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**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; Final Rule**

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****15 CFR Part 902****50 CFR Part 648**

[Docket No. 020531136-2224-02; 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: Final rule.

SUMMARY: NMFS issues this final rule to implement approved measures contained in the Atlantic Deep-Sea Red Crab Fishery Management Plan (FMP). These regulations implement the following measures: 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 intended effect of this final rule 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. Also, NMFS informs the public of the approval by the Office of Management and Budget (OMB) of the collection-of-information requirements contained in this final rule and publishes the OMB control numbers for these collections.

DATES: This final rule is effective on October 21, 2002.

ADDRESSES: Copies of the FMP, its Regulatory Impact Review (RIR), the Final Regulatory Flexibility Analysis (FRFA), and the Final Environmental Impact Statement (FEIS), as prepared by the New England Fishery Management Council (Council), are available from Paul J. Howard, Executive Director, New

England Fishery Management Council, 50 Water Street, The Tannery—Mill 2, Newburyport, MA 01950.

Comments regarding the collection-of-information requirements contained in this final rule should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attn: NOAA Desk Officer). **FOR FURTHER INFORMATION CONTACT:** E. Martin Jaffe, Fishery Policy Analyst, 978-281-9272.

SUPPLEMENTARY INFORMATION: This final rule implements approved measures contained in the FMP, which was approved by NMFS on behalf of the Secretary of Commerce (Secretary) on July 31, 2002.

Details concerning the justification for and development of the FMP and the implementing regulations were provided in the preamble to the proposed rule (67 FR 41936, June 20, 2002) and are not repeated here.

Maximum Sustainable Yield (MSY)

MSY is estimated at 6.24 million lb (2,830.4 mt) for the male-only red crab fishery. It 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 overfishing definition considers both the rate of exploitation and the condition of the stock. Overfishing is defined as any rate of exploitation that causes the ratio of current exploitation to an idealized exploitation under MSY conditions to exceed 1.0. Several methods may be used to define idealized exploitation, depending on the type of data available.

The red crab stock is 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 red crab 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 is specified at 95 percent of MSY, or 5.928 million lb (2,689 mt). This approach is intended to incorporate future changes in 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.

Approved Measures*Management Unit*

The boundaries of the management unit are 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) (66 FR 23183, May 8, 2001 and 66 FR 56781, November 13, 2001), incorporate a well-known biogeographic boundary (Cape Hatteras, NC), and are consistent with other New England Council FMPs.

Fishing Year

The fishing year begins 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 will 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 wants to fish for, catch, possess, transport, land, sell, trade, or barter red crab or red crab parts in or from the red crab management unit is required to obtain a Federal red crab permit. One of two types of Federal permits is required: (1) A limited access red crab permit is required for vessels to participate in the directed fishery (this permit is issued only to vessels that meet specified eligibility criteria); and (2) a red crab incidental catch permit is 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 are eligible for this permit. Vessels issued the limited access permit are also allowed to fish under the red crab incidental catch rules if they do not declare their intent to use a red crab DAS.

Owners of vessels issued a limited access red crab permit may, upon permit renewal beginning with the second fishing year, declare out of the red crab fishery for the following fishing year by submitting a binding declaration to the Administrator, Northeast Region, NMFS (Regional Administrator) at least 180 days prior to the following fishing year. NMFS will 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 declares out of the fishery for the following year must wait until the next year's permit renewal application process to declare back into the fishery for the next full fishing year.

Vessel owners have 180 days from the effective date of this final rule to apply for their initial limited access permits. Therefore, a vessel owner must apply for an initial limited access red crab permit before April 8, 2003. No vessel owner may apply for an initial limited access red crab permit after this date. Pursuant to § 648.4(a)(1)(i)(B), any owner who fails to renew his/her limited access permit for any fishing year will be ineligible to renew it in subsequent years.

As part of the application for a limited access red crab permit, vessel owners must declare the maximum number of traps/pots they use per string and the maximum number of strings they intend to employ annually, 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 are required to obtain a Federal dealer permit. Red crabs harvested from the red crab management unit may only be sold by a federally permitted vessel to federally permitted dealers.

