

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 648**

[Docket No. 010413094-1094-01; I.D. 032101A]

RIN 0648-AP10

**Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Atlantic Deep-Sea Red Crab Fishery**

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

**ACTION:** Emergency interim rule; request for comments.

**SUMMARY:** NMFS issues this emergency interim rule to govern fishing in the Atlantic deep-sea red crab (*Chaceon quinque-dens*) (red crab) fishery. This rule implements a total allowable catch (TAC) of 2.5 million lb (1,134 mt) of red crab; a possession limit of 65,000 lb (29.5 mt) of whole red crab or its equivalent; a trap/pot limit of 600 pots; and an incidental catch of 100 lb (45.4 kg) of whole red crab per fishing trip. This rule also establishes the requirements for a letter of authorization (LOA), for vessel reporting via an interactive voice response (IVR) system, and for submission of vessel trip reports (VTR) for the red crab fishery. The intended effect of this rule is to prevent or eliminate overfishing and provide immediate protection of the red crab stock in the previously unregulated Atlantic deep-sea red crab fishery in the Northeast region until a Federal fishery management plan (FMP) is implemented.

**DATES:** This emergency interim rule is effective from May 18, 2001, through November 14, 2001.

Written comments must be received no later than 5 p.m. local time on June 7, 2001.

**ADDRESSES:** Written comments should be sent to, and copies of the Environmental Assessment/Regulatory Impact Review supporting this action may be obtained from, Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930.

Comments regarding the collection-of-information requirements contained in this emergency interim rule should be sent to the Regional Administrator and to the Office of Information and Regulatory Affairs, Office of

Management and Budget (OMB), Washington, DC 20503 (Attn: NOAA Desk Officer).

**FOR FURTHER INFORMATION CONTACT:** E. Martin Jaffe, Fishery Policy Analyst, 978-281-9272.

**SUPPLEMENTARY INFORMATION:****Background**

Deep-sea red crabs are typically slow growing, and major recruitment events are believed to occur rarely, leaving this resource particularly vulnerable to overfishing. Prior to March 1, 2000 (the "control date" that may be used for establishing eligibility criteria for determining levels of access to the red crab fishery, should access be regulated in the future), the largest reported vessel in the red crab fishery was 120 ft (36.6 m) in length overall and the average hold capacity of vessels in the fleet was between 60,000 and 65,000 lb (27.2 mt and 29.5 mt) of whole crab product. As of the control date, no vessel reportedly fished more than 600 pots, and none had the ability to process completely crabs on board. ("Process completely" means that the harvested crabs are picked, cleaned, cooked, and frozen.) All but one of the five vessels in the fishery prior to the control date land their crabs whole and alive. The remaining vessel reportedly butchers the crabs on board, which means the crab is cut in half and the carapace removed (with a recovery rate of about 58 percent, by weight, of the whole crab). The principal method of fishing for these vessels is to steam to the fishing grounds, set and haul baited traps, and return to port quickly in order to ensure fresh product. Trips are limited in length primarily by the hold capacity of the vessel and by the need to keep the product fresh and, for most vessels, alive.

In late 2000, two additional vessels reportedly entered the red crab fishery. Both of these vessels are larger than the rest of the fleet, reportedly on the order of 150 ft (45.7 m) in length overall, and are catcher-processor vessels with the capability of extensive processing (picking, cleaning, cooking and freezing) of crab product on board while at sea. The hold capacity of these vessels is also larger than that of the other vessels in the fleet--one vessel reportedly has a hold capacity of up to 300,000 lb (136.1 mt) and the other up to 185,000 lb (84 mt). Each of these vessels is reported to be fishing similar numbers of traps/pots as the other vessels in the fleet. Further, in early 2001, a third new vessel reportedly entered the red crab fishery, and more vessels may be considering entering this fishery.

