PREAMBLE

This chapter establishes licensing requirements and exemptions for the harvesting of horseshoe crabs. This chapter also establishes commercial fisheries management measures for horseshoe crabs, including an annual commercial quota, gear specific quotas, and monitoring requirements for horseshoe crabs, that comply with the provisions of the Interstate Fishery Management Plan for Horseshoe Crab.

This chapter is promulgated pursuant to the authority contained in § 28.2-201 of the Code of Virginia. This chapter amends and re-adopts, as amended, previous Chapter 4 VAC 20-900-10 et seq. which was promulgated March 25, 2014 and made effective on April 1, 2014. The effective date of this chapter, as amended, is January 1, 2015.

4VAC20-900-10. PURPOSE.

The purpose of this chapter is to establish commercial fisheries management measures and monitoring requirements in accordance with the Interstate Fishery Management Plan for Horseshoe Crab.

4VAC20-900-20. DEFINITION.

The following words or terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"COLREGS Line" means the COLREGS Demarcation Line, as defined in the Code of Federal Regulations (33 CFR 80.510 Chesapeake Bay Entrance, VA).

"Horseshoe crab" means any crab of the species *Limulus polyphemus.*

"Land" or "landing" means to enter port with horseshoe crabs on board any boat or vessel, to begin offloading horseshoe crabs, or to offload horseshoe crabs.

"Toms Cove Area" means all waters of Toms Cove and Little Toms Cove located east of a line from the western most point of Assateague Point to the western most point of Fishing Point and extending to the mean low water line of Assateague Island.

4VAC20-900-21. PERMIT REQUIREMENTS AND EXEMPTION.

A. The taking by hand of as many as five horseshoe crabs in any one day only for noncommercial use shall be exempt from the licensing requirements.

B. It shall be unlawful for any individual to land horseshoe crabs in Virginia for commercial purposes without first obtaining a horseshoe crab permit as described in this section. A valid horseshoe crab permit shall be required of each individual to land horseshoe crabs for commercial purposes. Possession of any quantity of horseshoe crabs that exceeds the limit described in subsection A of this section shall be presumed for commercial purposes.

C. It shall be unlawful for any individual to take, catch, possess, or land any horseshoe crab by trawl gear without first having obtained a Horseshoe Crab Trawl Permit. The Horseshoe Crab Trawl Permit shall only be issued to a Virginia registered commercial fisherman who was issued an unrestricted horseshoe crab endorsement license or horseshoe crab bycatch permit prior to the license moratorium of May 1, 2011, and meets either of the criteria in subdivision 1 or 2 of this subsection:

1. Shall have documentation of a minimum harvest amount of one horseshoe crab at any time from January 1, 1993, through December 31, 2010, by trawl gear in the commission's mandatory harvest reporting system; or,

2. Shall have documentation of a minimum harvest amount of one horseshoe crab at any time from January 1, 2004, through December 31, 2010, by trawl gear in the federal dealer reports to the Standard Atlantic Fisheries Information System.

D. It shall be unlawful for any individual to take, catch, possess, or land any horseshoe crab by dredge gear without first having obtained either and only one of the following two available horseshoe crab dredge permits: a Horseshoe Crab Class A Dredge Permit or a Horseshoe Crab Class B Dredge Permit. The Horseshoe Crab Class A Dredge Permit shall only be issued to a Virginia registered commercial fisherman who was issued an unrestricted horseshoe crab endorsement license prior to the license moratorium of May 1, 2011, and meets either of the criteria in subdivision 1 or 2 of this subsection. The Horseshoe Crab Class B Dredge Permit shall only be issued to a Virginia registered commercial fisherman who was issued a restricted horseshoe crab endorsement license or a horseshoe crab bycatch permit prior to the license moratorium of May 1, 2011, and meets either of the criteria in subdivision 1 or 2 of this subsection.

1. Shall have documentation of a minimum harvest amount of one horseshoe crab at any time from January 1, 1993, through December 31, 2010, by dredge gear in the Commission's mandatory harvest reporting system; or,

2. Shall have documentation of a minimum harvest amount of one horseshoe crab at any time from January 1, 2004, through December 31, 2010, by dredge gear in the federal dealer reports to the Standard Atlantic Fisheries Information System.

