

qualify for an abatement permit. A General or Apprentice Falconer may conduct abatement activities under the permit holder's Federal abatement permit if the permit holder designates them as a subpermittee. Only raptors that belong to the abatement permit holder may be used under his or her abatement permit.

Raptors used under a Federal abatement permit must be captive-bred and banded with a Service-issued seamless band. Any MBTA-protected raptor species (including legally held threatened or endangered species) may be used for abatement, except for golden eagles and bald eagles. There is currently no limit to the number of raptors an abatement permit holder may hold under a Federal abatement permit provided that they are properly cared for and each raptor is used for abatement activities. Facilities and equipment must meet standards described in 50 CFR 21.29.

A Federal abatement permit holder may use captive-bred raptors held under his or her migratory bird master falconry permit for abatement activities without transferring them to his or her abatement permit, provided the applicable State falconry permitting authority allows this. The falconry bird used must be a species authorized for use per the conditions of the Federal abatement permit. Only the permit holder may use his or her falconry birds for abatement activities. Raptors held under a Federal abatement permit may not be used for falconry unless they are transferred to a falconry permit.

Abatement permit holders must submit a completed 3-186A form (Migratory Bird Acquisition and Disposition Report) to the issuing Migratory Bird Permit Office for each raptor he or she acquires or disposes of under the permit, but they have no other reporting requirements. Among other things, we solicit suggestions as to whether reporting will have value, and what level of reporting should be required.

A Federal abatement permit, by itself, does not authorize the general killing, injuring, or take of migratory birds or other wildlife. Any take of protected migratory birds by an abatement permit holder must be authorized by a Federal depredation order or depredation permit. Any harassment, disturbance, or take of bald eagles, golden eagles, or endangered or threatened species by an abatement permit holder must be authorized by the applicable Federal permit. Abatement activities must also be in accordance with any other applicable Federal, State, or Tribal law.

However, no additional Federal permit is required to take species that are not protected under the MBTA or any other applicable Federal law. In addition, no Federal permit is required to conduct abatement activities directed at protected migratory birds that do not amount to a take. We do not consider flushing, scaring, or hazing to meet the definition of take under the MBTA.

Possession and use for abatement of exotic raptor species that are not on the list of MBTA-protected species at 50 CFR 10.13, such as Barbary falcon, Lanner falcon, and Saker falcon, is not regulated under the MBTA and is outside the scope of this notice. Hybrid raptors of MBTA-protected species would still be subject to this proposed permit regulation. Though an abatement permit would not be required for use of such species in abatement activities, any resulting take of protected migratory birds or other protected wildlife must still be authorized under the applicable Federal, State, or Tribal law or regulation.

A Federal abatement permit will allow the permittee to conduct abatement at the locations identified and under the conditions listed on his or her abatement permit. A State abatement permit also may be required of an abatement practitioner.

We solicit comments and suggestions on any aspect of the use of trained MBTA-protected raptors for abatement activities and potential regulations to govern Federal permitting. We particularly solicit comments on the topics listed below. Explaining the reasons and rationale for your comments where appropriate will help as we consider them in the preparation of a proposed rule.

(1) Qualifications and experience necessary to qualify for a Federal abatement permit.

(2) Limits on the species that should be authorized for use in abatement activities.

(3) Limits on the numbers of raptors that should be authorized for use in abatement activities.

(4) Qualifications and experience of subpermittees (both those authorized to fly the permit holder's raptors and those allowed to care for birds).

(5) Caging requirements for birds, while traveling, being transported and held in "temporary" caging for extended periods of time, i.e., multiple birds held in a trailer while conducting seasonal abatement activities at multiple locations.

(6) The use of falconry birds held by subpermittees for abatement.

(7) Any other considerations relating to subpermittees conducting abatement

activities under a permit holder's permit, including their business relationship to the permit holder. For example, should falconers located elsewhere in the United States be allowed to conduct abatement activities in their own locale as subpermittees under a permit holder's abatement permit? Why or why not?

(8) Comments on what has worked well under existing permits and what has not worked well.

(9) Report information that should be required from a permit holder, if any.

(10) Other conditions that should apply to these permits.

(11) Examples of situations where raptors are used for abatement and information or documentation of success or lack of success in accomplishing abatement objectives.

