

(c) *Regulations.* (1) No person or vessel may enter into the security zone described in paragraph (a) of this section unless authorized by the Captain of the Port San Juan.

(2) Vessels seeking to enter the security zone established in this section may contact the COTP on VHF channel 16 or by telephone at (787) 289-2041 to request permission.

Dated: February 5, 2009.

E. Pino,

Captain, U.S. Coast Guard, Captain of the Port San Juan.

[FR Doc. E9-4812 Filed 3-5-09; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 001005281-0369-02]

RIN 0648-XN55

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Closure

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS closes the commercial fishery for king mackerel in the Florida east coast subzone. This closure is necessary to protect the Gulf king mackerel resource.

DATES: The closure is effective 12:01 a.m., local time, March 6, 2009, until 12:01 a.m., local time, April 1, 2009.

FOR FURTHER INFORMATION CONTACT: Susan Gerhart, telephone: 727-824-5305, e-mail: Susan.Gerhart@noaa.gov.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, and, in the Gulf of Mexico only, dolphin and bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Based on the Councils' recommended total allowable catch and the allocation ratios in the FMP, on April 30, 2001 (66 FR 17368, March 30, 2001) NMFS implemented a commercial quota of 2.25 million lb (1.02 million kg) for the eastern zone (Florida) of the Gulf migratory group of king mackerel. That quota is further divided into separate quotas for the Florida east coast subzone and the northern and southern Florida west coast subzones. The commercial quota implemented for the Florida east coast subzone is 1,040,625 lb (472,020 kg) (50 CFR 622.42(c)(1)(i)(A)(1)).

Under 50 CFR 622.43(a)(3), NMFS is required to close any segment of the king mackerel commercial fishery when its quota has been reached, by filing a notification at the Office of the **Federal Register**. NMFS has determined that the commercial quota for Gulf group king mackerel in the Florida east coast subzone will be reached on March 6, 2009. Accordingly, the commercial fishery for king mackerel in the Florida east coast subzone is closed at 12:01 a.m., local time, March 6, 2009, until 12:01 a.m., local time, April 1, 2009.

From November 1 through March 31 the Florida east coast subzone of the Gulf group king mackerel is that part of the eastern zone north of 25°20.4' N. lat. (a line directly east from the Miami-Dade/Monroe County, FL, boundary) to 29°25' N. lat. (a line directly east from the Flagler/Volusia County, FL, boundary). Beginning April 1, the boundary between Atlantic and Gulf groups of king mackerel shifts south and west to the Monroe/Collier County boundary on the west coast of Florida. From April 1 through October 31, king mackerel harvested along the east coast of Florida, including all of Monroe County, are considered to be Atlantic group king mackerel.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such prior notice and opportunity for public comment is unnecessary and contrary to the public interest. Such procedures would be unnecessary because the rule itself has already been subject to notice and comment, and all that remains is to notify the public of the closure. Allowing prior notice and opportunity for public comment is contrary to the public interest because of the need to immediately implement this action in

order to protect the fishery because the capacity of the fishing fleet allows for rapid harvest of the quota. Prior notice and opportunity for public comment will require time and would potentially result in a harvest well in excess of the established quota.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

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

Dated: March 2, 2009.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E9-4789 Filed 3-3-09; 4:15 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 090206152-9249-01]

RIN 0648-AX61

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

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

ACTION: Temporary rule; emergency action; request for comments.

SUMMARY: NMFS is implementing emergency measures to reduce the target total allowable catch (TAC) and associated days-at-sea (DAS) allocations in the Atlantic deep-sea red crab fishery, based on new scientific information. The red crab stock was assessed by the Data Poor Stocks Working Group in the fall of 2008, and a final report published in January 2009 indicates that the current estimate of maximum sustainable yield (MSY) for red crab is no longer reliable. The actions of this final rule are necessary to comply with the objectives of the Deep-Sea Red Crab Fishery Management Plan (FMP), as well as to ensure compliance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This action is intended to prevent unsustainable fishing of the red crab resource.

DATES: This rule is effective April 6, 2009, through September 2, 2009.

Comments must be received by 5 p.m. local time, on April 6, 2009.

ADDRESSES: You may submit comments, identified by RIN 0648–AX61, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>.

- Mail and hand delivery: Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: “Comments on Deep-Sea Red Crab Emergency Action.”

- Fax: (978) 281–9135. Send the fax to the attention of the Sustainable Fisheries Division. Include “Comments on Deep-Sea Red Crab Emergency Action” prominently on the fax.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the Environmental Assessment (EA) and Regulatory Impact Review (RIR) prepared for this rule are available from the Regional Administrator at the above address.

