

DATES: Comments and information regarding this proposed rule must be received by April 23, 2010.

ADDRESSES: Written comments on the proposed rule may be submitted, identified by RIN 0648-AX06, and addressed to: David Cottingham, Chief, Marine Mammal and Sea Turtle Conservation Division, by any of the following methods:

- Electronic Submissions: Submit all electronic comments via the Federal eRulemaking Portal: <http://www.regulations.gov>;
- Facsimile (fax): 301-713-4060, Attn: David Cottingham;
- Mail: Chief, Marine Mammal and Sea Turtle Conservation Division, NMFS, Office of Protected Resources, 1315 East West Highway, Silver Spring, MD, 20910.

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. NMFS may elect not to post comments that contain obscene or threatening content. 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. The proposed rule and supporting documents, including the biological report, economic report, initial regulatory flexibility analysis, and 4(b)(2) report, are also available electronically at <http://www.nmfs.noaa.gov/pr/species/turtles/leatherback.htm#documents>.

FOR FURTHER INFORMATION CONTACT: Sara McNulty, NMFS, Office of Protected Resources, 301-713-2322; Elizabeth Petras, NMFS Southwest Region, 562-980-3238; Steve Stone, NMFS Northwest Region, 503-231-2317.

SUPPLEMENTARY INFORMATION: On January 5, 2010, NMFS published the Proposed Rule to Revise the Critical Habitat Designation for the Endangered Leatherback Sea Turtle (75 FR 319). That **Federal Register** notice began NMFS' 60-day comment period, ending on March 8, 2010.

NMFS subsequently received a request from the Pacific Fishery

Management Council (Council) to extend the public comment period for an additional 45 days. The date the initial comment period closes falls in the middle of the Council's March 2010 meeting, precluding an opportunity for the Council to formulate and transmit comments. Additionally, the Council felt this proposed rule would be more appropriately discussed at the April Council meeting, where they plan to develop their comments. In this notice NMFS is extending the public comment period until April 23, 2010, in order to allow adequate time for the Council and others to thoroughly review and thoughtfully comment on the proposed rule.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: February 12, 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. 100105009-0053-01]

RIN 0648-AY51

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

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes 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. The implementing regulations for the Atlantic Deep-Sea Red Crab Fishery Management Plan (FMP) require NMFS to publish specifications for up to a period of 3 years and to provide an opportunity for public comment. The intent of this rulemaking is to specify the target TAC and other management measures in order to manage the red crab resource for fishing year (FY) 2010.

DATES: Written comments must be received no later than 5 p.m. eastern standard time, on March 22, 2010.

ADDRESSES: You may submit comments, identified by 0648-AY51, 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 Specifications."

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 Environmental Assessment and Initial Regulatory Flexibility Analysis (EA/IRFA) and other supporting documents for the specifications, are available from Paul Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950. The specifications document is also accessible via the Internet at <http://www.nero.noaa.gov>.

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

SUPPLEMENTARY INFORMATION:

Background

The FMP includes a specification process that requires the New England Fishery Management Council (Council) to recommend, on a triennial basis, a target TAC and a fleet DAS allocation that is consistent with that target TAC. In FY 2009, NMFS published an emergency rule to modify the target TAC and fleet DAS to be consistent with the recommendations of the Data Poor Stocks Working Group and Review Panel (Working Group). The Working Group recommended a reduction in the maximum sustainable yield (MSY) to 3.75-4.19 million lb (1,700-1,900 mt).

In keeping with the FMP in setting the target TAC at 95% of MSY, NMFS implemented a target TAC of 3.56 million lb (1,615 mt), and reduced the fleet DAS allocation from 780 DAS to 581 DAS. The fleet DAS allocation is divided equally among the vessels active in the fishery, which can vary from year to year. For FY 2009, the allocation was initially divided among four vessels; however, NMFS allowed the fourth vessel to opt out of the fishery for the FY and reallocated the fleet DAS to the remaining three vessels. It is expected that only three vessels will be active in the red crab fishery in FY 2010. The Council has requested waiving the 6-month notification requirement for opting out of the red crab fishery for FY 2010.