**Authority:** The authorities for this notice are the Migratory Bird Treaty Act, 40 Stat. 755 (16 U.S.C. 703-712); Pub. L. 95-616, 92 Stat. 3112 (16 U.S.C. 712(2)); Pub. L. 106-108, 113 Stat. 1491, and Note Following 16 U.S.C. 703.

Dated: June 27, 2011.

**Rachel Jacobson,**  
*Acting Assistant Secretary for Fish and Wildlife and Parks.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 100903433-1349-01]

RIN 0648-BA22

#### Fisheries of the Northeastern United States; Atlantic Deep-Sea Red Crab Fishery; Amendment 3

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

**ACTION:** Proposed rule; request for comments.

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**SUMMARY:** NMFS proposes regulations to implement Amendment 3 to the Atlantic Deep-Sea Red Crab Fishery Management Plan (Red Crab FMP). The New England Fishery Management Council (Council) developed Amendment 3 to bring the Red Crab FMP into compliance with the annual catch limit (ACL) and accountability measure (AM) requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Although

recommended by the Council as part of Amendment 3, this proposed rule announces NMFS' intention to disapprove a proposed measure to modify the existing trap restrictions and a proposed measure to remove the prohibition on landing more than one standard tote of female red crabs.

**DATES:** Written comments must be received no later than 5 p.m. eastern standard time, on August 5, 2011.

**ADDRESSES:** An environmental assessment (EA) was prepared for Amendment 3 that describes the proposed action and other considered alternatives, and provides an analysis of the impacts of the proposed measures and alternatives. Copies of Amendment 3, including the EA and the Initial Regulatory Flexibility Analysis (IRFA), are available on request from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950. These documents are also available online at <http://www.nefmc.org>.

You may submit comments, identified by RIN 0648-BA22, by any one of the following methods:

- **Electronic Submissions:** Submit all electronic public comments via the Federal eRulemaking Portal: <http://www.regulations.gov>.
- **Fax:** (978) 281-9135, Attn: Moira Kelly.
- **Mail:** Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on Red Crab Amendment 3 Proposed Rule."

**Instructions:** All comments received are 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). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

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

**SUPPLEMENTARY INFORMATION:**

## Background

The Council developed Amendment 3 with the primary goal of bringing the Red Crab FMP into compliance with the requirements of the reauthorized Magnuson-Stevens Act that FMPs include ACLs and AMs. The Red Crab FMP was implemented in October 2002. Since implementation, the red crab fishery has been managed under a target TAC and DAS system that allocated DAS equally across the fleet of limited access permitted vessels. The fleet DAS allocation was calculated by determining how many DAS would be required to reach the target TAC based on recent average landings-per-DAS by the active vessels. The FY 2010 target TAC was 3.91 million lb and fleet DAS allocation was 665 DAS. The FY 2010 specifications will remain in place until replaced by the proposed specifications in Amendment 3, if approved.

## Proposed Management Measures

### 1. Biological and Management Reference Points

The biological and management reference points currently in the Red Crab FMP are used to determine if overfishing is occurring or if the stock is overfished. However, these reference points for red crab are currently not sufficient to comply with the Magnuson-Stevens Act and the National Standard 1 (NS1) guidelines. As a result, the Council intended to establish new estimates for maximum sustainable yield (MSY), optimum yield (OY), overfishing limit (OFL), and acceptable biological catch (ABC) for red crab. However, there is still insufficient information on the species to establish the MSY, OY, or OFL, and ABC is defined in terms of landings instead of total catch (*i.e.*, landings plus dead discards).

MSY is defined under the Magnuson-Stevens Act as "the largest long-term average catch or yield that can be taken from a stock or stock complex under prevailing ecological, environmental conditions and fishery technological characteristics (*e.g.*, gear selectivity), and the distribution of catch among fleets." However, the Council's Scientific and Statistical Committee (SSC) determined that the model results from the December 2008 Data Poor Stocks Working Group (DPSWG) are an underestimate of MSY for red crab, but could not determine by how much, and so the SSC did not recommend an estimate of MSY. As a result, the MSY estimated in the FMP was rejected, but a new estimate could not be determined. Because the SSC could not determine

MSY, a new value for OY could not be developed.

The OFL is an estimate of the catch level above which overfishing is occurring, but based on the available information, the SSC determined that an OFL could not be estimated for the red crab fishery at this time.