FOR FURTHER INFORMATION CONTACT: Moira Kelly, Fishery Policy Analyst, (978) 281–9218, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION: The Red Crab FMP was established on October 21, 2002 (67 FR 63222), and was intended to manage the red crab fishery and prevent unsustainable fishing of the red crab resource. The management unit specified in the FMP includes red crab (*Chaceon quinque-dens*) in U.S. waters of the Atlantic Ocean from 35° 15.3' N. lat. (the latitude of Cape Hatteras Light, North Carolina) northward to the U.S./Canada border. The Red Crab FMP was adjusted once, by Framework Adjustment (FW) 1 (August 31, 2005, 70 FR 44066.) FW 1 established a multi-year specifications process and established the specifications through fishing year (FY) 2007. The specifications established for FY 2007 were continued without action into FY 2008, as allowed under the regulations,

because there was no new information that would have indicated a change was required.

In the fall of 2008, NMFS' Northeast Fisheries Science Center convened a panel of stock assessment biologists and fishery managers, known as the Data Poor Stocks Working Group, to evaluate the biological reference points and status of several fishery stocks that have proven challenging to assess using traditional stock assessment methods. The results and recommendations of the Working Group were peer-reviewed by a panel of outside scientists composed of relevant experts primarily from the Scientific and Statistical Committees of the Mid-Atlantic and New England Fishery Management Councils (Review Panel). One of the stocks considered by the Working Group and Review Panel was Atlantic deep-sea red crab, a deep-water crustacean that lives off the continental shelf along the east coast of the United States and that supports a small but valuable fishery. The fishery is managed under the Red Crab FMP, as developed by the New England Fishery Management Council (Council) and implemented in 2002. The FMP established a limited access permit program, per trip possession limits, gear requirements, and a DAS program for the limited access permit vessels, among other measures. DAS are assigned to each limited access permit holder based on a fleet-wide allocation of DAS that is calculated to achieve, but not exceed, the target TAC. Every year since the FMP was implemented, the target TAC has been 5.928 million lb (2,688 mt), and the limited access fleet has been allocated 780 DAS, divided evenly among the limited access permit vessels.

Fishery-independent data on the deep-sea red crab are sparse, and only two surveys have been conducted on the stock since the early 1970's, one in 1974 and another during 2003–2005. Little is known about the biology and ecology of the species, and quantitative estimates of life history traits are almost entirely lacking. Fishery-dependent data, particularly for the years prior to implementation of the FMP in 2002, are somewhat unreliable. The Working Group considered all available information on the species and its fishery, and presented its findings and recommendations to the Review Panel. Although the Review Panel was not able to recommend new biological reference points for the stock due to existing data limitations, it noted substantial uncertainty in all reference point estimates and recommended consideration of additional fishery-independent survey work and several avenues of research that would be

useful for management. Most significant to the subject action, the Review Panel agreed with the Working Group that the estimate of MSY developed for the original FMP is no longer reliable as a foundation for setting biological reference points. The Review Panel concluded that an MSY in the range of 3.75 million–4.19 million lb (1,700–1,900 mt), instead of the estimate of 6.24 million lb (2,830 mt) in the FMP, represents the best available science for the stock. This is a 33- to 40-percent reduction in MSY from the original FMP.

As noted above, the primary constraint on the directed, limited access red crab fishery is a DAS program that is based on the annual target TAC, currently set at 5.928 million lb (2,689 mt). The FMP specifies that the target TAC is calculated as 95 percent of MSY, so a reduction in MSY would necessitate a reduction in the annual target TAC, which would then result in a reduction in the fleet DAS allocation. Based on the range for MSY recommended by the Working Group and Review Panel, the annual target TAC for the fishery needs to be reduced to between 3.56 million lb (1,615 mt) and 3.98 million lb (1,805 mt). Such a reduction in the target TAC would require that the annual DAS allocated to the fleet also be reduced from 780 DAS to between 582 and 651 DAS.¹

The regulations governing the red crab fishery, found at subpart M of 50 CFR part 648, stipulate that “The target TAC for each fishing year will be 5.928 million lb (2,689 mt, unless modified pursuant to this paragraph,” and that “Each limited access permit holder shall be allocated 156 DAS” (780 DAS divided between the five limited access permit holders) “unless . . . the TAC is adjusted.” The Red Crab FMP established a fishing year that begins on March 1 of each year, through the last day of February. Because the results of the Data Poor Stocks Workshop and peer review were not available until January 20, 2009, and the fishing year started on March 1, 2009, there was insufficient time for the Council to consider this new scientific information and prepare and submit revised specifications for the 2009 fishing year. Also, because a 33- to 40-percent reduction in the target TAC, with a similar reduction in the DAS allocation, is required in order to bring the management measures into compliance