E. It shall be unlawful for any individual to take, catch, possess, or land any horseshoe crab by hand harvest without first having obtained a Horseshoe Crab Hand Harvest Permit. The Horseshoe Crab Hand Harvest Permit shall only be issued to a Virginia registered commercial fisherman who was issued a horseshoe crab hand harvester permit prior to the license moratorium of May 1, 2011, and shall have documentation of a minimum harvest amount of one horseshoe crab at any time from January 1, 1993, through December 31, 2010, by hand harvest in the commission's mandatory harvest reporting system.

F. It shall be unlawful for any individual to take, catch, possess, or land any horseshoe crab by pound net without first having obtained a Horseshoe Crab Pound Net Permit. The Horseshoe Crab Pound Net Permit shall only be issued to a Virginia registered commercial fisherman who was issued an unrestricted horseshoe crab endorsement license or horseshoe crab bycatch permit prior to the license moratorium of May 1, 2011, and meets either of the criteria in subdivision 1 or 2 of this subsection:

1. Shall have documentation of a minimum harvest amount of one horseshoe crab at any time from January 1, 1993, through December 31, 2010, by pound net in the commission's mandatory harvest reporting system; or,

2. Shall have documentation of a minimum harvest amount of one horseshoe crab at any time from January 1, 2004, through December 31, 2010, by pound net in the federal dealer reports to the Standard Atlantic Fisheries Information System.

G. It shall be unlawful for any individual to take, catch, possess, or land any horseshoe crab by any method other than trawl, dredge, pound net, or hand harvest without first having obtained a Horseshoe Crab General Category Permit. The Horseshoe Crab General Category Permit shall only be issued to a Virginia registered commercial fisherman who was issued an unrestricted horseshoe crab endorsement license or horseshoe crab bycatch permit prior to the license moratorium of May 1, 2011.

4VAC20-900-25. COMMERCIAL FISHERIES MANAGEMENT MEASURES.

A. It shall be unlawful for any individual to harvest horseshoe crabs from any shore or tidal waters of Virginia within 1,000 feet in any direction of the mean low water line from May 1 through June 7. The harvests of horseshoe crabs for biomedical use shall not be subject to this limitation.

B. From January 1 through June 7 of each year, it shall be unlawful for any individual to land, in Virginia, any horseshoe crab harvested from federal waters.

C. Harvests for biomedical purposes shall require a special permit issued by the Commissioner of Marine Resources, and all crabs taken pursuant to such permit shall be returned to the same waters from which they were collected.

D. The annual commercial quota of horseshoe crab shall be 172,828 horseshoe crabs. Additional quantities of horseshoe crab may be transferred to Virginia by other jurisdictions, in accordance with the provisions of Addendum I to the Atlantic States Marine Fisheries Commission Fishery Management Plan for Horseshoe Crab, April 2000, provided that the combined total of the commercial quota and transfer from other jurisdictions shall not exceed 355,000 horseshoe crabs. It shall be unlawful for any individual to harvest from Virginia waters, or to land in Virginia, any horseshoe crab for commercial purposes after any calendar-year commercial quota of horseshoe crab has been attained and announced as such.

1. The horseshoe crab commercial trawl gear quota is equal to 12.488% of the commercial quota of horseshoe crabs described in this subsection or 21,583 horseshoe crabs.

2. The horseshoe crab commercial dredge gear quota is equal to 40.348% of the commercial quota of horseshoe crabs described in this subsection or 69,733 horseshoe crabs.

3. The horseshoe crab commercial hand harvest quota is equal to 22.095% of the commercial quota of horseshoe crabs described in this subsection or 38,186 horseshoe crabs.

4. The horseshoe crab commercial pound net quota is equal to 18.142% of the commercial quota of horseshoe crabs described in this subsection or 31,354 horseshoe crabs.

5. The horseshoe crab commercial general category quota is equal to 6.927% of the commercial quota of horseshoe crabs described in this subsection or 11,972 horseshoe crabs.

