

fishing year (January 1, 2010, through December 31, 2010) to account for 2009 underharvests per 50 part 635.27(c) and transfer 18.8 mt dw to Canada from the reserve category of North Atlantic swordfish quota and 75.2 mt dw to other countries from the 2009 U.S. underharvest available in the South Atlantic swordfish quota. Consistent with Federal regulation (50 CFR part 635.27(c)(1)), the 2010 North Atlantic swordfish directed baseline quotas plus the 2009 underharvests would be divided equally between the semiannual periods of January through June and July through December, 2010. The 2010 adjusted quotas are 4,406.4 mt dw for North Atlantic swordfish and 75.2 mt dw for South Atlantic swordfish.

The commercial swordfish fishery is comprised of fishermen who hold a swordfish directed, incidental, or handgear limited access permit (LAP) and the related industries including processors, bait houses, and equipment suppliers, all of which NMFS considers to be small entities according to the size standards set by the Small Business Administration. As of October 2009, there were approximately 187 fishermen with a directed swordfish LAP, 72 fishermen with an incidental swordfish LAP, and 81 fishermen with a handgear LAP for swordfish. Based on the 2009 swordfish ex-vessel price per pound of \$3.49, the 2010 North Atlantic swordfish baseline quota could result in gross revenues of \$22,602,049.68 (6,476,232 lbs dw * \$3.49) and \$578,589.65 (165,785 lbs dw * \$3.49) for South Atlantic quota if the quota was fully utilized. However, in both the North and South Atlantic swordfish fisheries, the United States has not caught the full baseline quota since the 1997 fishing year. The 2009 total underharvest for North Atlantic swordfish was 2,524.2 mt dw and 75.2 mt dw for South Atlantic swordfish. The underharvest carryover amount has been capped, for the North Atlantic swordfish, at 1,468.8 mt dw (323,811 lbs dw) and at 75.2 mt dw (165,785 lbs dw) for South Atlantic swordfish. However, under ICCAT recommendation 09-03, 100 mt ww (75.2 mt dw) of 2009 U.S. underharvest of the South Atlantic swordfish quota was transferred to other countries. The proposed 2010 adjusted quota for the North and South Atlantic swordfish would be 4,406.4 mt dw and 75.2 mt dw, respectively. In this proposed action, the 2010 baseline quotas would be adjusted to account for the 2009 underharvest, which could result in additional total revenues for the North Atlantic swordfish fisheries of \$33,903,079.54 for a fully utilized adjusted quota. Potential revenues on a per vessel basis, considering a total of 340 swordfish permit holders, could be \$99,714.94 for the North Atlantic swordfish fishery and \$1,701.73 for the South Atlantic swordfish fishery. Because the United States is not expected to catch its entire quota, and the quota adjustments are the same in 2010 as they were in 2007, 2008, and 2009, NMFS does not expect these quota adjustments to have a significant economic impact on a large number of small entities.

Authority: 16 U.S.C. 1801 *et seq.* and 16 U.S.C. 971 *et seq.*

Dated: June 16, 2010.

Samuel D. Rauch III,
*Deputy Assistant Administrator for
Regulatory Programs, National Marine
Fisheries Service.*

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 100513223-0254-01]

RIN 0648-AY88

Fisheries of the Northeastern United States; Atlantic Deep-Sea Red Crab Fisheries; 2010 Atlantic Deep-Sea Red Crab Specifications In-season Adjustment

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

ACTION: Proposed rule; request for comments.

SUMMARY: In May 2010, NMFS finalized 2010 specifications for the Atlantic deep-sea red crab fishery, including a target total allowable catch (TAC) and a fleet-wide days-at-sea (DAS) allocation. However, the implementing regulations for the Atlantic Deep-Sea Red Crab Fishery Management Plan (FMP) allow NMFS to make an in-season adjustment to the specifications, after consulting with the New England Fishery Management Council (Council). The intent of this rulemaking is to adjust the target TAC and corresponding fleet DAS allocation equivalent to the revised recommendation by Council's Scientific and Statistical Committee (SSC).

DATES: Written comments must be received no later than 5 p.m. eastern standard time, on July 7, 2010.

ADDRESSES: You may submit comments, identified by 0648-AY88, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>.
 - Fax: (978) 281-9135, Attn: Regional Administrator.
 - Mail: Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: "Comments on 2010 Red Crab In-season Adjustment."
- Instructions: No comments will be posted for public viewing until after the

comment period has closed. All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the specifications document, including the Supplemental Environmental Assessment and Supplemental Regulatory Flexibility Analysis and other supporting documents for the in-season adjustment, are available from Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Moira Kelly, Fishery Policy Analyst, (978) 281-9218.

