

**PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES**

■ 6. The authority citation for part 635 continues to read as follows:

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

■ 7. In § 635.21, paragraph (a)(4)(vi) is removed and reserved and paragraph (a)(4)(vii) is added to read as follows:

**§ 635.21 Gear operation and deployment restrictions.**

\* \* \* \* \*

(a) \* \* \*

(4) \* \* \*

(vii) *Caribbean, Gulf, and South Atlantic EEZ area closures related to Deepwater Horizon oil spill.* Effective May 11, 2010, no vessel issued, or required to be issued, a permit under this part, may fish or deploy any type of fishing gear in the areas designated at §§ 622.33(c), 622.34(n), or 622.35(m) of this chapter.

\* \* \* \* \*

**PART 640—SPINY LOBSTER FISHERY OF THE GULF OF MEXICO AND SOUTH ATLANTIC**

■ 8. The authority citation for part 640 continues to read as follows:

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

■ 9. In § 640.7, paragraph (x) is added to read as follows:

**§ 640.7 Prohibitions.**

\* \* \* \* \*

(x) Harvest a spiny lobster, effective May 11, 2010, in the portion of the Gulf or South Atlantic EEZ designated in § 622.34(n) or § 622.35(m) of this chapter, respectively, due to the Deepwater Horizon oil spill.

**PART 654—STONE CRAB FISHERY OF THE GULF OF MEXICO**

■ 10. The authority citation for part 654 continues to read as follows:

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

■ 11. In § 654.7, paragraph (r) is removed and reserved and paragraph(s) is added to read as follows:

**§ 654.7 Prohibitions.**

\* \* \* \* \*

(s) Pull or tend a stone crab trap, effective May 11, 2010, in the portion of the Gulf EEZ designated in § 622.34(n) of this chapter, due to the Deepwater Horizon oil spill.

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

[Docket No. 100105009-0167-02]

RIN 0648-AY51

**Fisheries of the Northeastern United States; Atlantic Deep-Sea Red Crab Fisheries; 2010 Atlantic Deep-Sea Red Crab Specifications**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues final specifications for the 2010 Atlantic deep-sea red crab fishery, including a target total allowable catch (TAC) and a fleet-wide days-at-sea (DAS) allocation. The intent of this rulemaking is to specify the target TAC and other management measures in order to manage the red crab resource for fishing year (FY) 2010.

**DATES:** This rule is effective on June 14, 2010.

**ADDRESSES:** Copies of the specifications document, including the Environmental Assessment (EA) and the Initial Regulatory Flexibility Analysis (IRFA) are available from Paul Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950. The specifications document is also accessible via the Internet at <http://www.nefmc.org>. NMFS prepared a Final Regulatory Flexibility Analysis (FRFA), which is contained in the Classification section of this rule. The FRFA consists of the IRFA, public comments and responses contained in this final rule, and a summary of impacts and alternatives contained in this final rule. The small entity compliance guide is available from Patricia A. Kurkul, Regional Administrator, Northeast Regional Office, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930-2298, and on the Northeast Regional Office's website at <http://www.nero.noaa.gov>.

**FOR FURTHER INFORMATION CONTACT:** Moira Kelly, Fishery Policy Analyst, (978) 281-9218.

**SUPPLEMENTARY INFORMATION:****Background**

The Red Crab FMP includes a specification process that requires the New England Fishery Management Council (Council) to recommend, on a

triennial basis, a target TAC and a fleet DAS allocation that is consistent with that target TAC. In FY 2009, NMFS published a temporary emergency rule to modify the 2009 target TAC and fleet DAS to be consistent with the recommendations of the Data Poor Stocks Working Group and Review Panel (Working Group). The Working Group recommended a reduction in the maximum sustainable yield (MSY) to 3.75–4.19 million lb (1,700–1,900 mt). In keeping with the FMP in setting the target TAC at 95 percent of MSY, NMFS implemented a target TAC of 3.56 million lb (1,615 mt), and reduced the fleet DAS allocation from 780 DAS to 582 DAS. The fleet DAS allocation is divided equally among the vessels active in the fishery, which can vary from year to year. For FY 2009, the allocation was initially divided among four vessels; however, NMFS allowed one of the four vessels to opt out of the fishery for the FY and reallocated the fleet DAS to the remaining three vessels. It is expected that four vessels will be active in the red crab fishery in FY 2010. The Council has requested waiving the 6-month notification requirement for opting out of the red crab fishery for FY 2010.