ABC is defined under the Magnuson-Stevens Act as "a level of stock or stock complex's annual catch that accounts for the scientific uncertainty in the estimate of OFL and any other scientific uncertainty, and should be specified based on the ABC control rule." The NS1 guidelines further state that "ABC may not exceed OFL," and that "the determination of ABC should be based, when possible, on the probability that an actual catch equal to a stock's ABC would result in overfishing." These guidelines also require that the Council's ABC control rule be based on scientific advice provided by its SSC and that the SSC recommend the ABC to the Council.

At its March 16, 2010, meeting, the SSC determined that the available information for red crab provided an insufficient basis on which to recommend an ABC control rule, and that "an interim ABC based on long-term average landings is safely below an overfishing threshold and adequately accounts for scientific uncertainty." The SSC reviewed information on historical dead discards of red crab in the directed trap fishery and in bycatch fisheries at its June 22, 2010, meeting in an effort to recommend an ABC that includes both landings and dead discards. However, the SSC determined that there was insufficient information to specify dead discards, but that the long-term average landings, and the presumed discarding practices associated with those landings, were sustainable, and maintained its recommendation of specifying the interim red crab ABC in terms of landings only. Based on this approach, the long-term average landings for 1974-2008 result in an ABC of 3.91 million lb (1,775 mt), represented in terms of commercial landings.

### 2. ACL

Under section 303(a)(15) of the Magnuson-Stevens Act, any FMP must establish a mechanism for specifying ACLs at a level that prevents overfishing. The NS1 guidelines further state that the ACL for a given stock or stock complex cannot exceed the ABC, that it serves as the basis for invoking AMs, and that ACLs in coordination with AMs must prevent overfishing. Based on the requirements of the Magnuson-Stevens Act and the NS1

guidelines with respect to ACLs and AMs, Amendment 3 proposes that the ACL for red crab be set equal to the ABC, because scientific uncertainty has been accounted for in establishing the ABC. This rule also proposes to set the ACL equal to the total allowable landings (TAL) for FYs 2011–2013, because the management uncertainty in the red crab fishery is minimal and the SSC determined that there was insufficient information to specify dead discards.

3. *Accountability Measures*

The NS1 guidelines describe AMs as management controls aimed at preventing the ACL from being exceeded, and to correct or mitigate overages of the ACL. The Council proposes both proactive and reactive AMs for the red crab fishery in Amendment 3. The proactive AM would grant the Regional Administrator the authority to close the red crab fishery when the TAL is projected to be harvested. The reactive AM would be a pound-for-pound payback of any overage, should the TAL be exceeded. In any year in which the ACL and TAL are not equal, if any overage of the ACL is not accounted for through the AM that applies to an overage of the TAL (e.g., higher than expected discards, or an unexpected increase in incidental landings by vessels with open access red crab permits), then the unaccounted-for amount by which the ACL was exceeded will be deducted from the subsequent single fishing year's ACL.

4. *FYs 2011–2013 Specifications*

The Council proposes the following specifications for red crab for FYs 2011–2013:

	mt	Million lb
MSY .....	undetermined	
OFL .....	undetermined	
OY .....	undetermined	
ABC .....	1,775 .....	3.91
ACL .....	1,775 .....	3.91
TAL .....	1,775 .....	3.91

5. *TAL; Eliminate DAS*

This measure would replace the DAS and target TAC management scheme with a TAL. The Council intends this measure to work in conjunction with the in-season closure authority AM, which would grant the Regional Administrator the authority to close the fishery when the TAL is project to be harvested. This measure is being proposed to simplify the management measures for red crab, provide increased

flexibility to the red crab fleet, and ensure more accurate accounting of the catch limits.

6. *Eliminate Trip Limits*

Red crab vessels qualified for a trip limit during the initial limited access qualification process. The FMP originally specified a trip limit of 75,000 lb (34,019 kg), unless a vessel owner could demonstrate he or she landed more than 75,000 lb (34,019 kg) on a trip during the qualification period, in which case the owner was granted a trip limit equal to that higher level, rounded to the nearest 5,000 lb (2,268 kg). Only one vessel qualified under that provision, and it has operated with a trip limit of 125,000 lb (56,699 kg) since 2002. The proposed rule would eliminate these trip limits to simplify the management measures for red crab and provide increased flexibility to the red crab fleet.

