromised, especially in light of the fact that horseshoe crabs are extremely vulnerable to overexploitation. They are easily harvested and breed only once a year after reaching maturity at 10 years of age. Furthermore, all states in the Delaware Bay area – New Jersey, Maryland, Pennsylvania, and Delaware – have reduced horseshoe crab landings in line with Addendum 1, yet Virginia has not. As a result, the fishery has merely shifted landings to Virginia, thereby negating any conservation benefits of the other states' reductions in allowable landings.

Landings data from 1999 show that 152,495 horseshoe crabs the equivalent of Virginia's quota for year 2000 under Addendum 1 - were landed by the first week in May 1999. Assuming the same rate of landings applies in 2000 as in 1999, Virginia has most likely landed more horseshoe crabs than its allocation under Addendum 1 by this time. Therefore, this moratorium action, designed to support and encourage implementation of Addendum 1, is necessary to allow the Commission to assure the availability of horseshoe crabs for present and future generations, including commercial fishermen,

through further study and management, rather than risk depletion by overfishing.

A recreational fishery for horseshoe crabs does not exist. Yet, by issuing regulations regarding possession and landing of horseshoe crabs regardless of where they are harvested, NMFS has taken into account the variation in Virginia's horseshoe crab fishery as it is prosecuted in both Virginia waters and the exclusive economic zone (EEZ). The acts prohibited during the moratorium are defined by the Act; therefore, NMFS cannot reduce the burden on fishermen. The regulations NMFS is issuing pursuant to 16 U.S.C. 5106(d) are the minimum necessary to implement the moratorium, and still allow horseshoe crabs to be harvested and used by Virginia's whelk fishermen in the EEZ. Therefore, NMFS has minimized the regulatory burden on fishermen where practicable.

Procedural Considerations

For the following legal and factual reasons, NMFS is proceeding with the declaration of the moratorium and issuance of regulations necessary to implement the moratorium prior to the end of the 90-day CZMA time period. First, the Act states in section 804 that "the [Atlantic States Marine Fisheries] Commission shall prepare and adopt coastal fishery management plans to provide for the conservation of coastal fishery resources," and mandates in section 806 that the Secretary enforce such conservation efforts by declaring a moratorium on a fishery upon finding that a state has failed to implement and enforce measures in the applicable coastal fishery management plan that are necessary for conservation. "Conservation" is defined in the Act as "the restoring, rebuilding, and maintaining of any coastal fishery resource and the marine environment, in order to assure the availability of coastal fishery resources on a long-term basis." (Section 802(4).) The best available scientific information suggests that the horseshoe crab population is at risk of decline. If the population is in decline, the Commission's ability to restore, rebuild, and maintain the population to assure the availability of horseshoe crabs on a long-term basis is compromised, especially in light of the fact that horseshoe crabs are extremely vulnerable to overexploitation. They are easily harvested and breed only once a year after reaching maturity at 10 years of age. Furthermore, all states in the Delaware Bay area – New Jersey, Maryland, Pennsylvania, and Delaware – have reduced horseshoe crab landings in line with Addendum 1 to the

Horseshoe Crab Plan, yet Virginia has not. As a result, the fishery has merely shifted landings to Virginia, thereby negating any conservation benefits of the other states' reductions in allowable landings.

In Section 802(a) of the Act, Congress found:

(3) Because no single governmental entity has exclusive management authority for Atlantic coastal fishery resources, harvesting of such resources [is] frequently subject to disparate, inconsistent, and intermittent State and Federal regulation that has been detrimental to the conservation and sustainable use of such resources and to the interests of fishermen and the Nation as a whole.

(4) The responsibility for managing Atlantic coastal fisheries rests with the States, which carry out a cooperative program of fishery oversight and management through the Atlantic States Marine Fisheries Commission. It is the responsibility of the Federal Government to support such cooperative interstate management of coastal fishery resources.

(5) The failure by one or more Atlantic States to fully implement a coastal fishery management plan can affect the status of Atlantic coastal fisheries, and can discourage other States from fully implementing coastal fishery management plans.

(6) It is in the national interest to provide for more effective Atlantic State fishery resource conservation and management.

The purpose of the Act as stated in Section 802(b) "is to support and encourage the development, implementation, and enforcement of effective interstate conservation and management Atlantic coastal fishery resources."

Given these findings and purposes, Congress clearly intended to address the type of situation presented by Virginia's refusal to implement and enforce Addendum 1 to the Commission's ISFMP for horseshoe crab. In the Act, Congress established procedures for quick action regarding the declaration of a Federal moratorium to support and encourage the development, implementation, and enforcement of effective interstate conservation and management of Atlantic coastal fishery resources. This interpretation is supported by the plain language of section 805, which allows the Commission only 10 working days to notify the Secretary that a state is not in compliance with a coastal fishery management plan; and by section 806, which allows the Secretary only 30 days to solicit and consider comments by the state and fishery management councils, make an independent determination of whether the State is in compliance and, if not, determine whether the measures the state has failed to implement and enforce are necessary for conservation.

Furthermore, section 806 also states that the Secretary must implement the moratorium within 6 months after its declaration. While the Act does not explicitly state a limit on the length of time that may elapse between the Secretary's finding and his declaration of the moratorium, NMFS believes, based on the language of sections 805 and 806, that that time period must be as short as possible.

Furthermore, landings data from 1999 show that 152,495 horseshoe crabs – the equivalent of Virginia's quota for year 2000 under Addendum 1 – were landed by the first week in May 1999.

Assuming the same rate of landings applies in 2000 as in 1999, Virginia has most likely landed more horseshoe crabs than its allocation under Addendum 1 by this time, further supporting implementation of a moratorium without further delay.

Because of these legal and factual reasons, and the need to promote the conservation of the resource, NMFS' action is consistent to the maximum extent practicable with the Virginia Coastal Management Program under 15

CFR 930.32(a). Moreover, NMFS is authorized to act prior to the end of the CZMA statutory and regulatory time periods pursuant to 15 CFR 930.32(b), otherwise NMFS would fail to meet its statutory responsibilities.

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

List of Subjects in 50 CFR Part 697

Fisheries, Fishing, Intergovernmental relations.

Dated: October 10, 2000.

William T. Hogarth,

*Deputy 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 50 CFR part 697 continues to read as follows:

Authority: 16 U.S.C. 5101 *et seq.*

2. In § 697.2, the definition for “Horseshoe crab” is added in alphabetical order to read as follows:

§ 697.2 Definitions.

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

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

§ 697.7 Prohibitions.

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(e) *Atlantic Coast horseshoe crab fishery.* In addition to the prohibitions set forth in § 600.725 of this chapter and 16 U.S.C. 5106(e), it is unlawful for any person to do any of the following:

(1) Possess any horseshoe crabs in Virginia waters, regardless of where they were harvested.

(2) Land any horseshoe crabs in Virginia, regardless of where they were harvested.

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