In September 2009, the Council's Scientific and Statistical Committee (SSC) accepted the Working Group's recommendation that MSY for red crab should be set within the range 3.75–4.19 million lb (1,700–1,900 mt), and recommended that the interim acceptable biological catch (ABC) be set commensurate with recent catch. The SSC determined recent catch to be the amount of red crab landed in FY 2007, which was 2.83 million lb (1,284 mt). The landings in FY 2007 were the lowest since the implementation of the FMP in 2002. Despite the recommendation from the SSC that the target TAC not exceed an ABC of 2.83 million lb (1,284 mt), the Council recommended a target TAC and fleet DAS allocation equal to the 2009 emergency rule, 3.56 million lb (1,615 mt) and 582 DAS, respectively. The Council based its target TAC on the MSY advice from the Working Group, rather than that recommended by the SSC, because the Council considered the advice of the Working Group to provide an acceptably low risk of avoiding overfishing. The Council further requested the SSC to reconsider its recommendation for red crab.

In response to this request from the Council to reconsider its recommendation, the SSC met on March 16–17, 2010, and determined that the interim ABC for red crab should be revised. The SSC has determined that

the model results from the Working Group are an underestimate of MSY, but could not determine by how much. The SSC now recommends that the ABC for red crab be set equal to long-term average landings (3.91 million lb; 1,775 mt). The SSC considers this level of landings to be sustainable and comfortably below the actual MSY level.

### Final Specifications

In the proposed rule, NMFS proposed setting the target TAC equal to the original SSC recommendation because this level would be consistent with the best available science, but noted that if the SSC revised its ABC recommendation prior to the publication of the final specifications for FY 2010, NMFS would consider revising the specifications to the levels recommended by the Council. However, the red crab regulations at § 648.260 provided no explicit authority for NMFS to have proposed specifications that differed from the Council's recommendation. Accordingly, based on this regulatory constraint, because the specifications recommended by the Council exceeded the ABC recommended by the Council's SSC, had the ABC recommendation of the SSC not changed, NMFS would have had no alternative but to disapprove the Council's proposed specifications in the final rule. But, based on the new ABC recommendation by the Council's SSC, NMFS is able to approve the FY 2010 specifications, which are now consistent with the best scientific information available, at the level recommended by the Council.

Therefore, this final rule adopts the Council's recommended target TAC of 3.56 million lb (1,615 mt) and DAS allocation of 582 DAS, instead of the proposed target TAC of 2.83 million lb (1,284 mt) and 464 fleet DAS allocation. Although this is consistent with the Council's recommendation, it remains less than the most recent ABC recommendation by the SSC because, as explained above, the red crab specification regulations do not grant NMFS the authority to implement a target TAC different than that recommended by the Council. As an alternative, the red crab regulations at § 648.260(a)(3) authorize NMFS to make an in-season adjustment of the specifications, after consultation with the Council and an opportunity for additional public comment.

### Other Measures

NMFS is also adopting the Council's request to waive the 6-month notification requirement for vessels to opt out of the red crab fishery for FY

2010. Currently, vessel owners must inform NMFS of their intention to opt out of the fishery 6 months prior to the start of the next fishing; i.e., by September 1. NMFS is adopting the Council's request because the specification decisions were not made until after September.

As described in the FMP, and specified at § 648.260(b)(2), if the effective date of a final rule falls after the start of the FY on March 1, fishing may continue under the specifications for the previous year. Because the specifications that were put in place under the emergency action expired on February 28, 2010, the target TAC and DAS allocation reverted to those previously specified in the regulations (5.928 million lb (2,688 mt) and 780 DAS, respectively). However, any DAS used by a vessel on or after March 1 will be counted against the DAS allocation the vessel receives for FY 2010.

### Comment and Response

One comment was received from the Atlantic Red Crab Company, requesting NMFS to adopt the SSC's revised ABC recommendation of 3.91 million lb (1,775 mt) as the target TAC, which would have a positive economic impact on the red crab industry. As stated above, NMFS does not have the regulatory authority to implement a target TAC that is greater than the Council's recommended level; however, the regulations do provide for an in-season adjustment of the specifications, after consultation with the Council. Therefore, at this time, NMFS is implementing the specifications recommended by the Council. Following an opportunity to consult with the Council, NMFS may consider a mid-year adjustment to the specifications.

One comment was also received from the Council requesting NMFS to adopt its recommended specifications of 3.56 million lb (1,615 mt) based on the SSC's revised recommendation for ABC, and noting that the Council intends to consider recommending that the target TAC be adjusted according to the procedures laid out in the FMP at its earliest opportunity. This final rule adopts the Council's recommended target TAC of 3.56 million lb. As stated above, NMFS may consider a mid-year adjustment to the specifications.

### Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this rule is consistent with the Atlantic Deep-Sea Red Crab FMP, other

provisions of the Magnuson-Stevens Act, and other applicable law.

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

Included in this final rule is the FRFA prepared pursuant to 5 U.S.C. 604(a). The FRFA incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, and NMFS's responses to those comments, and a summary of the analyses completed to support the action. A copy of the EA/Regulatory Impact Review/IRFA 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 here.