In September 2009, the Council's Scientific and Statistical Committee (SSC) accepted the Working Group's recommendation that MSY for red crab should be set within the range 3.75–4.19 million lb (1,700–1,900 mt), and recommended that the interim acceptable biological catch (ABC) be set commensurate with recent catch. 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 2009 meeting, there was some concern among Council members that a quorum of SSC members was not present during the red crab discussion. As a result, the Council approved a motion to "send the red crab ABC back to the SSC for further analysis after new peer review information is available and that a quorum is present throughout SSC deliberations." Further, at its November 2009 meeting, the Council approved a follow-up motion to "direct the PDT and the SSC to review the SSC recommended interim ABC for red crab to determine if it should be revised." To date, the SSC has not reviewed its interim ABC recommendation, nor as any new peer-reviewed information been made available.

As described in the FMP, and specified at § 648.260(b)(2), if the effective date of a final rule falls after the start of the FY on March 1, fishing may continue under the specifications for the previous year. Because the specifications currently in place under the emergency action will expire on February 28, 2010, the target TAC and DAS allocation will revert to those specified in the regulations (5.928 million lb (2,688 mt) and 780 DAS, respectively) if the effective date of the final rule is after March 1. However, any

DAS used by a vessel on or after March 1 will be counted against the DAS allocation the vessel ultimately receives for FY 2010.

Proposed Specifications

Despite the recommendation from the SSC that the target TAC not exceed an ABC of 2.83 million lb (1,284 mt), the Council recommended a target TAC and fleet DAS allocation equal to the 2009 emergency rule, 3.56 million lb (1,615 mt) and 581 DAS, respectively. The Council vote reflected the majority view of members that the ABC recommendation by the SSC is inappropriate, and that setting the ABC equal to a single year's landings, rather than a range of recent year's landings, is improper. The Council based its target TAC on the MSY advice from the Working Group, rather than that recommended by the SSC, because the Council considers the advice of the Working Group to provide an acceptably low risk of avoiding overfishing. The Council considers it their role to determine an acceptable level of risk of overfishing after receiving scientific information about what is the level of overfishing. To be consistent with the Council's SSC recommendation and relevant Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) provisions, NMFS is instead proposing to set the target TAC for FY 2010 equal to the SSC's recommended ABC (2.83 million lb; 1,284 mt) and a recalculated fleet DAS allocation of 464 DAS. This is the maximum allowable level of fishing effort that is consistent with the SSC recommendation; however, should the SSC revise its ABC recommendation prior to publication of final specifications for FY 2010, NMFS would consider revising these specifications to the levels recommended by the Council, so long as the revised specifications remain consistent with the advice of the SSC.

NMFS considers the best available science, as required under National Standard 2, is best represented by a recommendation from an SSC based on its review of the available scientific information. The Council's SSC accepted the Working Group's results and has recommended setting the overfishing limit (OFL) equal to the MSY range proposed by the Working Group. The SSC also concluded that "[g]iven the data-poor nature of the stock assessment, the SSC derived an interim ABC on the basis of status quo catch . . . Landings in 2007 were 1,284 mt [2.83 million lb], which is 68–76 percent of the approximate OFL. This magnitude of catch provides a 24- to 32-

percent buffer between OFL and ABC, which is consistent with general guidance on buffers for data-moderate to data-poor stocks." The SSC also noted "that there should be a substantial buffer between OFL and ABC for data-poor stocks, an ABC based on the 2002–2007 average landings would contradict the [Working Group's advice]. Therefore, the SSC recommendation is for an interim ABC that is based on 2007 landings until a better estimate of OFL can be determined."

Other Proposed Measures

The Council has proposed waiving the 6-month notification requirement to opt out of the red crab fishery. Currently, vessel owners must inform NMFS of their intention to opt out of the fishery 6 months prior to the start of the next fishing; i.e., by September 1. The Council feels that because the specifications decisions were not made until November, it would seem unfair to industry to require vessel owners make business decisions without knowing what the target TAC would be for the upcoming FY. NMFS is proposing to adopt this waiver for FY 2010.