Operators of vessels issued a Federal red crab vessel permit must obtain a Federal operator permit. An individual who already holds an operator permit for another federally managed fishery

need not reapply, since there is no qualification or test for this permit.

Qualification Criteria for Limited Access

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

Reporting Requirements

This rule extends the existing Northeast Region Vessel Trip Report (VTR) system to vessels with red crab permits. The owner or operator of vessels issued either a limited access or incidental catch permit must 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 must complete and submit accurate VTRs for all fishing trips, regardless of whether they fish for or land any red crab.

Owners or operators of vessels participating in the limited access fishery must also 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 must 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) may be submitted electronically or through other media. The report must be provided weekly, and must be postmarked and received within 16 days after the end of each reporting week. A negative report is required if there are no purchases of any species during the reporting week.

Target TAC

An annual specifications process provides 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 also include the specification of OY and/or adjustments to trip/possession limits. The Council's Plan Development Team (PDT) will 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 will be counted against a target TAC. The target

TAC will 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 will 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 (i.e., a 822,000 lb (372,853 kg) overage), then the target TAC for the following year may be set no higher than 5.106 million lb (2,316 mt) (5.928 million lb - 822,000 lb = 5.106 million lb). 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) underage), then the target TAC may be set at 6.606 million lb (2,996 mt). The target TAC for the first full fishing year, March 1, 2003 through February 29, 2004, is 5.928 million lb (2,689 mt) of whole red crab or its equivalent. The target TAC for the initial fishing year is discussed under "DAS allocation for Initial Implementation Year", below.

Allocations of Red Crab DAS

Along with the annual target TAC, the annual specification process involves calculation of the total DAS that may be utilized by the directed fishery, based on the average catch per DAS from the previous year. Total DAS are 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 may 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 will not be wasted, while providing no incentive to hoard DAS. In addition, a carry-over provision enhances safety at sea by creating a disincentive for a vessel to use up remaining DAS at the end of a fishing year, notwithstanding bad weather conditions. This measure also limits the potential annual fishing capacity to roughly 10 percent above the baseline. An initial baseline of 130 DAS is established for each limited access vessel for the fishing year that ends February 28, 2003, because this rule first implements the red crab management measures well after the start of the initial fishing year (March 1, 2002). Therefore, the management measures

will not be in effect for a full fishing year.

From March 1, 2003, through February 29, 2004, each participating vessel will 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 will remain the baseline unless modified through the specification process in the FMP.

A DAS is counted as a whole day (24 hours). Any portion of a day on which a vessel is out of port counts as a full DAS. For example, if a vessel embarks on a fishing trip at 11:00 p.m. on June 1, that day of departure counts as one DAS. If it returns from the trip at 1:00 a.m. on June 10, that day of return also counts as one DAS. The vessel will 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, as is the case in the Northeast multispecies and Atlantic sea scallop fisheries.

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 regulatory hiatus period between the expiration of the red crab emergency regulations on May 14, 2002, and implementation of the FMP, the Regional Administrator will calculate the amount of red crab landed during that period. This landings total will be deducted from the target TAC (5.928 million lb) (2,689 mt) and the remainder is the amount of target TAC available for the initial fishing year under the DAS program. The percentage of the target TAC remaining will be calculated and vessels participating in the DAS program will 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 will be reduced by 20 percent, with the result rounded down to the nearest whole number). The calculated DAS allocation will be provided to permit holders by letter.

Trip Limits During a Red Crab DAS

All vessels issued a limited access red crab permit will 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 can document at least one trip with higher landings during the limited access qualification period, then that vessel will qualify for a trip limit equal to the larger trip, rounded to the nearest

5,000 lb (2,268 kg). A vessel that landed crab in other than whole form must apply the more appropriate of two recovery rate formulas, or a formula approved by the Regional Administrator, in accordance with § 648.263(a)(2) to determine its highest landings on a trip during the qualification period. Documentation of the highest landings on a trip 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 must 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, will be implemented for all vessels issued a red crab incidental catch permit. This incidental catch limit will 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 is prohibited, except for an incidental catch allowance equal to the amount that will fill one standard U.S. fish tote (approximately 100 lb (45.4 kg)) per vessel per trip. This measure does 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 rule prohibits the full processing of red crabs at sea, but allows landing of crabs in less than whole form, provided crabs are landed as described below. "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 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 for and prevent the harvesting of red crabs for their claws and/or legs alone. This measure will 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 may possess red crab claws and legs separate from crab bodies equal to the amount that will fill one standard U.S. fish tote (approximately 100 lb (45.4 kg)) per vessel per trip. 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 may 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 are 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 is less than 600, the vessel is subject to that declared limit on traps/pots.