The most recent information available on deep-sea red crabs and the red crab fishery, which is based on a 1977 assessment, indicates that there is a maximum sustainable yield (MSY) of approximately 5.5 million lb (2,495 mt) and that four to six vessels fishing at historical levels of capacity represent the maximum amount of harvesting effort that can be sustained by the resource in order not to exceed the MSY. The addition of up to three new vessels, with a potential for more, threatens not only the resource but also the viability of the existing fishery unless restrictive measures are put into place. While the non-processor vessels fill their holds with whole and, in most cases, live crabs, the catcher-processor vessels have the capability to fill their holds with processed frozen crab meat and thus land an equivalent live weight product of 5 to 30 times higher than the non-processor vessels (depending on hold capacity and processing recovery rate).

Since there were only five vessels in the fishery at the time of the control date, and given the evidence that harvesting capacity on that date was sufficient to utilize fully the available resource, additional harvesting capacity after the control date threatens the fishery. Concerns for overharvesting are increased if vessels entering the fishery after the control date are significantly larger in hold capacity and/or are capable of processing red crab at sea.

Given an MSY for the Northeast region of 5.5 million lb (2,495 mt) and a hold capacity of approximately 65,000 lb (29.5 mt) of whole crab, each of the five vessels fishing in the red crab fishery prior to the March 1, 2000, control date could take a maximum of 1.3 percent of the MSY per trip. A catcher-processor vessel, with a hold capacity of 300,000 lb (136.1 mt) of finished product, could take approximately 16 to 30 percent of the MSY per trip (depending on processing recovery rate). Given the recent red crab landings by vessels that fished for red crab prior to the control date, incremental effort by those vessels and effort by new vessels could result in overfishing.

In fact, even without new entrants, overfishing may be occurring. Preliminary reports from the industry suggest that existing vessels harvested approximately 7 million lb (3,175.2 mt) of red crab in 2000, roughly 125 percent of the MSY estimate.

At its January 23, 2001, meeting, the New England Fishery Management Council (Council) approved a motion to request that the Secretary of Commerce (Secretary) use his authority under

section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) to promulgate emergency regulations to address the potential for a rapid increase in the harvesting of red crab and to halt or prevent overfishing, while providing immediate protection to the red crab resource as the Council develops an FMP for red crab.

Section 305(c) of the Magnuson-Stevens Act authorizes the Secretary to implement emergency regulations or interim measures, if necessary, to address an emergency or overfishing, regardless of whether an FMP exists for such fishery. These emergency regulations may remain in effect for no more than 180 calendar days after the date of publication in the **Federal Register**, with a possible 180-day extension, provided the public has an opportunity to comment on the measures. In the case where emergency regulations are implemented at the request of the Council, an extension is justified only if the Council is actively preparing an FMP (or an FMP amendment or other regulations) to address the emergency or overfishing on a permanent basis.

For the reasons stated above, NMFS concurs with the Council's determination that the current exploitation of the red crab resource, combined with the likelihood of immediate, significant increases in total exploitation, constitutes an emergency situation that presents significant conservation problems. Although the precise level of harvest is unknown, recently reported landings have been at or in excess of the historical MSY. With the arrival of new harvesting capacity and the probability that total capacity could increase several-fold in the next few months, there is strong justification for the Secretary's intervention in preventing overfishing.

This emergency rule contains measures that, NMFS believes, will prevent or eliminate overfishing of the red crab stock in the short term in the EEZ from Cape Hatteras Light, NC, northward to the U.S.-Canada border. This area was chosen for regulation because it encompasses, based on available information, the portions of the red crab stock currently being harvested. The measures include a TAC of 2.5 million lb (1,134 mt) of red crab for the 180-day period of effectiveness for this emergency rule, which is based on an annual TAC of 5.0 million lb (2,268 mt); a possession limit of 65,000 lb (29.5 mt) of whole red crab or its equivalent; a trap/pot limit of 600 pots; and an incidental catch of 100 lb (45.4 kg) of whole red crab per trip. This rule

also establishes the requirements for a LOA, for vessel reporting via an IVR system, and for submission of VTRs for the red crab fishery.