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 was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). 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 Council (see **ADDRESSES**).

There are no large entities that participate in this fishery, as defined in section 601 of the RFA; 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 Draft EA analyzed three alternatives (including the no action alternative) for establishing a target TAC and fleet-wide DAS allocation for FY 2010. Alternative 1 (status quo) would set the MSY, OY, target TAC, and DAS allocation equal to those adopted through emergency action on April 6, 2009. If the status quo alternative were adopted, MSY would be 3.75 million lb (1,700 mt), OY and the target TAC would be 3.56 million lb (1,615 mt), and the fleet DAS would be 582. If the DAS were allocated equally to the four vessels that have been active in recent years, the DAS per vessel would be 146. If only three vessels remain in the fishery, the resulting DAS allocation would be 194 DAS for each active vessel. Alternative 2 would adopt the SSC's recommended interim ABC value of 2.83 million lb (1,284 mt) as the target TAC for FY 2010. The corresponding fleet DAS would be 464, based on the fleet average daily landings per charged DAS for the years 2006–2008 (6,106 lb/DAS; 2,770 kg/DAS). 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. As noted above, one of the limited access permits has been declared out of the fishery each year since 2004 and a second vessel opted out for FY 2009 as well. If four vessels remain in the fishery, the resulting DAS allocation would be 116 DAS for each active vessel. If only three vessels remain in the fishery, the resulting DAS allocation would be 155 DAS for each active vessel. If no action were taken (Alternative 3), MSY would revert to the 6.24-million-lb (2,830-mt) value established by the FMP, and OY and the target TAC for FY 2010 would revert to 5.93 million lb (2,689 mt). The fleet-wide DAS allocation would be 780 DAS. If these DAS were distributed equally to the four limited access vessels that have been active in the fishery in recent years, the allocation per vessel would be 195 DAS. If a second vessel were to opt out for FY 2010, the allocation for each of the remaining three vessels would be 260 DAS.

Under the Council's recommended specifications, approximately \$730,000

of additional potential revenue could be available to the red crab fleet compared to NMFS's proposed specifications, and approximately \$2.4 million less potential revenue than the No Action alternative. The current target TAC that would be maintained by the Council's alternative 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 that would result from the Council's recommended specifications. Whereas a limited market 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.

The loss in revenue to the red crab fleet from NMFS's proposed specifications compared to the no action alternative would potentially be approximately \$3.1 million. Potential losses from alternative fisheries that may result from the need to readjust vessel time among fisheries are uncertain. The loss in revenue to the red crab fleet from this target TAC compared to the Council recommended target TAC would potentially be approximately \$730,000.

The target TAC prescribed by the FMP would allow for approximately \$3.1 million more potential revenue for the red crab fleet in the short-term compared to NMFS's proposed target TAC, and approximately \$2.4 million more revenue compared to the Council's recommended target. However, not implementing a target TAC consistent with the Working Group's advice could create potentially negative long-term economic effects due to overexploitation.

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

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: February 12, 2010.

Samuel D. Rauch III,

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

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 § 648.4, paragraph (a)(13)(i)(B)(2)(ii) is revised to read as follows:

§ 648.4 Vessel permits.

- (a) * * *
- (13) * * *
- (i) * * *
- (B) * * *
- (2) * * *

(ii) A limited-access permit holder may choose to declare out of the red crab fishery for the next fishing year by submitting a binding declaration on a form supplied by the Regional Administrator, which must be received by NMFS at least 180 days before the last day of the current fishing year. NMFS will presume that a vessel intends to fish during the next fishing year unless such binding declaration is received at least 180 days before the last day of the current fishing year. Any limited-access permit holder who has submitted a binding declaration must submit either a new binding declaration or a renewal application for the year after which they were declared out of the fishery. For the 2010 fishing year only, the 6-month notification requirement is waived, and a vessel may be declared out of the fishery at any time prior to fishing under a limited access red crab DAS.

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3. 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 fishing year 2010 will be 2.830 million lb (1,283 mt), unless modified pursuant to this paragraph.

* * * * *

4. 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.* Each limited access permit holder shall be allocated 93 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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