7. *Modify Trap Limit Regulations*

The current trap limit regulations state that red crab may not be harvested from gear other than a marked red crab trap; no more than 600 traps may be used when fishing for red crab; and lobster, red crab, or fish may not be harvested from a parlor trap while on a red crab DAS. The proposed measure would modify the regulation to prohibit more than 600 traps being deployed in water deeper than 400 m; prohibit a limited access red crab vessel from harvesting red crab in water shallower than 400 m; and prohibit parlor traps from being deployed at water shallower than 400 m. This measure was proposed by the Council to allow red crab vessels that also fish for lobster to do so on the same trip. However, the proposed modifications may be unenforceable. They would require an enforcement agent to witness the deployment of traps beyond the recommended depth range and/or witness the at-sea retrieval of the traps to determine compliance with the regulations. As this is not practical, NMFS proposes to disapprove this measure because of the inability to effectively enforce these regulations.

8. *Remove Prohibition on Landing Female Red Crab*

The Council has also proposed a measure that would remove the current prohibition on landing more than one standard tote (100 lb (45.4 kg)) of female red crab, conditional on a scientific recommendation from the SSC. The Council proposed this measure to allow the future expansion of the fishery to include female red crab. However, NMFS considers this proposal to be administratively unnecessary and

inconsistent with the best available science.

Administratively, modifying the regulations to allow landing female red crabs could be done through a framework adjustment, as specified in the FMP, and the analytical requirements to implement such a change to the male-only fishery would be the same with or without the approval of this measure. Amendment 3 did not recommend any specific management measures or monitoring protocol that would potentially need to be implemented in conjunction with implementing this change.

Scientifically, the SSC determined that at this time there is insufficient scientific information available to make any determination as to the potential impact on red crab of landing more than an incidental amount of female red crab. Further, analysis of the impacts of landing female red crabs was not included in the FMP and none is included in Amendment 3. If sufficient scientific information becomes available, and the Council determines it is interested in removing this prohibition once specific management measures to accommodate this change are developed, additional Council action and analysis would be required, regardless of whether this measure is implemented in Amendment 3. Therefore, NMFS proposes to disapprove this measure. NMFS seeks comments on all of the proposed measures in Amendment 3, as well as on its intention to disapprove two of the Council's proposed measures.

As required under section 303(c) of the Magnuson-Stevens Act, the Council reviewed the draft regulations and deemed them necessary and appropriate for implementation of Amendment 3. Technical changes to the regulations deemed necessary by the Secretary for clarity may be made, as provided under section 304(b) of the Magnuson-Stevens Act.

**Classification**

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Red Crab FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

The Office of Management and Budget has determined that this proposed rule is not significant for the purposes of Executive Order 12866.

The Council prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act (RFA),

included in Amendment 3 and supplemented by information contained in the preamble to this proposed rule. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section of the preamble and in the SUMMARY of this proposed rule. A summary of the IRFA follows. A copy of this analysis is available from the Council (see ADDRESSES).

All of the entities (fishing vessels) affected by this action are considered small entities under the Small Business Administration size standards for small fishing businesses (i.e., they have less than \$4.0 million in annual gross sales). Therefore, there are no disproportionate effects on small versus large entities.

This action does not introduce any new reporting, recordkeeping, or other compliance requirements. This proposed rule does not duplicate, overlap, or conflict with other Federal rules.

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

The participants in the commercial red crab fishery were defined as those vessels issued limited access red crab permits. Although some firms own more than one vessel, available data make it difficult to reliably identify ownership control over more than one vessel. As of December 2011, there were four vessels with limited access red crab permits actively operating in the red crab fishery. For this analysis, the number of permitted vessels is considered to be a maximum estimate of the number of small business entities. The total value of landings in the red crab fishery averaged \$3.44 million, so all business entities in the harvesting sector can be categorized as small businesses for purpose of the RFA, even if the assumption overstates the number of business entities.

*Economic Impacts of the Proposed Action Compared to Significant Non-Selected Alternatives*

The proposed action will affect all four active vessels in the directed red crab fishery. However, it is not expected to have any impact on the gross or average revenues for the fishery because it does not change the total allowable landings level for red crab from the FY 2010 level of 3.913 million lb (1,775 mt). This harvest level is substantially higher than the average landings in recent years (2.588 million lb (1,174 mt) from FY 2007–2009), and is not

expected to constrain landings unless markets for red crab substantially improve or major new markets develop. The FY 2007–2009 landings were low due to market conditions, and were not constrained by the total catch limit during 2007–2009.

