



RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

OFFICE OF THE DIRECTOR
235 Promenade Street, Room 425
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April 13, 2016

Grover J. Fugate
Executive Director
Coastal Resources Management Council
Stedman Government Center
4808 Tower Hill, Suite 116
Wakefield, Rhode Island 02879

By email: gfugate@crmc.ri.gov

Re: **John Eliason/Horseshoe Crab Fishery**

Director Fugate:

John Eliason is a licensed participant in Rhode Island's horseshoe crab fishery. The Rhode Island Department of Environmental Management ("DEM") licenses him to harvest horseshoe crabs, hold horseshoe crabs, and purchase horseshoe crabs from other licensed harvesters. I have been advised that Mr. Eliason has participated in the horseshoe crab fishery for upwards of twenty years.¹ His horseshoe crab fishing occurs off the shore in Warwick. It is my understanding that Mr. Eliason is the only licensed Rhode Islander fisher who supplies horseshoe crabs to a Massachusetts biomedical facility. At that facility, horseshoe crab fluid is extracted and used in medical research.

As explained below, Mr. Eliason's harvesting, holding, and dealing in horseshoe crabs is commercial fishing within the exclusive jurisdiction of DEM.

Commercial Fishing

The Rhode Island "General Assembly's power to regulate marine fisheries is broad and plenary." *Riley v. Rhode Island Dep't of Envtl. Mgmt.*, 941 A.2d 198, 206 (R.I. 2008) (citing *Chereznia v. Lynch*, 847 A.2d 818, 822 (R.I. 2004)). In Title 20, the General Assembly vested this broad authority over the fish and wildlife of Rhode Island to the Director of DEM. *See* R.I.

¹ A Division of Fish and Wildlife memorandum documenting Mr. Eliason's recent licensure history is attached.

Gen. Laws § 20-1-2.² Within Title 20, “commercial fishing” is defined as “to take, harvest, *hold*, transport, load or off-load, marine species for sale or for intended sale.” *Id.* § 20-1-3(a)(9) (emphasis added). Focusing on Chapter 2.1 of Title 20, Commercial Fishing Licenses, the General Assembly specifies that it is the DEM Director’s duty to “maintain a commercial fisheries licensing system.” *Id.* § 20-2.1-9. As such, the management of commercial fisheries is vested within the jurisdiction of DEM.

Commercial Fishing Licenses — Crustaceans

DEM has the exclusive authority to issue licenses for the commercial fishing of crustaceans. *See id.* § 20-2.1-4(a)(1). The statutory definition of crustaceans includes horseshoe crabs. *See id.* § 20-2.1-3(4). A license is required “[t]o catch, harvest, or to *hold* or transport for sale . . . any crustacean.” *Id.* § 20-2.1-4(a)(1) (emphasis added). Mr. Eliason’s horseshoe crab fishing, therefore, is commercial fishing of crustaceans exclusively licensed by DEM.

Horseshoe Crab Regulations

In its *Rhode Island Marine Fisheries Regulations*, DEM promulgated regulations for the governance of various fisheries including the horseshoe crab fishery. *See Rhode Island Marine Fisheries Regulations*, Sections 10.1 *et seq.* For example, the Department’s regulations require that a licensed commercial fisher must obtain a special permit: “No person shall harvest horseshoe crabs for commercial purposes without a valid commercial marine fishing license and a Horseshoe Crab Harvest Permit obtained from the Director.” *Id.* § 10.1.1. These Regulations also mandate the timely return to marine waters of all horseshoe crabs following their use by biomedical facilities. *See id.* § 10.4.3. In addition, regulations specify that “[t]he only species of Horseshoe Crab which may be possessed within the jurisdictional limits of the State of Rhode Island is the Atlantic Horseshoe Crab *Limulus polyphemus*.” *Id.* § 10.3.3.

Horseshoe Crab Fishing Is Not The Wet Storage Of Shellfish

CRMC has authority pertaining to the wet storage of shellfish. *See* R.I. Admin. Code 25-8-4:19.5.1. The term “shellfish” is defined as “quahogs, clams, mussels, scallops, oysters, conches, and mollusks in general other than squid.” R.I. Gen. Laws § 20-2.1-3(10). Shellfish is also defined as “oysters, mussels, and all varieties of clams.” *Id.* §§ 20-8.1-1(7), 21-14-1(7). Regulations define the term shellfish as “all molluscan species growing in Rhode Island tidal waters, including, but not limited to bay quahaug, ocean quahaug, blue mussel, oyster, soft-shell clam, bay scallop, and surf clam.” R.I. Admin. Code 25-8-4:4.6. Under none of these definitions is a horseshoe crab defined as a shellfish.

² In Chapter 10 of Title 20, the General Assembly granted authority for aquaculture to both the Coastal Resources Management Council (CRMC) and DEM. For example, aquaculture applications are submitted to CRMC but cannot be approved until the Director of DEM evaluates the application. *See* R.I. Gen. Laws §§ 20-10-4, 20-10-5. Aquaculture is defined to mean “the cultivation, rearing, or propagation of aquatic plants or animals under either natural or artificial conditions.” *Id.* § 20-10-2(1). As explained herein, Mr. Eliason is engaged in commercial fishing of horseshoe crabs; his horseshoe crab harvesting and holding is not aquaculture.