Vessels issued a limited access red crab permit and fishing under a red crab DAS are prohibited from deploying, hauling, or removing fish from any fishing gear other than red crab gear. Red crab gear is 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 is 18 ft³ (0.51 m³) in volume. In addition, all red crab traps/pots must be rectangular, trapezoidal or conical, unless other designs whose volume does not exceed 18 ft³ (0.51 m³) are authorized by the Regional Administrator. In conjunction with the trap/pot limit described above, this will prevent a potential increase in the per-day efficiency of vessels fishing under a red crab DAS.

Only red crab traps/pots may be used by a vessel fishing in the limited access

red crab fishery when fishing under a red crab DAS, in order to enhance conservation of red crabs and reduce the possibility of ghost fishing (i.e., fishing that continues when traps/pots or buoys are lost). Because red crab traps/pots, unlike parlor traps/pots, do not prevent the eventual escape of crabs from the trap, many of the crabs that might enter the traps during the period between trips will be gone before the vessel returns to haul the traps on a subsequent trip. Therefore, by prohibiting the use of compartments in red crab traps/pots there is no longer the possibility of red crabs dying in a trap/pot before the trap/pot is hauled. 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, are not prohibited from deploying, hauling, or removing fish from parlor traps/pots or using non-trap/pot gear.

Annual Monitoring and Framework Adjustment Measures

The Council must prepare a biennial Stock Assessment and Fishery Evaluation (SAFE) Report for the red crab fishery and its resource. The Red Crab PDT must meet at least annually to review the status of the stock and the fishery. The PDT must report any necessary adjustments to the measures and recommendations for the specifications and TACs to the Council's Red Crab Committee, which in turn must recommend appropriate changes to the Council. Specifications must be recommended to NMFS, and changes to management measures may 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, is similar to that used in other Northeast Region fisheries. This process allows 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 must meet to develop new management measures to the FMP. Either during or at the conclusion of the framework process, the public will be provided an opportunity to offer comments on the Council's framework adjustment process and the newly-developed management measures.

The management measures and/or changes to them may 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 essential fish habitat (EFH); (5) description and identification of habitats of particular concern (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 as described in the FMP. 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 regulations 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

Depth zone affinities are used to describe EFH for red crab. EFH for red crab includes those areas of the offshore waters (out to the offshore U.S. boundary of the EEZ), in depths of 200–1,800 m, as identified and described in section 3.7.4 of the FMP. The activity managed by the FMP occurs in a limited area and a narrow depth band along the continental slope of the United States, from the southern flank of Georges Bank south to Cape Hatteras, NC. The range of this activity occurs across the designated EFH of 11 species managed by the New England, Mid-Atlantic and South Atlantic Fishery Management Councils. As discussed in Section 3.7.6 of the FMP, no adverse impacts are expected on the EFH of these species and no further mitigation is practicable or necessary. Potential impacts to EFH associated with this fishery are expected to decrease as a result of this action, based on the overall controls on the fishery, the trap/pot limit, the non-trap/pot gear prohibition, and the controlled access program, which will limit the number of participants.

This rule also revises 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.

Comments and Responses

Three sets of written comments on the FMP were received during the comment period on the FMP, which ended July 1, 2002. The comments were considered by NMFS before it approved the FMP on July 31, 2002, and are included below.

NMFS also received four sets of written comments on the proposed rule, some of which included comments on the FMP, during the comment period specified in the proposed rule, which ended on July 23, 2002. Because the comment period for the proposed rule was distinct from, and followed, the comment period for the FMP, comments received during the proposed rule comment period were not considered in NMFS' determination to approve the FMP. However, the comments addressing the proposed rule were considered in approval and implementation of this final rule effecting the FMP and its management measures and are responded to here.

