

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Parts 600 and 697**

[I.D. 080601B]

**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 EFPs to harvest horseshoe crabs; request for comments.

**SUMMARY:** NMFS announces that the Assistant Administrator for Fisheries is considering issuing an EFP to Limuli Laboratories to conduct experimental fishing operations otherwise restricted by the 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 EFPs for the harvest of 10,000 horseshoe crabs total for biomedical purposes and requiring as a condition of each EFP the collection of data on the status of Delaware Bay Horseshoe Crabs within the Reserve. Therefore, this document invites comments on the issuance of an EFP to Limuli Laboratories and establishes a cut-off date for receipt of complete applications for the harvest of horseshoe crabs from the Reserve for biomedical and data collection purposes.

**DATES:** Comments on this notice and applications for an EFP for biomedical and data collection purposes must be received on or before August 30, 2001.

**ADDRESSES:** Written comments and complete applications should be sent to and copies of a draft environmental assessment may be requested from Richard H. Schaefer, Chief, Staff Office for Intergovernmental and Recreational Fisheries, NMFS, 8484 Georgia Avenue, Suite 425, Silver Spring, MD 20910. Mark the outside of the envelope "Comments on Horseshoe Crab EFP Proposal" or "Application for Horseshoe Crab EFP." Comments or applications may also be sent via facsimile (fax) to (301) 427-2313. Neither comments nor applications will be accepted if submitted via e-mail or the Internet.

**FOR FURTHER INFORMATION CONTACT:** Paul Perra, Fishery Biologist (Management), (301) 427-2014.

**SUPPLEMENTARY INFORMATION:****Background**

The regulations that govern exempted experimental fishing, at 50 CFR 600.745(b) and 697.22 allow the Regional Administrator or Assistant Administrator for Fisheries to authorize for limited testing, public display, data collection, exploration, health and safety, environmental clean-up and/or hazardous removal purposes, and 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 crab, 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, unless an EFP is issued. 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 because the resulting mortality should be 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 have varied sizes of horseshoe crabs and the 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 due to the trawling operation.

Collection of horseshoe crabs for biomedical purposes from the Reserve is necessary because of the low numbers of horseshoe crabs found along the New Jersey Coast from August 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 significant scientific data gathered from the horseshoe crabs collected in the Reserve as a condition of receiving an EFP. Since the Reserve was established on February 5, 2001, no fishery data has been collected from this area. This data is needed to improve the understanding of horseshoe crabs 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 State of New Jersey, and the Commission.

**Proposed EFP**

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

The Limuli Laboratories of Cape May Court House, in cooperation with Dr. Carl N. Schuster, Jr., and the State of

New Jersey's Division of Fish and Wildlife, submitted an application for an EFP on April 11, 2001. 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.

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

(1) Allowing up to five vessels to collect horseshoe crabs from the Reserve. Five vessels are considered the maximum number because of the difficulty in enforcing the terms and conditions of the EFPs and the Reserve's regulations if more vessels are allowed to harvest horseshoe crabs from the Reserve;

(2) Requiring collection under an EFP to take place over approximately 20 days during the months of August, September, and October. Horseshoe crabs are readily available in harvestable concentrations nearshore earlier in the year, and offshore in the Reserve later in the year;

(3) Requiring a 5 and 1/2 inch flounder net to be used by these vessels 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) Limiting the number of horseshoe crabs collected by any one vessel to 500 per day and limiting the total number of horseshoe crabs to be taken out of the Reserve to no more than 10,000 per year;

(6) Restricting the hours of fishing to daylight hours only, approximately from 7:30 a.m. to 5:00 p.m. will 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

(7) 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 the following morning alive back to 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 EFP holders provide information on sex ratio, daily numbers, and tag 10 percent of the horseshoe crabs harvested. Also, EFP holders may be required to provide photographic documentation of physical appearance and 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: August 8, 2001.

**Dean Swanson,**

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

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[I.D. 080201E]

RIN 0648-AM40

#### Fisheries of the Exclusive Economic Zone Off Alaska; License Limitation Program for Groundfish of the Bering Sea and Aleutian Islands Area

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

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** The North Pacific Fishery Management Council (Council) has submitted Amendment 67 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI). Amendment 67 is necessary to stabilize the fully utilized fixed gear Pacific cod fishery in the BSAI. This will be accomplished by issuing endorsements for exclusive access to longtime participants. The intended effect of Amendment 67 is to conserve and manage the Pacific cod resources in the BSAI in accordance with the Magnuson-

Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). NMFS is requesting comments from the public on Amendment 67, copies of which may be obtained from the Council (see **ADDRESSES**).

**DATES:** Comments on Amendment 67 must be submitted by October 15, 2001.

**ADDRESSES:** Comments on proposed Amendment 67 should be submitted to Sue Salvesson, Assistant Regional Administrator for Sustainable Fisheries, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK, 99802, Attn: Lori Gravel, or delivered to room 401 of the Federal Building, 709 West 9th Street, Juneau, AK. Comments will not be accepted if submitted via e-mail or Internet. Copies of Amendment 67 and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis prepared for Amendment 67 are available from the North Pacific Fishery Management Council, 605 West 4th Avenue, Suite 306, Anchorage, AK 99501; telephone 907-271-2809.

**FOR FURTHER INFORMATION CONTACT:** John Lepore, 907-586-7228 or e-mail at john.lepore@noaa.gov.

**SUPPLEMENTARY INFORMATION:** The Magnuson-Stevens Act requires that each Regional Fishery Management Council submit any fishery management plan or plan amendment it prepares to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, after receiving a fishery management plan or plan amendment, immediately publish a notice in the **Federal Register** that the fishery management plan or plan amendment is available for public review and comment. This action constitutes such notice for Amendment 67 to the BSAI FMP. NMFS will consider the public comments received during the comment period in determining whether to approve Amendment 67.

#### Background

The Council recommended, and NMFS approved, the License Limitation Program (LLP) to address concerns of excess capital and capacity in the groundfish and crab fisheries off Alaska. Fishing under the LLP began on January 1, 2000. More information on the specifics of the LLP and the problems it was designed to resolve can be found in the final rule implementing the LLP (63 FR 52642, October 1, 1998).

The LLP, as implemented on January 1, 2000, was always considered by the Council and NMFS as an initial stage in a multi-staged process designed to reduce capacity and capital in the