E. It shall be unlawful for any individual to harvest or land horseshoe crabs during any calendar year from waters east of the COLREGS line by any gear after 81,331 male horseshoe crabs have been landed and announced as such, and the following provisions shall also apply:

1. It shall be unlawful for any individual to harvest or land any female horseshoe crabs from waters east of the COLREGS Line.

2. It shall be unlawful for any individual to harvest or land any amount of horseshoe crabs from waters east of the COLREGS Line by any gear, except trawl or dredge gear.

3. It shall be unlawful for any valid Horseshoe Crab Trawl Permittee or Horseshoe Crab Class A Dredge Permittee to take, catch, possess, or land more than 1,250 male horseshoe crabs from waters east of the COLREGS Line when it is projected and announced that 65,065 male horseshoe crabs have been landed from waters east of the COLREGS Line.

4. It shall be unlawful for any valid Horseshoe Crab Class B Dredge Permittee to take, catch, possess, or land more than 500 male horseshoe crabs from waters east of the COLREGS Line when it is projected and announced that 65,065 male horseshoe crabs have been landed from waters east of the COLREGS Line.

F. For the purposes of this regulation, no horseshoe crab shall be considered a male horseshoe crab unless it possesses at least one modified, hook-like appendage as its first pair of walking legs.

G. Limitations on the daily harvest and possession of horseshoe crabs for any vessel described below are as follows:

1. It shall be unlawful for any valid Horseshoe Crab Trawl Permittee, as described in 4VAC20-900-21 C, to possess aboard any vessel or to land any number of horseshoe crabs in excess of 2,500 per day. When it is projected and announced that 80% of the horseshoe crab commercial trawl gear quota has been taken, it shall be unlawful for any valid Horseshoe Crab Trawl Permittee to possess aboard any vessel or to land any number of horseshoe crabs in excess of 1,250 per day. When it is projected and announced that 100% of the horseshoe crab commercial trawl quota is taken, it shall be unlawful for any valid Horseshoe Crab Trawl Permittee to possess or land any horseshoe crab taken by trawl gear.

2. It shall be unlawful for any valid Horseshoe Crab Class A Dredge Permittee, as described in 4VAC20-900-21 D, to possess aboard any vessel or to land any number of horseshoe crabs in excess of 2,500 per day. When it is projected and announced that 80% of the horseshoe crab commercial dredge gear quota has been taken, it shall be unlawful for any valid Horseshoe Crab Class A Dredge Permittee to possess aboard any vessel or to land any number of horseshoe crabs in excess of 1,250 per day. When it is projected and announced that 100% of the horseshoe crab commercial dredge gear quota has been taken, it shall be unlawful for any valid Horseshoe Crab Class A Dredge Permittee to possess or land any horseshoe crab taken by dredge gear.

3. It shall be unlawful for any valid Horseshoe Crab Class B Dredge Permittee, as described in 4VAC20-900-21 D, to possess aboard any vessel or to land any number of horseshoe crabs in excess of 1,000 per day. When it is projected and announced that 80% of the horseshoe crab commercial dredge gear quota has been taken, it shall be unlawful for any valid Horseshoe Crab Class B Dredge Permittee to possess aboard any vessel or to land any number of horseshoe crabs in excess of 500 per day. When it is projected and announced that 100% of the horseshoe crab commercial dredge gear quota has been taken, it shall be unlawful for any valid Horseshoe Crab Class B Dredge Permittee to possess or land any horseshoe crab taken by dredge gear.

4. It shall be unlawful for any valid Horseshoe Crab Hand Harvest Permittee, as described in 4VAC20-900-21 E, to possess aboard any vessel or to land any number of horseshoe crabs in excess of 500 per 24-hour period, as described in subdivision 9 of this subsection. When it is projected and announced that 80% of the horseshoe crab commercial hand harvest quota has been taken, it shall be unlawful for any valid Horseshoe Crab Hand Harvest Permittee to possess aboard any vessel or to land any number of horseshoe crabs in excess of 250 per 24-hour period, as described in subdivision 9 of this subsection. When it is projected and announced that 100% of the horseshoe crab commercial hand harvest quota has been taken, it shall be unlawful for any valid Horseshoe Crab Hand Harvest Permittee to possess or land any horseshoe crab taken by hand.