Comment 1: The United States Coast Guard (USCG) expressed concern with the enforceability of the proposed trap/pot limits. While it said that gear marking and declaration requirements will help mitigate its enforcement concerns, it would be problematic to confirm the actual number of traps per set and number of sets deployed on the fishing grounds. It further stated that it would also be difficult to confirm the use and ownership of any unmarked gear on the fishing grounds. Because USCG cutters are not equipped to haul fixed fishing gear, especially in deep water, inspections, it stated, would have to be limited to random opportunities when cutters detect fishing vessels actively retrieving gear.

Response: The problem raised by USCG about enforcing trap/pot and set limits is an unavoidable one for trap/pot fisheries. However, because this fishery is so small, NMFS believes that the potential for at-sea intervention by the USCG will serve as a sufficient deterrent.

Comment 2: The United States Environmental Protection Agency (EPA) commented that its previous concerns with the draft EIS had been resolved with one exception—ghost fishing (as it relates to entrapment of marine life). EPA stated that it would like to see a

ghost panel required, preferably on two adjacent trap/pot surfaces, in the traps/pots used by the directed fishery, because trap materials of wood and wire mesh can last a long time in the marine environment, especially in a deep-sea cold water environment. As stated in the draft EIS, an average of 10.5 red crab traps/pots are lost/damaged per fishing trip. EPA calculated that approximately 2,000 traps/pots are potentially lost or broken annually. It said that over a 10-year period, this would put a substantial amount of gear on the sea floor.

Response: Ghost fishing by red crab traps/pots is not an issue of concern. Red crab traps/pots, unlike the parlor traps/pots used in the lobster fishery, do not prevent the escapement of crabs or other fish that enter the trap.

Comment 3: Three commenters were concerned with the method of counting DAS. Under the proposed rule, any portion of a day on which a vessel is out of port would count as a full DAS. They stated that this method of counting DAS has no bearing on the conservation of the red crab resource but has serious implications for the safety and operational economics of red crab vessels and crew, which one commenter believes to be contrary to National Standards 5, 8 and 10. In illustration, the commenter pointed out that, in order to conserve a DAS, a vessel would wait until midnight to sail; that sailing during darkness will increase the risk of collision; and that the captains and crews would be hampered by darkness and operating when their biological clocks tell them they are expected to be asleep. The commenter further stated that disruptions to existing operating practices will reduce efficiency, create an unnecessary burden on fishing communities, and create incentives that compromise safe operations. The commenters urge NMFS to modify this method of counting DAS by counting on an hourly basis.

Response: The commenters' arguments are based on their contention that leaving at midnight is contrary to current practice. In fact, NMFS believes that leaving at midnight, or even a few hours after midnight, is not unusual. NMFS also believes that crews often work in the dark, sometimes during long shifts. Vessels are free to sail at any time, and sailing at a time perceived to be safe is totally within the discretion of the vessel owner or captain.

As for operational economics, NMFS disagrees that the FMP's method of counting DAS reduces efficiency or creates an unnecessary burden on fishing communities. The method of counting DAS applies equally to all vessels in the fishery, which is

controlled by a target Total Allowable Catch. Under the FMP, the allocation of DAS to vessels each year will take overages and underages into consideration. If more DAS are required due to underages, even if they are perceived to have occurred as a result of the method of counting DAS, more DAS would be allocated.

Comment 4: The SAFMC expressed concern regarding the southern boundary. The proposed southern border of the Red Crab Management Area includes the area between the VA/NC border and Cape Hatteras, NC. The northernmost border for the SAFMC's Golden Crab FMP is the VA/NC border. Red crab and Jonah crab are included in the golden crab fishery but are not managed under the Golden Crab FMP. The SAFMC commented that, because of this proposed area overlap, significant negative impacts to the SAFMC's golden crab fishery would result from approval of this measure in the FMP. The SAFMC stated that, under the FMP, vessels could fish within the area of overlap but would have to discard all golden crabs, which would be wasteful and result in conflict with South Atlantic fishermen deploying golden crab traps. It also stated that the potential for having red crab vessels fishing in the area of overlap may deter Southern Zone vessels that had planned to transfer to the Northern Zone from doing so, thereby exacerbating conflicts within the Southern Zone. The SAFMC requested that NMFS disapprove the proposed management unit and approve the alternative with the boundary at the VA/NC border.

