

the surface water in Rhinehart's Pond, Massey Run, and Hogue Creek; and, decommission the previously constructed facilities. These RAOs were met by treating the surface water in Rhinehart's Pond; removing, solidifying, and disposing of the sediment in Rhinehart's Pond which exceeded 1,600 mg/kg of zinc; removing and disposing of the sediment in Massey Run which exceeded 1,600 mg/kg of zinc; and decommissioning the facilities previously constructed. Monitoring was performed on the treatment plant discharge to ensure the effluent standards were met. Confirmatory sampling was performed to ensure that the cleanup level was achieved in Rhinehart's Pond. Confirmatory sampling was not performed for the sediment removal in Massey Run because EPA identified all of the stream pools in which sediment had to be removed and all of the sediment was removed in each of these pools.

#### *Operation and Maintenance*

The facilities constructed under OU-1 were operated and maintained by EPA from 1992 to 2002. The Commonwealth of Virginia contributed its ten percent share of these operation and maintenance costs through a Superfund State Contract.

All of the facilities constructed under OU-1 were decommissioned as part of the OU-3 Remedial Action, leaving nothing left to operate or maintain. In addition, re-vegetation of the site (performed as part of OU-3) was designed to return the site to a natural condition. The trees, bushes, and grass seed mixtures used were selected by the U.S. Fish & Wildlife Service because they are indigenous to the area. During the June 21, 2004 inspection, the U.S. Fish & Wildlife Service verified that significant plant and tree species had taken root within the stream area and along the stream banks, with good plant diversity and healthy condition.

#### *Five-Year Review*

CERCLA requires a five-year review of all sites where the remedial action results in hazardous substances, pollutants or contaminants remaining at the site above levels that allow for unlimited use and unrestricted exposure. EPA has completed two Five-Year Reviews for this Site. The first was completed on September 12, 1997 (while clean-up was ongoing) and the second on November 6, 2002 (just at the end of the OU-3 Remedial Action).

Since all of the remaining contaminated media (surface water and sediment from Rhinehart's Pond and sediment from Massey Run) was

removed from the Site as part of the OU-3 Remedial Action, there are no hazardous substances, pollutants or contaminants remaining at the Site above levels that allow for unlimited use and unrestricted exposure. Thus, no additional Five-Year reviews will be conducted. Further, there are no institutional controls needed for this Site.

#### *Community Involvement*

Public participation activities have been satisfied as required in CERCLA section 113(k), 42 U.S.C. 9613(k), and CERCLA section 117, 42 U.S.C. 9617. Documents in the Site docket which EPA relied on for recommendation of the deletion of the Site from the NPL are available to the public in the information repositories.

#### **V. Deletion Action**

EPA, with the concurrence of the Commonwealth of Virginia through the Department of Environmental Quality, has determined that all appropriate responses under CERCLA have been completed at the Site, and that no further response actions are necessary. Therefore, EPA is deleting the Site from the NPL.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication of a notice of intent to delete. This action will be effective September 30, 2005, unless EPA receives adverse comments by August 31, 2005, on this notice or the parallel notice of intent to delete published in the "Proposed Rules" section of today's **Federal Register**. If adverse comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this direct final notice of deletion before the effective date of the deletion and it will not take effect and EPA will also prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

#### **List of Subjects in 40 CFR Part 300**

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: July 26, 2005.

**Donald S. Welsh,**

*Regional Administrator, U.S. EPA Region III.*

■ For the reasons set out in the preamble, 40 CFR part 300 is amended as follows:

#### **PART 300—[AMENDED]**

■ 1. The authority citation for part 300 continues to read as follows:

**Authority:** 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p.193.

#### **Appendix B—[Amended]**

■ 2. Table 1 of Appendix B to Part 300 is amended under Virginia ("VA") by removing the site name "Rhinehart Tire Fire Dump."

