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No proof for crab ban, fishermen say

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A group of Delaware Bay fishermen are suing the state Department of Environmental Protection to try to overturn a moratorium on horseshoe-crab harvesting.

The state DEP issued the moratorium in 2006, and recently moved to extend it indefinitely to aid a migratory shorebird that feeds on horseshoe-crab eggs.

The Delaware Bay beaches are the largest spawning area in the world for horseshoe crabs and the red knot, which winters in South America, stops here each spring to feed on the eggs before continuing to Arctic nesting grounds. The crabs have been harvested since the 1800s for use as fertilizer, animal feed, bait and for biomedical applications.

The South Jersey Waterman's Association and other commercial fishing interests in the case argue there are plenty of horseshoe crabs, and there is no proof their limited harvest is causing a decline in the population of red knots.

A similar moratorium in the state of Delaware was struck down by the courts, partly because of shaky data, which is one of the arguments on this side of the bay.

"The moratorium is arbitrary and capricious because none of the scientific studies in support of the moratorium provide an accurate account of the amount of horseshoe crab eggs in Delaware Bay. There is evidence there is surplus of horseshoe crab eggs. Even if there were a lack of eggs in Delaware Bay, however, the DEP provides no substantial evidence that a lack of food is causing the red knot's decline," states the lawsuit filed in state Superior Court.

The DEP, in its legal brief, cites studies that show a reduction in horseshoe-crab egg densities on the Delaware Bay beaches at the same time numbers of red knots have nosedived. Other studies show the weight of red knots, a sign they are not eating enough, is declining.

"Other conditions affecting the red knot have not changed as significantly as the reduction in horseshoe crab egg availability to red knots during their spring staging along the Delaware Bay," states the DEP brief.

The suit was initially filed in June 2006 and was scheduled to go to court on Nov. 27, 2007, but was postponed. The ban was set to expire Dec. 31, but earlier this month the state proposed extending it. The fishermen still want their day in court.

The ban so far has stopped a harvest quota of 150,000 horseshoe crabs per year, or 300,000 crabs in the past two years. The fishermen, however, note the annual quota was rarely met. In 2005, only 87,250 crabs were harvested. They argue this is a tiny percentage of the horseshoe crab stock

estimated by scientists at 13.3 million crabs.

The lawsuit also delves into economic issues. The fishermen note the crabs are used as bait to land conch and eels, the latter supplying a growing recreational fishery for striped bass. The conch and eel fishery generate \$13 million to \$17 million annually and supply 340 to 440 jobs, they say.

The DEP, however, points out that in 2003, harvesters sold the crabs for only about \$200,000 while the red knots were part of an eco-tourism birding industry worth as much as \$41 million per year.

The fishermen argue the DEP moratorium is invalid because it's outside the scope of the agency's authority. It notes the Atlantic States Marine Fisheries Commission, a compact of 15 East Coast states, charged with managing horseshoe crabs, considered but then rejected a harvesting ban.

"The ASMFC decided a full moratorium was unnecessary, as lesser restrictions including a reduced season and quota, would provide the same results of egg availability for red knots while still allowing fishermen to pursue their livelihoods," states the suit.

It also argues the state can only protect indigenous species, and the red knot only spends about two weeks per year in New Jersey. It also questions the DEP's authority to protect red knots, since the federal government recently declined to give the bird endangered-species status.

The suit also notes the state put restrictions in place before the ban that reduced the catch by 90 percent of the traditional harvest. Harvesting has been greatly reduced in recent years, and red knot numbers continue to decline. The suit questions whether the cause is a shortage of crab eggs. It notes crab spawning has been stable since 1999, and after red knots depart, there are still eggs on the beaches.

The suit mentions pollution, global warming, habitat degradation, competition from species and hunting as other reasons for the red-knot decline.

The DEP argues it can impose stricter restrictions than the ASMFC, and it says a migratory species can be considered indigenous. The DEP says the red knots are here more than two weeks and are "naturally occurring" in New Jersey as a product of evolution.

It says New Jersey is as important as wintering grounds in South America and breeding grounds in Canada. The bird is often on the move. Under the argument of the fishermen, the DEP notes, the red knot "would appear to be indigenous to nowhere."

The fishermen argue the DEP is supposed to regulate fisheries to produce optimal yields and not to protect migratory shorebirds. The DEP notes that besides fisheries laws, there is also an act the agency operates under to protect endangered species. The red knot did not get federal endangered-species listing but is listed as threatened in New Jersey.

The DEP said it balanced the short-term harm to fishermen against permanent harm, possibly extinction, of the red knot.

"...the department appropriately exercised its statutory mandate to manage both the horseshoe crab and the red knot to ensure the continuation of both species in the ecosystem," states the DEP brief.

Even if the bird were endangered, the fishermen argue, the DEP only has the power to prohibit actions against the bird itself and not the food it eats.

"The legislature never enabled the DEP to promulgate fishing regulations that eliminate an entire fishery for the purposes of incidentally protecting birds," the suit states.

There are several environmental groups that have intervened in the case.

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Print Page

Close Window