

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

[Docket No. 010413094-1178-02; I.D. 060701A]

RIN 0648-AP10

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Atlantic Deep-Sea Red Crab Fishery

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

ACTION: Interim final rule; request for comments.

SUMMARY: NMFS issues this interim final rule to amend regulations implemented through emergency interim rule for the Atlantic deep-sea red crab (*Chaceon quinquedens*) (red crab) fishery. This interim final rule revises the conversion factor for determining equivalent live weight of landings where red crab are landed in a butchered state. The intent of this interim final rule is to allow vessels that butcher at sea to land a true live weight equivalent trip limit, currently set at 65,000 pounds (29.5 metric tons (mt)).

DATES: Effective July 18, 2001, through November 14, 2001. Comments must be received no later than 5 p.m., local time on August 22, 2001.

ADDRESSES: Written comments should be sent to, and copies of the Environmental Assessment/Regulatory Impact Review supporting the original emergency interim action may be obtained from Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Regina L. Spallone, Fishery Policy Analyst, phone: 978-281-9221, fax: 978-281-9135, e-mail: regina.l.spallone@noaa.gov.

SUPPLEMENTARY INFORMATION: The red crab fishery is a relatively small trap fishery off the northeast coast generally prosecuted in waters deeper than 200 fathoms (365.7 m). Until one year ago, there were an estimated 5 vessels in the directed red crab fishery, all of which are reportedly under 120 ft (36.6 m) in length with an average hold capacity of 60,000 to 65,000 lb (27.2 to 29.5 mt) of whole crab product. While none of these 5 vessels has the ability to process

completely (picked, cleaned, cooked, and frozen) crabs on board, one reportedly butchers the crabs on board. The 4 remaining vessels land their crabs whole and alive. In the last year, additional vessels have entered this fishery. These vessels have significantly larger hold capacities than the original 5 vessels and can process completely crabs on board.

NMFS issued an emergency interim rule (rule) for the red crab fishery on May 8, 2001 (66 FR 23182). The rule was intended to prevent or eliminate overfishing and provide immediate protection of the red crab resource in what had previously been an unregulated fishery. The rule implemented, among other measures, a possession limit of 65,000 lb (29.5 mt) of whole red crab (or its equivalent in butchered product) for directed trips. For non-red crab directed trips, the rule implemented an incidental catch limit of 100 lb (45.4 kg) of whole red crab per fishing trip, or its equivalent. These limits are in line with recent historical catches and will likely constrain the larger vessels that entered the fishery in the last year. The rule is effective through November 14, 2001. The New England Fishery Management Council is currently developing a fishery management plan for this fishery that will implement management restrictions on a permanent basis.

While the rule did not specifically define "butcher on board," it set the possession limit for crab parts (other than whole or meat-only) equivalent to the whole red crab when the weight of the red crab parts is multiplied by 1.72. This multiplier corresponds with a recovery rate of 58 percent noted in the environmental assessment (EA) drafted in support of the rule. The EA noted that butchered-at-sea red crab was about 58 percent (with a range of about 49 to 64 percent), by weight, of the whole red crab. The rule thus codified the conversion ratio that reflected a recovery rate of about 58 percent of whole to butchered red crab, or 1.72 to 1.

The EA noted in providing this estimate that when crabs are butchered at sea, unwanted parts of the crab are discarded, specifically, the carapace, gills, viscera. Since the publication of the rule, NMFS received information to clarify the process of butchering at sea and how that clarification affects the conversion ratio specified in the rule. By including the removal of the gills and viscera in addition to the carapace, the EA specified a slightly more thorough process in butchering red crab than is currently practiced. The process specified in the EA could be referred to

as a "fully cleaned" butchered red crab section, which is typically not what is landed by those who butcher at sea.

According to industry, a less than fully cleaned butchered-at-sea red crab has not had the gills, mandibles, and a large percentage of the tail flaps removed. The additional weight remaining on the crab would shift the equivalent weight ratio towards the higher percentage in the range of multipliers identified in the EA. That is, more weight would remain on the product when it is landed versus what was considered in the rule. Based on information provided by industry and preliminarily corroborated by NMFS, a recovery rate of about 64 percent is more in line with the equivalent ratio of red crab landed as butchered than 58 percent. Therefore, the interim final rule revises the multiplier used to determine the equivalent possession limit for butchered red crab to 64 percent, or 1.56. Applying the revised multiplier to the current possession limit yields an equivalent possession limit of approximately 41,670 lb (18.9 mt), as compared to 37,791 lb (17.1 mt) using the current 1.72 multiplier.

The ratio of 4 to 1, or 25 percent, was used to convert the weight of whole crab to finished product weight for crabs that have been picked, cleaned, cooked, and frozen (that is, meat only). No similar information was received with respect to the processed equivalent conversion ratio.