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#### **DEPARTMENT OF COMMERCE**

#### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 648**

[Docket No. 050510127–5190–02; I.D. 050305D]

**RIN 0648–AS35**

#### **Fisheries of the Northeastern United States; Atlantic Deep-Sea Red Crab Fishery; Framework Adjustment 1 to the 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 final regulations to implement Framework Adjustment 1 to the Atlantic Deep-Sea Red Crab (Red Crab) Fishery Management Plan (FMP). This final rule modifies the existing annual review and specification process by allowing specifications to be set for up to 3 years at a time, and continues the current target total allowable catch (TAC) of 5.928 million lb (2.69 million kg) and fleet days-at-sea (DAS) of 780 fleet DAS for fishing year (FY) 2006 and FY2007. The purpose of this action is to conserve and manage the red crab resource, reduce the staff resources necessary to effectively manage this fishery, and provide consistency and predictability to the industry.

**DATES:** This rule is effective August 31, 2005.

**ADDRESSES:** Copies of supporting documents, including the Environmental Assessment (EA), Regulatory Impact Review (RIR), the Initial Regulatory Flexibility Analysis (IRFA), and Stock Assessment and Fishery Evaluation (SAFE) Report, are available from Paul J. Howard,

Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. The EA/RIR/IRFA is also accessible via the Internet at <http://www.nero.nmfs.gov>.

The Final Regulatory Flexibility Analysis (FRFA) consists of the IRFA, public comments and responses contained in this final rule, and the summary of impacts and alternatives contained in this final rule.

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

**SUPPLEMENTARY INFORMATION:** This final rule implements measures contained in Framework Adjustment 1 to the FMP (Framework 1) that modify the existing annual review and specifications process by allowing specifications to be set for up to 3 years at a time, and continues the current target total allowable catch (TAC) of 5.928 million lb (2.69 million kg) and 780 fleet DAS for FY2006 and FY2007. Details concerning the justification for and development of Framework 1 and the implementing regulations were provided in the preamble to the proposed rule (70 FR 29265, May 20, 2005) and are not repeated here.

#### Multi-Year Specifications Process

The Council identified 3 years as an appropriate length of time to reduce the administrative burden associated with an annual review cycle without increasing the risk of over-harvesting the red crab resource. The appropriate environmental and regulatory reviews required under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the National Environmental Policy Act (NEPA), and other applicable laws will be completed during the year in which 3-year specifications are set. The Red Crab Plan Development Team (PDT) will complete an updated SAFE Report every 3 years, and recommend specifications for up to 3 of the following fishing years, and will continue to evaluate the red crab stock and fishery status annually. The annual evaluation will focus on the most recent fishery-dependent information including, but not limited to, DAS used and red crab landings. More comprehensive analyses will be conducted in the SAFE Report every 3 years. The Council retains the flexibility to set red crab specifications for less than 3 years based on new information and/or recommendations from the PDT.

Multi-year specifications provide the industry with greater regulatory consistency and predictability, and simplifies the process by reducing the frequency of Council decision-making

and NMFS rulemaking. However, the maximum 3-year specification process does not prevent the Council from changing specifications during the interim years, if information obtained during the annual review indicates that the red crab specifications warrant a change, e.g., to comply fully with the Magnuson-Stevens Act.

This action is not expected to have any substantial direct social or economic impact on the red crab fishery. All potential impacts on the resources associated with this fishery will derive from the additional level of risk to these resources that could occur if the specifications are set at too high a level. If specifications are set too high, then there could be a greater risk of overfishing. However, the annual review required under this action provides the opportunity for the Council to adjust the out-year specifications, if new information indicates that the out-year specifications were set at an inappropriate level.

#### FY2006 and FY2007 Specifications

For FY2006 and FY2007, this action continues the current (FY2005) TAC of 5.928 million lb (2.69 million kg) and 780 fleet DAS. Because the small fishing fleet has neither exceeded an annual TAC nor used all of its allocated DAS since implementation of the FMP, landings are not expected to exceed established amounts.

The measures implemented under the FMP are expected to continue to protect the resource from overexploitation and maintain a sustainable fishery. Because this action maintains the status quo, it is expected to have the same effect as previously analyzed actions.

