

§ 32.70 Wyoming.

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Seedskaadee National Wildlife Refuge

A. Hunting of Migratory Game Birds. We allow hunting of ducks, coots, dark geese, common snipe, rails, and mourning doves on designated areas of the refuge in accordance with State regulations and the following conditions:

- 1. Waterfowl hunters may enter the refuge 1 hour before legal shooting hours to set up decoys and blinds.
2. You may use only portable blinds or blinds constructed from dead or downed wood. We prohibit digging pit blinds.
3. You must unload and encase or dismantle all firearms when transporting them in a vehicle or boat under power.
4. You may possess only approved nontoxic shot.

B. Upland Game Hunting. We allow hunting of sage grouse, cottontail rabbit, red fox, jackrabbit, raccoon, and skunk on designated areas of the refuge in accordance with State regulations and the following conditions:

- 1. You must unload and encase or dismantle all firearms when transporting them in a vehicle or boat under power.
2. You may possess only approved nontoxic shot.
3. We prohibit the shooting of prairie dogs, coyotes, and other species not listed.

C. Big Game Hunting. We allow hunting of pronghorn, mule deer, and moose on designated areas of the refuge in accordance with State regulations and the following condition: You must unload and encase or dismantle all firearms when transporting them in a vehicle or boat under power.

D. Sport Fishing. You may sportfish on designated areas of the refuge in accordance with State regulations and general refuge regulations.

35. In § 32.72 Guam by adding paragraphs D.5., D.6., and D.7., of Guam National Wildlife Refuge to read as follows:

§ 32.72 Guam.

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Guam National Wildlife Refuge

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D. Sport Fishing. \* \* \*

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5. We prohibit use of Self Contained Underwater Breathing Apparatus (SCUBA) to take fish or invertebrates.

6. We prohibit anchoring of boats on the refuge.

7. We prohibit sailboards or motorized personal watercraft on the refuge.

Dated: June 4, 2002.

Paul Hoffman,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02-14900 Filed 6-19-02; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 020531136-2136-01; I.D. 041802C]

RIN 0648-AP76

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

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement the Atlantic Deep-Sea Red Crab Fishery Management Plan (FMP) developed by the New England Fishery Management Council (Council). This proposed rule would establish: A limited access program for the directed fishery; a target total allowable catch (TAC) level; a Days-at-Sea (DAS) allocation effort control program; permitting and reporting requirements, including an Interactive Voice Response (IVR) system for limited access vessels; trip limits and incidental harvest allowances; trap/pot limits; processing at sea restrictions; and a framework adjustment process among other measures. The purpose of this proposed action is to implement permanent management measures for the Atlantic deep-sea red crab (red crab)(Chaceon quinque-dens) fishery pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the FMP and to prevent overfishing of the red crab resource.

DATES: Comments must be received on or before 5 p.m., local time, on July 23, 2002.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on Red Crab FMP." Comments also may be sent via facsimile (fax) to (978) 281-9135. Comments will not be accepted if submitted via e-mail or Internet.

Comments regarding the collection-of-information requirements contained in this proposed 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).

Copies of the FMP, its Regulatory Impact Review (RIR) and the Initial Regulatory Flexibility Analysis (IRFA), and the Final Environmental Impact Statement (FEIS) are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, The Tannery - Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: E. Martin Jaffe, Fishery Policy Analyst, 978-281-9272, fax 978-281-9135.

SUPPLEMENTARY INFORMATION:

Background

The FMP was developed by the Council in response to concerns that overfishing was occurring due to increased landings and increasing participation and interest in the red crab fishery. Prior to 1970, there was no known fishery for Atlantic deep-sea red crab, although there was some incidental catch of red crab in other fisheries. In the early 1970s, small markets opened up for the species, spurring one or two vessels to attempt to fish directly for red crab. Markets for this species fluctuated over the next decade or so, as did attempts at new techniques to improve the harvest, preservation, and processing of the crabs. Throughout the 1980s, there was a fairly consistent fishery for red crab, with known landings annually averaging over 5.5 million lb (2,495 mt). In the early 1990s, landings fluctuated, but they have been steadily increasing since about 1995. Industry reports suggest that landings exceeded 7 million lb (3,175.2 mt) in 2000.

In late 1999, faced with increasing landings and increased interest in the fishery from potential new entrants, a group of fishermen requested that the Council develop a Red Crab FMP. In November 1999, the Council voted to begin development of the FMP.

In January 2000, at the recommendation of its Red Crab Committee, the Council voted to establish a control date for the red crab fishery, in case the Council chose to differentiate historic participants in the red crab fishery from new, speculative entrants. The Council also intended that a control date serve as a disincentive to any new vessels considering moving to New England to begin fishing for red crab.

On February 2, 2000, the Council published in the Federal Register a Notice of Intent to Prepare an

Environmental Impact Statement (EIS), officially beginning the Council's FMP scoping process (65 FR 4941). The Council hosted two scoping meetings, well attended by the red crab industry and other interested parties, at which there was general support for the development of an FMP, including consideration of management measures establishing a limited entry program, a minimum allowable crab size, a male-crab only fishery, a processing-at-sea prohibition, and reasonable trap/pot limits.

The Council established March 1, 2000, as the control date for the red crab fishery through publication in the **Federal Register** (65 FR 11029) on that date.

In November 2000, the Council was notified that at least two new vessels had announced their intentions to relocate to New England from other parts of the country to fish for red crab. The existing members of the fishery and the Council became concerned that the additional fishing power and effort represented by these new entrants could jeopardize the sustainability of the resource before the FMP could be developed and implemented.

In January 2001, faced with an increase in the number of vessels targeting the red crab resource, the Council requested that the Secretary of Commerce (Secretary) take emergency action to prevent overfishing in the red crab fishery while the Council continued to develop an FMP. NMFS, on behalf of the Secretary, determined that the existing level of exploitation and the likelihood of substantial increases in total exploitation in the area north of Cape Hatteras, NC, presented serious conservation problems necessitating emergency action to prevent overfishing. On May 8, 2001, NMFS published emergency regulations designed to prevent overfishing, effective May 18 through November 14, 2001 (66 FR 23182).

On July 23, 2001, to address comments it received from the industry, NMFS amended the emergency regulations by publishing a revision of the conversion factor used to determine the whole weight equivalent of partially processed or butchered crabs (66 FR 38165). The emergency regulations were extended for a second 180-day period, from November 15, 2001 through May 14, 2002 (66 FR 56781).

The threat of overfishing the red crab resource is the primary concern requiring management attention, particularly if additional vessels enter the fishery. Maximum sustainable yield (MSY) is estimated at 6.24 million lb (2,830.4 mt) for the male-only red crab

fishery. Commercial landings of red crab have exceeded this level several times since the development of the fishery. Overfishing is of particular concern due to the nature of the species; red crabs are typically slow-growing and major recruitment events are believed to rarely occur.

Historically, a small number of vessels have achieved landings in excess of MSY. The five vessels participating in the directed red crab fishery prior to 2000, averaged 96 ft (29.3 m) in length, fished an average of 544 pots, and had the capacity to land an average of approximately 78,000 lb (35,380 kg) of red crab per trip. This suggests that these five vessels alone can exceed the original estimate of MSY.

#### **Status of the Stocks**

The MSY estimate was calculated based on a 1974 NMFS survey of the red crab resource and the resulting stock assessment (Serchuk, 1977). Several assumptions underlie the calculation of MSY: (1) That the fishery continues to retain and land only male crabs larger than 4 inches (10.2 cm); that the natural mortality rate for red crabs is 0.15; and (3) that the management unit extends to Cape Hatteras, NC. The status of the red crab fishery will be updated if and when new scientific data are obtained.

#### **Overfishing Definition**

The FMP proposes an overfishing definition that considers both the rate of exploitation and the condition of the stock. Overfishing would be defined as any rate of exploitation that caused the ratio of current exploitation to an idealized exploitation under MSY conditions to exceed 1.0. The FMP includes several methods that could be used to define idealized exploitation, depending on the type of data available.

The red crab stock would be considered to be in an overfished condition if any one of the following three conditions is met:

Condition 1 -- The current biomass of red crab in the FMP management unit is below  $\frac{1}{2}$  Bmsy.

Condition 2 -- The annual fleet average catch per unit effort (CPUE), measured as marketable crabs landed per trap haul, continues to decline below a baseline level for 3 or more consecutive years.

Condition 3 -- The annual fleet average CPUE, measured as marketable crabs landed per trap haul, falls below a minimum threshold level in any single year.

#### **Optimum Yield (OY)**

OY would be specified at 95 percent of MSY, or 5.928 million lb (2,689 mt).

This approach is intended to incorporate future changes to MSY into the estimate of OY, to account for any uncertainty about the status or vulnerability of the resource or the current levels of fishing effort.

#### **Management Unit**

The boundaries of the management unit would be limited to the waters north of 35 15.3' N. lat., bounded by the coastline of the continental United States in the west and north, and the Hague Line and seaward extent of the U.S. Exclusive Economic Zone (EEZ) in the east. The proposed boundaries reflect the traditional extent of the red crab fishery in the Northeast United States, are consistent with prior action taken by the Secretary (the Emergency Regulations), incorporate a well-known bio-geographic boundary (Cape Hatteras, NC), and are consistent with other New England Council FMPs.

#### **Fishing Year**

The fishing year would begin on March 1 of each year, which reflects traditional fishing practices prior to times of relatively higher effort and landings. The timing of the fishing year is anticipated to reduce the margin of error associated with projections of landings made about future fishing years. It also reflects the time after which the cumulative landings for the first 6 months of the fishery are expected to be the highest, which would reduce the margin of error associated with projected landings during the second half of the year.

#### **Permitting Requirements**

The owner of any commercial vessel who wishes to fish for, catch, possess, transport, land, sell, trade, barter, butcher or partially process at sea red crab in or from the red crab management unit would be required to obtain a Federal red crab permit. Two types of Federal permits would be required: (1) A limited access red crab permit would be required for vessels to participate in the directed fishery; this permit would be issued only to vessels that meet specified eligibility criteria; and (2) a red crab incidental catch permit would be required in order for any vessel to land an incidental catch of red crabs up to 500 lb (226.8 kg) per fishing trip. All vessels would be eligible for this permit. Vessels issued the limited access permit would also be allowed to fish under the red crab incidental catch rules if they had not declared their intent to use a red crab DAS.