As mentioned previously, a region-wide MSY estimate of red crab is approximately 5.5 million lb (2,495 mt). The 1977 red crab assessment, which was based on a 1974 survey conducted prior to the establishment of the Hague Line, included portions of Georges Bank that are now in Canadian waters. Since 92.4 percent of the total exploitable biomass abundance was in U.S. waters, an appropriate annual TAC for the area chosen for regulation is approximately 5 million lb (2,268 mt).

The establishment of a 2.5-million lb (1,134-mt) TAC sets an upper limit on the amount of red crab available to be harvested during the 180-day effectiveness period of these emergency regulations. When NMFS determines that total landings of red crab are projected to have reached the TAC, the directed red crab fishery will be closed and fishing for, and landings of, red crab in amounts greater than the incidental catch limit will be prohibited. NMFS has set the TAC at a level that will ensure, to the extent possible, that overfishing does not occur.

This action establishes a 65,000-lb (29.5-mt) possession limit, which is the average hold capacity of the non-processing red crab vessels that fished historically, at least 1 year prior to and including the control date of March 1, 2000. The possession limit applies to landings of whole or processed red crabs equivalent to 65,000 lb (29.5 mt) of whole crabs. The ratio of whole crab weight to finished product weight for crab parts, other than whole crabs or meat only, is 1.72 to 1. The ratio of whole crab weight to finished product weight for crabs that have been picked, cleaned, cooked, and frozen (that is, meat only) is 4 to 1. Vessels that land whole crabs and that have hold capacities of approximately 65,000 lb (29.5 mt) should be able to continue fishing at or near their historical levels. Vessels with significantly larger hold capacities than 65,000 lb (29.5 mt) will be able to participate in the fishery but will likely be constrained in their ability to fish efficiently for red crab. Setting the trip limit at 65,000 lb (29.5 mt) is intended to help prevent a derby-type fishery and is intended to allow the greatest number of vessels with a recent history in the fishery to continue to fish in a safer, more economical manner, while not expressly precluding red crab fishing by any vessel that chooses to fish under the emergency provisions. The transferring of red crab at sea, either whole or processed, is prohibited

pursuant to § 648.265(b). Purchasing, possessing or receiving for a commercial purpose, more than 100 lb (45.4 kg) of whole red crab, or its equivalent as specified at § 648.265(a), caught by a vessel in the EEZ that has not been issued a valid LOA under this subpart, is also prohibited pursuant to § 648.265(c).

This action also establishes a trap/pot limit of 600 pots. No vessel reportedly fished more than 600 pots as of the control date and this pot limit is not expected to be a restriction for vessels currently fishing for red crab, including the newly entered vessels. This pot limit could, however, serve to prevent any vessel from increasing the number of pots it fishes, in the face of trip limits. Therefore, with a vessel spreading its effort out and catching its trip limit over several days, rather than sooner, the fishery is prevented from being converted into a derby-type fishery.

For non-red crab directed trips, data from 1998 and 1999 show that the median catch was 115 lb (52.2 kg) per trip. An incidental catch limit of 100 lb (45.4 kg) of whole red crab per fishing trip, or its equivalent as discussed above, is established by this emergency action for vessels fishing without a LOA in order to allow historical incidental catches to continue. While NMFS' databases show a total incidental catch of red crab of 13,594 lb (6,166 kg) in 1998 and of 10,852 lb (4,922.5 kg) in 1999, this is very likely to be an underestimate, given the uncertainty in the data. Nevertheless, the total allowed incidental catch, which is not counted against the TAC, is expected to be insignificant and should not undermine the benefits of having a TAC.