Response: During the public review phase of the FMP development process, the NEFMC received reports that the Atlantic deep-sea red crab fishery extended south to Cape Hatteras, NC (although most activity was reported to be constrained to the area north of Norfolk Canyon). The reason reported for not fishing south of Cape Hatteras, NC was that there is a significant diminishment in the abundance of market-sized crabs south of Cape Hatteras. Although there are no known boundaries of different red crab stocks, Cape Hatteras, NC is a well-known biogeographic boundary that may keep separate red crab larvae from north and south of this line. The Northeast Fisheries Science Center is exploring genetic differences between red crabs found north of Cape Hatteras, south of Cape Hatteras, and in the Gulf of Mexico. The establishment of Cape Hatteras, NC, as the southernmost boundary of the Atlantic deep-sea red crab fishery not only comports with the aforementioned rationale, but is

consistent with the management areas specified in the previous red crab emergency rule and in most other NEFMC FMPs.

Red crabs are not included in the management unit of the Golden Crab FMP, and golden crabs are not included in the management unit of the Red Crab FMP; therefore, there is no direct conflict in management jurisdiction. Extending the red crab management unit to Cape Hatteras is intended to prevent overfishing of the red crab resource by controlling fishing effort in this area. If the southern boundary of the management unit were established at the VA/NC border, any vessel would be able to fish for red crab between the border and Cape Hatteras with no restrictions on effort, landings, or gear. In fact, this could result in localized overfishing of the red crab resource and an increase in potential gear conflicts if vessels moved into this area to avoid the regulations that exist north of the management unit boundary.

NMFS believes the SAFMC's concern that red crab vessels fishing in the area between the VA/NC border and Cape Hatteras would deter Southern Zone vessels from transferring to the Northern Zone because of gear conflict possibilities is likely unwarranted. First, due to the establishment of a limited access program in the red crab fishery, NMFS anticipates that no more than four or five red crab vessels will be authorized to fish at more than incidental catch levels (most Northeast red crab vessels fish north of Hudson Canyon). Second, the area of overlap is small relative to SAFMC's entire Northern Zone, which runs from the VA/NC border to a point just south of Daytona Beach, FL. Given the very broad range of the two fisheries (Daytona Beach, FL, to the VA/NC border and Georges Bank to Cape Hatteras, NC for golden crab and red crab, respectively), and the limited number of vessels allowed to operate in these areas, it seems unlikely that there would be significant gear conflicts in the relatively small area of overlap.

Finally, regulating the harvest of red crabs north of Cape Hatteras, NC would not negatively impact or retard development of the golden crab fishery north of Daytona Beach, FL. Vessels permitted to fish for red crab will not be allowed to retain any golden crabs, unless they also possess a golden crab permit issued by the Southeast Region, NMFS.

Changes from the Proposed Rule

In § 648.264, paragraph (a)(6) is added. Paragraph (a)(6) corrects an inadvertent omission in the proposed

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

NOAA codifies its OMB control numbers for information collection 15 CFR part 902. Part 902 collects and displays the control numbers assigned to information collection requirements of NOAA by OMB pursuant to the Paperwork Reduction Act (PRA). This final rule codifies OMB control number for 0648-0202 for § 648.262 and 0648-0351 for § 648.264. Under NOAA Administrative Order 205-11, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere, NOAA, has delegated to the Assistant Administrator for Fisheries, NOAA, the authority to sign material for publication in the **Federal Register**.

Classification

The Administrator, Northeast Region, NMFS, determined that the FMP implemented by this rule is necessary for the conservation and management of the Atlantic deep-sea red crab fishery and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

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

The Assistant Administrator for Fisheries, NOAA, finds good cause under 5 U.S.C. 553(d)(3) to waive all but 10 days of the 30-day delayed effectiveness period of the implementing regulations contained in this final rule. It is contrary to the public interest to delay for more than 10 days the effective date of regulatory provisions establishing the specification process and management measures because, there exist currently, no measures to protect the red crab resource or to limit catching and landing red crabs from the 2002 TAC.