Owners of vessels issued a limited access red crab permit would, upon permit renewal beginning with the

second fishing year, be able to declare out of the red crab fishery for the following fishing year by submitting a binding declaration to the Regional Administrator at least 180 days prior to the following fishing year. NMFS would presume that a vessel owner intends to fish the following fishing year unless such a declaration is received. The requirement for owners of vessels to declare if their intent is not to fish prior to each fishing year is necessary in order to facilitate any needed adjustment of the annual allocation of DAS per vessel, which is based on the expected number of vessels that would actually participate in the fishery. A vessel owner who declared out of the fishery for the following year would have to wait until the next year's permit renewal application process to declare back into the fishery for the next full fishing year.

Vessel owners would have 180 days from the effective date of the regulations to apply for their initial limited access permits. Owners who failed to renew their permit for any fishing year, except if they declared their intent not to participate, would be ineligible to renew their permits in subsequent years.

As part of the application for a limited access red crab permit, vessel owners would have to declare the maximum number of traps/pots they use per string and the maximum number of strings they employ, such that the product of the maximum number of traps/pots per string and the maximum number of strings declared is no more than 600 traps/pots.

Dealers who purchase red crab product from any vessel would be required to obtain a Federal dealer permit. Red crabs harvested from the red crab management unit could only be sold by a federally permitted vessel to federally permitted dealers.

Operators of vessels issued a Federal red crab vessel permit would be required to obtain a Federal operator permit. An individual who already holds an operator permit for another federally managed fishery would not need to reapply, since there is no qualification or test for this permit.

#### **Qualification Criteria for Limited Access**

Subject to the restrictions defined in this proposed rule, a vessel could qualify for a limited access red crab permit if the vessel demonstrated that its average landings per year of red crabs during the 3-year period prior to the March 1, 2000, control date were >250,000 lb (113,398 kg).

#### **Reporting Requirements**

This proposed rule would extend the existing Northeast Region Vessel Trip Report (VTR) system to vessels with red crab permits. This would require the owner or operator of vessels issued either a limited access or incidental catch permit to submit monthly reports on fishing effort, landings, and discards within 15 days of the end of the reporting month. Both limited access and incidental catch vessels would be required to complete and submit VTRs for all fishing trips, regardless of whether they land any red crab.

Owners or operators of vessels participating in the limited access fishery would also be required to report their total red crab landings through an IVR system within 24 hours of the termination of any trip that lands red crab.

Dealers issued a red crab dealer permit would be required to submit a weekly dealer report on forms provided by or approved by the Regional Administrator. If authorized in writing by the Regional Administrator, the form(s) could be submitted electronically or through other media. The report would be provided weekly, and would have to be postmarked and received within 16 days after the end of each reporting week. A negative report would be required even if there were no crabs purchased.

#### **Target TAC**

An annual specifications process would provide the mechanism to make adjustments to the amount of target TAC available to the fishery and the number of DAS to be allocated to each vessel authorized to participate in the limited access fishery. Specifications would also include the specification of OY and/or adjustments to trip/possession limits. The Council's Plan Development Team (PDT) would review the most recent landings and effort data on an annual basis in order to provide the information necessary for the Council to recommend the specifications for the following fishing year. Each fishing year, the landings in the red crab fishery would be counted against a target TAC. The target TAC would be set annually through the annual specification process at a level equal to the most current estimate of OY for the fishery. The target TAC would be adjusted based on any projected overage or underage expected for the current fishing year. For example, when the Council is setting the annual specifications for the following fishing year, if OY is 5.928 million lb (2,689 mt) and the Council projects that 6.75 million lb (3,062 mt)

will be harvested in the current fishing year (a 822,000 lb (372,853 kg) overage), then the target TAC for the following year could be set at 5.106 million lb (2,316 mt). If, on the other hand, the Council projects that only 5.25 million lb (2,381 mt) will be harvested in the current fishing year (a 678,000 lb (307,536 kg) overage), then the target TAC could be set at 6.606 million lb (2,996 mt). The target TAC for the first full fishing year would be 5.928 million lb (2,689 mt) of whole red crab or its equivalent.

#### **Allocations of Red Crab DAS**

Along with the annual target TAC, the annual specification process would involve calculation of the total DAS that could be utilized by the directed fishery, based on average catch per DAS from the previous year. Total DAS would be allocated equally to all vessels issued a limited access red crab permit, divided by the number of vessels that intend to participate in the fishery for the fishing year. Any unused DAS allocated to a vessel in one fishing year could be carried over to the next fishing year, up to a maximum of 10 DAS or 10 percent of the total allocated DAS, whichever is less. The partial end of the year DAS carry-over is intended to ensure that at least some unused fishing effort would not be wasted, while providing no incentive to hoard DAS. This measure would also limit the potential annual fishing capacity to roughly 10 percent above the baseline. The FMP allocates only 130 DAS to each limited access vessel for the fishing year that ends February 28, 2003, because the FMP, if approved, would not go into effect until well after the start of the fishing year. However, if the FMP is approved, the management measures would not be effective for a full year. Because there would be a hiatus between the expiration of the emergency rule described above and the implementation of the FMP and implementing regulations, if approved, the FMP specifies the method by which vessel DAS allocations would be adjusted (see Initial Implementation Year, below).

From March 1, 2003, through February 29, 2004, each participating vessel would be allocated 156 DAS, unless this allocation were changed because of one or more vessel owners declaring out of the fishery or under the FMP specification process. The allocation of 156 DAS per participating vessel would remain the baseline unless modified through the specification process.

A DAS would be counted as a whole day (24 hours). Any portion of a day on

which a vessel is out of port would count as a full DAS. For example, if a vessel embarked on a fishing trip at 11:00 p.m. on June 1, that day of departure would count as one DAS. If it returned from the trip at 1:00 a.m. on June 10, that day of return would also count as one DAS. The vessel would have used 10 DAS during the fishing trip, rather than the 8.0833 DAS that would be counted as used if DAS were counted on an hourly basis.

#### **DAS Allocation for Initial Implementation Year**

During the initial year of implementation of the FMP, to account for red crab removed from the resource during the hiatus period, the Regional Administrator would calculate the amount of red crab landed during the hiatus period between the expiration of the red crab emergency regulations on May 15, 2002, and implementation of the FMP. This landings total would be deducted from the target TAC (5.928 million lb)(2,689 mt) and the remainder would represent the amount of target TAC available for the initial fishing year under the DAS program. The percentage of the target TAC remaining would be calculated and vessels participating in the DAS program would be allocated the calculated percentage of the initial baseline of DAS (for example, if landings during the hiatus period equal 20 percent of the target TAC, the allocation of 130 DAS would also be reduced by 20 percent, with the result rounded down to the nearest whole number).

#### **Trip Limits During a Red Crab DAS**

All vessels issued a limited access red crab permit would be subject to a baseline trip limit of at least 75,000 lb (34,019 kg) of whole red crab or its equivalent. If a vessel could show documented proof of one trip with higher landings during the limited access qualification period, then that vessel would qualify for a trip limit equal to the larger trip, rounded to the nearest 5,000 lb (2,268 kg). A vessel that partially processes or butchers its harvested red crabs would apply the more appropriate of two recovery rate formulas in accordance with § 648.263(a)(2) to determine its largest trip limit during the qualification period. Such proof would have to be received by NMFS within 30 days after receipt of a vessel owner's application for an initial limited access red crab vessel permit. A vessel owner would have to fish consistent with the 75,000-lb (34,019-kg) trip limit until authorized for a trip higher than 75,000 lb (34,019

kg) by NMFS through issuance of an updated vessel permit.

#### **Incidental Catch Limit**

An incidental catch limit of 500 lb (226.8 kg) per trip, in whole weight equivalent, would be implemented for all vessels issued a red crab incidental catch permit. This incidental catch limit would also apply to vessels issued a limited access red crab permit when they are not fishing under a red crab DAS.

#### **Female Red Crab Possession Restrictions**

The retention and landing of female red crabs in the limited access red crab fishery would be prohibited, except for an incidental catch allowance equal to the amount that would fill one standard U.S. fish tote per vessel per trip (approximately 100 lb (45.4 kg)). This measure would not apply to vessels fishing under the provisions of the red crab incidental catch permit, because the Council did not want to provide any incentive to seek any more than the first 500 lb (227 kg) of red crab harvested.

#### **Processing At Sea Restrictions**

This proposed rule would prohibit the full processing of red crabs at sea, but would allow partial processing and butchering. "Full processing" is defined as any activity that removes meat from any part of a red crab.

Crabs must be landed whole or split in half along the length of the carapace, with legs and claws still attached to the carapace parts. To determine the equivalent whole crab weight for crabs landed in half sections, this proposed rule provides two different calculations, depending on whether the gills and other detritus are removed. For crab halves where gills and other detritus have not been removed (typically referred to as "butchering"), the equivalent whole weight is equal to the weight of the halves multiplied by 1.56 (a 64-percent recovery rate). For crab halves where all of the gills and other detritus have been removed (typically referred to as "partial processing"), the equivalent whole weight is equal to the weight of the halves multiplied by 1.72 (a 58-percent recovery rate).

This requirement is intended to remove the incentive and prevent the harvesting of red crabs for their claws and/or legs alone. This measure would also facilitate the administration and enforcement of the male-only restriction in the directed fishery, because the sex could be discerned either by the shape of the tail flap on whole crabs, or by the outline of the tail flap on partially processed or butchered crabs.

Vessels issued a limited access red crab permit and fishing under a red crab DAS would be allowed to possess red crab claws and legs separate from crab bodies equal to the amount that would fill one standard U.S. fish tote per vessel per trip (approximately 100 lb (45.4 kg)). This mutilation allowance is intended to account for incidental and unintended loss of claws and/or legs during normal fishing operations. Vessels fishing under the provisions of the red crab incidental catch permit could possess no more than two claws and eight legs per crab on board the vessel.