Information on costs in the fishery is not readily available and individual vessel profitability cannot be determined directly; therefore, expected changes in gross revenues were used as a proxy for profitability. For the four participating vessels in 2009, average total sales were \$534,602 per vessel. Because the proposed action would not directly constrain the gross revenues per vessel, it would not directly affect the profits of individual vessels, and, therefore, it is not necessary to analyze impacts according to the dependence of each vessel in the red crab fishery.

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

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: June 29, 2011.

**John Oliver,**

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

For the reasons stated in the preamble, 50 CFR part 648 is proposed to be 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 § 648.2, the definition for “Day(s)-at-Sea” is revised, and the definition for “Red crab trip” is added, in alphabetical order, to read as follows:

**§ 648.2 Definitions.**

\* \* \* \* \*

*Day(s)-at-Sea* (DAS), with respect to the NE multispecies and monkfish fisheries (except as described in § 648.82(k)(1)(iv)), and the Atlantic sea scallop fishery, means the 24-hr 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, or scallops.

\* \* \* \* \*

*Red crab trip*, with respect to the Atlantic deep-sea red crab fishery, means a trip on which a vessel fishes for, possesses, or lands, or intends to fish for, possess, or land red crab in excess of the incidental limit, as specified at § 648.263(b)(1).

3. In § 648.4, paragraphs (a)(13)(i)(E)(3), (a)(13)(i)(M), and

(a)(13)(i)(N) are removed; and paragraphs (a)(13)(i)(A) and (B) are revised to read as follows:

**§ 648.4 Vessel permits.**

(a) \* \* \*  
(13) \* \* \*

(i) *Limited access red crab permit—*  
(A) *Eligibility.* Any vessel of the United States that possesses or lands more than the incidental amount of red crab, as specified in § 648.263(b), per red crab trip must have been issued and carry on board a valid limited access red crab permit.

(B) *Application/renewal restrictions.* The provisions of paragraph (a)(1)(i)(B) of this section apply.

\* \* \* \* \*

**§ 648.7 [Amended]**

4. In § 648.7, paragraph (b)(2)(iii) is removed.

5. In § 648.10, paragraphs (h) introductory text, (h)(4), and (h)(8) are revised to read as follows:

**§ 648.10 VMS and DAS requirements for vessel owners/operators.**

\* \* \* \* \*

(h) *Call-in notification.* The owner of a vessel issued a limited access monkfish permit who is participating in a DAS program and who is not required to provide notification using a VMS, and a scallop vessel qualifying for a DAS allocation under the occasional category that has not elected to fish under the VMS notification requirements of paragraph (e) of this section and is not participating in the Sea Scallop Area Access program as specified in § 648.60, and any vessel that may be required by the Regional Administrator to use the call-in program under paragraph (i) of this section, are subject to the following requirements:

\* \* \* \* \*

(4) The vessel’s confirmation numbers for the current and immediately prior NE multispecies or monkfish fishing trip must be maintained on board the vessel and provided to an authorized officer immediately upon request.

\* \* \* \* \*

(8) Any vessel that possesses or lands per trip more than 400 lb (181 kg) of scallops; any vessel issued a limited access NE multispecies permit subject to the NE multispecies DAS program requirements that possesses or lands regulated NE multispecies, except as provided in §§ 648.10(h)(9)(ii), 648.17, and 648.89; and any vessel issued a limited access monkfish permit subject to the monkfish DAS program and call-in requirement that possess or lands monkfish above the incidental catch trip limits specified in § 648.94(c) shall be

deemed to be in its respective DAS program for purposes of counting DAS and will be charged DAS from its time of sailing to landing, regardless of whether the vessel's owner or authorized representative provides adequate notification as required by paragraphs (e) through (h) of this section.

\* \* \* \* \*

6. In § 648.14, paragraphs (t)(2)(iii) and (t)(3)(iv) are added; paragraphs (t)(2)(ii) and (t)(4) through (6) are revised; and paragraph (t)(7) is removed to read as follows:

**§ 648.14 Prohibitions.**

\* \* \* \* \*

(t) \* \* \*

(2) \* \* \*

(ii) *Restriction on female red crabs.*

Fish for, catch, possess, transport, land, sell, trade, or barter; or attempt to fish for, catch, possess, transport, land, sell, trade, or barter; female red crabs in excess of one standard U.S. fish tote in a fishing year in which female red crabs were not specified in the ABC and authorized to be landed.