### Final Regulatory Flexibility Analysis

#### *Statement of Objective and Need*

A description of the reasons why this action is being taken, and the objectives of and legal basis for these specifications 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*

Two comments were submitted on the proposed rule; while they were not specific to the IRFA, one did comment on the economic effects of the rule. NMFS has responded to the comments in the Comments and Responses section of the preamble to this final rule. No changes were made to the final rule as a result of the comments received.

#### *Description and Estimated of Number of Small Entities to Which the Rule will Apply*

There are no large entities that participate in this fishery, as defined in section 601 of the RFA; therefore, there are no disproportionate effects on small versus large entities. Information on costs in the fishery are not readily available, and individual vessel profitability cannot be determined directly; therefore, changes in gross revenues were used as a proxy for profitability. In the absence of quantitative data, qualitative analyses were conducted.

The participants in the commercial sector are the owners of vessels issued limited access red crab vessel permits. There are five limited access red crab vessel permits, although only three vessels participated in the fishery in FY 2009.

*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 Impact on Small Entities*

Specification of the target TAC and corresponding fleet DAS allocation is constrained by the conservation objectives of the FMP, under the authority of the Magnuson-Stevens Act. The target TAC contained in this final rule is equal to the FY 2009 target TAC, and roughly 20 percent higher than actual FY 2009 commercial red crab landings. Whereas a limited market has been responsible for the shortfall in landings compared to the target TAC, red crab vessel owners have invested heavily in a new processing plant in New Bedford, MA, and have developed new marketing outlets with hopes to increase demand for their product. Further, the Council considered three alternatives, and this rule implements the alternative that has the highest target TAC and DAS allocation that is consistent with both the FMP and the best available science.

*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 Federal permits issued for the Atlantic 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 website: <http://www.nero.noaa.gov>.

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

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

Dated: May 10, 2010.

**Eric C. Schwaab,**

*Assistant Administrator for Fisheries, 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. In § 648.4, paragraph (a)(13)(i)(B)(2)(ii) is revised to read as follows:

**§ 648.4 Vessel permits.**

- (a) \* \* \*
- (13) \* \* \*
- (i) \* \* \*
- (B) \* \* \*
- (2) \* \* \*

(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. For the 2010 fishing year only, the 6-month notification requirement is waived, and a vessel may be declared out of the fishery at any time prior to fishing under a limited access red crab DAS during the 2010 fishing year.

\* \* \* \* \*

■ 3. In § 648.260, paragraph (a)(1) is revised to read as follows:

**§ 648.260 Specifications.**

- (a) \* \* \*

(1) Target total allowable catch. The target TAC for each fishing year will be 3.56 million lb (1,615 mt), unless modified pursuant to this paragraph.

\* \* \* \* \*

■ 4. In § 648.262, paragraph (b)(2) is revised to read as follows:

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

\* \* \* \* \*

- (b) \* \* \*

(2) For fishing years 2010 and thereafter. 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)(ii) or the TAC is adjusted consistent with § 648.260.

\* \* \* \* \*

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

[Docket No. 100204079-0199-02]

**RIN 0648-XQ49**

**Fisheries of the Northeastern United States; Atlantic Bluefish Fishery; 2010 Atlantic Bluefish Specifications**

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

**ACTION:** Final rule; final specifications for the 2010 Atlantic bluefish fishery.

**SUMMARY:** NMFS issues final specifications for the 2010 Atlantic bluefish fishery, including state-by-state commercial quotas, a recreational harvest limit, and recreational possession limits for Atlantic bluefish off the east coast of the U.S. The intent of these specifications is to establish the allowable 2010 harvest levels and possession limits to attain the target fishing mortality rate (F), consistent with the Atlantic Bluefish Fishery Management Plan (FMP).

**DATES:** Effective June 14, 2010, through December 31, 2010.

**ADDRESSES:** Copies of the specifications document, including the Environmental Assessment (EA) and the Initial Regulatory Flexibility Analysis (IRFA) are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South Street, Dover, DE 19901-6790. The specifications document is also accessible via the Internet at <http://www.nero.noaa.gov>. NMFS prepared a Final Regulatory Flexibility Analysis (FRFA), which is contained in the Classification section of this rule. The FRFA consists of the IRFA, public comments and responses contained in this final rule, and a summary of impacts and alternatives contained in this final rule. The small entity compliance guide is available from Patricia A. Kurkul, Regional Administrator, Northeast Regional Office, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930-2298, and on the Northeast Regional Office's website at <http://www.nero.noaa.gov>.

**FOR FURTHER INFORMATION CONTACT:** Sarah Heil, Fishery Management Specialist, (978) 281-9257.

**SUPPLEMENTARY INFORMATION:**