

a tariff containing rates and regulations applicable to the portion or through service it furnishes in conjunction with another subject carrier.

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[FR Doc. 2011-25201 Filed 9-28-11; 8:45 am]

BILLING CODE 1505-01-D

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 32

#### Hunting and Fishing

##### *CFR Correction*

In Title 50 of the Code of Federal Regulations, Parts 18 to 199, revised as of October 1, 2010, on page 448, in § 32.60, in the Ernest F. Hollings ACE Basin National Wildlife Refuge, reinstate paragraph D, to read as follows:

#### § 32.60 South Carolina.

\* \* \* \* \*

#### Ernest F. Hollings ACE Basin National Wildlife Refuge

\* \* \* \* \*

■ *D. Sport Fishing.* We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

- 1. We allow fishing in impounded waters contained within dikes and levees in the Beaufort County portion of the refuge annually from April 1 through August 31 during daylight hours. We close fishing during all remaining times within all refuge-impounded waters.
- 2. We prohibit boat use within refuge-impounded waters. We only allow bank fishing.
- 3. We only allow hook and line sport fishing utilizing rod and reel or pole.
- 4. We only open access into refuge areas to fishing by foot or bicycle.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 100903433-1531-02]

RIN 0648-BA22

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

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

**ACTION:** Final rule.

**SUMMARY:** This final rule implements measures that were approved in Amendment 3 to the Atlantic Deep-Sea Red Crab Fishery Management Plan (FMP). The New England Fishery Management Council (Council) developed Amendment 3 to bring the 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). This rule establishes the mechanisms for specifying an ACL and AMs and sets the total allowable landings (TAL) for red crab for the 2011-2013 fishing years (FY). NMFS disapproved two proposed measures in Amendment 3. This final rule implements additional management measures to promote efficiency in the red crab fishery.

**DATES:** This rule is effective September 29, 2011.

**ADDRESSES:** An environmental assessment (EA) was prepared for Amendment 3 that describes the proposed action and other considered alternatives, and provides a thorough 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>.

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

#### SUPPLEMENTARY INFORMATION:

##### Background

This final rule implements approved measures in Amendment 3, which was

partially approved by NMFS on behalf of the Secretary of Commerce (Secretary). A proposed rule to implement the measures in Amendment 3 published in the **Federal Register** on July 6, 2011 (76 FR 39369), with public comments accepted through August 5, 2011. Details concerning the development of Amendment 3 were contained in the preamble of the proposed rule and are not repeated here. A Notice of Availability (NOA) for Amendment 3 was published in the **Federal Register** on June 22, 2011 (76 FR 36511), with public comments accepted through August 22, 2011.

Amendment 3 was initiated to bring the Red Crab FMP into compliance with the Magnuson-Stevens Act and establish a framework for an ACL and AMs. Red crab is a data-poor stock and, in the absence of better scientific information, the SSC recommended setting the acceptable biological catch (ABC) equal to the long-term (1974-2008) average landings of the directed red crab fishery (3.91 million lb; 1,774 mt). The SSC determined that the results from the December 2008 Data Poor Stocks Working Group were an underestimate of the maximum sustainable yield (MSY) for red crab, but could not determine by how much, so the SSC did not recommend an estimate of MSY. As a result, the MSY estimate in the FMP was rejected, but a new estimate could not be determined. Because the SSC could not determine MSY, a new value for optimum yield (OY) could not be developed. The overfishing limit (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. The SSC concluded that scientific uncertainty is accounted for by using the precautionary approach of the status quo, so setting ACL equal to ABC is appropriate. The SSC also concluded that the undeterminable level of discards associated with the long-term average landings is sustainable, and that setting the TAL equal to ACL is also appropriate.

#### Disapproved Measures

##### 1. Modification to Trap Limit Restrictions

Changing the trap limit regulations to depth-based trap limits as proposed by the Council would be unenforceable and inconsistent with the policy of the Magnuson-Stevens Act that the management program be based on the Federal capabilities in carrying out enforcement (Magnuson-Stevens Act section 2(c)(3)). Depth-based provisions

are impractical for enforcement because the enforcement agent would have to witness the deployment of traps beyond the regulated depth range and/or witness the at-sea retrieval of the traps to determine compliance.