5. It shall be unlawful for any valid Horseshoe Crab Pound Net Permittee, as described in 4VAC20-900-21 F, to possess aboard any vessel or to land any number of horseshoe crabs in excess of 500 per day. When it is projected and announced that 80% of the horseshoe crab commercial pound net quota has been taken, it shall be unlawful for any valid Horseshoe Crab Pound Net Permittee to possess aboard any vessel or to land any number of horseshoe crabs in excess of 250 per day. When it is projected and announced that 100% of the horseshoe crab commercial pound net quota has been taken, it shall be unlawful for any valid Horseshoe Crab Pound Net Permittee to possess or land any horseshoe crab taken by pound net.

6. It shall be unlawful for any valid Horseshoe Crab General Category Permittee, as described in 4VAC20-900-21 G, to possess aboard any vessel or to land any number of horseshoe crabs in excess of 250 per day. When it is projected and announced that 80% of the horseshoe crab commercial general category quota has been taken, it shall be unlawful for any valid Horseshoe Crab General Category Permittee to possess aboard any vessel or to land any number of horseshoe crabs in excess of 125 per day. When it is projected and announced that 100% of the horseshoe crab commercial general category quota has been taken, it shall be unlawful for any valid Horseshoe Crab General Category Permittee to possess or land any horseshoe crab taken by gear other than trawl, dredge, pound net, or by hand.

7. It shall be unlawful for any two valid Horseshoe Crab Hand Harvest Permittees when fishing from the same boat or vessel to possess or land more than 1,000 horseshoe crabs per 24-hour period, as described in subdivision 9 of this subsection. When it is projected and announced that 80% of the horseshoe crab commercial hand harvest quota has been taken, it shall be unlawful for any two valid Horseshoe Crab Hand Harvest Permittees fishing from the same boat or vessel to possess or land more than 500 horseshoe crabs per 24-hour period, as described in subdivision 9 of this subsection.

8. It shall be unlawful for any valid Horseshoe Crab General Category Permittee to harvest horseshoe crabs by gill net, except as described in this subdivision.

   a. Horseshoe crabs shall only be harvested from a gill net, daily, after sunrise and before sunset.

   b. It shall be unlawful for any individual to harvest or possess horseshoe crabs taken by any gill net that has a stretched mesh measure equal to or greater than six inches, unless the twine size of that gill net is equal to or greater than 0.81 millimeters in diameter (0.031 inches), and that individual possesses his own valid commercial striped bass permit or his own Black Drum Harvesting and Selling Permit, as well as a Horseshoe Crab General Category Permit.

9. It shall be unlawful for any person permitted for hand harvest of horseshoe crabs to possess or land any horseshoe crabs, except during a 24-hour period that extends from 12 noon on one day to 12 noon the following day.

H. From April 1 through June 30, in the Toms Cove Area, it shall be unlawful for any individual to place, set, or fish any gill net, except as described in this subsection.

1. From April 1 through May 31, any gill net licensed as over 600 feet and up to 1,200 feet in length, shall have at least one anchored end 800 feet from the mean low water line.

2. From June 1 through June 30, it shall be unlawful to place, set, or fish any gill net after sunset or before sunrise.

I. It shall be unlawful for any valid Horseshoe Crab Trawl Permittee, Horseshoe Crab Class A Dredge Permittee, or Horseshoe Crab Class B Dredge Permittee to offload any horseshoe crabs between the hours of 10 p.m. and 7 a.m.

4VAC20-900-26. COMMERCIAL GEAR RESTRICTED AREA.