#### **Gear Requirements and Restrictions**

Vessels issued a limited access red crab permit and fishing under a red crab DAS would be subject to a maximum limit of 600 red crab traps/pots. If the total number of traps/pots declared by the owner of a vessel on the annual vessel permit application were less than 600, the vessel would be subject to that declared limit on traps/pots.

Vessels issued a limited access red crab permit and fishing under a red crab DAS would be prohibited from hauling any fishing gear other than red crab gear. Red crab gear would be identifiable through required markings on the buoys used at the end of each set of traps/pots.

The maximum allowable size of all traps/pots used in the limited access red crab fishery when under a red crab DAS would be 18 ft<sup>3</sup> (0.51 m<sup>3</sup>) in volume. In conjunction with the trap/pot limit described above, this would prevent a potential increase in the per-day efficiency of fishing vessels fishing under a red crab DAS.

The use of parlor traps/pots or non-trap/pot gear by a vessel fishing in the limited access red crab fishery when under a red crab DAS would be prohibited. Because red crab traps/pots, unlike parlor traps/pots, do not prevent the escape of crabs from the trap, many of the crabs that might enter the traps during the period between trips would be gone before the vessel returned to haul the traps on a subsequent trip. Also, lost red crab traps do not present a ghost fishing problem, because the crabs can escape from the traps. Vessels fishing under the red crab incidental catch provisions, including vessels in the red crab fishery when not fishing under a red crab DAS, would not be prohibited from using parlor traps/pots or non-trap/pot gear.

#### **Annual Monitoring and Framework Adjustment Measures**

The Council would prepare a biennial Stock Assessment and Fishery

Evaluation (SAFE) Report for the red crab fishery and its resource. The Red Crab PDT would meet at least annually to review the status of the stock and the fishery. The PDT would report any necessary adjustments to the measures and recommendations for the specifications and TACs to the Council's Red Crab Committee, which in turn would recommend appropriate changes to the Council. Specifications would be recommended to NMFS, and changes to management measures would be adopted through a framework adjustment or FMP amendment.

The framework adjustment process, on an annual basis or at any other time during the fishing year, would be similar to that used in other Northeast Region fisheries. This process would permit changes to be made to the regulations in a timely manner without going through the FMP amendment process.

During the framework adjustment process, the Council would meet to develop new management measures to the FMP. Either during, or at the conclusion of the framework process, the public would be provided an opportunity to offer comments on the Council's framework adjustment process and the newly-developed management measures.

In the instant case, the Council provided the public with an opportunity to comment on the framework adjustment measures. The management measures and/or changes to them could be implemented and adjusted through the framework process and specifically include the following: (1) OY; (2) management unit; (3) technical parameters for MSY; (4) description and identification of EFH; (5) description and identification of HAPCs; (6) incidental catch limits; (7) minimum size of landed crabs; (8) restricting directed fishing to male crabs only; (9) butchering/processing restrictions; (10) trap/pot limits; (11) gear requirements/restrictions; (12) TAC; (13) trip limits; (14) controlled access; (15) DAS; and (16) any other measure currently included in the FMP.

Pursuant to section 304(b) of the Magnuson-Stevens Act, the Secretary has made minor modifications to the framework process outlined in the regulations. These modifications help to clarify the Secretary's authority and discretion to publish framework measures as a final rule without prior notice and comment. Although the Council, after consideration of numerous criteria, may recommend that a rule be published directly as a final rule, this recommendation does not affect the Secretary's authority or

discretion in deciding whether it is appropriate to publish the rule without prior notice and comment. However, in order to publish a final rule without prior notice and comment, the Secretary must make a finding under the Administrative Procedure Act that good cause exists to waive prior notice and comment.

#### **Essential Fish Habitat (EFH)**

The Council proposes to use depth zone affinities for EFH. EFH for red crab includes those areas of the offshore waters (out to the offshore U.S. boundary of the EEZ), in depths between 200—1,800 m, as identified and described in section 3.7.4 of the FMP.

This proposed rule would also revise the definitions of "Council", "Day(s)-at-Sea", "Fishing year", "Processor", "Processing, or to process, in the Atlantic herring fishery", and "Sorting machine", to clarify the meaning of each and to provide consistency with text used in like definitions from other species regulations.

#### **Classification**

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

The Council prepared an FEIS for the FMP; a notice of availability for the DEIS was published on November 30, 2001 (66 FR 59787). The Council has selected a preferred alternative management strategy intended to mitigate, to the extent possible, all possible social and economic adverse effects while minimizing risks to the resource and its environment. Overall, the proposed action is expected to have significant positive effects on the red crab resource relative to the no action alternative.

The Council prepared an initial regulatory flexibility analysis (IRFA) that 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 in the preamble and in the **SUMMARY**.

The following sections provide a summary of the analyses of the potential impacts of the management alternatives considered in the FMP. The full descriptions of the management alternatives, and the specific measures associated with each alternative, are provided in detail in sections 4.2 and 4.3 of the FMP. Also, the full analyses of the potential impacts of the specific measures associated with each alternative are provided in detail in section 5.3 of the FMP. A full analysis

of the differences among the management alternatives is provided in section 5.4 of the FMP.

Quantitative information is limited for this fishery. When possible, the quantitative impacts of the alternatives were considered, but in many instances it was only possible to qualitatively describe impacts.

The proposed measures could affect any vessel that has participated in the red crab fishery, all of which readily fall within the Small Business Administration's (SBA) definition of small business and the RFA's definition of "small entity." Therefore, all alternatives and analyses associated with the FMP and proposed rule necessarily are alternatives and analyses applicable to impacts on small entities. The Council IRFA identified 86 individual vessels that reported some landings of red crab during 1991–2001. The IRFA considered the level of participation in the fishery by examining cumulative landings made by the vessels over the 11-year period. Forty-seven vessels made cumulative landings of less than 1,000 lb (453.6 kg). Twenty-two vessels had cumulative landings between 1,000 lb (453.6 kg) and 10,000 lb (4,535.9 kg). Only two of these vessels landed 5,000 lb (2,268 kg) or more in any one year.

Four vessels reported between 10,000 lb (4,535.9 kg) and 100,000 lb (45,359.2 kg) of cumulative landings during the period, though none of these vessels made landings in more than 2 of the 11 years. Another six vessels reported between 100,000 lb (45,359.2 kg) and 1,000,000 lb (453,592.4 kg) of cumulative landings in the period. None of these vessels reported any landings prior to 1995, and two vessels reported landings only in 2001.

Seven vessels reported cumulative landings greater than 1 million lb (453,592.4 kg). Of the seven, two vessels have not reported any landings since 1993. The remaining five vessels are currently reporting landings.

The Council examined more recent data in the IRFA, but noted that the available landings and revenue data are incomplete because red crab vessels and dealers have not been required to participate in the existing NMFS mandatory reporting program for vessels and dealers. If vessels or dealers are involved in one of the other fisheries that requires Federal permits and mandatory reporting, their red crab activity has been included in those reports. This circumstance means that the stated number of entities subject to the regulation is a lower-bound estimate, since the number of non-

federally permitted entities cannot be estimated.

The Council's IRFA also utilized information obtained through a voluntary survey of participants in the red crab fishery. Most of the vessel owners who responded to the survey reported that they are dependent upon red crab landings for 100 percent of their annual income. The processors who responded to the survey reported that they all process many species besides red crab, and that red crab accounts for an average of 11.5 percent of their fish processing operations.

The IRFA notes that 17 vessels requested the Letter of Authorization (LOA) required under the emergency regulations to harvest more than 100 lb (45.4 kg) of red crab per trip during the period May 18 - November 14, 2001. Of those vessels, seven actually reported red crab landings during the period. Only six vessels made multiple trips during the emergency period and consistently landed at or near the trip limit of 65,000 lb (29.5 mt).

In addition to the proposed management program, the Council considered eight management program alternatives and a "no action" alternative. Each management program is composed of a suite of management measures, though some measures are common to most or all of the alternatives. Most of the alternatives included limited access programs, and all of the alternatives included some level of incidental catch limits for vessels targeting species other than red crab. In addition, all of the management alternatives include requirements for fishing gear to be marked, restrictions on the use of non-trap gear in the directed fishery, and permit and reporting requirements. While there are economic impacts on small entities associated with these measures, the impacts are the same for all of the alternatives. The impacts of these measures will be described separately from the discussion of the alternatives.

#### Limited Access Program

The limited access eligibility criteria included in the proposed action requires a vessel to have landed more than 250,000 lb (113.40 mt) of red crab during the 3 years prior to the control date (March 1, 1997 - February 29, 2000). The Council expected a minimum of five vessels to meet these eligibility criteria. The Council considered establishing less restrictive eligibility criteria, and expected a minimum of eight vessels to meet the least restrictive criteria considered, which would have required a vessel to have landed 40,000 lb (18,143.7 kg) or

more during the eligibility period of March 1, 1997—February 29, 2000. This implies that three entities may be negatively impacted because the proposed limited access program will exclude them from the directed fishery. These three vessels landed at least 10,000 lb (4,535.9 kg) of red crab for 3 years prior to the control date, for an average of 3,333 lb (1,511.8 kg) per year. The IRFA estimated the maximum revenue loss to be \$2,833 per year for each of these vessels.

The IRFA also evaluated the impact of the proposed program by comparing the qualifying vessels with the vessels that fished multiple times under LOAs issued under the emergency regulations. This comparison indicates that one entity may be excluded from the directed fishery by the proposed criteria because the vessel entered the fishery after the control date of March 1, 2000. This vessel does not currently participate in the fishery and has left the New England area. The impacts on this vessel will be severe, but cannot be detailed in the IRFA because of data confidentiality restrictions.

The revenue effects on these impacted entities would be moderated if they can adapt their fishing activities and redirect their fishing activity onto other species. It appears that most will have this option. Of the 17 vessels noted above that were issued LOAs under the emergency action, 14 had the vessel permits necessary to fish in other fisheries, including other limited access fisheries such as American lobster, summer flounder, scup and black sea bass.

