

Federal Communications Commission.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 041208344-4344-01; I.D. 012605A]

RIN 0648-AR59

#### Fisheries of the Northeastern United States; Atlantic Deep-Sea Red Crab Fishery

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues final specifications for the 2005 Atlantic Deep-Sea Red Crab (red crab) fishery, which are the same as specifications for the 2004 fishery. The target total allowable catch (TAC) and fleet days at sea (DAS) for fishing year (FY) 2005 is 5.928 million lb (2.69 million kg) and 780 fleet DAS, respectively.

Accordingly, since one qualified limited access vessel has opted out of the fishery for FY2005, the four remaining vessels are each allocated 195 DAS. The intent of the specifications is to conserve and manage the red crab resource and provide for a sustainable fishery.

**DATES:** This rule is effective from March 1, 2005, through February 28, 2006.

**ADDRESSES:** Copies of supporting documents, including the Stock Assessment and Fishery Evaluation (SAFE) Report, Environmental Assessment (EA), and the Regulatory Impact Review (RIR) for the 2005 Red Crab Fishing Year are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. The SAFE Report/EA/RIR is also accessible via the Internet at <http://www.nero.nmfs.gov>.

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

**SUPPLEMENTARY INFORMATION:** This final rule implements the final specifications for the FY2005 red crab fishery. Regulations implementing the Atlantic

Deep-Sea Red Crab Fishery Management Plan (FMP) require the New England Fishery Management Council (Council) to review annually the red crab specifications. The Council's Red Crab Plan Development Team (PDT) meets at least annually to review the status of the stock and the fishery. Based on this review, the PDT reports to the Council's Red Crab Committee any necessary adjustments to the management measures and recommendations for the specifications. Specifications may include the specification of optimum yield (OY), the setting of a target TAC, allocation of DAS, and/or adjustments to trip/possession limits. In developing the management measures and recommendations for the annual specifications, the PDT reviews the following data, if available: commercial catch data; current estimates of fishing mortality and catch-per-unit-effort; 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. Recommended specifications are presented to the Council for adoption and recommendation to NMFS.

#### Final 2005 Specifications

Based on available biological information, the Council has recommended that the maximum sustainable yield (MSY) and OY for FY2005 should remain the same as in FY2004. The FMP defines the target TAC as equal to OY, and OY is set at 95 percent of MSY, unless adjusted through the annual specifications process. The MSY for FY2005 is still estimated to be 6.24 million lb (2.83 million kg); therefore, absent any new information on which to base a change in OY, OY and the target TAC remain 5.928 million lb (2.69 million kg).

According to the DAS database, four of the five vessels that received a limited access permit in FY2003 used a total of 571 days; 73 percent of the full 780 DAS that were allocated (the fifth vessel did not fish in FY2003). That amount of fishing effort resulted in 4.09 million lb (1.86 million kg) of red crab landed by the limited access fleet.

The fleet was allocated 780 DAS for FY2004 and, because one of the limited access vessels had opted out of the fishery, this translated into 195 DAS for each of the four participating limited access vessels. FY2004 began on March 1, 2004, and, as of January 1, 2005, the

participating limited access vessels had used 592 DAS and landed 3.32 million lb (1.51 million kg) of red crab.

There seems to be some seasonal variability in fishing activity, but data collection under the FMP has not been implemented long enough to evaluate seasonal trends accurately at this time. As of January 1, 2005, all four of the vessels with limited access permits that did not declare out of the fishery had DAS remaining for FY2004.

In addition to the vessels with limited access permits, there are about 1,234 vessels with open access incidental take red crab permits. These open access incidental take permits allow a vessel to land up to 500 lb (226.8 kg) of whole red crab per trip. According to the Vessel Trip Report database, only two vessels with incidental red crab permits reported any red crab landings and both were very small amounts.

While limited data from the observer database and monkfish industry-based surveys indicate that red crab bycatch occurs in the groundfish and monkfish fisheries, there is not sufficient information to date to determine the level of bycatch of red crabs.

Based on the Council's analysis in its 2005 Red Crab SAFE Report/EA/RIR, the Council recommended that the current FY2004 specifications be maintained for FY2005. NMFS concurs that the Council's recommended specifications meet the objectives of the FMP and, therefore, the following specifications are maintained for FY2005:

*Target TAC:* 5.928 million lb (2.69 million kg)

*Fleet DAS:* 780 (since one vessel has opted out of the fishery for FY2005, the remaining four vessels would receive 195 DAS each)

#### Classification

This action is exempt from review under Executive Order 12866.

A description of the legal basis and reasons for the action, and its objectives, can be found in the preamble and are not repeated here. This action does not contain any new collection-of-information, reporting, or recordkeeping requirements. It would not duplicate, overlap, or conflict with any other Federal rules.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive proposed rulemaking and its concomitant prior notice and opportunity for public comment on this action. This action continues specifications already in place in § 648.260(a)(1) (setting the TAC), § 648.262(b)(2) (setting the DAS), and in 67 FR 63222 (setting the DAS reallocation). These specifications,

which were subject to public comment, were intended to remain in place indefinitely unless changed at the recommendation of the Council. This intention was stated clearly in the preamble to 67 FR 63222. Because the Council has not recommended any change in the FY2005 specifications, public comment through proposed rulemaking is unnecessary. For the same

reason, there is good cause under 5 U.S.C. 553(d)(3) to waive any delay in effectiveness of this rule.

Because prior notice and opportunity for public comment are waived for this rule pursuant to 5 U.S.C. 553(b), the Regulatory Flexibility Act analysis, pursuant to 5 U.S.C. 601 *et seq.*, is not required.

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

Dated: February 7, 2005.

**John Oliver,**

*Deputy Assistant Administrator for Operations, National Marine Fisheries Service.*

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