

allowed. At the March 2010 Council meeting, the Council reviewed an EFP application that proposed to utilize the entire 5,000 mt set aside. The applicants proposed the use of 4200 mt to replicate the summer survey conducted under the EFP approved in 2009 and expand the sample size and area covered. In addition to the summer survey, the applicants proposed to use 800 mt of the set aside to run a fall pilot project to test the viability of alternative tools and methodologies. The proposal went forward for public comment and was reviewed by the Council again at their April meeting, at which time the Council recommended that NMFS approve and issue the EFP.

One of the goals set forth in the EFP application is the development of an index of biomass for Pacific sardine, with the desire that this index be included in the subsequent Pacific sardine stock assessment. If NMFS determines that an EFP cannot be issued, then the set aside will be re-allocated to the third period's directed harvest allocation. Any research set aside attributed to an EFP for use during the closed fishing time in the second allocation period (prior to September 15), but not utilized, will roll into the third allocation period's directed fishery. Any research set aside attributed to an EFP for use during the closed fishing time in the third allocation period, but not utilized, will not be re-allocated.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: May 28, 2010.

**Carrie Selberg,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

RIN 0648-XW53

#### Atlantic Coastal Fisheries Cooperative Management Act Provisions; Application for Exempted Fishing Permit; Horseshoe Crabs

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notification of a proposal to conduct exempted fishing; request for comments.

**SUMMARY:** The Acting Director, Office of Sustainable Fisheries, has made a

preliminary determination that the subject exempted fishing permit (EFP) application submitted by Limuli Laboratories of Cape May Court House, New Jersey, contains all the required information and warrants further consideration. The proposed EFP would allow the harvest of up to 10,000 horseshoe crabs from the Carl N. Shuster Jr. Horseshoe Crab Reserve for biomedical purposes and require, as a condition of the EFP, the collection of data related to the status of horseshoe crabs within the reserve. The Acting Director has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Atlantic States Marine Fisheries Commission's (Commission) Horseshoe Crab Interstate Fisheries Management Plan (FMP). However, further review and consultation may be necessary before a final determination is made to issue the EFP. Therefore, NMFS announces that the Acting Director proposes to recommend that an EFP be issued that would allow up to 3 commercial fishing vessels to conduct fishing operations that are otherwise restricted by the regulations promulgated under the Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act). The EFP would allow for an exemption from the Carl N. Shuster Jr. Horseshoe Crab Reserve (Reserve).

Regulations under the Atlantic Coastal Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

**DATES:** Written comments on this action must be received on or before June 18, 2010.

**ADDRESSES:** Written comments should be sent to Emily Menashes, Acting Director, Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Room 13362, Silver Spring, MD 20910. Mark the outside of the envelope "Comments on Horseshoe Crab EFP Proposal." Comments may also be sent via fax to (301) 713-0596. Comments on this notice may also be submitted by e-mail to: [Horseshoe-Crab.EFP@noaa.gov](mailto:Horseshoe-Crab.EFP@noaa.gov). Include in the subject line of the e-mail comment the following document identifier: Horseshoe Crab EFP Proposal.

**FOR FURTHER INFORMATION CONTACT:** Brian Hooker, Fishery Management Specialist, (301) 713-2334 ext. 173.

**SUPPLEMENTARY INFORMATION:**

#### Background

Limuli Laboratories submitted an application for an EFP on May 14, 2010, to collect up to 10,000 horseshoe crabs

for biomedical and data collection purposes from the Reserve. The applicant has applied for, and received, a similar EFP every year from 2001-2009. The current EFP application specifies that: (1) the same methods would be used in 2010 that were used in years 2001-2009, (2) at least 15 percent of the bled horseshoe crabs would be tagged, and (3) there had not been any sighting or capture of marine mammals or endangered species in the trawling nets of fishing vessels engaged in the collection of horseshoe crabs since 1993. The project submitted by Limuli Laboratories would provide morphological data on horseshoe crab catch, would tag caught horseshoe crabs, and would use the blood from the caught horseshoe crabs to manufacture Limulus Amebocyte Lysate (LAL), an important health and safety product used for the detection of endotoxins. The LAL assay is used by medical professionals, drug companies, and pharmacies to detect endotoxins in intravenous pharmaceuticals and medical devices that come into contact with human blood or spinal fluid.

#### Results of 2009 EFP

No horseshoe crabs were collected from the Reserve by the applicant during the 2009 season. Thus, no results were submitted. The last year in which the applicant actually collected horseshoe crabs authorized under an EFP was 2007. Results from 2007 were published in the **Federal Register** on June 2, 2008 (73 FR 31434), and thus are not repeated here. Data collected under previous EFPs were supplied to NMFS, the Commission, and the State of New Jersey.

#### Proposed 2010 EFP

Limuli Laboratories proposes to conduct an exempted fishery operation using the same means, methods, and seasons proposed/utilized during the EFPs in 2001-2009. Limuli proposes to continue to tag at least 15 percent of the bled horseshoe crabs as they did in 2007. NMFS would require that the following terms and conditions be met for issuance of the EFP:

1. Limiting the number of horseshoe crabs collected in the Reserve to no more than 500 crabs per day and to a total of no more than 10,000 crabs per year;

2. Requiring collections to take place over a total of approximately 20 days during the months of July, August, September, October, and November. (Horseshoe crabs are readily available in harvestable concentrations nearshore earlier in the year, and offshore in the Reserve from July through November);

3. Requiring that a 5½ inch (14.0 cm) flounder net be used by the vessel to collect the horseshoe crabs. This condition would allow for continuation of traditional harvest gear and adds to the consistency in the way horseshoe crabs are harvested for data collection;

4. Limiting trawl tow times to 30 minutes as a conservation measure to protect sea turtles, which are expected to be migrating through the area during the collection period, and are vulnerable to bottom trawling;

5. Restricting the hours of fishing to daylight hours only, approximately from 7:30 a.m. to 5 p.m. to aid law enforcement;

6. Requiring that the collected horseshoe crabs be picked up from the fishing vessels at docks in the Cape May Area and transported to local laboratories, bled for LAL, and released alive the following morning into the Lower Delaware Bay; and

7. Requiring that any turtle take be reported to NMFS, Northeast Region Assistant Regional Administrator of Protected Resources Division within 24 hours of returning from the trip in which the incidental take occurred.