#### Incidental Catch Allowance

The proposed action would implement an incidental catch limit of 500 lb (226.8 kg) per trip. The Council believed that this would ensure that the offshore lobster fishery, as well as other fisheries, would be able to continue to land relatively small amounts of red crab as incidental catch. Alternative levels for incidental catch that were considered were 50-lb (22.7-kg), 100-lb (45.4-kg), and 1,000-lb (453.6-kg) limits. The Council's IRFA examined red crab landings data for the period 1998-2000 and identified trips that landed red crab as incidental catch. Approximately 27 percent of trips landed 50 lb (22.7 kg) or less; nearly 40 percent landed up to 100 lb (45.4 kg); nearly 75 percent landed up to 500 lb (226.8 kg); and 89 percent landed up to 1,000 lb (453.6 kg).

#### Gear Restrictions

All of the alternatives would require red crab gear to be marked in a manner

consistent with current industry practices, so the impacts of the gear-marking requirements are minor. In addition, all alternatives would prohibit vessels targeting red crab from using any gear other than pot/trap gear. The directed fishery currently uses only pot/trap gear, so there are no impacts associated with this restriction.

#### Permits and Reporting Requirements

Vessels landing red crab would be required to have permits, as would dealers purchasing red crab from permitted vessels. Operators of vessels with red crab permits would be required to obtain operator permits. Vessels landing red crab would need to submit logbook reports, and dealers purchasing this species would need to submit dealer reports. Some vessels and dealers are currently issued the required permits as a result of their participation in other managed fisheries. For those entities, the red crab fishery would be added to an existing permit and there would be no new impacts.

Some vessel owners and dealers may have to obtain Federal permits for the first time. In these instances, the costs associated with completing the necessary applications would be: Vessel permit, \$7.50/applicant; dealer permit, \$7.50/applicant; and operator permit, \$15.00. Annual costs associated with completing vessel trip reports are estimated at \$20.00. Annual costs associated with dealer reporting are estimated at \$30.00.

#### Impacts of Alternatives on Vessels

The economic impacts of the other measures included in the alternatives considered by the Council are summarized below. The proposed action is referred to in the IRFA as Alternative 5 (Preferred Alternative).

#### *Proposed Action: Target TAC, DAS and Trip Limits*

The proposed action would establish a target TAC at a level that would prevent overfishing. In order to constrain landings to the level of the target TAC, DAS would be allocated to each vessel that qualified for the limited access permit. These DAS would be calculated based on the average landings in the fishery, but each vessel would be allowed to land red crab under a trip limit restriction of at least 75,000 lb/trip (34,019.4 kg/trip). A vessel that demonstrated higher landings in the past would be assigned a trip limit equal to the highest landings on a historical trip. In addition to the trip limit restriction, the limited access vessels would be limited to using 600 pots/traps. The landings of female crabs

(other than a small allowance for accidental retention) would be prohibited. This would limit the extent to which red crabs could be butchered or processed prior to landing.

The impact of the DAS under the proposed action presumed a potential DAS allocation of up to 183 DAS each. This represents a reduction from the number of days that red crab vessel owners reported being at sea (200–300 days). The IRFA notes that the owners of five vessels active in the fishery commented that they could operate profitably on an allocation of 183 days. Because vessels can expend their DAS when they choose, DAS are expected to allow flexibility in fishing activity and more consistent supply to the red crab market.

The proposed trip limit would allow vessels to operate at their best historical level, so impacts are expected to be slight. The use of historical levels would maintain each vessel's individual competitive position within the fishery. The IRFA noted that it would not always be possible for a vessel to duplicate its highest level of landings, so that, on average, vessel trips would likely land less than the vessel trip limit.

Several of the measures in this alternative are consistent with the way the fishery currently operates and so would have no impact. In response to market demand, red crab landings have been composed almost exclusively of male crabs. The average number of traps used in the fishery is estimated at 560, so the 600-trap limit would have no impacts, except to prevent an expansion of effort. The restrictions on red crab processing at sea are intended to improve the ability to enforce the trip limits and restrictions on landing females. The butchering/processing restriction is consistent with the practice of most of the vessels known to participate in the fishery, although it appears at least one vessel would have to modify its operations.

#### *Alternative 1: Emergency Rule*

The incidental catch allowance, gear restrictions, permits and reporting requirements are included in this alternative. This alternative does not include a limited access program. The principal management measure in this alternative is a hard TAC, with closure of the directed fishery required when the TAC is attained. This alternative would also establish trip limits and trap limits. When quotas are relatively low, the fishing industry generally attempts to land as much as possible before the TAC is attained and the fishery is closed. This results in a glut of products

that may exceed market demand, resulting in lower revenues to fishermen and economic waste. It also interrupts supply to markets due to the closed fishery. Each regulated entity would, therefore, experience unstable revenue and have to deal with market supply problems. The fishery under the emergency regulations demonstrated this effect.

#### *Alternative 2: Hard TAC with Trap/Pot Limits*

The limited access program, incidental catch allowance, gear restrictions, permits and reporting requirements are included in this alternative. This alternative would establish a trap limit for all limited access vessels, intended to make fishing effort equivalent. This alternative would also prohibit most landings of female red crab and would restrict butchering/processing at sea. The major impacts associated with this alternative would be related to the fishery closures when the TAC was attained, and to the trap limit. The impacts of the hard TAC would be the same as in Alternative 1. The impacts of the trap limit would be to force vessels to operate at less than their full capacity, reducing their efficiency. Reducing the number of traps/pots from current levels would reduce the catch without any associated reduction of costs, resulting in reduced profitability and higher costs per crab harvested.

#### *Alternative 3: Hard TAC, Trap/Pot Limits, and Trip Limits*

The limited access program, incidental catch allowance, gear restrictions, permits and reporting requirements are included in this alternative. The measures in Alternative 2 are also included, and a trip limit measure is added. All limited access vessels would be restricted to the same trip limit, whether or not the vessels had the ability to make landings higher than the trip limit. Such vessels would be forced to operate in an inefficient manner, and in some cases might not generate enough revenue to cover their variable costs. Some of these vessels could decide not to participate in the fishery. The impact of such decisions could be offset by fishing for other species, but it is impossible to estimate how much additional revenue this would generate.

#### *Alternative 4: Target TAC with DAS*

The limited access program, incidental catch allowance, gear restrictions, permits and reporting requirements are included in this alternative. This alternative would

establish a trap limit for all limited access vessels, prohibit most landings of female red crab, and restrict butchering/processing at sea. This alternative would set a target TAC, and allocate DAS to limited access vessel intended to maintain landings consistent with the target TAC. The only difference between this alternative and the measures in the proposed action is that this alternative would not establish trip limits. The lack of a trip limit would reduce the impact on the limited access vessels by allowing them to make each trip as profitable as possible. However, the Council selected the proposed action because the addition of trip limits would constrain vessels to operate at historical levels only, maintaining each vessel's relative individual competitive position within the fishery, as of the control date. It would also constrain the total fleet to meet the conservation objectives of the FMP.

#### *Alternative 5: Trip Limits and Set Number of Trips*

The limited access program, incidental catch allowance, gear restrictions, permits and reporting requirements are included in this alternative. This alternative would establish a trap limit for all limited access vessels, prohibit most landings of female red crab, and restrict butchering/processing at sea. This alternative would allocate a specified number of trips to limited access vessels, and set a trip limit for such vessels. The only difference between this alternative and that contained in the proposed measures is that vessel activity would be controlled on a trip level, rather than a DAS level, and there would be no formalized calculation of a target TAC. Even though a TAC would not be specified, the allocation of trips and establishment of trip limits would have to take the total catch into account. Depending on the level of the trip limit, it could require vessels to operate in an inefficient manner. Consideration was given in this alternative to establishing trip limits specific to each vessel, which could have improved the efficiency of operations and reduced the impacts.

#### *Alternative 6: All Possible Measures*

The limited access program, incidental catch allowance, gear restrictions, permits and reporting requirements are included in this alternative. This alternative included all of the measures in the proposed action, but added a minimum size requirement. The minimum size restriction is projected to have little impact because there is no market for small red crabs, so this alternative has economic impacts

similar to those of the preferred alternative.

*Alternative 7: IVQ with Controlled Access*

The limited access program, incidental catch allowance, gear restrictions, permits and reporting requirements are included in this alternative. In addition, this alternative would establish a TAC, and establish Individual Vessel Quotas (IVQs) that would allocate to each vessel an individual percentage share of the TAC. Vessels would be able to operate at their peak efficiency, maximizing their revenue, and thus their profit. The creation of use rights means that some vessel owners would gain economically and some would lose; this creates a redistribution of wealth and has equity implications. New quota-based programs including IVQs are currently not allowed under the Magnuson-Stevens Act.

*Alternative 8: IVQ Only*

The incidental catch allowance, gear restrictions, permits and reporting requirements are included in this alternative. This alternative would not establish a limited access program, but would establish an IVQ. In the absence of a limited access program, more vessels would participate in the fishery. Because of this, each IVQ vessel would have a smaller share of the TAC than in the previous alternative. The economic benefits of IVQ would still be realized, but would be shared among a larger group of vessels thus diminishing per-vessel share. New quota-based programs including IVQs are currently not allowed under the Magnuson-Stevens Act.

*Alternative 9: No Action*

Without regulatory action, additional vessels would enter the fishery and current participants could increase harvest levels without restriction. In the short term, landings and revenue could increase for many vessels, but because uncontrolled landings could not be sustained, eventually the profitability of all vessels would decrease. With the entry of additional vessels, the catch per vessel would decrease. There would initially be an increased supply of red crabs to consumers because landings would not be restricted, but the long-term effect would be decreased supply and, presumably, higher prices. Uncontrolled and potentially escalating fishing effort could have negative economic impacts on those businesses that depend on the red crab fishery.

**Economic Impacts on Dealers**

In 2001, the NMFS dealer reports indicated that seven dealers purchased red crab; of these, only one purchased more than 1,500 lb (680.4 kg). For the other six, red crab appears to have represented a minor part of their business. Consideration of impacts on dealers is hampered by the limited data available. The dealer(s) who purchased 96 percent of the red crab landed cannot be identified in the existing data.

Another way to look at dealer dependence on red crab is to consider the dollar value of red crab. By this measure, only one dealer depended on red crab for more than \$200,000 in revenue. In 2000, there were three dealers listed in the dealer database that purchased 12 percent of the red crab landings. The dealer(s) who purchased 88 percent of the red crab landings could not be identified in the existing data.