It shall be unlawful for any person to harvest any horseshoe crabs by dredge gear within Virginia Blue Crab Sanctuary Area 2 as described in 4VAC20-752-20. The Virginia Blue Crab Sanctuary Area 2 consists of all tidal waters of the Chesapeake Bay that are bounded by a line beginning at the mean low water line of Willoughby Spit at its intersection with the center line of the Hampton Roads Bridge Tunnel facility, Latitude 36° 58.0456514' N., Longitude 76° 17.8459721' W.; thence in a northwesterly direction to a point 200 feet offshore of mean low water, Latitude 36° 58.0637717' N., Longitude 76° 17.8812821' W.; thence and following a line in a general easterly direction, said line being 200 feet offshore of the mean low water line, to a point on Ocean View Fishing Pier (formerly Harrison's Fishing Pier), Latitude 36° 57.6985477' N., Longitude 76° 15.5855211' W.; thence northeasterly to Thimble Shoal Light, Latitude 37° 00.8708333' N., Longitude 76° 14.3970000' W.;

thence northeasterly to Cape Charles Lighthouse, Latitude 37° 07.3743333' N., Longitude 75° 54.3898333' W.; thence southwesterly along the COLREGS Line to its intersection with the mean low water line of Cape Henry, Latitude 36° 55.6885268' N., Longitude 76° 00.3772955' W.; thence, in a general westerly direction, following the mean low water line of the Chesapeake Bay, crossing the mouth of the Lynnhaven River along the north side of the Lesner Bridge and the Mouth of Little Creek at the offshore ends of the stone breakwaters and continuing along said mean low water line to a point at its intersection with the center line of the Hampton Roads Bridge Tunnel facility, said point being the point of beginning.

4VAC20-900-30. (Repealed.)

4VAC20-900-35. MONITORING REQUIREMENTS.

A. Any individual harvesting or landing horseshoe crabs in Virginia shall report monthly on forms provided by the Marine Resources Commission all harvests of horseshoe crabs including, but not limited to, bait fisheries, bycatch, biomedical industry, and scientific and educational research harvests. Reporting requirements shall consist of numbers and pounds landed by sex, harvest method and harvest location.

B. It shall be unlawful for any valid Horseshoe Crab Trawl Permittee, Horseshoe Crab Class A Dredge Permittee, or Horseshoe Crab Class B Dredge Permittee to fail to contact the Marine Resources Operations Station prior to offloading horseshoe crabs. The horseshoe crab permittee shall provide the Marine Resources Commission the name of the vessel and its captain and the anticipated or approximate offloading time and site. Following offloading, the horseshoe crab permittee shall contact the Marine Resources Operation Station and provide the total number of horseshoe crabs landed, gear type, and location of harvest.

C. It shall be unlawful for any valid Horseshoe Crab Pound Net Permittee, Horseshoe Crab Hand Harvest Permittee, or Horseshoe Crab General Category Permittee to fail to contact the Virginia Marine Resources Commission Interactive-Voice-Response (IVR) System within 24 hours of landing and provide his Commercial Fisherman Registration License number, and the time, date, number of horseshoe crabs landed, gear type, and location of harvest.

D. It shall be unlawful for any individual, firm or corporation to buy any horseshoe crabs from any lawful harvester on or after July 1, 2007, without first having obtained a Horseshoe Crab Buying Permit from the Marine Resources Commission. The permit application shall be completed in full by the licensed seafood buyer, and a copy of the permit shall be kept in possession of the licensed buyer while buying or possessing horseshoe crabs.

E. Any licensed seafood buyer permitted to purchase horseshoe crabs shall provide written reports to the Marine Resources Commission of daily purchases and harvest information on forms provided by the Marine Resources Commission. Such information shall include the date of the purchase, the buyer's horseshoe crab permit number and harvester's Commercial Fisherman Registration License number, gear type used, water area fished, city or county of landing, and number of female horseshoe crabs and male horseshoe crabs purchased. These reports of any current weekly purchases shall be completed in full and submitted to the Marine Resources Commission no later than Thursday of the following week. In addition, once it has been projected and announced 65,065 male horseshoe crabs have been landed from waters east of the COLREGS Line each permitted buyer shall call the Marine Resources Commission's IVR on a daily basis to report his name and permit number, date, number of female horseshoe crabs and number of male horseshoe crabs purchased, gear used and water area fished by the harvester.