Vessels are currently fishing on the red crab resource and the threat of overfishing the resource is the primary problem needing management action. In order to address this threat, NMFS implemented emergency regulations on May 8, 2001, through November 14, 2001, to prevent overfishing of the

resource. The emergency regulations were extended from November 15, 2001, through May 14, 2002. The fishery has been unregulated since the expiration of the emergency rule.

Overfishing is of particular concern due to the nature of the species because red crabs are typically slow-growing and major recruitment events are believed to rarely occur. The best scientific information available indicates that when the fishable stock of this resource was under virgin conditions, the maximum sustainable yield of red crab was 5.5 million pounds. Since this estimation was derived, commercial landings have exceeded this amount several times. All the current information available on the red crab and its fishery indicates that there is a limited MSY that can be harvested by only four to six vessels fishing at existing levels of capacity. Without regulations in place to limit the effort and total catch of the resource, overfishing is likely to occur. Therefore, there is also an immediate conservation benefit that would arise by waiving all but 10 days of the delayed effectiveness period, as there would be measures in place to protect the resource. This 10-day delay period is the minimum necessary to allow fishers and dealers to obtain newly required permits. Therefore, the Assistant Administrator for Fisheries, NOAA, finds good cause under 5 U.S.C. 553(d)(3) to waive all but 10 days of the 30-day delayed effectiveness period of the implementing regulations.

A final environmental impact statement was prepared for this FMP; a notice of availability was published on May 31, 2002 (67 FR 38100). NMFS determined, upon review of the FMP/FEIS and public comments, that approval and implementation of the FMP is environmentally preferable to the status quo. The FEIS demonstrates that it contains management measures able to mitigate, to the extent possible, all possible social and economic adverse effects while minimizing risks to the resource and its environment; and will have significant positive effects on the red crab resource relative to the no action alternative.

An FRFA was completed for this action that contains the items specified in 5 U.S.C. 604(a). The FRFA consists of the IRFA, the comments and responses to the proposed rule, and a summary of the analyses completed in support of this action. A copy of the analyses is available from the Council (see **ADDRESSES**). The preamble to the proposed rule included a detailed summary of the analyses contained in the IRFA, and that discussion is not

repeated in its entirety here. A description of the action, a discussion of why it is being considered, and its legal basis are also contained in the preamble to the proposed rule and are not repeated here. The summary of the analyses of the potential impacts of the management alternatives considered in the FMP are provided in the Classification section of the proposed rule and are not repeated here. The items specified in 5 U.S.C. 604(a) are summarized as follows:

Public Comments

Four comments were received on the measures contained in the proposed rule. Comments did not address the economic impact of the rule. No changes were made to the measures outlined in the proposed rule as a result of the comments received.

Number of Small Entities

The IRFA identified 86 individual vessels that reported some landings of red crab during 1991-2001, all of which appear to be small entities.

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. No professional skills are necessary to comply with any of the reporting requirements associated with this action.

Minimizing Significant Economic Impacts on Small Entities

Alternatives considered by the Council to lessen impacts on small entities are summarized below. 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 by this final rule compared to that alternative because the 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 Council selected the more restrictive criteria because all of the information available indicated that four to six vessels fishing at existing levels of capacity represented the maximum amount of harvesting that could be sustained by the resource.

The IRFA also evaluated the impact of the limited access program by comparing the qualifying vessels with the vessels that fished multiple times under LOAs issued under the emergency regulations. This comparison indicated that one entity might be excluded from the directed fishery under the approved qualification 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 would have been severe if it had intended to fish for red crabs, but cannot be detailed in the IRFA because of data confidentiality restrictions.

The revenue effects on these impacted entities will 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.

In addition to the management program implemented by this final rule, the Council considered and rejected eight other management alternatives and a “no action” alternative, which are incorporated by reference in the FRFA. When compared with the “no action” alternative, all of the alternatives would have a positive economic effect on the level of harvest. An analysis indicated that the management program implemented by this final rule would

best minimize significant economic impacts while achieving the conservation goals and objectives of the FMP. The preferred alternative will reverse recent overcapacity in the fishery (which could have severely impacted the full-time small entities), and provides operational flexibility to the full-time small entities participating in the fishery (which minimizes the economic impacts of necessary constraints on fishing effort). For a description of the alternatives considered but rejected, see the IRFA discussion in the Classification section of the proposed rule (67 FR 41936).