The proposed action has only limited impact on dealers because the red crab fishery is expected to operate at levels similar to those in recent years.

**Competitive Effects Analysis**

Most, if not all, of the vessels, dealers, and processors fall within the definition of small entities and, thus, any alternatives to reduce impacts are necessarily alternatives affecting impacts on small entities. The voluntary survey indicated that one processor employs 1,000 people, which is a number greater than that specified in the definition of a small entity. However, the maximum number of year-round employees, as opposed to seasonal, for any processor, was listed as 400 so it is possible that all dealers would be appropriately categorized as small entities. There is also an indication that a fish and seafood wholesaler that employs 150 people may not be a small entity. However, the percentage of this wholesaler's business revenue that comes from the sale of red crab products ranges from less than 1 percent to 33 percent and averages only slightly more than 25 percent. Because of the small nature of the fishery and the issue of confidentiality, it is not possible to disclose if there are disproportionate size effects. There are no disproportionate costs of compliance among the affected small entities. The proposed action does not create regulations that duplicate, overlap, or conflict with any state regulation or other Federal law.

A copy of this analysis is available from the Council (see **ADDRESSES**).

This rule contains eight collection-of-information requirements, which have

been submitted to OMB for approval. The public's reporting burden for the collection-of-information requirements includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information requirements.

The new reporting requirements and the estimated time for a response are as follows:

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

Dealer purchase reports, OMB control number 0648-0229 (10 minutes/response).

Limited access vessel permits, OMB control number 0648-0202 (5 minutes/response).

Incidental catch vessel permits, OMB control number 0648-0202 (5 minutes/response).

Dealer permits, OMB control number 0648-0202 (5 minutes/response).

Operator permits, OMB control number 0648-0202 (60 minutes/response).

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

Gear marking requirements, OMB control number 0648-0351 (36 minute/response).

Public comment is sought regarding: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS (see **ADDRESSES**) and to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington DC 20503 (Attn: NOAA Desk Officer).

Notwithstanding any other provision of the 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, unless that collection-of-information displays a currently valid OMB control number.

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

Fishing, Fisheries, Reporting and recordkeeping requirements.

Dated: June 14, 2002.

William T. Hogarth, Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out 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 § 648.1, the first sentence of paragraph (a) is revised to read as follows:

§ 648.1 Purpose and scope.

(a) This part implements the fishery management plans (FMPs) for the Atlantic mackerel, squid, and butterfish fisheries (Atlantic Mackerel, Squid, and Butterfish FMP); Atlantic salmon (Atlantic Salmon FMP); the Atlantic sea scallop fishery (Scallop FMP); the Atlantic surf clam and ocean quahog fisheries (Atlantic Surf Clam and Ocean Quahog FMP); the NE multispecies and monkfish fisheries (NE Multispecies FMP and Monkfish FMP); the summer flounder, scup, and black sea bass fisheries (Summer Flounder, Scup, and Black Sea Bass FMP); the Atlantic bluefish fishery (Atlantic Bluefish FMP); the Atlantic herring fishery (Atlantic Herring FMP); the spiny dogfish fishery (Spiny Dogfish FMP); the Atlantic deep-sea red crab fishery (Deep-Sea Red Crab FMP); and the tilefish fishery (Tilefish FMP).

3. In § 648.2, the definitions of "Council", "Day(s)-at-Sea", "Fishing year", "Processor", "Processing, or to process, in the Atlantic herring fishery", and "Sorting machine" are revised and new definitions for "Atlantic deep-sea red crab (red crab)", "Full-processing (fully process), with respect to the Atlantic deep-sea red crab fishery", "Parlor trap/pot", "Red Crab Management Unit", and "Red crab trap/pot" are added in alphabetical order to read as follows:

§ 648.2 Definitions.

Atlantic deep-sea red crab (red crab) means Chaceon quinqueedens.

Council means the New England Fishery Management Council (NEFMC) for the Atlantic herring, Atlantic sea scallop, Atlantic deep-sea red crab, and NE multispecies and monkfish fisheries; or the Mid-Atlantic Fishery Management Council (MAFMC) for the

Atlantic mackerel, squid, and butterfish; Atlantic surf clam and ocean quahog; summer flounder, scup, and black sea bass; spiny dogfish; Atlantic bluefish; and tilefish fisheries.

Day(s)-at-Sea (DAS), with respect to the NE multispecies and monkfish fisheries (except as described in § 648.82(k)(1)(iv)), Atlantic sea scallop fishery, and Atlantic deep-sea red crab fishery, means the 24-hour periods of time or any part thereof during which a fishing vessel is absent from port to fish for, possess or land, or fishes for, possesses or lands, regulated species, monkfish, scallops, or red crabs. With respect to the red crab fishery, any portion of a calendar day in which a vessel is out of port, after having declared into the red crab DAS fishery, shall count as a full DAS.

Fishing year means: (1) For the Atlantic sea scallop and Atlantic deep-sea red crab fisheries, from March 1 through the last day of February of the following year. (2) For the NE multispecies and monkfish fisheries, from May 1 through April 30 of the following year. (3) For all other fisheries in this part, from January 1 through December 31.

Full-processing (fully process), with respect to the Atlantic deep-sea red crab fishery, means any activity that removes meat from any part of a red crab.

Parlor trap/pot means any structure or other device, other than a net, with two or more compartments within designed to impede escape, that is placed, or designed to be placed, on the ocean bottom and is designed for, or is capable of, catching lobsters and/or red crabs.

Processor, with respect to the Atlantic surf clam and ocean quahog fisheries, means a person who receives surf clams or ocean quahogs for a commercial purpose and removes them from a cage.

Processing, or to process, with respect to the Atlantic herring fishery, means the preparation of Atlantic herring to render it suitable for human consumption, bait, commercial uses, industrial uses, or long-term storage, including but not limited to cooking, canning, roe extraction, smoking, salting, drying, freezing, or rendering into meat or oil.

Red Crab Management Unit means an area of the Atlantic Ocean from 35 15.3° N. Lat., the approximate latitude of Cape Hatteras Light, NC, northward to the U.S.-Canada border, extending eastward from the shore to the outer boundary of the exclusive economic zone and

northward to the U.S.-Canada border in which the United States exercises exclusive jurisdiction over all Atlantic deep-sea red crab fished for, possessed, caught or retained in or from such area.

Red crab 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.

Sorting machine, with respect to the Atlantic sea scallop fishery, means any mechanical device that automatically sorts whole scallops by shell height, size, or other physical characteristics.

4. In § 648.4, paragraph (a) (13) is added to read as follows:

§ 648.4 Vessel permits.

(13) Red Crab vessels. Any vessel of the United States must have been issued and have on board a valid red crab vessel permit to fish for, catch, possess, transport, land, sell, trade, barter, butcher or partially process at sea any red crab in or from the EEZ portion of the Red Crab Management Unit.

(i) Limited access red crab permit—(A) Eligibility. A vessel, or its replacement, may be issued a limited access red crab permit if the vessel's total landings averaged greater than 250,000 lb (113,400 kg) of red crab per year for the 3 years beginning March 1, 1997, through February 29, 2000. To calculate the average value per year, the total landings of whole red crab, or its equivalent by weight, between March 1, 1997, and February 29, 2000, inclusive, shall be divided by 3. If the quotient is greater than 250,000 lb (113,400 kg), the vessel meets the landings criteria. For example, if a vessel caught greater than 750,000 lb (340,200 kg) in the 3-year qualifying time span—even if it fished just 2 of those 3 years—the average per year would be greater than 250,000 lb (113,400 kg).

(B) Application/renewal restriction—(1) Initial application. A vessel owner must apply for an initial limited access red crab permit before [insert date 180 days from the effective date of the final rule]. No vessel owner may apply for an initial limited access red crab permit after this date.

(2) Fishing years beyond the initial year. (i) For fishing years beyond the initial year, the provisions of paragraph (a)(1)(i)(B) of this section apply.

(ii) A vessel owner 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.

(C) *Qualification restrictions.* The provisions of paragraph (a)(1)(i)(C) of this section apply.

(D) *Change in ownership.* The provisions of paragraph (a)(1)(i)(D) of this section apply.

(E) *Replacement vessels.* (1) To be eligible for a limited access permit under this section, the replacement vessel's length, GRT, and NT may not exceed by greater than 10 percent the length, GRT, and NT of the vessel's baseline specifications, if applicable. The replacement vessel must also meet any other applicable criteria under paragraph (a)(13)(i)(F) of this section.

(2) A vessel that lawfully replaced a vessel that meets the qualification criteria set forth in paragraph (a)(13)(i)(A) of this section may qualify for and fish under the permit category for which the replaced vessel qualified.

(3) A vessel that replaced a vessel that fished for and landed red crab between March 1, 1997, and February 29, 2000, may use the replaced vessel's history in lieu of or in addition to such vessel's fishing history to meet the qualification criteria set forth in paragraph (a)(13)(i)(A) of this section, unless the owner of the replaced vessel retained the vessel's permit or fishing history, or such vessel no longer exists and was replaced by another vessel according to the provisions in paragraph (a)(1)(i)(D) of this section.

(F) *Upgraded vessel.* A vessel may be upgraded, whether through refitting or replacement, and be eligible to retain or renew a limited access permit, providing that the vessel's length, GRT, and NT is increased no more than once. Any increase in any of the aforementioned specifications of vessel size may not exceed 10 percent of the vessel's baseline specifications, as applicable. If any increase in any of the aforementioned specifications of vessel size occurs, any increase in the other specifications must be performed at the same time.

(G) *Consolidation restriction.* The provisions of paragraph (a)(1)(i)(G) of this section apply.

(H) *Vessel baseline specifications.* The vessel baseline specifications in this section are the respective specifications (length, GRT, and NT) of the vessel that was initially issued a limited access permit as of the date the initial vessel applied for such permit.

(I) *Limited access permit restrictions.* A vessel issued a limited access red crab permit may not be issued a red crab incidental catch permit during the same fishing year.