SUPPLEMENTARY INFORMATION:

Background

For fishing year (FY) 2010, the Council was required to establish specifications for the red crab fishery consistent with the best available scientific information. In September 2009, the Council's SSC recommended a maximum sustainable yield (MSY) for red crab within the range 3.75-4.19 million lb (1,700-1,900 mt), which was consistent with the most recent stock assessment (conducted by the Northeast Fisheries Science Center's 2008 Data Poor Stocks Working Group), and recommended that the interim acceptable biological catch (ABC) be set commensurate with recent catch. At the time, the SSC determined recent catch to be the amount of red crab landed in FY 2007, which was 2.83 million lb (1,284 mt). The landings in FY 2007 were the lowest since the implementation of the FMP in 2002. During the Council's review of the SSC's recommendation at its September and November 2009 meetings, the Council requested the SSC reconsider its recommendations, and recommended that the FY 2010 specifications for red crab be set equal to those implemented under the 2009 red crab emergency action implemented by NMFS (74 FR 9770, March 6, 2009), i.e., a target TAC of 3.56 million lb (1,615 mt) and 582 fleet DAS.

In response to the request from the Council to reconsider its recommendation, the SSC met on March 16–17, 2010, and determined that the interim ABC for red crab should be revised. The SSC has determined that the model results from the December 2008 Data Poor Stocks Working Group are an underestimate of MSY, but could not determine by how much, and did not recommend an estimate of MSY. The SSC now recommends that the ABC for red crab be set equal to long-term (1974–2008) average landings (3.91 million lb; 1,775 mt). The SSC considers this level of landings to be sustainable and comfortably below the actual, but undetermined, MSY level.

Because NMFS does not have the regulatory authority to establish a target TAC greater than that recommended by the Council in the May 14, 2010 final rule implementing the FY 2010 red crab specifications (75 FR 27219), that rule set the specifications equal to the Council's November 2009 recommendation for a target TAC of 3.56 million lb (1,615 mt) and a corresponding allocation of 582 fleet DAS. However, the regulations for red crab do allow for an in-season adjustment of the specifications, as set forth in § 648.260(a)(3), after consultation with the Council and an opportunity for additional public comment. The Council met on April 28, 2010, and has recommended adjusting the red crab specifications in accordance with the SSC's revised recommended catch level of 3.91 million lbs, or 1,775 mt. With the Council's new recommendation of a target TAC for red crab of 3.91 million lbs (1,775 mt), NMFS now proposes an in-season adjustment.

Proposed Specifications

NMFS is proposing to implement the SSC's revised recommended catch level as the adjusted target TAC for the FY 2010 red crab fishery. This would result in a target TAC of 3.91 million lb (1,775 mt). Using the most recent calculation of average landings-per-DAS charged (5,882 lb/DAS (2,668 kg/DAS) charged from FY 2005–2009), the corresponding fleet DAS allocation would be 665 DAS.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has preliminarily determined that this proposed rule is consistent with the Atlantic Deep-Sea Red Crab FMP, other provisions of the Magnuson-Stevens

Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

An IRFA has been prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA consists of relevant portions of this preamble and the environmental assessment for this action. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this preamble and in the SUMMARY. A summary of the analysis follows. A copy of this analysis is available from the Regional Administrator (see ADDRESSES).

There are no large entities, as defined in section 601 of the RFA, that participate in this fishery; therefore, there are no disproportionate effects on small versus large entities. Information on costs in the fishery are not readily available, and individual vessel profitability cannot be determined directly; therefore, changes in gross revenues were used as a proxy for profitability. In the absence of quantitative data, qualitative analyses were conducted.

The participants in the commercial sector are the owners of vessels issued limited access red crab vessel permits. There are five limited access red crab vessel permits, although only three vessels participated in the fishery in FY 2009.

The IRFA in the Supplemental EA analyzed the revised recommendation for establishing a target TAC and fleet-wide DAS allocation for FY 2010. The revised recommended specifications would set the target TAC equal to 3.91 million lb (1,775 mt), and the fleet DAS would be 665. The fleet DAS would be divided by the five current limited access permits, or less depending on the number of permits that declare out of the fishery. One of the limited access permits has been declared out of the fishery each year since 2004, including FY 2010. If the DAS are allocated equally to the four vessels that have been actively fishing this year, the DAS per vessel would be 166.

Under the Council's revised recommended specifications, approximately \$350,000 of additional potential revenue could be available to the red crab fleet compared to NMFS'

originally implemented FY 2010 specifications. The target TAC in this proposed rule is greater than the average of the past 4 years' landings, 2 of which were higher, and 2 lower. For the past 2 years, the fleet has landed less than the target TAC recommended by the Council. Whereas a reduced demand for red crab in recent years has been responsible for the shortfall in landings compared to the target TAC, red crab vessel owners have invested heavily in a new processing plant in New Bedford, MA, and have developed new marketing outlets with hopes to increase demand for their product. Accordingly, NMFS anticipates a greater likelihood that red crab landings will be closer to the target TAC in FY 2010.

Dated: June 16, 2010.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.260, paragraph (a)(1) is revised to read as follows:

§ 648.260 Specifications.

(a) * * *

(1) *Target total allowable catch.* The target TAC for each fishing year will be 3.910 million lb (1,775 mt), unless modified pursuant to this paragraph.

* * * * *

3. In § 648.262, paragraph (b)(2) is revised to read as follows:

§ 648.262 Effort-control program for red crab limited access vessels.

* * * * *

(b) * * *

(2) *For fishing year 2010 and thereafter.* Each limited access permit holder shall be allocated 133 DAS unless one or more vessels declares out of the fishery consistent with § 648.4(a)(13)(i)(B)(2) or the TAC is adjusted consistent with § 648.260.

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