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as “small entity compliance guides.” The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide will be sent to all holders of permits issued for the Atlantic deep-sea red crab fishery. In addition, copies of this final rule and guide (i.e., permit holder letter) are available from NMFS (see **ADDRESSES**) and at the following web site: <http://www.nmfs.gov/ro/doc/nero.html>.

Need for and Objectives of the Final Rule

This final rule is necessary to implement approved measures contained in the Atlantic Deep-Sea Red Crab FMP. The intent of this final rule is to manage the red crab fishery pursuant to the Magnuson-Stevens Act and the FMP in order to prevent overfishing of the red crab resource.

This rule contains eight collection-of-information requirements subject to the Paperwork Reduction Act. The collection of this information has been approved by the Office of Management and Budget. 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).

No professional skills are necessary for preparation of reports or records specified above.

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

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 648

Fishing, Fisheries, Reporting and recordkeeping requirements.

Dated: October 1, 2002.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For the reasons set out in the preamble, 15 CFR chapter IX, part 902 and 50 CFR chapter VI, part 648 are amended as follows:

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 350 *et seq.*

2. In § 902.1, the table in paragraph (b) under 50 CFR is amended by adding entries for § 648.262 and § 648.264 to read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648—)
50 CFR	
648.262	–0202
648.264	–0351

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 “Processing, or to process, in the Atlantic Herring fishery” and “Processor” are removed; the definitions of “Council”, “Day(s)-at-Sea”, and “Fishing year” are revised; the definition of “Sorting machine” is removed and a definition of “Sorting machine, with respect to the Atlantic sea scallop fishery” is added in its place; and new definitions for “Atlantic deep-sea red crab (red crab)”, “Full-processing (fully process or fully processed), with respect to the Atlantic deep-sea red crab fishery”, “Parlor trap/pot”, “Processing, or to process with respect to the Atlantic herring fishery”, “Processor, with respect to the Atlantic surf clam and ocean quahog fisheries”, “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 quinquegens*.

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 period 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 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 or fully processed), 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 more than one compartment inside designed to impede escape of lobsters or crabs from the device or structure, which 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.

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.

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.

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 or parlor trap/pot, 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.

(a) * * *

(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, or barter, any red crab or red crab part 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 for 2002.* A vessel owner must apply for an initial limited access red crab permit before April 8, 2003. No vessel owner may apply for an initial limited access red crab permit after this date.

(2) *Fishing years 2003 and beyond.* (i) For fishing years beyond the initial year, the provisions of paragraph (a)(1)(i)(B) of this section apply.

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

(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. 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, provided 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 indicated on the vessel's initial limited access permit as of the date the initial vessel applies 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 and has not been replaced, must apply for and receive a CPH that confirms 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 met 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 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 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 April 8, 2003 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 April 8, 2003 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 in writing 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 for and land red crab as if a limited access permit had been issued, 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. During the appeal, the vessel may only land up to 75,000 lb (34,019 kg) of red crab per trip. 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.

(ii) *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, 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).

* * * * *

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 this section.

(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. The report shall include at least the following information, and any other information required by the Regional Administrator: Vessel identification, DAS confirmation number, trip during which species are caught, date landed, condition (whole, half sections with gills, half sections without gills), and pounds landed. IVR reporting does not exempt the owner or operator from other applicable reporting requirements of this section.

* * * * *

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 red crab parts, 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, or barter, any red crab or red crab parts 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 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 red crab parts, 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 in weight 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 in weight 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, or barter, greater than 500 lb (226.8 kg) of whole red crab, or its equivalent in weight 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 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 for, catch, possess, transport, land, sell, trade, or barter, in the Red Crab Management Unit under a red crab DAS if the vessel has declared out of the fishery prior to the start of the fishing year.

(10) Fish for, catch, possess, transport, land, sell, trade, or barter, red crab in excess of landing limits 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 any 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, unless a preponderance of the evidence shows that the vessel fished exclusively in state waters and has not been issued a valid federal permit.