In contrast, horseshoe crabs are defined as crustaceans. *See* R.I. Gen. Laws § 20-2.1-3(4). Moreover, the only species of horseshoe crabs that may be possessed in Rhode Island is the Atlantic Horseshoe Crab *Limulus polyphemus*. *See* R.I. Admin. Code 25-8-4:15.1.10.3.3. The Atlantic States Marine Fisheries Commission (“ASMFC”) explains that *Limulus polyphemus* are marine arthropods.³

Since horseshoe crabs are not shellfish, the holding of horseshoe crabs is not the wet storage of shellfish. Rather, the “holding” of horseshoe crabs is a commercial fishery regulated exclusively by DEM. *See* R.I. Gen. Laws §§ 20-1-3(a)(9); 20-2.1-3(4); 20-2.1-4(a).

RIDEM Has Exclusive Jurisdiction Over Horseshoe Crab Fishing

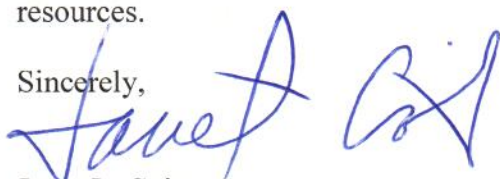
For many years, Mr. Eliason has harvested and held horseshoe crabs in storage cars. Mr. Eliason holds horseshoe crabs prior to their transport to Massachusetts where their fluids are extracted for biomedical purposes and then returned to the holding cars. The ASMFC recognizes the critical importance of this fishery:

Horseshoe crabs are also collected by the biomedical industry to support the production of LAL (short for *Limulus amoebocyte lysate*), a clotting agent that aids in the detection of human pathogens in patients, drugs, and intravenous devices. No other procedure has the same accuracy as the LAL test. Blood from the horseshoe crab is obtained by collecting adults, extracting a portion of their blood, and releasing them alive.⁴

Mr. Eliason’s fishing falls squarely within RIDEM’s jurisdiction. Essentially, he harvests and holds crustaceans and offers their fluid for sale. This commercial fishing of horseshoe crabs is within the exclusive jurisdiction of DEM.

I hope that this letter clarifies any confusion regarding this matter and appreciate the cooperative relationship of RIDEM and CRMC in our joint efforts to protect the State’s natural resources.

Sincerely,



Janet L. Coit

Director, R.I. Department of Environmental Management

cc: John Eliason
Brian Goldman (by email)

Attachment

³ *See* <http://www.asmfc.org/species/horseshoe-crab> (last visited April 10, 2016).

⁴ *See* <http://www.asmfc.org/species/horseshoe-crab> (last visited April 10, 2016).



Rhode Island
Department of Environmental Management

DIVISION OF FISH AND WILDLIFE

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To: Gary Powers, DEM Legal

From: Jason McNamee, Chief, Division of Fish and Wildlife - Marine Fisheries Section

Re: John Eliason Horseshoe Crab Fishery Participation

Date: April 12, 2016

Mr. Eliason has been an active participant in the Rhode Island Horseshoe Crab fishery since the Atlantic States Marine Fisheries Commission, Interstate Fishery Management Plan ("FMP") for Horseshoe Crab was adopted in December 1998. Prior to this FMP, we have no record of participants on the individual level and cannot verify his participation although anecdotal evidence indicates his involvement in both the biomedical and bait fisheries in excess of twenty (20) years.

Mr. Eliason has been compliant with all reporting requirements of the Marine Section permit for Horseshoe Crab harvest and has held a State of Rhode Island Dealers Permit since 2013. He also has been an active participant in providing Biological data on the Horseshoe Crab catch composition which is part of the State of Rhode Island Annual Compliance Report for the Interstate Management Plan submitted to the ASMFC.

Mr Eliason currently is in possession of the following two licenses and one permit issued by the Department by which he is authorized to harvest, purchase and sell horseshoe crabs:

1. A commercial fishing license allows him to go in to the waters of the state and harvest horseshoe crabs. This license is renewed annually, his license number is - MPURP000618
2. A commercial seafood dealers license allows him to purchase harvested horseshoe crabs from other fishers. This license is renewed annually, his dealers license number is - DMPURP000185
3. A Division of Fish and Wildlife Permit (free permit) which allows him to harvest Bait and Biomedical Horseshoe Crabs (number provided below). This is a single permit that he is issued annually that allows him to harvest both biomedical and bait crabs; both types of harvest are authorized pursuant to this single permit.

The reason for the Bait and Biomedical Horseshoe Crabs permit (#3 above) is to allow a mechanism for the DFW to require special reporting for horseshoe crabs so we can determine the portion of the harvest that is bait and that which is for biomedical use. If the reports are not filled out adequately, the fisher will not be authorized to participate in the horseshoe crab fishery in the following year, while not having to suspend the fisherman's whole license.

Below are the permits issued for Mr. Eliason during the last four years. The permits indicate that Mr. Eliason is permitted to participate in both the Bait and Bio-medical portions of the annual Horseshoe Crab harvest.

Permit	Permit Number
HSC	2013-37
HSC	2014-31
HSC	2015-18
HSC	2016-18