In conjunction with the aforementioned measures, vessels intending to fish for or land more than the allowed incidental catch limit for red crab are required to obtain an LOA issued by the Administrator, Northeast Region, NMFS, by requesting one, in writing, from the Northeast Region Permit Office (see **ADDRESSES**) or by calling the Permit Office at 978-281-9370.

To allow for monitoring of the TAC, vessels that obtain an LOA are required to report their red crab catch landings via an IVR system (the IVR reporting system used to monitor harvest levels for certain species in the fisheries of the Northeast) upon returning to port for each trip until the expiration of these emergency regulations or until such time that the TAC has been reached and the fishery closed, whichever comes first.

To enable the gathering of data for the fishery that are necessary for the

development of a Red Crab FMP, vessels that obtain an LOA are required to file a VTR, consistent with these emergency regulations, for the duration of these emergency regulations or until such time that the TAC has been reached and the fishery closed, whichever comes first.

The red crab fishery falls under the Marine Mammal Protection Act Category I Lobster Trap/Pot fishery. Therefore, vessels in this fishery are required to comply with the applicable gear restrictions for that fishery, including a required weak link at the buoy that breaks away knotless at 3,780 lb (1,714.6 kg) and a requirement for marking of gear as specified at § 229.32. Also, red crab fishing gear, fished in 200 fathoms (365.8 m) or less by a vessel issued a limited access lobster permit under § 697.4(a), must comply with the trap tagging requirements specified at § 697.19.

#### Classification

The AA finds that the need to provide immediate protection to the Atlantic deep-sea red crab stock to protect it from overfishing constitutes good cause to waive the requirement to provide notice and the opportunity for public comment, pursuant to authority set forth at 5 U.S.C. 553 (b)(B), as such procedures would be contrary to the public interest. Similarly, the need to implement these measures in a timely manner to protect the stock from overfishing constitutes good cause, under authority contained in 5 U.S.C. 553(d)(3), to partially waive the 30-day delay in effective date otherwise required by 5 U.S.C. 553(d). The reason for the partial waiver is to allow vessel owners 10 days to obtain the necessary vessel LOA and fishing logs.

This emergency rule has been determined to be not significant for the purposes of E.O. 12866.

This rule is exempt from the analytical requirements of the Regulatory Flexibility Act because no public comments are required under 5 U.S.C. 553 *et seq.* and no other law mandates the application of such requirements.

Notwithstanding any other provision of law, no person is required to respond to nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection-of-information displays a currently valid OMB control number.

This rule contains four collection-of-information requirements subject to the PRA. The collection of this information has been approved by OMB, and the

OMB control numbers and the estimated time for a response are as follows:

Letters of authorization, OMB control number 0648-0202 (5 minutes/response).

Observer deployment, OMB control number 0648-0202 (2 minutes/response).

Vessel trip reports, OMB control number 0648-0212 (5 minutes/response).

IVR system reports, OMB control number 0648-0212 (4 minutes/response).

The aforementioned response estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates, or any other aspect of the data requirements, including suggestions for reducing the burden, to NMFS and OMB (see ADDRESSES).

#### List of Subjects in 50 CFR Part 648

Fishing, Fisheries, Vessel permits, Reporting and recordkeeping requirements.

Dated: May 2, 2001.

John Oliver,

Acting Assistant Administrator for Fisheries,  
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is 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. Subpart M is added to read as follows:

#### Subpart M—Emergency Measures for the Atlantic Deep-Sea Red Crab Fishery

Sec.

- 648.260 Purpose and scope.
- 648.261 Definitions.
- 648.262 Vessel letters of authorization (LOA).
- 648.263 Recordkeeping and reporting requirements.
- 648.264 Closure.
- 648.265 Possession and landing limits.
- 648.266 Trap/pot limits.
- 648.267 Incidental catch.
- 648.268 Prohibitions.