**2. Prohibition on Landing Female Red Crab**

Removing the prohibition on landing female red crabs, contingent upon a recommendation from the SSC, would be inconsistent with National Standard 2 of the Magnuson-Stevens Act and administratively confusing. The SSC determined that there were insufficient data to support removing the existing prohibition at this time and, because all of the catch recommendations were based on the long-term average landings of the male-only directed fishery, the SSC recommended the status quo as a sustainable approach. Amendment 3 proposed to remove the prohibition on landing female red crab only if the SSC approved a landing limit; however, the amendment did not specify how NMFS should implement and monitor a mixed-sex fishery. In addition, a framework adjustment would be necessary to implement management measures, including the ACL framework, for allowing the landing of female red crab regardless of the approval of this measure in Amendment 3.

**Approved 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 are 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 MSY, OY, OFL, and ABC for red crab. However, MSY, OY, and OFL could not be estimated with the available information, and ABC is defined in terms of landings instead of total catch (i.e., the red crab ABC does not include dead discards).

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.

The SSC, at its March 16, 2010, meeting, 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. 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**

The Magnuson-Stevens Act, under section 303(a)(15), requires that any FMP 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 establishes an ACL for red crab that is equal to the ABC. Amendment 3 also sets the TAL equal to the ACL 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. Amendment 3 implements both proactive and reactive AMs for the red crab fishery. The proactive AM grants the NMFS Regional Administrator the authority to close the red crab fishery when the TAL is projected to be harvested. The reactive AM is 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 the ACL is exceeded, the amount of that overage not already deducted from the TAL (e.g., higher than expected discards, or an unexpected increase in incidental landings by vessels with open access red crab permits) will be deducted from the subsequent single fishing year’s ACL.

**4. FYs 2011–2013 Specifications**

The following specifications will be in effect for FYs 2011–2013:

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

**5. TAL; Eliminate DAS**

This measure replaces the DAS and target TAC management program with a TAL. This simplifies the management measures for red crab, provides increased flexibility to the red crab fleet, and ensures more accurate accounting of the catch limits and monitoring of the catch.

**6. Eliminate Trip Limits**

Red crab vessels qualified for a trip limit during the initial limited access qualification process. The FMP 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 and was granted a trip limit equal to that higher level, rounded to the nearest 5,000 lb (2,268 kg). One vessel qualified under that provision, and has operated with a trip limit of 125,000 lb (56,699 kg) since 2002. Amendment 3 eliminates these trip limits to simplify the management measures for red crab and to provide increased flexibility to the red crab fleet.

**Comments and Responses**

Two comments were received on the proposed rule and the amendment. One comment was received on the NOA, from the National Park Service, stating no objection to Amendment 3. One comment was received on the proposed

rule from an individual recommending that NMFS cut all quotas, including the red crab quota, by 50 percent. Amendment 3 proposed, and this final rule implements, a catch level consistent with the best available scientific information, as recommended by the SSC.

### Classification

The Administrator, Northeast Region, NMFS, determined that Amendment 3 is necessary for the conservation and management of the red crab fishery and 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.

Pursuant to 5 U.S.C. 553(d)(1), NMFS finds good cause to waive the 30-day delayed effectiveness provision of the APA because any delay in effectiveness is unnecessary. This action implements a TAL that is equal to the target TAC that the fishery is currently operating under for FY 2011, establishes AMs that would not be implemented unless the TAL is exceeded, and removes the DAS program and trip limits for the limited access red crab fleet. The purpose of the delay in effectiveness is to allow affected parties time to modify their behaviors, businesses, or practices to come into compliance with new regulations. This rule imposes no additional requirements on the affected entities. It retains the current TAL for the red crab fishery, and removes the DAS and trip limit restrictions; thus, implementing this rule will not affect the day-to-day operations of the fleet. In fact, removing the DAS and trip limit restrictions will allow the red crab fleet to fish more efficiently and provides flexibility to vessel owners. The AM to close the directed fishery will not necessarily impact the fishery, because the AM will only be implemented if TAL is exceeded prior to the end of the FY, which may not occur. Because implementing the rule upon publication will not require any change in fishery practices, nor will it cause a fishery participant to be in violation of a new regulation, delaying the rule's effectiveness for thirty days is unnecessary.