As part of the terms and conditions of the EFP, for all horseshoe crabs bled for LAL, NMFS would require that the EFP holder provide data on sex ratio and daily harvest. Also, the EFP holder would be required to examine at least 200 horseshoe crabs for morphometric data. Terms and conditions may be added or amended prior to the issuance of the EFP.

The proposed EFP would exempt three commercial vessels from regulations at 50 CFR 697.7(e) and 697.23(f) which prohibit the harvest and possession of horseshoe crabs from the Reserve on a vessel with a trawl or dredge gear aboard.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: May 26, 2010.

**Carrie Selberg,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

A-570-912

#### **Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Notice of Decision of the Court of International Trade Not in Harmony**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** On May 14, 2010, the United States Court of International Trade (“CIT”) sustained the final remand redetermination made by the Department of Commerce (“Department”) pursuant to the CIT’s remand of the final determination in the antidumping investigation on certain new pneumatic off-the-road tires (“OTR tires”) from the People’s Republic of China (“PRC”). See *Bridgestone Americas Inc. v. United States*, Consol. Ct. No. 08-00256, Slip Op. 10-55 (Ct. Int’l Trade May 14, 2010) (“*Bridgestone*”). This case arises out of the Department’s Final Determination in the antidumping investigation on OTR tires from the PRC. See *Certain New Pneumatic Off-The-Road-Tires from the People’s Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485 (July 15, 2008) (“*Final Determination*”); *Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China: Notice of Amended Final Affirmative Determination of Sales at Less Than Fair Value and Antidumping Duty Order*, 73 FR 51624 (September 4, 2008). The final judgment in this case was not in harmony with the Department’s July 2008 final determination.

**EFFECTIVE DATE:** May 24, 2010

**FOR FURTHER INFORMATION CONTACT:** Lilit Astvatsatrian or Charles Riggie, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone (202) 482-6412 or (202) 482-0650, respectively.

**SUPPLEMENTARY INFORMATION:** In July 2008, the Department published in the **Federal Register** the *Final Determination* in the antidumping investigation on OTR tires from the PRC in which it calculated a zero dumping rate for respondent Xugong Tyres Co., Ltd. (“Xugong”).

In August 2008, petitioners, Bridgestone Americas, Inc. and Bridgestone Americas Tire Operations, LLC (collectively, “Bridgestone”) and Titan Tire Corporation (“Titan”), respectively, filed summons with the CIT challenging the *Final Determination* with respect to Xugong’s zero dumping margin. Among their claims, Bridgestone and Titan alleged that the Department erred in its *Final Determination* by treating as indirect materials certain inputs used by Xugong in the production of subject merchandise.

In April 2009, the Department requested a voluntary remand to further explain its determination regarding the classification of the fifteen raw materials reported by Xugong as indirect materials. On August 4, 2009, the CIT remanded this matter to the Department to reconsider whether each of the fifteen inputs was a direct or indirect material, to reopen the record as appropriate, and to recalculate the margin accordingly. See *Bridgestone Americas Inc. v. United States*, Consol. Ct. No. 08-00256, Slip Op. 09-79 (Ct. Int’l Trade Aug. 4, 2009).

After receiving comments on the draft remand results, the Department on January 7, 2010, issued its final remand redetermination in which it treated Xugong’s fifteen raw material inputs as direct materials and, thus, recalculated Xugong’s margin by adding Xugong’s fifteen raw materials as direct material inputs in the calculation of the normal value. As a result of this recalculation, Xugong’s dumping rate changed from 0.00 percent to 10.01 percent. See *Bridgestone Americas Inc. v. United States*, Consol. Ct. No. 08-00256, dated January 8, 2010.

On May 14, 2010, the CIT sustained the final redetermination made by the Department pursuant to the CIT’s remand of the final determination in the antidumping investigation of the OTR tires from the PRC. See *Bridgestone*, Slip Op. 10-55 at 14.

#### **Timken Notice**

In its decision in *Timken Co. v. United States*, 893 F. 2d 337, 341 (Fed. Cir. 1990) (“*Timken*”), the United States Court of Appeals for the Federal Circuit held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (“the Act”), the Department must publish a notice of a court decision that is not “in harmony” with a Department determination and must suspend liquidation of entries pending a “conclusive” court decision.

The Court’s decision in *Bridgestone* on May 14, 2010, constitutes a final decision of that court that is not in harmony with the Department’s *Final Determination*. This notice is published in fulfillment of the publication requirements of *Timken* with an effective date of May 24, 2010 (*i.e.*, 10 days following the CIT’s ruling). Accordingly, the Department will direct the U.S. Customs and Border Protection (“CBP”) effective May 24, 2010, to suspend liquidation of entries of subject merchandise manufactured and exported by Xugong pending the expiration of the period to appeal or pending a final decision on appeal. The Department will issue revised instructions to CBP if the Court’s