

Kelley Drye Represents Conch Fishermen in Successful Repeal of Moratorium on Horseshoe Crab Harvesting

JUNE 8, 2007 - *Washington, DC* – A decision issued today by the Sussex County, Delaware Superior Court invalidates a moratorium on the harvest of horseshoe crabs just in time for the summer harvest season in the Delaware Bay. Representing a group of horseshoe crab and conch fishermen, David Frulla, a fisheries specialist at the law firm Kelley Drye Collier Shannon, helped convince a judge that, on the record before the court, the moratorium was baseless because a limited harvest strategy providing equivalent conservation benefits was available but rejected. Further, the moratorium would have unlawfully threatened the livelihood of both horseshoe crab fishermen and those who rely on horseshoe crab for bait, such as conch fishermen. The conch fishery generates between \$11 and \$15 million annually for local economies.

As a result of the successful appeal, and in accordance with Addendum IV of the Atlantic States Marine Fisheries Commission (“ASMFC”) management plan, Delaware fishermen will be able to harvest 100,000 male horseshoe crabs, which is less than one percent of the estimated adult male population in the Delaware Bay. Further, the harvest is delayed until June 8, and thus after the horseshoe crabs have spawned and shorebirds, such as red knots that forage on horseshoe crab eggs, have departed the Delaware Bay along their migratory path. For these reasons, Addendum IV was specifically designed to maximize benefits for shorebirds, while allowing for a limited commercial fishery.

“We are very pleased the Court recognized a win-win for shorebirds and fishermen alike by invalidating the moratorium” said Mr. Frulla. “With the horseshoe crab population demonstrably rebounding after nearly a decade of conservation, there was no rational reason for the state to step up existing conservation measures over and above the delayed male-only harvest. This more balanced and scientific approach fully protects female horseshoe crabs and was approved with overwhelming interstate support by the ASMFC.”

More specifically, since 1999, Delaware has imposed annual catch limits on horseshoe crabs and additional reporting and monitoring requirements as part of its participation in the ASMFC, and commercial horseshoe crab landings were already reduced by 76 percent. Instead of implementing the science-based, carefully limited, delayed male-only management approach recommended by the Delaware Department of Natural Resources and Environmental Control (“DNREC”) staff, last November, DNREC Secretary Hughes imposed a two-year moratorium on horseshoe crab harvests. Today’s court decision reverses the moratorium, allowing the limited male-only harvest to proceed.

“We are so pleased that the Court understood the need to balance sensible environmental regulations with the economic realities of those of us who depend upon the resources of the Delaware Bay. The Court confirmed that there was not any rational record basis for the moratorium. The decision is a victory for shorebird conservation, science-based fisheries management, and the rule of law,” said Rick Robins, owner of Bernie’s Conchs, LLC, a Virginia conch processing business. “Everybody wins with this decision.”

About David E. Frulla

David E. Frulla is a Partner in Kelley Drye Collier Shannon's Litigation, Environmental Law, and Government Relations and Public Policy Practice Groups. He maintains an advocacy-focused practice that seeks to develop and implement regulatory approaches to lessen governmental burdens on businesses and other regulated entities. Mr. Frulla has a particular expertise in maritime and natural resources-related law.

About Kelley Drye Collier Shannon's Fisheries Practice

Kelley Drye Collier Shannon features the nation's foremost multidisciplinary practice in the area of marine fisheries and resource management. The firm brings together two of the most well-recognized practitioners—David Frulla and Shaun Gehan—in fisheries litigation, regional fishery management council advocacy, regulatory procedure, and government relations with a team of seasoned lobbyists, economists, public relations professionals, and lawyers concentrated in disciplines of particular value to commercial fishing businesses, including international trade and customs, trade regulation, food and drug law, food safety, and business law.

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