¹ Rather than a simple proportional reduction in the DAS allocation (i.e., a 33- to 40-percent reduction from the current 780 DAS), the proposed DAS range is based on updated average landings per DAS in the red crab fishery for the fishing years 2005–2008.

with the best available science on the red crab stock and to minimize the risk that unsustainable fishing will occur, NMFS is implementing emergency measures under section 305(c) of the Magnuson-Stevens Act.

The Council intends to incorporate the results of the Data Poor Stocks Workshop and peer review into the development of specifications for the 2010 fishing year and an amendment to the FMP intended to address the new annual catch limit and accountability measure requirements of the reauthorized Magnuson-Stevens Act. For the intervening year, NMFS is implementing the following as emergency measures: (1) A reduction in the 2009 target TAC to 3.56 million lb (1,615 mt); and (2) a reduction in the number of DAS initially allocated to each of the five limited access permit holders to 116 DAS. A target TAC of 3.56 million lb (1,615 mt) represents 95 percent of the lower bound of the MSY range recommended by the Working Group and Review Panel. With no guidance from the Review Panel other than the substantial degree of uncertainty noted regarding the available data, NMFS intends to set specifications in a precautionary manner until the Council can more fully consider the implications of this new scientific information. An initial per vessel DAS allocation of 116 DAS represents a fleet allocation of 582 DAS, divided by the five current limited access permits. There is a provision in the Red Crab FMP that if one or more limited access permit holders formally declares out of the directed red crab fishery for an entire fishing year, that the DAS initially allocated to that permit are to be distributed equally to the remaining permit holders. As has occurred each year since 2003, one of the limited access permits has been declared out of the fishery for the 2009 fishing year. The resulting DAS allocation will be 146 DAS for each of the remaining four limited access permit holders. NMFS is implementing no other changes to the management measures governing the red crab fishery at this time.

A revised target TAC of 3.56 million lb (1,615 mt) represents a 40-percent reduction in the target TAC from that available to the fishery in fishing year 2008, and the revised fleet DAS allocation of 582 DAS represents a 25.3-percent reduction in allocated DAS. The FMP provides that DAS allocations are to be updated through the specifications process by using the most recent available data to determine the pounds of red crab landed per DAS, on average, and then dividing the annual target TAC

by this amount. Using updated landings and DAS usage information from fishing years 2005–2008, the average landings of red crab by the limited access fleet is just over 6,100 lb/DAS (2,767 kg/DAS). This is a decrease from the nearly 7,600 lb/DAS (3,447 kg/DAS) used in the FMP and subsequently in the specifications process, and represents a decline in catch-per-unit-effort (CPUE) that is intended to be addressed in the DAS allocation. Reasons for such a decline in CPUE may include a decrease in the exploitable biomass of the red crab resource, inter-annual variability in the availability of red crabs to the fishery, an increase in vessel search time, an increase in distance traveled from port to the fishing grounds, or a decline in trip duration. Failing to account for this decline in CPUE in setting the DAS allocation under this rule (i.e., maintaining the same 7,600 lb/DAS (3,447 kg/DAS) to determine the DAS allocation for the revised target TAC) would result in fewer DAS allocated to the fleet (468 DAS instead of 582 DAS). Given the decline in CPUE evidenced by the decrease in landings per DAS, a lower fleet DAS allocation would likely result in the fleet being unable to attain the target TAC.

NMFS has determined that this action complies with agency guidance for implementation of emergency measures under section 305(c) of the Magnuson-Stevens Act (August 21, 1997, 62 FR 44421). The situation this rule is intended to address:“(1) Results from the recently published (January 20, 2009) final report of the Data Poor Stocks Working Group and Review Panel indicating that, based on the best available scientific information, the MSY for red crab is 33–40 percent less than previously estimated; (2) presents serious conservation and management problems in the fishery, which, if left unaddressed, would likely result in unsustainable fishing of the red crab stock; and (3) can be addressed through these emergency regulations to immediately reduce the annual target TAC and DAS allocations for the 2009 fishing year in order to prevent unsustainable fishing.” Without this action, unsustainable fishing is likely, which could cause more significant long-term impacts on the red crab resource and fishery than the short-term impacts to the fishery expected from this emergency action.” The basis for taking this action is ecological in nature in that it is intended to prevent unsustainable fishing.