#### Subpart M—Emergency Measures for the Atlantic Deep-Sea Red Crab Fishery

##### § 648.260 Purpose and scope.

These regulations implement emergency measures, under the

authority of the Magnuson-Stevens Act, to manage the red crab fishery in the EEZ in U.S. waters of the western Atlantic Ocean from 35°15.3' N. Lat., the latitude of Cape Hatteras Light, NC, northward to the U.S.-Canada border.

##### § 648.261 Definitions.

In addition to the definitions in the Magnuson-Stevens Act, 50 CFR part 600, and in § 648.2, the terms in this subpart have the following meaning:

*Red crab* means *Chaceon quinque-dens*.

*Trap/pot* means any structure or other device, other than a net, that is placed, or designed to be placed, on the ocean bottom and is designed for, or is capable of, catching red crabs.

##### § 648.262 Vessel letters of authorization (LOA).

(a) Any vessel of the United States must have been issued and have on board a valid LOA from the Northeast Regional Administrator to fish for, catch, possess, transport, land, sell, trade, barter, or process at sea more than 100 lb (45.4 kg) of red crab, or its equivalent as specified at § 648.265(a), per fishing trip in or from the EEZ from 35°15.3' N. Lat., the latitude of Cape Hatteras Light, NC, northward to the U.S.-Canada border.

(b) An LOA, once issued, shall be effective until the TAC has been reached and the fishery has been closed as specified under § 648.264.

(c) An LOA, for the purposes of this subpart, may be obtained by telephone or written request to the Northeast Region Permit Office.

##### § 648.263 Recordkeeping and reporting requirements.

(a) The owner or operator of a vessel issued a valid LOA under this subpart must comply with the recordkeeping and reporting requirements prescribed in this subpart, unless the TAC has been reached and the fishery has been closed as specified in § 648.264. The owner or operator of a vessel that has been issued a valid LOA under this subpart must report red crab landings per fishing trip via an IVR system within 24 hours after returning to port and offloading. The IVR report does not exempt the owner or operator from any other applicable reporting requirements of this part and shall include at least the following information, and any other information required by the Regional Administrator: Vessel identification, pounds of red crab landed, and pounds of red crab discarded at sea, in accordance with the conversion factor specified in § 648.265(a), if applicable.

(b) The owner or operator of a vessel issued a valid LOA under this subpart

must maintain on board the vessel, and submit to the Northeast Regional Administrator, an accurate fishing log report for each fishing trip, on forms supplied by or approved by the Northeast Regional Administrator. Log reports must be filled out before landing any red crab or its equivalent. Information in log reports must be provided in accordance with § 648.7(b)(1)(i). Fishing vessel log reports, including negative fishing reports, must be postmarked or received by the Northeast Regional Administrator within 15 days after the end of the reporting month. Each vessel owner will be sent forms and instructions, including the address to which reports are to be submitted, along with the LOA issued under this subpart. This log report does not exempt the owner or operator from other applicable reporting requirements of this part.

#### § 648.264 Closure.

NMFS shall prohibit any further fishing for, catching, landing, or processing at sea of red crab, in a fishing period for which NMFS has established a TAC, other than incidental catch as specified at § 648.267, as of the date NMFS determines that the total landings of red crab will reach or exceed that TAC. NMFS shall publish notification of this prohibition in the **Federal Register**, without further opportunity for public comment.

#### § 648.265 Possession and landing limits.

(a) A vessel or operator of a vessel that has been issued a valid LOA under this subpart may fish for, catch, possess, transport, land, sell, trade, barter, or process at sea up to 65,000 lb (29.5 mt) of whole red crab (including culls) or its equivalent, per fishing trip. For red crab meat-only, the equivalent weight of whole red crab is the weight of red crab meat multiplied by 4. For red crab parts other than whole or meat-only, the equivalent weight of whole red crab is the weight of red crab parts multiplied by 1.72.

(b) A vessel may not transfer at sea, either directly or indirectly, or attempt to transfer at sea to any vessel, any red crab, or its equivalent, taken in or from the EEZ.