(J) *Confirmation of permit history (CPH).* Notwithstanding any other provisions of this part, a person who does not currently own a fishing vessel, but who has owned a qualifying vessel that has sunk, been destroyed, or transferred to another person, must apply for and receive a CPH if the fishing and permit history of such vessel has been retained lawfully by the applicant. To be eligible to obtain a CPH, the applicant must show that the qualifying vessel meets the eligibility requirements, as applicable, in this part. Issuance of a valid CPH preserves the eligibility of the applicant to apply for a limited access permit for a replacement vessel based on the qualifying vessel's fishing and permit history at a subsequent time, subject to the replacement provisions specified in this section. If fishing privileges have been assigned or allocated previously under this part, based on the qualifying vessel's fishing and permit history, the CPH also preserves such fishing privileges. A CPH must be applied for in order for the applicant to preserve the fishing rights and limited access eligibility of the qualifying vessel. An application for a CPH must be received by the Regional Administrator no later than 30 days prior to the end of the first full fishing year in which a vessel permit cannot be issued. Failure to do so is considered abandonment of the permit as described in paragraph (a)(1)(i)(K) of this section. A CPH issued under this part will remain valid until the fishing and permit history preserved by the CPH is used to qualify a replacement vessel for a limited access permit. Any decision regarding the issuance of a CPH for a qualifying vessel that has applied for or been issued previously a limited access permit is a final agency action subject to judicial review under 5 U.S.C. 704. Information requirements for the CPH application are the same as those for a limited access permit. Any request for information about the vessel on the CPH application form refers to the qualifying vessel that has been sunk, destroyed, or transferred. Vessel permit applicants who have been issued a CPH and who wish to obtain a vessel permit for a replacement vessel based upon the previous vessel history may do so pursuant to paragraph (a)(13)(i)(E) of this section.

(K) *Abandonment or voluntary relinquishment of permits.* The

provisions of paragraph (a)(1)(i)(K) of this section apply.

(L) *Restriction on permit splitting.* The provisions of paragraph (a)(1)(i)(L) of this section apply.

(M) *Notification of eligibility for 2002.* (1) NMFS will attempt to notify all owners of vessels for which NMFS has credible evidence available that they meet the qualification criteria described in paragraph (a)(13)(i)(A) of this section and that they qualify for a limited access red crab permit. Vessel owners must still apply by [insert date 180 days from the effective date of the final rule] to complete the qualification requirements.

(2) If the vessel owner has not been notified that the vessel is eligible to be issued a limited access red crab permit, and the vessel owner believes that there is credible evidence that the vessel does qualify under the pertinent criteria, the vessel owner may apply for a limited access red crab permit by [insert date 180 days from the effective date of the final rule] by submitting evidence that the vessel meets the requirements described in paragraph (a)(13)(i)(A) of this section.

(N) *Appeal of denial of a permit.* (1) Any applicant denied a limited access red crab permit may appeal to the Regional Administrator within 30 days of the notice of denial. Any such appeal shall be in writing. The only ground for appeal is that the Regional Administrator erred in concluding that the vessel did not meet the criteria in paragraph (a)(13)(i)(A) of this section. The appeal must set forth the basis for the applicant's belief that the decision of the Regional Administrator was made in error.

(2) The appeal may be presented, at the option of the applicant, at a hearing before an officer appointed by the Regional Administrator. The hearing officer shall make a recommendation to the Regional Administrator. The decision on the appeal by the Regional Administrator is the final decision of the Department of Commerce.

(3) Status of vessels pending appeal. A vessel denied a limited access red crab permit may fish, provided that the denial has been appealed, the appeal is pending, the vessel owner has presented prima facie evidence that the decision was made in error, and the vessel has on board a letter from the Regional Administrator authorizing the vessel to fish. The Regional Administrator will issue such a letter for the pendency of any appeal. The decision on the appeal is the final administrative action of the Department of Commerce. The letter of authorization must be carried on board the vessel. If the appeal is finally denied, the Regional Administrator

shall send a notice of final denial to the vessel owner; the authorizing letter shall become invalid 5 days after receipt of the notice of denial.

(i) *Red crab incidental catch permit.* A vessel of the United States that is subject to these regulations and that has not been issued a red crab limited access permit is eligible for and may be issued a red crab incidental catch permit to catch, possess, transport, land, sell, trade, barter, butcher or partially process at sea up to 500 lb (226.8 kg) of red crab, or its equivalent as specified at § 648.263(a)(2)(i) and (ii), per fishing trip in or from the Red Crab Management Unit. Such vessel is subject to the restrictions in § 648.263(b).

(ii) [Reserved]

5. In § 648.5, the first sentence in paragraph (a) is revised to read as follows:

**§ 648.5 Operator permits.**

(a) *General.* Any operator of a vessel fishing for or possessing Atlantic sea scallops in excess of 40 lb (18.1 kg), NE multispecies, spiny dogfish, monkfish, Atlantic herring, Atlantic surf clam, ocean quahog, Atlantic mackerel, squid, butterfish, scup, black sea bass, or bluefish, harvested in or from the EEZ, or tilefish harvested in or from the EEZ portion of the Tilefish Management Unit, or Atlantic deep-sea red crab harvested in or from the EEZ portion of the Red Crab Management Unit, issued a permit, including carrier and processing permits, for these species under this part, must have been issued under this section, and carry on board, a valid operator permit. \* \* \*

\* \* \* \* \*

6. In § 648.6, paragraph (a)(1) is revised to read as follows:

**§ 648.6 Dealer/processor permits.**

(a) \* \* \*

(1) All dealers of NE multispecies, monkfish, Atlantic herring, Atlantic sea scallop, Atlantic deep-sea red crab, spiny dogfish, summer flounder, Atlantic surf clam, ocean quahog, Atlantic mackerel, squid, butterfish, scup, bluefish, tilefish, and black sea bass; Atlantic surf clam and ocean quahog processors; and Atlantic herring processors or dealers, as described in § 648.2; must have been issued under this section, and have in their possession, a valid permit or permits for these species. A person who meets the requirements of both the dealer and processor definitions of any of the aforementioned species' fishery regulations may need to obtain both a dealer and a processor permit,

consistent with the requirements of that particular species' fishery regulations. Persons aboard vessels receiving small-mesh multispecies and/or Atlantic herring at sea for their own use exclusively as bait are deemed not to be dealers, and are not required to possess a valid dealer permit under this section, for purposes of receiving such small-mesh multispecies and/or Atlantic herring, provided the vessel complies with the provisions of § 648.13.

\* \* \* \* \*

7. In § 648.7, paragraphs (b)(1)(iii) and (b)(1)(iv) are removed and paragraph (b)(2) is added to read as follows:

**§ 648.7 Recordkeeping and reporting requirements.**

\* \* \* \* \*

(b) \* \* \*

(2) *IVR system reports*—(i) *Atlantic herring owners or operators.* The owner or operator of a vessel described here must report catches (retained and discarded) of herring each week to an IVR system. The report shall include at least the following information, and any other information required by the Regional Administrator: Vessel identification, reporting week in which species are caught, pounds retained, pounds discarded, management area fished, and pounds of herring caught in each management area for the previous week. Weekly Atlantic herring catch reports must be submitted via the IVR system by midnight, Eastern Time, each Tuesday for the previous week. Reports are required even if herring caught during the week has not yet been landed. This report does not exempt the owner or operator from other applicable reporting requirements of § 648.7.

(A) The owner or operator of any vessel issued a permit for Atlantic herring subject to the requirements specified by § 648.4(c)(2)(vi)(C) that is required by § 648.205 to have a VMS unit on board must submit an Atlantic herring catch report via the IVR system each week (including weeks when no herring is caught), unless exempted from this requirement by the Regional Administrator.

(B) An owner or operator of any vessel issued a permit for Atlantic herring that is not required by § 648.205 to have a VMS unit on board and that catches ≥2,000 lb (907.2 kg) of Atlantic herring on any trip in a week must submit an Atlantic herring catch report via the IVR system for that week as required by the Regional Administrator.

(C) An owner or operator of any vessel that catches ≥2,000 lb (907.2 kg) of Atlantic herring, some or all of which is caught in or from the EEZ, on any trip in a week, must submit an Atlantic

herring catch report via the IVR system for that week as required by the Regional Administrator.

(D) Atlantic herring IVR reports are not required from Atlantic herring carrier vessels.

(ii) *Tilefish vessel owners or operators.* The owner or operator of any vessel issued a limited access permit for tilefish must submit a tilefish catch report via the IVR system within 24 hours after returning to port and offloading as required by the Regional Administrator. The report shall include at least the following information, and any other information required by the Regional Administrator: Vessel identification, trip during which species are caught, and pounds landed. IVR reporting does not exempt the owner or operator from other applicable reporting requirements of § 648.7.

(iii) *Red crab vessel owners and operators.* The owner or operator of any vessel issued a limited access permit for red crab must submit a red crab catch report via the IVR system within 24 hours after returning to port and offloading as required by the Regional Administrator. IVR reporting does not exempt the owner or operator from other applicable reporting requirements of § 648.7.

\* \* \* \* \*

8. In § 648.10, paragraph (c) introductory text, and paragraphs (c)(2) and (c)(5) are revised to read as follows:

**§ 648.10 DAS notification requirements.**

\* \* \* \* \*

(c) *Call-in notification.* Owners of vessels issued limited access multispecies, monkfish or red crab permits who are participating in a DAS program and who are not required to provide notification using a VMS, scallop vessels qualifying for a DAS allocation under the occasional category and who have not elected to fish under the VMS notification requirements of paragraph (b) of this section, and vessels fishing pending an appeal as specified in § 648.4(a)(1)(i)(M)(3), (a)(9)(i)(N)(3) and (a)(13)(i)(N)(3) are subject to the following requirements:

\* \* \* \* \*

(2) The vessel's confirmation numbers for the current and immediately prior multispecies, monkfish or red crab fishing trip must be maintained on board the vessel and provided to an authorized officer upon request.

\* \* \* \* \*

(5) Any vessel that possesses or lands per trip greater than 400 lb (181 kg) of scallops, and any vessel issued a limited access multispecies permit subject to the multispecies DAS program and call-

in requirement that possesses or lands regulated species, except as provided in §§ 648.17 and 648.89, any vessel issued a limited access monkfish permit subject to the monkfish DAS program and call-in requirement that possesses or lands monkfish above the incidental catch trip limits specified in § 648.94(c), and any vessel issued a limited access red crab permit subject to the red crab DAS program and call-in requirement that possesses or lands red crab above the incidental catch trip limits specified in § 648.263(b)(1), shall be deemed in its respective DAS program for purposes of counting DAS, regardless of whether the vessel's owner or authorized representative provided adequate notification as required by paragraph (c) of this section.