(iii) Fish for, possess, or land red crab, in excess of the incidental limit specified at § 648.263(b)(1), after determination that the TAL has been reached and notice of the closure date has been made.

\* \* \* \* \*

(3) \* \* \*

(iv) Purchase or otherwise receive for a commercial purpose in excess of the incidental limit specified at § 648.263(b)(1), after determination that the TAL has been reached and notice of the closure date has been made.

(4) *Prohibitions on processing and mutilation.* (i) Retain, possess, or land red crab claws and legs separate from crab bodies in excess of one standard U.S. fish tote, if fishing on a red crab trip with a valid Federal limited access red crab permit.

(ii) Retain, possess, or land any red crab claws and legs separate from crab bodies if the vessel has not been issued a valid Federal limited access red crab permit or has been issued a valid Federal limited access red crab permit, but is not fishing on a dedicated red crab trip.

(iii) Retain, possess, or land more than two claws and eight legs per crab if the vessel has been issued a valid Federal red crab incidental catch permit, or has been issued a valid Federal limited access red crab permit and is not fishing on a dedicated red crab trip.

(iv) Possess or land red crabs that have been fully processed at sea, *i.e.*, engage in any activity that removes meat

from any part of a red crab, unless a preponderance of available evidence shows that the vessel fished exclusively in state waters and was not issued a valid Federal permit.

(5) *Gear requirements.* Fail to comply with any gear requirements or restrictions specified at § 648.264.

(6) *Presumption.* For purposes of this part, the following presumption applies: 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.

\* \* \* \* \*

7. Section 648.260 is revised to read as follows:

**§ 648.260 Specifications.**

(a) *Annual review and specifications process.* The Council, the Red Crab Plan Development Team (PDT), and the Red Crab Advisory Panel shall monitor the status of the red crab fishery and resource.

(1) The Red Crab PDT shall meet at least once annually during the intervening years between Stock Assessment and Fishery Evaluation (SAFE) Reports, described in paragraph (b) of this section, 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 year(s) need to be modified. At a minimum, this review shall include a review of at least the following data, if available: Commercial catch data; current estimates of fishing mortality and catch-per-unit-effort (CPUE); discards; 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.

(2) If new and/or additional information becomes available, the Red Crab PDT shall consider it during this annual review. Based on this review, the Red Crab PDT shall provide guidance to the Red Crab Committee and the Council regarding the need to adjust measures in the Red Crab FMP to better achieve the FMP's objectives. After

considering guidance, the Council may submit to NMFS its recommendations for changes to management measures, as appropriate, through the specifications process described in this section, the framework process specified in § 648.261, or through an amendment to the FMP.

(3) Based on the annual review, described above, and/or the SAFE Report described in paragraph (b) of this section, recommendations for acceptable biological catch (ABC) from the Scientific and Statistical Committee (SSC), and any other relevant information, the Red Crab PDT shall recommend to the Red Crab Committee and Council the following specifications for harvest of red crab: An annual catch limit (ACL) set less than or equal to ABC, and total allowable landings (TAL) necessary to meet the objectives of the FMP in each red crab fishing year, specified for a period of up to 3 fishing years.

(4) 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.

(5) Taking into account the annual review and/or SAFE Report described in paragraph (b) of this section, the advice of the SSC, and any other relevant information, the Red Crab PDT may also recommend to the Red Crab Committee and Council changes to stock status determination criteria and associated thresholds based on the best scientific information available, including information from peer-reviewed stock assessments of red crab. These adjustments may be included in the Council's specifications for the red crab fishery.

(6) *Council recommendation*—(i) The Council shall review the recommendations of the Red Crab PDT, Red Crab Committee, and SSC, any public comment received thereon, and any other relevant information, and make a recommendation to the Regional Administrator on appropriate specifications and any measures necessary to assure that the specifications will not be exceeded.

(ii) The Council's recommendation must include supporting documentation, as appropriate, concerning the environmental, economic, and social impacts of the recommendations. The Regional Administrator shall consider the recommendations and publish a rule in the **Federal Register** proposing specifications and associated measures,

consistent with the Administrative Procedure Act.

(iii) The Regional Administrator may propose specifications different than those recommended by the Council. If the specifications published in the **Federal Register** differ from those recommended by the Council, the reasons for any differences must be clearly stated and the revised specifications must satisfy the criteria set forth in this section, the FMP, and other applicable laws.