Classification

This interim final rule amends an emergency rule by relieving a restriction on the possession limit for vessels that butcher at sea red crab. Immediate implementation will result in economic benefits to those vessels, while presenting no significant harm to the red crab resource or other vessels in the fishery. Because this interim final rule amends an action necessary to provide immediate protection to the Atlantic deep-sea red crab stock to protect it from overfishing, the Acting Assistant Administrator for Fisheries finds that there is good cause to waive the requirement to provide notice and the opportunity for public comment, pursuant to authority set forth at 5 U.S.C. 553 (b)(B), as such procedures would be contrary to the public interest. This rule allows an increase in the numbers of crabs that vessels that butcher crabs at sea may harvest. This change makes the trip limit for these vessels comparable to those vessels that land whole crab. Therefore, the rule relieves a restriction and is not subject to the 30-day delay in effective date otherwise required by 5 U.S.C. 553 (d).

Because prior notice and opportunity for public comment are not required for this interim final rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

An EA and Regulatory Impact Review (RIR) were drafted in support of the emergency rule. The RIR ensures that NMFS systematically and comprehensively considers all available alternatives so that the public welfare can be enhanced in the most efficient and cost effective way. This interim final rule adjusts a conversion ratio multiplier to reflect the upper limit of the range that was considered in the RIR analysis for the emergency rule. (See: Secretarial Emergency Action for the Deep-Sea Red Crab (*Chaceon quinque-dens*) Fishery: Environmental Assessment/Regulatory Impact Review) This change is being made to respond to industry concerns that indicate their method of butchering at sea red crabs is different from that discussed in the EA, and results in a different recovery rate. Applying the revised multiplier to the current possession limit of 65,000 lbs (29.5 mt) could yield an equivalent possession limit of approximately 41,670 lb (18.9 mt), as compared to 37,791 lb (17.1 mt) with the 1.72 multiplier. This increase in landings will have a positive impact on those who butcher red crab at sea. The additional allowance of landings should have no impact on vessels that do not butcher at sea and on the overall total allowable catch level because the total weight of whole crabs harvested would remain the same. It is only the landings total that would change for the vessel(s) that butcher at sea. Thus, there should be no resulting loss in revenues for the rest of the fleet. No new information on landings is available since the preparation of the RIR. This interim final rule has been determined to be not significant for the purposes of E.O. 12866.

List of Subjects in 50 CFR Part 648

Fishing, Fisheries, Vessel permits, Reporting and recordkeeping requirements.

Dated: July 17, 2001.

William T. Hogarth,

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

For the reasons set out in the preamble, 50 CFR part 648, subpart M, which is effective through November 14, 2001, 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 § 648.265, paragraph (a) is suspended and paragraph (d) is added to read as follows:

§ 648.265 Possession and landing limits.

* * * * *

(d) A vessel or operator of a vessel that has been issued a valid LOA under this subpart may fish for, catch, possess, transport, land, sell, trade, barter, or process at sea up to 65,000 lb (29.5 mt) of whole red crab (including culls) or its equivalent, per fishing trip. For red crab meat-only, the equivalent weight of whole red crab is the weight of red crab meat multiplied by 4. For red crab parts other than whole or meat-only, the equivalent weight of whole red crab is the weight of red crab parts multiplied by 1.56.

§§ 648.262, 648.263, 648.265, and 648.268 [Amended]

3. In addition to the amendments set forth above, in the following sections, remove the words “§ 648.265(a)”, each time it appears, and add in its place the words “648.265 (d)”:

Section	Paragraph
648.262	(a)
648.263	(a)
648.265	(c)
648.268	(a) (1)
648.268	(a) (5)

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 010112013-1013-01; I.D. 071801D]

Fisheries of the Exclusive Economic Zone Off Alaska; Northern Rockfish in the Western Regulatory Area of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for northern rockfish in the Western Regulatory Area of the Gulf of

Alaska (GOA). This action is necessary to prevent exceeding the 2001 total allowable catch (TAC) of northern rockfish in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 18, through 2400 hrs, A.l.t., December 31, 2001.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907-586-7228.

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

The 2001 TAC of northern rockfish for the Western Regulatory Area was established as 600 metric tons (mt) by the Final 2001 Harvest Specifications and Associated Management Measures for the Groundfish Fisheries Off Alaska (66 FR 7276, January 22, 2001).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2001 TAC for northern rockfish in the Western Regulatory Area will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 550 mt, and is setting aside the remaining 50 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for northern rockfish in the Western Regulatory Area of the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to avoid exceeding the 2001 TAC of northern rockfish for the Western Regulatory Area of the GOA constitutes good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(3)(B) and 50 CFR 679.20(b)(3)(iii)(A), as such procedures