\* \* \* \* \*

9. In § 648.11, the first sentence of paragraph (a) and paragraph (e) are revised to read as follows:

**§ 648.11 At-sea sampler/observer coverage.**

(a) The Regional Administrator may request any vessel holding a permit for Atlantic sea scallops, NE multispecies, monkfish, Atlantic mackerel, squid, butterfish, scup, black sea bass, bluefish, spiny dogfish, Atlantic herring, tilefish, or Atlantic deep-sea red crab; or a moratorium permit for summer flounder; to carry a NMFS-approved sea sampler/observer. \* \* \*

\* \* \* \* \*

(e) The owner or operator of a vessel issued a summer flounder moratorium permit, a scup moratorium permit, a black sea bass moratorium permit, a bluefish permit, a spiny dogfish permit, an Atlantic herring permit, an Atlantic deep-sea red crab permit, or a tilefish permit, if requested by the sea sampler/observer, also must:

(1) Notify the sea sampler/observer of any sea turtles, marine mammals, summer flounder, scup, black sea bass, bluefish, spiny dogfish, Atlantic herring, Atlantic deep-sea red crab, tilefish, or other specimens taken by the vessel.

(2) Provide the sea sampler/observer with sea turtles, marine mammals, summer flounder, scup, black sea bass, bluefish, spiny dogfish, Atlantic herring, Atlantic deep-sea red crab, tilefish, or other specimens taken by the vessel.

\* \* \* \* \*

10. In § 648.12, the introductory text to this section is revised to read as follows:

**§ 648.12 Experimental fishing.**

The Regional Administrator may exempt any person or vessel from the requirements of subparts A (General

provisions), B (Atlantic mackerel, squid, and butterfish), D (Atlantic sea scallop), E (Atlantic surf clam and ocean quahog), F (NE multispecies and monkfish), G (summer flounder), H (scup), I (black sea bass), J (Atlantic bluefish), K (Atlantic herring), L (spiny dogfish), M (Atlantic deep-sea red crab), and N (tilefish) of this part for the conduct of experimental fishing beneficial to the management of the resources or fishery managed under that subpart. The Regional Administrator shall consult with the Executive Director of the MAFMC regarding such exemptions for the Atlantic mackerel, squid, butterfish, summer flounder, scup, black sea bass, spiny dogfish, bluefish, and tilefish fisheries.

\* \* \* \* \*

11. In § 648.13, paragraph (g) is added to read as follows:

**§ 648.13 Transfers at sea.**

\* \* \* \* \*

(g) All persons are prohibited from transferring at sea, either directly or indirectly, or attempting to transfer at sea to any vessel, any red crab, or its equivalent as specified at § 648.263(a)(2)(i) and (ii), taken in or from the EEZ portion of the Red Crab Management Unit.

12. In § 648.14, paragraphs (x)(12) and (dd) are added to read as follows:

**§ 648.14 Prohibitions.**

\* \* \* \* \*

(x) \* \* \*

(12) *Red crab.* All red crab retained or possessed on a vessel issued any permit under § 648.4 are deemed to have been harvested in or from the Red Crab Management Unit, unless the preponderance of all submitted evidence demonstrates that such red crab were harvested by a vessel fishing exclusively outside of the Red Crab Management Unit or in state waters.

\* \* \* \* \*

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

(1) Catch, possess, transport, land, sell, trade, barter, butcher or partially process at sea any red crab in or from the EEZ portion of the Red Crab Management Unit, unless in possession of a valid limited access red crab vessel permit or red crab incidental catch permit issued by the Northeast Regional Administrator under this subpart.

(2) Land, or possess on board a vessel, greater than the possession or landing limits specified in § 648.263.

(3) Fail to comply with the recordkeeping and reporting requirements of § 648.7.

(4) 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 § 648.263(a)(2)(i) and (ii), taken in or from the EEZ portion of the Red Crab Management Unit.

(5) Purchase, possess, or receive, greater than 500 lb (226.8 kg) of whole red crab, or its equivalent as specified at § 648.263(a)(2)(i) and (ii), caught in the EEZ portion of the Red Crab Management Unit by a vessel that has not been issued a valid limited access red crab permit under this subpart.

(6) Purchase, possess, or receive, up to 500 lb (226.8 kg) of whole red crab, or its equivalent as specified at § 648.263(a)(2)(i) and (ii), caught in the EEZ portion of the Red Crab Management Unit by a vessel that has not been issued a valid limited access red crab permit or red crab incidental catch permit under this subpart.

(7) Fish for, catch, possess, transport, land, sell, trade, barter, butcher or partially process at sea greater than 500 lb (226.8 kg) of whole red crab, or its equivalent as specified at § 648.263(a)(2)(i) and (ii), per fishing trip, in or from the Red Crab Management Unit, unless in possession of a valid limited access red crab vessel permit issued by the Northeast Regional Administrator under this subpart and fishing under a red crab DAS.

(8) Fail to comply with the provisions of the DAS notification program specified in §§ 648.262(b)(5) and 648.10, if the vessel has been issued a valid limited access red crab permit.

(9) Fish in the Red Crab Management Unit under a red crab DAS if the vessel had declared out of the fishery at least 180 days prior to the start of the fishing year.

(10) Fish for, catch, possess, transport, land, sell, trade, barter, butcher or partially process at sea red crab in excess of a landing limit specified in § 648.263.

(11) Possess, deploy, fish with, haul, harvest red crab from, or carry on board a vessel, in excess of the trap/pot and/or string limit specified at § 648.264(a)(2) when fishing under a red crab DAS.

(12) Retain, possess or land female red crabs in excess of one standard U.S. fish tote if the vessel has been issued a valid limited access red crab permit and is fishing under a red crab DAS.

(13) Retain, possess or land red crab claws and legs separate from crab bodies in excess of one standard U.S. fish tote if the vessel has been issued a valid

limited access red crab permit and is fishing under a red crab DAS.

(14) Retain, possess or land red crab claws and legs separate from crab bodies if the vessel has not been issued a valid limited access red crab permit or has been issued a valid limited access red crab permit and is not fishing under a red crab DAS.

(15) Retain, possess or land in excess of two claws and eight legs per crab if the vessel has been issued a valid red crab incidental catch permit or has been issued a valid limited access red crab permit and is not fishing under a red crab DAS. (16) Fully process red crabs at sea, i.e., any activity that removes meat from any part of a red crab.

(17) Fail to comply with the gear marking requirements specified at § 648.264(a)(5).

(18) Possess, fish or deploy parlor traps/pots if the vessel has been issued a valid limited access red crab permit and is fishing under a red crab DAS.

(19) Possess, fish or deploy red crab traps/pots larger than the maximum size specified at § 648.263(a)(4), if the vessel has been issued a valid limited access red crab permit and is fishing under a red crab DAS.

13. Subpart M is added to read as follows:

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

Sec.

648.260 Annual specifications.

648.261 In-season adjustments and annual specification/framework adjustment process.

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

648.263 Red crab possession and landing restrictions.

648.264 Gear requirements/restrictions.

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

##### **§ 648.260 Annual specifications.**

(a) *Fishing year.* The fishing year begins on March 1 of each year and ends on the last day of February of the following year.

(b) *Total allowable catch.* The TAC for each fishing year will be 5.928 million lb (2,688.9 mt), unless modified pursuant to paragraph (d) of this section.

(c) *Adjustments to the TAC.* Any overage of the TAC for the limited access category that occurs in a given fishing year will be subtracted from the TAC for that category in the following fishing year. Conversely, any underage of the TAC for the limited access

category that occurs in a given fishing year will be added to the TAC for that category in the following fishing year.

(d) *Process for setting annual specifications.* The Council's Red Crab Plan Development Team (PDT) will meet at least annually to review the status of the stock and the fishery. (1) Based on this review, the PDT will report to the Council's Red Crab Committee, no later than 5 months prior to the start of the next fishing year, any necessary adjustments to the management measures and recommendations for the specifications and/or TACs. Specifications include the specification of OY, the setting of any hard or target TACs, allocation of DAS, and/or adjustments to trip/possession limits. The PDT will specifically recommend TACs for the following year and an estimated TAC for the year after. In developing these recommendations the PDT will review the following data, if available: Commercial catch data; current estimates of fishing mortality and catch-per-unit-effort (CPUE); stock status; recent estimates of recruitment; virtual population analysis results and other estimates of stock size; sea sampling, port sampling, and survey data or, if sea sampling data are unavailable, length frequency information from port sampling and/or surveys; impact of other fisheries on the mortality of red crabs; and any other relevant information.

(2) Based on recommendations from the Council's Red Crab PDT after its review of the available information on the status of the stock and the fishery, the Red Crab Committee may recommend to the Council changes to the appropriate specifications and/or the annual TAC, as well as any measures necessary to assure that the specifications will not be exceeded.

(3) The Council shall review these recommendations and any public comment received and shall recommend to the Regional Administrator appropriate specifications and/or annual TAC, as well as any measures necessary to assure that the specifications will not be exceeded. Specifications, and/or TACs and other management measures, shall be implemented by the Regional Administrator, and may include the specification of OY, the setting of any hard or target TACs, allocation of DAS, and/or adjustments to trip/possession limits. Annual specifications and other measures shall be implemented through the framework adjustment process specified at § 648.261. The previous year's specifications/TACs and other measures shall remain effective unless changed by the Regional Administrator.

If the specifications are not changed, this will be announced through notification in the **Federal Register**.

##### **§ 648.261 In-season adjustments and annual specification/framework adjustment process.**

(a) *In-season adjustments.* The specifications and TACs established pursuant to this section may be adjusted by NMFS, after consulting with the Council, during the fishing year by publishing notification in the **Federal Register** stating the reasons for such action and providing an opportunity for prior public comment. Any adjustments must be consistent with the Atlantic Deep-Sea Red Crab FMP objectives and other FMP provisions.