(c) No person may purchase, possess, or receive for a commercial purpose, more than 100 lb (45.4 kg) of whole red crab, or its equivalent as specified at § 648.265(a), caught in the EEZ by a vessel that has not been issued a valid LOA under this subpart.

#### § 648.266 Trap/pot limits.

A vessel or operator of a vessel may possess, haul, harvest red crab from, or

carry on board a vessel, up to a total of 600 traps/pots when fishing for, catching, or landing red crab.

#### § 648.267 Incidental catch.

Any vessel or operator of a vessel that has not been issued a valid LOA under this subpart, or a vessel or operator of a vessel that has been issued a valid LOA under this subpart and the prohibition specified at § 648.264 takes effect, is authorized to possess and land no more than 100 lb (45.4 kg) of whole red crab, or its equivalent, per trip.

#### § 648.268 Prohibitions.

(a) In addition to the general prohibitions specified in § 600.725 of this chapter and in § 648.14, it is unlawful for any person to do any of the following:

(1) Fish for, catch, possess, transport, land, sell, trade, barter or process at sea more than 100 lb (45.4 kg) of whole red crab, or its equivalent as specified at § 648.265(a), per fishing trip, in or from the EEZ from 35°15.3' N. Lat., the latitude of Cape Hatteras Light, NC, northward to the U.S.-Canada border, unless in possession of a valid LOA issued by the Northeast Regional Administrator under this subpart.

(2) Fail to comply with the recordkeeping and reporting requirements of § 648.263.

(3) Fish for, catch, possess, transport, land, sell, trade, barter or process at sea red crab in excess of a landing limit specified in § 648.265.

(4) Possess, haul, harvest red crab from, or carry on board a vessel, more than a total of 600 traps/pots when fishing for, catching, or landing red crab as specified at § 648.266.

(5) Transfer at sea, either directly or indirectly, or attempt to transfer at sea to any vessel, any red crab, or its equivalent as specified at § 648.265(a), taken in or from the EEZ.

(6) Purchase, possess, or receive for a commercial purpose, more than the incidental catch level specified in § 648.267 of red crab caught in the EEZ from 35°15.3' N. Lat., the latitude of Cape Hatteras Light, NC, northward to the U.S.-Canada border by a vessel that has not been issued a valid LOA under this subpart.

(b) [Reserved]

[FR Doc. 01-11460 Filed 5-2-01; 4:57 pm]

BILLING CODE 3510-22-S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 660

[Docket No. 010502110-1110-01; I.D. 042401D]

RIN 0648-AO49

### Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; 2001 Management Measures

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

**ACTION:** Annual management measures for the ocean salmon fishery; request for comments.

**SUMMARY:** NMFS establishes fishery management measures for the 2001 ocean salmon fisheries off Washington, Oregon, and California and the 2002 salmon seasons opening earlier than May 1, 2002. Specific fishery management measures vary by fishery and by area. The measures establish fishing areas, seasons, quotas, legal gear, recreational fishing days and catch limits, possession and landing restrictions, and minimum lengths for salmon taken in the U.S. exclusive economic zone (EEZ) (3-200 nm) off Washington, Oregon, and California. The management measures are intended to prevent overfishing and to apportion the ocean harvest equitably among treaty Indian and non-treaty commercial and recreational fisheries. The measures are also intended to allow a portion of the salmon runs to escape the ocean fisheries in order to provide for spawning escapement and for inside fisheries (fisheries occurring in state internal waters).

**DATES:** Effective from 0001 hours Pacific Daylight Time, May 2, 2001, until the effective date of the 2002 management measures, as published in the **Federal Register**. Comments must be received by May 23, 2001.

**ADDRESSES:** Comments on the management measures and the related environmental assessment (EA) may be sent to Donna Darm, Acting Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way N.E., Seattle, WA 98115-0070, fax: 206-526-6376; or to Rebecca Lent, Regional Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802-4213, fax: 562-980-4018. Comments