(17) Fail to comply with any gear marking requirement 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 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) *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. Based on this review, the PDT will report to the Council's Red Crab Committee, no later than October 1, any necessary adjustments to the management measures and recommendations for the specifications. Specifications include the specification of OY, the setting of any target TACs, allocation of DAS, and/or adjustments to trip/possession limits. The PDT will specifically recommend target TACs for the following year and an estimated target TAC for the year after.

(1) *Target total allowable catch.* The target TAC for each fishing year will be 5.928 million lb (2,688.9 mt), unless modified pursuant to this paragraph.

(2) *Adjustments to DAS allocation based on target TAC.* For purposes of determining the appropriate DAS allocation, any overage of the target TAC

that occurs in a given fishing year will be subtracted from the target TAC in the following fishing year and, conversely, any underage of the target TAC that occurs in a given fishing year will be added to the target TAC in the following fishing year.

(3) *In-season adjustments.* The specifications 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) *Development of annual specifications.* In developing the management measures and recommendations for the annual specifications, 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.

(1) 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, as well as any measures necessary to assure that the specifications will not be exceeded.

(2) The Council shall review these recommendations and any public comment received and shall submit its recommendation to the Regional Administrator after at least one Council meeting. If the Council submits a recommendation to the Regional Administrator after one Council meeting and the Regional Administrator concurs with the recommendation, the Regional Administrator shall publish the Council's recommendation in the **Federal Register** as a proposed rule unless there is adequate justification to waive prior notice and comment. The Council may instead choose to follow the framework adjustment process specified at § 648.261 and request that the Regional Administrator publish the recommendation as a proposed or final rule. If the Regional Administrator concurs that the Council's recommendation meets the Red Crab

FMP objectives and is consistent with other applicable law, and determines that the recommended management measures should be published as a final rule, the action will be published as a final rule in the **Federal Register**. If the Regional Administrator concurs that the recommendation meets the FMP objectives and is consistent with other applicable law, and determines that a proposed rule is warranted, and, as a result, the effective date of a final rule falls after the start of the fishing year on March 1, fishing may continue under the specifications for the previous year. However, DAS used by a vessel on or after March 1 will be counted against any DAS allocation the vessel ultimately receives for that year.

§ 648.261 Framework adjustment process.

(a) To implement 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 (a)(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.

(b) [Reserved]

§ 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, or barter, greater than 500 lb (226.8 kg) of red crab, or its equivalent in weight 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)(j) 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 in this paragraph (b). 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 notify permit holders by letter of the newly calculated DAS allocation.

(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)(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, or barter, 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 in weight as specified at paragraphs (a)(2)(i) and (ii) of this section, when fishing under a red crab DAS.

(ii) A vessel owner or operator who shows credible proof of landings on at least one trip higher than 75,000 lb (34,019.4 kg) during the limited access qualification period shall qualify for a larger trip limit, rounded to the nearest 5,000 lb (2,268 kg) of the higher trip landed. Such proof must be in writing and 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, or barter, 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, possess, or land, fully-processed red crab.

(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, or barter, up to 500 lb (226.8 kg) of red crab, or its equivalent in weight as specified at paragraphs (a)(1)(i) and (ii) of this section, per fishing trip in or from the Red Crab Management Unit.

(2) *Full-processing prohibition.* No person may fully process at sea, possess, or land, fully-processed red crab.

(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 or harvest red crab from 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 owner or operator of a vessel that holds a valid limited access red crab permit 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. 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.* No person may haul or remove lobster, red crab or fish from parlor traps/pots when fishing under a red crab DAS.

(4) *Maximum trap/pot size.* The maximum allowable red crab trap/pot size of red crab traps/pots used or deployed on a red crab DAS is 18 cubic feet (0.51 cubic meters) in volume. Red crab traps/pots may be rectangular, trapezoidal or conical only, unless other red crab 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.

(6) *Additional gear requirements.* (i) In addition to complying with the gear regulations found at § 229.32, vessels must include a weak link at the buoy that breaks away knotless at 3,780 lb (1,714.6 kg).

(ii) Red crab traps/pots, fished in 200 fathoms (365.8 m) or less by a vessel issued a limited access lobster permit under § 697.4(a), must comply with the trap tagging requirements specified at § 697.19.

(b) [Reserved]

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