(b) *Annual specification/framework adjustment process.* To implement annual specifications or a framework adjustment for the Red Crab FMP, the Council shall develop and analyze proposed actions over the span of at least two Council meetings and provide advance public notice of the availability of both the proposals and the analyses. Opportunity to provide written and oral comments shall be provided throughout the process before the Council submits its recommendations to the Regional Administrator.

(1) In response to an annual review of the status of the fishery or the resource by the Red Crab PDT, or at any other time, the Council may recommend adjustments to any of the measures proposed by the Red Crab FMP. The Red Crab Oversight Committee may request that the Council initiate a framework adjustment. Framework adjustments shall require one initial meeting (the agenda must include notification of the impending proposal for a framework adjustment) and one final Council meeting. After a management action has been initiated, the Council shall develop and analyze appropriate management actions within the scope identified below. The Council may refer the proposed adjustments to the Red Crab Committee for further deliberation and review. Upon receiving the recommendations of the Oversight Committee, the Council shall publish notice of its intent to take action and provide the public with any relevant analyses and opportunity to comment on any possible actions. After receiving public comment, the Council must take action (to approve, modify, disapprove, or table) on the recommendation at the Council meeting following the meeting at which it first received the recommendations. Documentation and analyses for the framework adjustment shall be available at least 2 weeks before the final meeting.

(2) After developing management actions and receiving public testimony, the Council may make a recommendation to the Regional Administrator. The Council's recommendation shall include supporting rationale, an analysis of impacts required under paragraph 1 of this section and a recommendation to the Regional Administrator on whether to issue the management measures as a final rule. If the Council recommends that the management measures should be issued directly as a final rule, the Council shall consider at least the following factors and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season;

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the Council's recommended management measures;

(iii) Whether there is an immediate need to protect the resource or to impose management measures to resolve gear conflicts;

(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(3) If the Regional Administrator concurs with the Council's recommended management measures, they shall be published in the **Federal Register**. If the Council's recommendation is first published as a proposed rule and the Regional Administrator concurs with the Council's recommendation after receiving additional public comment, the measures shall then be published as a final rule in the **Federal Register**.

(4) If the Regional Administrator approves the Council's recommendations, the Secretary may, for good cause found under the standard of the Administrative Procedure Act, waive the requirement for a proposed rule and opportunity for public comment in the **Federal Register**. The Secretary, in so doing, shall publish only the final rule. Submission of recommendations does not preclude the Secretary from deciding to provide additional opportunity for prior notice and comment in the **Federal Register**.

(5) The Regional Administrator may approve, disapprove, or partially disapprove the Council's recommendation. If the Regional Administrator does not approve the Council's specific recommendation, the

Regional Administrator must notify the Council in writing of the reasons for the action prior to the first Council meeting following publication of such decision.

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

(a) *General.* A vessel issued a limited access red crab permit may not fish for, catch, possess, transport, land, sell, trade, barter, butcher or partially process at sea greater than 500 lb (226.8 kg) of red crab, or its equivalent as specified at § 648.263(a)(2)(i) and (ii), per fishing trip in or from the Red Crab Management Unit, except during a DAS as allocated under and in accordance with the applicable DAS program described in this section, unless otherwise provided in this part.

(1) *End-of-year carry-over.* With the exception of vessels that held a Confirmation of Permit History as described in § 648.4(a)(13)(i)(f) for the entire fishing year preceding the carry-over year, limited access vessels that have unused DAS on the last day of February of any year may carry over a maximum of 10 unused DAS, or 10 percent of the total allocated DAS, whichever is less, into the next fishing year. Any DAS that have been forfeited due to an enforcement proceeding will be deducted from all other unused DAS in determining how many DAS may be carried over.

(2) [Reserved]

(b) *DAS program—(1) For fishing year 2002.* For the fishing year beginning March 1, 2002, each limited access permit holder's allocation of DAS shall be based on a baseline of 130 DAS per vessel and, if necessary, adjusted as specified below. Based upon the best available information, the Regional Administrator shall estimate the landings from May 15, 2002, which is the first day following the expiration of the red crab Secretarial interim rule, up to the implementation date of the red crab limited access program. These estimated total landings shall be deducted from the target TAC and the percentage of the TAC that remains available shall be used to reduce the initial baseline of DAS (i.e., a percentage of 130 DAS to an equivalent percentage). For example, if estimated landings equal 20 percent of the target TAC, thereby leaving 80 percent of the target TAC, the DAS allocation shall be reduced by 20 percent to 104 DAS. Each vessel shall be allocated the adjusted DAS for the remainder of the fishing year. The Regional Administrator shall publish in the **Federal Register** the adjusted DAS for the remainder of the fishing year.

(2) *For fishing years 2003 and thereafter.* Each limited access permit holder shall be allocated 156 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(c).

(3) *Accrual of DAS.* Any portion of a day in which a vessel is out of port, after having declared into the DAS fishery, shall count as a full DAS. For example, if a vessel calls into the fishery at 11 p.m. on Thursday and calls out of the fishery at 10 p.m. on Friday, the next day, that vessel shall be assessed 2 full DAS (48 hours) for the fishing trip, even though the trip lasted only 23 hours.

(4) *Good Samaritan credit.* Same as § 648.53(f).

(5) *Declaring red crab DAS.* A vessel's owner or authorized representative shall notify the Regional Administrator of a vessel's participation in the red crab DAS program using the notification requirements specified in § 648.10.

(6) *Adjustments in annual red crab DAS allocations.* Adjustments to the annual red crab DAS allocation, if required to meet fishing mortality goals, may be implemented pursuant to § 648.260(c).

**§ 648.263 Red crab possession and landing restrictions.**

(a) *Vessels issued limited access red crab permits—(1) Possession and landing restrictions—(i)* A vessel or operator of a vessel that has been issued a valid limited access red crab permit under this subpart may fish for, catch, possess, transport, land, sell, trade, barter, butcher or partially process at sea up to 75,000 lb (34,019.4 kg) per trip, unless adjusted consistent with paragraph (a)(1)(ii) of this section, of whole red crab, or its equivalent as specified at paragraphs (a)(2)(i) and (ii) of this section, per fishing trip when fishing under a red crab DAS.

(ii) A vessel owner or operator who shows credible proof of landings on one trip higher than 75,000 lb (34,019.4 kg) shall qualify for a larger trip limit, rounded to the nearest 5,000 lb (2,268 kg) during the limited access qualification period of the higher trip landed. Such proof must be received by NMFS within 30 days after receipt of a vessel owner's application for an initial limited access red crab vessel permit. A vessel owner shall fish consistent with the provisions and trip limit specified at paragraph (a)(1)(i) of this section until credible proof of a trip higher than 75,000 lb (34,019.4 kg) is approved by NMFS.

(2) *Conversion to whole crab weight.*

(i) For red crab that is landed in half sections, with all gills and other detritus

still intact, the recovery rate is 64 percent of a whole red crab, which is equal to the weight of red crab half sections multiplied by 1.56.

(ii) For red crab that is landed in half sections, with all gills and other detritus removed, the recovery rate is 58 percent of a whole red crab, which is equal to the weight of red crab half sections multiplied by 1.72.

(3) *Female red crab restriction.* A vessel may not fish for, catch, possess, transport, land, sell, trade, barter, butcher or partially process at sea female red crabs in excess of one standard U.S. fish tote of incidentally caught female red crabs per trip when fishing under a red crab DAS.

(4) *Full-processing prohibition.* No person may fully process at sea, or possess, or land, fully-processed red crab (i.e., the removal of meat from any part of a red crab is not permitted).

(5) *Mutilation restriction.* A vessel may not retain, possess or land red crab claws and legs separate from crab bodies in excess of one standard U.S. fish tote per trip when fishing under a red crab DAS.

(b) *Vessels issued red crab incidental catch permits—(1) Possession and landing restrictions.* A vessel or operator of a vessel that has been issued a red crab incidental catch permit may catch, possess, transport, land, sell, trade, barter, butcher or partially process at sea up to 500 lb (226.8 kg) of red crab, or

its equivalent as specified at § 648.262(a)(i) and (ii), per fishing trip in or from the Red Crab Management Unit.

(2) *Full-processing prohibition.* No person may fully process at sea, or possess, or land, fully-processed red crab (i.e., the removal of meat from any part of a red crab is not permitted).

(3) *Mutilation restriction.* A vessel may not retain, possess or land red crab claws and legs separate from crab bodies.

**§ 648.264 Gear requirements/restrictions.**

(a) *Limited access red crab permitted vessels.* (1) No vessel may haul any fishing gear other than red crab traps/pots, marked as specified by paragraph (a)(5) of this section, when on a red crab DAS.

(2) A vessel or operator of a vessel may fish with, deploy, 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 when on a red crab DAS. A vessel owner is required to declare, on the annual permit application, the maximum number of traps/pots used per string and the maximum number of strings employed, such that the product of the maximum number of traps/pots per string and the maximum number of strings declared is no more than 600 traps/pots. The vessel is restricted to the product of the maximum number of traps/pots per string multiplied by the

maximum number of strings declared on the annual vessel permit application.

(3) *Parlor traps/pots.* The use of parlor traps/pots in the red crab fishery is prohibited when fishing in the red crab fishery under a red crab DAS.

(4) *Maximum trap/pot size.* The maximum allowable trap/pot size of traps/pots used or deployed on a red crab DAS is 18 cubic feet (0.51 cubic meters) in volume. Traps/pots may be rectangular, trapezoidal or conical only, unless other new trap/pot designs whose volume does not exceed 18 cubic feet (0.51 cubic meters) are authorized by the Regional Administrator.

(5) *Gear markings.* The following is required on all buoys used at the end of each red crab trawl:

(i) The letters “RC” in letters at least 3 inches (7.62 cm) in height must be painted on top of each buoy.

(ii) The vessel’s permit number in numerals at least 3 inches (7.62 cm) in height must be painted on the side of each buoy to clearly identify the vessel.

(iii) The number of each trap trawl relative to the total number of trawls used by the vessel (i.e., “3 of 6”) must be painted in numerals at least 3 inches (7.62 cm) in height on the side of each buoy.

(iv) High flyers and radar reflectors are required on each trap trawl.

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