F. Individuals harvesting horseshoe crabs for biomedical use and owners of facilities using horseshoe crabs for biomedical purposes shall monitor and report monthly to the Marine Resources Commission all harvests or purchases of horseshoe crabs and the percentage of mortality up to the point of release including that mortality that occurs during harvest, shipping, handling, and bleeding.

G. Owners of biomedical facilities using horseshoe crabs shall participate in the tagging program of the Marine Resources Commission to evaluate the post-release mortality of horseshoe crabs.

H. Monthly reports shall be due to the Marine Resources Commission no later than the fifth day of the following month.

4VAC20-900-36. (Repealed.)

4VAC20-900-37. LICENSE MORATORIUM

As of May 1, 2011, the issuance of commercial licenses or permits for horseshoe crab hand harvest, horseshoe crab bycatch, unrestricted horseshoe crab endorsement, and restricted horseshoe crab endorsement shall be prohibited except as described in this section. Only those registered commercial fisherman who have been determined by the Marine Resources Commission to have been issued a license or permit prior to May 1, 2011, for horseshoe crab hand harvest, horseshoe crab bycatch, unrestricted horseshoe crab endorsement, or restricted horseshoe crab endorsement shall be eligible to purchase that license or permit after May 1, 2011.

4VAC20-900-38. CONTROL DATE.

The Marine Resources Commission hereby establishes December 31, 2010, as the control date for management of all horseshoe crab licenses and fisheries in Virginia. Participation by any individual in a horseshoe crab fishery after the control date will not be considered in the calculation of horseshoe crabbing rights should further entry limitations be established. Any individual entering the horseshoe crab fishery after the control date will forfeit any right to future participation in the horseshoe crab fishery should further entry limitation be established.

4VAC20-900-39. PERMIT TRANSFERS.

A. The Commissioner or his designee may approve transfers of a horseshoe crab permit, as described in 4VAC20-900-21, to any individual who meets any of the following criteria:

1. Demonstrates a significant hardship on the basis of health and provides the commissioner documentation, by an attending physician, of the medical condition.

2. Demonstrates a significant hardship on the basis of a call to active military duty and provides the commissioner an explanation, in writing, and copy of the military orders for active duty.

3. Documents the death of an immediate family member currently eligible for a horseshoe crab license or permit and possesses a legal Commercial Fisherman Registration License.

B. The documented harvest history of a former horseshoe crab licensee or permittee, in the commission's mandatory harvest reporting system, whose horseshoe crab license or permit has been transferred in accordance with subsection A of this section from May 1, 2011, through December 10, 2013, shall be considered when determining permit requirements of any individual receiving the transferred license or permit.

4VAC20-900-40. (Repealed.)

4VAC20-900-45. REQUIREMENTS OF AUTHORIZED AGENTS.

A. It shall be unlawful for any individual to serve as an agent for a horseshoe crab hand harvest permittee.

B. Any individual serving as an agent to harvest horseshoe crabs for any lawfully licensed or permitted horseshoe crab fisherman, except as described in subsection A of this section, shall be limited to the use of only one registered commercial fisherman's horseshoe crab license or permit.

4VAC20-900-50. PENALTY.

As set forth in § 28.2-903 of the Code of Virginia, any individual violating any provision of this chapter shall be guilty of a Class 3 misdemeanor, and a second or subsequent violation of any provision of this chapter committed by the same individual within twelve months of a prior violation is a Class 1 misdemeanor.

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This is to certify that the foregoing is a true and accurate copy of the chapter passed by the Marine Resources Commission, pursuant to authority vested in the Commission by § 28.2-201 of the Code of Virginia, duly advertised according to statute, and recorded in the Commission's minute book, at meeting held in Newport News, Virginia on December 9, 2014.

COMMONWEALTH OF VIRGINIA
MARINE RESOURCES COMMISSION

By: _____
John M. R. Bull
Commissioner

Subscribed and sworn to before me this 16th day of December, 2014.

JANE E. WARREN
NOTARY PUBLIC
Commonwealth of Virginia
Reg. #7191792
My Commission Expires 3-31-16

Jane E. Warren
Notary Public