Because the FMP is managed under a target TAC, rather than a hard TAC requiring the closing of the fishery when the TAC is reached, there is no direct mechanism to prevent the fishery from exceeding the TAC; however, the DAS management program implemented under the FMP was designed to constrain red crab fishing effort to a level consistent with, or less than that which would allow the resource to produce maximum sustainable yield, while still providing sufficient opportunity to harvest the target TAC. Therefore, as DAS are adjusted, the level of potential red crab harvest is expected to adjust accordingly, assuming a constant harvest rate per day-at-sea.

In terms of the biological impacts on other non-target species and the ecosystem, based on analysis in the FMP/EIS, it is unlikely that any of the alternatives in the EA/RIR/IRFA would have an impact. There is very little known about the interactions of the

deep-sea red crab with other species and their associated communities. The FMP explains that initial reports from industry members indicate that there is very little, if any, bycatch of other species in the directed red crab fishery. According to the recent SAFE Report (October 2004), there are no records of observed red crab trips in the observer database, and the trips that are recorded in the Vessel Trip Report (VTR) database have very little bycatch information. The FMP did identify that the bycatch of red crab in other fisheries may be a more substantial issue. However, the bycatch of red crab in other fisheries is not pertinent to this action.

#### Comments and Responses

During the comment period for the proposed rule (70 FR 29265, May 20, 2005), which ended June 20, 2005, two e-mails with comments were received from the same commenter.

*Comment:* The commenter is opposed to a multi-year time frame and stated that the stock conditions change annually, and that a multi-year time frame lends itself to less accurate setting of quotas.

*Response:* The PDT will continue to undertake an annual evaluation of the red crab stock and fishery status. The multi-year specification process does not prevent the Council from setting specifications during the interim years, if information obtained during the annual review indicates that the red crab specifications warrant a change.

*Comment:* The commenter stated that the stock is overfished and that the quota should be cut by 50 percent this year, and by 10 percent each year thereafter.

*Response:* NMFS determined that the stock is not overfished. The commenter gave no specific rationale for the suggestion that the TAC and fleet DAS be reduced from what was proposed. The reasons presented by the Council and NMFS for implementing these specifications are discussed in the preambles to the proposed rule and this final rule, and are sufficiently analyzed within the Framework 1 document. These specifications were developed based on the best scientific data available at the time, in accordance with the requirements of the Magnuson-Stevens Act. There is no known scientific basis for reducing the target TAC and fleet DAS allocation to the levels suggested by the commenter.

*Comment:* The commenter suggested establishment of marine sanctuaries.

*Response:* While NMFS acknowledges the importance of the general issues raised by the commenter, Framework 1

did not consider or recommend marine sanctuaries in this fishery, nor are the establishment of marine sanctuaries in this fishery called for under applicable law.

#### **Changes from the Proposed Rule (70 FR 29265, May 20, 2005)**

Minor editorial changes were made from the proposed rule to the final rule to clarify the intent of, and improve the readability of, the regulatory text.

#### **Classification**

The Administrator, Northeast Region, NMFS, determined that Framework 1 is necessary for the conservation and management of the 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.

NMFS prepared a FRFA, which incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, NMFS responses to those comments, and a summary of the analyses completed to support the action. A copy of the IRFA is available from the Council (see **ADDRESSES**).

The preamble to the proposed rule (70 FR 29265, May 20, 2005) included a detailed summary of the analyses contained in the IRFA, and that discussion is not repeated here.

#### **Final Regulatory Flexibility Analysis**

##### *Statement of Objective and Need*

This rule is necessary to modify the existing annual review and specification process to allow specifications to be set for up to 3 years in advance, and establishes the fishery specifications for FY2006 and FY2007. The purpose of this rule is to conserve and manage the red crab resource, reduce the staff resources necessary to effectively manage this fishery, and provide consistency and predictability to the industry. A full description of the reasons why this action is being considered, and the objectives and legal basis for this action, are explained in the preambles to the proposed rule and this final rule and are not repeated here.

##### *Summary of Significant Issues Raised in Public Comments*

No comments related to the economic analyses in the IRFA or the economic impacts of the rule generally were received. No changes to the proposed rule were made as a result of public comments. For a summary of the comments received, and NMFS's responses to them, see "Comments and Responses."

