

Delaware Supreme Court Dismisses Appeal to Close Horseshoe Crab Fishery

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On June 24, the Delaware Supreme Court dismissed the appeal by a consortium of environmental groups seeking to close Delaware's horseshoe crab fishery. Represented by Kelley Drye & Warren LLP attorneys David E. Frulla and Eric Waeckerlin, Bernie's Conchs, LLC, a Virginia conch processing company, and Charles Auman, a local Delaware seafood dealer and fisherman, prevailed in the ruling. The ruling leaves Delaware's existing, restrictive horseshoe crab harvesting regulations in effect, which allow the harvest of 100,000 males per year. According to scientists with the Department of Natural Resources & Environmental Control ("DNREC"), the quota allows for the annual removal of less than one percent of the estimated mature male population of horseshoe crabs in Delaware Bay.

The male-only harvest strategy was developed by conch processor Rick Robins, and won interstate approval in May 2006 by the Atlantic States Marine Fisheries Commission ("ASMFC"). The strategy includes a year-round moratorium on the harvest of female horseshoe crabs in Delaware and New Jersey in order to maximize egg availability for migratory shorebirds in Delaware Bay while allowing a very limited commercial harvest of male horseshoe crabs after the red knots depart the Bay. Horseshoe crab scientist Dr. Carl N. Shuster, Jr. described the male-only harvest strategy as a perfect interim management solution, while the horseshoe crab population continues its present recovery.

Robins was pleased with the ruling and described the limited male-only harvest in Delaware as "a biologically sound management approach that represents a clear win-win solution for the birds, the crabs and the dependent fisheries. The strategy was upheld after being vetted technically at the ASMFC and emerging from extensive judicial review."

Coincidentally, the ruling comes at a time when multiple lines of scientific evidence indicate that the horseshoe crab population in the Delaware Bay population is experiencing a strong recovery. A recently updated meta-analysis by the ASMFC, which includes 13 horseshoe crab surveys and datasets, confirms that the population is quickly recovering towards 1990 population levels, which were regarded as the modern peak of horseshoe crab abundance. The recovery follows aggressive action by the ASMFC to abate fishing mortality, beginning in 1998 with the development of the Interstate Fishery Management Plan for Horseshoe Crab, which was followed by a series of increasingly restrictive addenda that cut harvesting by over 70 percent coastwide and by 90 percent in the Delaware Bay.

Recent red knot data indicate that the migratory shorebirds have not responded to the increases in horseshoe crab abundance, resulting in heightened concern over environmental factors elsewhere in the flyway, including mass mortality events that were documented in Uruguay in 2007, the apparent result of a toxic marine algal bloom.

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