Classification

The Acting Assistant Administrator for Fisheries, NOAA (AA), finds good

cause pursuant to 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment because it would be impracticable and contrary to the public interest. This emergency action responds to the requirements of the Magnuson-Stevens Act to prevent unsustainable fishing and ensure that conservation and management measures are based on the best available scientific information.

The results of the Data Poor Stocks Working Group and Review Panel assessment of the red crab stock clearly indicate that the estimate of MSY used to establish a target TAC of 5.928 million lb (2,689 mt) does not represent the best available scientific information, and that a target TAC of between 3.56 million lb (1,615 mt) and 3.98 million lb (1,805 mt), with the appropriate reductions in DAS, is necessary to ensure that unsustainable fishing does not occur on the resource. NMFS must take every action possible to stop unsustainable fishing and prevent it from occurring in the fishing year that began on March 1, 2009.

Until this rule is effective, commercial fishermen are authorized to fish substantially more DAS, with a significantly higher target TAC, than what the resource can support according to the best available scientific information. If effectiveness of the rule is delayed in order to allow prior notice and comment, the existing management measures that were designed to attain a higher TAC would be inconsistent with the revised estimate of MSY for the stock. Waiver of the notice-and-comment rulemaking period will serve the public and the resource by ensuring measures sufficient to prevent unsustainable fishing are implemented in a timely fashion for the 2009 fishery that began on March 1, 2009.

NMFS did not initiate the emergency action earlier because the report of the Data Poor Stocks Working Group and Review Panel was not finalized and released until January 20, 2009, only 39 days before the start of the 2009 fishing year.

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

This rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is not subject to the requirement to provide prior notice and opportunity for public comment pursuant to 5 U.S.C. 553 or any other law.

Dated: March 3, 2009

James W. Balsiger,

*Acting Assistant Administrator for Fisheries,
National Marine Fisheries Service.*

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

■ 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. In § 648.260, paragraph (a)(1) is suspended and paragraph (a)(4) is added to read as follows:

§ 648.260 Specifications.

(a) * * *

(4) *Target total allowable catch.* The target TAC for fishing year 2009 will be 3.560 million lb (1,615 mt), unless modified pursuant to this paragraph.

* * * * *

■ 3. In § 648.262, paragraph (b)(2) is suspended and paragraph (b)(7) is added to read as follows:

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

(b) * * *

(7) *For fishing year 2009.* Each limited access permit holder shall be allocated 116 DAS unless one or more vessels declares out of the fishery consistent with § 648.4(a)(13)(i)(B)(2) or the TAC is adjusted consistent with § 648.260.

[FR Doc. E9-4795 Filed 3-5-09; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0910091344-9056-02]

RIN 0648-XN53

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 630 of the Gulf of Alaska

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

ACTION: Temporary rule; modification of a closure.

SUMMARY: NMFS is reopening directed fishing for pollock in Statistical Area

630 of the Gulf of Alaska (GOA). This action is necessary to fully use the A season allowance of the 2009 total allowable catch (TAC) of pollock specified for Statistical Area 630 of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 9, 2009, through 1200 hrs, A.l.t., March 10, 2009. Comments must be received at the following address no later than 4:30 p.m., A.l.t., March 18, 2009.

ADDRESSES: Send comments to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by 0648-XN53, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal website at <http://www.regulations.gov>.

- Mail: P. O. Box 21668, Juneau, AK 99802.

- Fax: (907) 586-7557.

- Hand delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK.

All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Enter "N/A" in the required fields, if you wish to remain anonymous. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907-586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

NMFS closed the directed fishery for pollock in Statistical Area 630 of the GOA under § 679.20(d)(1)(iii) on

January 22, 2009 (74 FR 5625, January 30, 2009).

NMFS has determined that approximately 1,524 metric tons of pollock remain in the directed fishing allowance in Statistical Area 630 of the GOA. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C), and (a)(2)(iii)(D), and to fully utilize the A season allowance of the 2009 TAC of pollock in Statistical Area 630, NMFS is terminating the previous closure and is reopening directed fishing for pollock in Statistical Area 630 of the GOA.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA) finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening of pollock in Statistical Area 630 of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of February 26, 2009. The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Without this inseason adjustment, NMFS could not allow the TAC of pollock in Statistical Area 630 of the GOA to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until March 18, 2009.

This action is required by § 679.20 and § 679.25 and is exempt from review under Executive Order 12866.

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

Dated: March 3, 2009.

Emily H. Menashes,
Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. E9-4793 Filed 3-3-09; 4:15 pm]

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