##### *Description and Estimate of Number of Small Entities to Which the Rule Will Apply*

According to the Small Business Administration standards, any fish harvesting or hatchery business is a small entity if it is independently owned and operated and not dominant in its field of operations, and if it has annual receipts of not in excess of \$3.5 million. There are five vessels with limited access permits in this fishery, and all of them meet the criteria for small entities; therefore, there is no disproportionate effect between large and small entities. All the alternatives and analyses contained in Framework 1 necessarily reflect on these five vessels.

##### *Description of Projected Reporting, Recordkeeping, and other Compliance Requirements*

No additional reporting, recordkeeping, or other compliance requirements are included in this final rule.

##### *Description of the Steps Taken to Minimize Economic Impacts on Small Entities*

The Council prepared an economic analysis that describes the economic impact that this rule will have on small entities. A summary of the analysis follows:

As stated in the preamble to the proposed rule, this action incorporates two separate, but related, decisions of the Council. First, the Council determined that it would modify the annual review and specification process (Decision 1), rather than maintaining the status quo, which would require that specifications be set annually. After the Council elected to modify the annual review and specification process, it then decided to propose the specifications for FY2006 and FY2007 (Decision 2) in order to give effect to Decision 1.

Decision 1, which dealt solely with the 3-year review and specification cycle for the alternatives considered, had two options. Option 1 would not have required an annual review of the status of the red crab resource and fishery, while Option 2 (this final action) does require such review. Neither option would have a direct economic impact on the vessels with limited access permits in the red crab fishery; therefore, there are no alternatives available that would result in different economic impacts on affected small entities.

Decision 2, which dealt solely with the specifications for FY2006 and FY2007, originally identified three alternatives. Two of these became the

same alternative (i.e., the resulting target TAC and fleet DAS were equal) so that the remaining two were evaluated in the economic analysis once the Council's choice of specifications for FY2005 was made (see 70 FR 7190, February 11, 2005). This action will continue the same TAC (5.928 million lb (2.69 million kg) and fleet DAS allocation (780) as in FY2004 and FY2005. The non-preferred alternative would have continued the same target TAC, but would have allocated 5 percent fewer total fleet DAS than the DAS allocation for FY2005. This allocation would have remained the same for FY2006 and FY2007. Therefore, under the non-preferred alternative, the DAS allocation for both fishing years would have been 741, rather than the 780 DAS to be implemented under this action.

No adverse economic impacts associated with the fleet allocation of 780 DAS are expected. Since the implementation of the FMP, in no year has any vessel utilized its full DAS allocation, such that no regulatory barriers have existed to prevent vessels from increasing their landings and revenue. Accordingly, the potential remains for vessels to increase their revenues over and above those of recent years.

No significant alternatives exist that would increase expected direct economic benefits relative to the alternative implemented in this rule. The only potential way to increase expected economic benefits above those expected as a result of this rule would be to further increase the target TAC and DAS allocated to the fleet. However, all scenarios in which the target TAC and allocated fleet DAS are higher than 5.928 million lb (2.69 million kg) and 780 DAS, respectively, would compromise the objective of the FMP and the legal mandate of the Magnuson-Stevens Act to prevent overfishing. This action is not expected to alter the fishing practices of the four vessels actively participating, of the five vessels permitted, in the fishery.

##### *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 letter to permit

holders that also serves as a small entity compliance guide (the guide) was prepared. Copies of this final rule are available from the NMFS Northeast Regional Office, and the guide, i.e., permit holder letter, will be sent to all holders of limited access permits for the red crab fishery. The guide and this final rule are available at the following web site: <http://www.nero.noaa.gov/nero/>.

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: July 25, 2005.