(iv) If the final specifications are not published in the **Federal Register** for the start of the fishing year, the previous year's specifications shall remain in effect until superseded by the final rule implementing the current year's specifications, to ensure that there is no lapse in regulations while new specifications are completed.

(b) **SAFE Report.** (1) The Red Crab PDT shall prepare a SAFE Report at least every 3 yr. Based on the SAFE Report, the Red Crab PDT shall develop and present to the Council recommended specifications as defined in paragraph (a) of this section for up to 3 fishing years. The SAFE Report shall be the primary vehicle for the presentation of all updated biological and socio-economic information regarding the red crab fishery. The SAFE Report shall provide source data for any adjustments to the management measures that may be needed to continue to meet the goals and objectives of the FMP.

(2) In any year in which a SAFE Report is not completed by the Red Crab PDT, the annual review process described in paragraph (a) of this section shall be used to recommend any necessary adjustments to specifications and/or management measures in the FMP.

8. Section 648.262 is revised to read as follows:

**§ 648.262 Accountability measures for red crab limited access vessels.**

(a) **Closure authority.** NMFS shall close the EEZ to fishing for red crab in excess of the incidental limit by commercial vessels for the remainder of the fishing year if the Regional Administrator determines that the TAL has been harvested. Upon notification of the closure, a vessel issued a limited access red crab permit may not fish for, catch, possess, transport, land, sell, trade, or barter, in excess of 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.

(b) **Adjustment for an overage.** (1) If NMFS determines that the TAL was exceeded in a given fishing year, the exact amount of the landings overage will be deducted, as soon as is practicable, from a subsequent single fishing year's TAL, through notification consistent with the Administrative Procedure Act.

(2) If NMFS determines that the ACL was exceeded in a given fishing year, the exact amount of an overage that was not already deducted from the TAL under paragraph (b)(i) of this section will be deducted, as soon as is practicable, from a subsequent single fishing year's TAL, through notification consistent with the Administrative Procedure Act.

9. In § 648.263, paragraph (a)(1) is removed and reserved, and paragraphs (a)(3), (a)(5), and (b)(1) are revised to read as follows:

**§ 648.263 Red crab possession and landing restrictions.**

(a) \* \* \*

(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 on a dedicated red crab trip, unless the Council has recommended, and NMFS has implemented, an ACL and specifications, based on a recommendation from the SSC and the procedures specified in § 648.260, that authorizes the landings of female red crabs for a given fishing year.

\* \* \* \* \*

(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 on a dedicated red crab trip.

(b) \* \* \*

(1) **Possession and landing restrictions.** A vessel or operator of a vessel that has been issued a red crab incidental catch permit, or a vessel issued a limited access red crab permit not on a dedicated red crab trip, as defined in § 648.2, 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.

\* \* \* \* \*

10. In § 648.264, paragraphs (a)(1), (a)(2), (a)(3), and (a)(6) are revised to read as follows:

**§ 648.264 Gear requirements/restrictions.**

(a) \* \* \*

(1) Limited access red crab vessel may not harvest red crab from any fishing gear other than red crab traps/pots, marked as specified by paragraph (a)(5) of this section.

(2) Limited access red crab vessels may not deploy more than 600 traps/pots in water depths greater than 400 m (219 fath), and may not harvest red crab in water depths less than 400 m (219 fath).

(3) **Parlor traps/pots.** Limited access red crab vessels may not deploy parlor traps/pots in water depths greater than 400 meters (219 fathoms).

\* \* \* \* \*

(6) **Additional gear requirements.** Vessels must comply with the gear regulations found at § 229.32 of this title.

\* \* \* \* \*

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

**RIN 0648-AX05**

**Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Amendment 11**

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

**ACTION:** Announcement of availability of fishery management plan amendment; request for comments.

**SUMMARY:** NMFS announces that the Mid-Atlantic Fishery Management Council (Council) has submitted Amendment 11 to the Atlantic Mackerel, Squid, and Butterfish (MSB) Fishery Management Plan (FMP) (Amendment 11), incorporating the Final Environmental Impact Statement (FEIS) and the Initial Regulatory Flexibility Analysis (IRFA), for review by the Secretary of Commerce and is requesting comments from the public.

**DATES:** Comments must be received on or before September 6, 2011.

**ADDRESSES:** A final environmental impact statement (FEIS) was prepared for Amendment 11 that describes the proposed action and other considered alternatives and provides a thorough analysis of the impacts of the proposed