Moreover, waiving the delayed effectiveness of this rule is in the public interest. Currently, five vessels divide equally the total number of DAS, even though only four vessels are fishing. The fleet had anticipated that Amendment 3 would be effective at an earlier date, and did not exercise its ability to "opt out" the one permit that does not fish last fall, which would have reallocated the fleet DAS between four vessels instead

of five. Thus, each vessel has a lower allocation of red crab DAS than they would have had they opted out one permit. In addition, one of the vessels is nearing the end of its DAS allocation and would have to stop fishing until this rule is implemented. Finally, this rule will increase the fleet's flexibility and ability to take the entire fishing quota, which is the purpose of the rule. Currently, the fleet is half-way through the fishing year, but only 40% through the quota. If this rule is not implemented upon publication, the purpose of the rule may be undermined.

Accordingly, the delay in effectiveness is unnecessary and contrary to the public's interest, and is hereby waived.

The Council prepared an EA for Amendment 3. Based on the analysis in the EA, the AA concluded that there will be no significant impact on the human environment as a result of this rule. A copy of the EA is available from the Council (see **ADDRESSES**).

NMFS, pursuant to section 604 of the Regulatory Flexibility Act (RFA), has prepared a FRFA in support of Amendment 3. The FRFA incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, NMFS' responses to those comments, relevant analyses in the Amendment and its EA, and a summary of the analyses completed to support the action implemented through this rule. A copy of the analyses done in the Amendment and EA is available from the Council (see **ADDRESSES**). A summary of the IRFA was published in the proposed rule for this action and is not repeated here. A description of why this action was considered, the objectives of, and the legal basis for this rule is contained in the preamble to the proposed rule and this final rule and is not repeated here.

#### *A Summary of the Significant Issues Raised by the Public in Response to the IRFA, a Summary of the Agency's Assessment of Such Issues, and a Statement of Any Changes Made in the Proposed Rule as a Result of Such Comments*

Two comments were received on the proposed rule and the amendment. However, neither of these comments were specific to the IRFA or economic analysis contained in Amendment 3.

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

The Small Business Administration (SBA) considers commercial fishing entities (NAICS code 114111) to be small entities if they have no more than

\$4 million in annual sales, while the size standard for charter/party operators (part of NAICS cod 487210) is \$7 million in sales. The participants in the commercial red crab fishery are 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. For this analysis, the number of permitted vessels is considered to be a maximum estimate of the number of small business entities. However, 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. For the reasons above, all vessels with limited access permits would be considered small business entities that would be affected by the proposed action. As of September 2011, there were four vessels with limited access red crab permits actively operating in the red crab fishery.

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

There are no compliance requirements associated with this final rule implementing Amendment 3.

This final rule does not duplicate, overlap, or conflict with other Federal rules.

#### *Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes*

All of the management measures in Amendment 3 that were approved by NMFS provide for increased flexibility and promote efficiency within the fishery. This action implements a measure that eliminates the DAS requirements, which provides for increased flexibility for vessel owners to fish without concern for their DAS clock. Amendment 3 also removes the commercial trip limit, which eliminates regulatory discards and promotes efficiency. Therefore, by implementing management measures that increase flexibility and efficiency and reduce waste, NMFS has taken the steps necessary to minimize the impacts of this action on small entities consistent with the stated objectives of applicable statutes.

#### **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 small entity compliance guide (the guide) was prepared. Copies of this final rule are available from the Northeast Regional Office, and the guide, i.e., permit holder letter, will be sent to all holders of permits for the red crab fishery. The guide and this final rule will be available upon request, and posted on the Northeast Regional Office's Web site at <http://www.nero.noaa.gov>.

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

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: September 23, 2011.

**Samuel D. Rauch III,**

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

For the reasons set out 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 § 648.2, 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 issued a limited access scallop permit and not issued an LAGC scallop permit that possesses or lands scallops; any vessel issued a limited access scallop and LAGC IFQ scallop permit that possesses or lands more than 600 lb (272.2 kg) of scallops; any vessel issued a limited access scallop and LAGC NGOM scallop permit that possesses or lands more than 200 lb (90.7 kg) of scallops; any vessel issued a limited access scallop and LAGC IC

scallop permit that possesses or lands more than 40 lb (18.1 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)(4) through (6) are revised; and paragraph (t)(7) is removed to read as follows:

**§ 648.14 Prohibitions.**

\* \* \* \* \*

(t) \* \* \*

(2) \* \* \*

(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)(5) and (b)(1) are revised to read as follows:

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

(a) \* \* \*

(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, paragraph (a)(1) is 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.

\* \* \* \* \*

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