**James W. Balsiger,**

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

■ For the reasons stated in the preamble, 50 CFR part 648 is amended as follows:

#### PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. Section 648.260 is amended by revising the section heading and paragraphs (a) introductory text, (b) introductory text, and (b)(1) to read as follows:

##### § 648.260 Specifications.

(a) *Process for setting specifications.* The Council's Red Crab Plan Development Team (PDT) shall prepare a Stock Evaluation and Assessment (SAFE) Report at least every 3 years. Based on the SAFE Report, the PDT shall develop and present to the Council recommended specifications as defined in this paragraph (a) for up to 3 fishing years. The PDT shall meet at least once annually during the intervening years between SAFE Reports to review the status of the stock and the fishery. Based on such review, the PDT shall provide a report to the Council on any changes or new information about the red crab stock and/or fishery, and it shall recommend whether the specifications for the upcoming years need to be modified. The annual review shall be limited in scope and shall concentrate on the most recent fishery-dependent information including, but not limited to, days-at-sea (DAS) used and red crab landings. In the event that the PDT recommends an adjustment to the specifications, the PDT shall prepare a supplemental specifications package for a specific time duration up to 3 years. Specifications include the specification of OY, the setting of any target TACs,

allocation of DAS, and/or adjustments to trip/possession limits.

\* \* \* \* \*

(b) *Development of specifications.* In developing the management measures and specifications, the PDT shall review at least 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) The PDT, after its review of the available information on the status of the stock and the fishery, may recommend to the Council any measures necessary to assure that the specifications will not be exceeded, as well as changes to the appropriate specifications.

\* \* \* \* \*

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#### DEPARTMENT OF COMMERCE

##### National Oceanic and Atmospheric Administration

##### 50 CFR Part 660

[Docket No. 040429134-4135-01; I.D.072205E]

##### Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Inseason Action #2—Adjustment of the Commercial Salmon Fishery from the U.S.-Canada Border to Cape Falcon, Oregon

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

**ACTION:** Temporary rule; modification of fishing seasons; request for comments.

**SUMMARY:** NMFS announces that the commercial salmon fishery in the area from the U.S.-Canada Border to Cape Falcon, OR was modified. The fourth open period for the May-June fishery scheduled to open May 20, 2005, was extended from 4 to 7 days, with a 125-Chinook possession and landing limit for the 7-day open period. The area closed at midnight on May 26, 2005. All other restrictions remained in effect as announced for 2005 ocean salmon fisheries. This action was necessary to

conform to the 2005 management goals, and the intended effect is to allow the fishery to operate within the seasons and quotas specified in the 2005 annual management measures.

**DATES:** Adjustment effective 0001 hours local time (l.t.), May 20, 2005, until 2359 hours l.t., May 26, 2005; after which the fishery will remain closed until opened through an additional inseason action for the west coast salmon fisheries, which will be published in the **Federal Register**. Comments will be accepted through August 16, 2005.

**ADDRESSES:** Comments on these actions must be mailed to D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, NOAA, 7600 Sand Point Way N.E., Bldg. 1, Seattle, WA 98115-0070; or faxed to 206-526-6376; or Rod McInnis, Regional Administrator, Southwest Region, NMFS, NOAA, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802-4132; or faxed to 562-980-4018. Comments can also be submitted via e-mail at the [2005salmonIA2.nwr@noaa.gov](mailto:2005salmonIA2.nwr@noaa.gov) address, or through the internet at the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments, and include I.D. 072205E in the subject line of the message. Information relevant to this document is available for public review during business hours at the Office of the Regional Administrator, Northwest Region, NMFS.

**FOR FURTHER INFORMATION CONTACT:** Christopher Wright, 206-526-6140.

**SUPPLEMENTARY INFORMATION:** The NMFS Regional Administrator (RA) modified the season for the commercial salmon fishery in the area from the U.S.-Canada Border to Cape Falcon, OR by inseason action. The fourth open period for the May-June fishery scheduled to open May 20, 2005, was extended from 4 to 7 days, with a 125-Chinook possession and landing limit for the 7-day open period. On May 20, 2005, the RA determined that available catch and effort data indicated that the 29,000 Chinook quota for the May-June fishery would likely be attained by the end of the extended period. The area closed at midnight on May 26, 2005. The fishery was to remain closed until further notice, but was scheduled to be reevaluated on May 31. If there was sufficient quota remaining, any further openers were to be announced.

All other restrictions remained in effect as announced for 2005 ocean salmon fisheries. This action was necessary to conform to the 2005 management goals, and the intended