

corrected to read "Jan. 26 & 27."
Remove "Jan. 26" from under the subheading Ducks and geese.

7. On page 49766 under the heading South Carolina, the season dates for the youth waterfowl hunting day are corrected to read "Jan. 26 & 27."
Remove "Jan. 26 & 27" from under the subheading Ducks and geese.

Dated: October 24, 2001.

Joseph E. Doddridge,

Acting Assistant Secretary for Fish and Wildlife and Parks.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 010413094-1094-01; I.D. 060701A]

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: Extension of the expiration date of an emergency interim rule.

SUMMARY: NMFS informs the public that the emergency interim rule published on May 8, 2001, as amended on July 23, 2001, to govern fishing in the Atlantic deep-sea red crab (*Chaceon quinque-dens*) (red crab) fishery from May 18, 2001, through November 14, 2001, is extended for an additional 180 days to continue protection of red crab while permanent measures are being developed by the New England Fishery Management Council (Council). The extension adjusts the total allowable catch (TAC) for its 180-day duration to 2.16 million lb (979.8 mt); maintains 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. The extension also continues the requirements for a letter of authorization, for vessel reporting via an interactive voice response system, and for submission of vessel trip reports for the red crab fishery. The intended effect of extending this rule is to continue 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 while a Federal fishery management plan (FMP) is being developed.

DATES: The expiration date of the emergency interim rule, published May 8, 2001 (66 FR 23182), as amended on July 23, 2001 (66 FR 38165), is extended effective November 15, 2001, through May 14, 2002.

FOR FURTHER INFORMATION CONTACT: E. Martin Jaffe, Fishery Policy Analyst, 978-281-9272, fax 978-281-9135, e-mail martin.jaffe@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

At its January 23, 2001, meeting, the Council requested that the Secretary of Commerce (Secretary) use his authority under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management 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. An emergency interim rule to implement management measures for the red crab fishery was published on May 8, 2001 (66 FR 23182), effective May 18, 2001, through November 14, 2001. A full discussion of the status of the red crab stock and the need for emergency interim action is found in the preamble to the emergency interim rule and is not repeated here.

On July 23, 2001, NMFS amended the emergency interim rule (66 FR 38165) by revising the conversion factor for determining live weight landings where red crab are landed in a butchered state. Based on comments subsequently received, additions/modifications to those conversions may again be needed in the long term and will be fully addressed in the FMP under development.

On August 2, 2001, 83.9 percent of the red crab total allowable catch (TAC) was landed and, based on projections that the TAC would be reached as of August 17, 2001, NMFS closed the directed fishery effective on August 17, 2001.

After promulgating the initial emergency interim rule, NMFS was sued in the Federal District Court of Virginia by the owners of two large crab processor vessels on grounds that emergency rulemaking was not justified and that the rule was not supported by the record. On a motion to change venue by the intervenor New England Red Crab Harvesters Association, the lawsuit was recently transferred to Massachusetts. In promulgating this

extension to the emergency interim rule, NMFS has taken into account all issues covered in this lawsuit and concluded that the measures included in this rule are necessary for a risk-averse approach to protecting the red crab resource.

This action extends the emergency interim measures for 180 days, effective November 15, 2001. Emergency interim measures extended by this action include a TAC of 2.16 million lb (979.8 mt). This TAC is based on one-half of an annual TAC of 5.0 million lb (2,268 mt) reduced by the overage caught during the initial emergency period (which was approximately 340,000 lb (154.22 mt)). NMFS reduced the TAC for the extension period by the amount of the overage (340,000 lb (154.22 mt)) from the initial period in order to ensure that the annual TAC of 5.0 million lb is not exceeded. Other measures, which remain the same as in the initial emergency interim rule, include: a possession/landing limit of 65,000 lb (29.5 mt) of whole red crab, or its whole weight equivalent, per vessel per fishing trip; a trap/pot limit of 600 pots per vessel; and an incidental catch limit of 100 lb (45.4 kg) of red crab per fishing trip. This extension also continues the requirements for a letter of authorization, vessel reporting via an interactive voice response system, and submission of vessel trip reports for the red crab fishery.

Comments and Responses

Comment 1: By allowing the continuation of fishing by vessels that entered the fishery after the March 1, 2000, control date, the emergency rule does not protect the viability of the existing fishery nor is it consistent with national and international fishery policy.

Response: The emergency rule contains measures that NMFS believes will prevent or eliminate overfishing of the red crab stock in the short term from Cape Hatteras Light, NC, northward to the U.S.-Canada border. A moratorium on vessels that entered the red crab fishery after the control date is a controversial and time-consuming action to implement and would be better addressed in the Red Crab FMP currently under development.

Comment 2: The emergency rule does not prevent substantial damage to the historical participants in the Atlantic red crab fishery.

Response: The emergency rule establishes a 65,000-lb (29.5-mt) possession limit, which has been estimated to be the average hold capacity of the red crab vessels that had

been fishing at least 1 year prior to and including the control date of March 1, 2000. This trip limit was selected to allow the greatest number of vessels with a recent history in the fishery to continue to fish while not precluding red crab fishing by any vessel that chooses to fish under the emergency provisions.

Comment 3: If the emergency rule is extended it should be modified to limit the issuance of letters of authorization to vessels that had a history of substantial participation in the red crab

fishery prior to March 1, 2000, as requested by the Council.

Response: At its January 23, 2001, meeting, the Council approved a motion to request that the Secretary use his authority to promulgate emergency regulations to halt or prevent potential overfishing, while providing immediate protection to the red crab resource as the Council develops an FMP for red crab. The management measures implemented by this emergency rule are intended to help prevent a derby-type fishery and are intended to allow the

greatest number of vessels with a recent history in the fishery to continue to fish while not precluding red crab fishing by any vessel that chooses to fish under the emergency provisions.

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

Dated: November 7, 2001.

Rebecca Lent,

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

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