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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No.: 200212-0054]

RIN 0648-BI31

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

2020-2023 Atlantic Deep-Sea Red Crab Specifications

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

ACTION: Proposed specifications; request for comments.

SUMMARY: We are proposing specifications for the 2020 Atlantic deep-sea red crab fishery, including an annual catch limit and total allowable landings limit, projected quotas for 2021-2023, and a clarification to the specifications process. The proposed action is intended to establish the allowable 2020 harvest levels, consistent with the Atlantic Deep-Sea Red Crab Fishery Management Plan. This action is necessary to establish allowable red crab harvest levels that will prevent overfishing.

DATES: Comments must be received on or before **[INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments, identified by NOAA-NMFS-2020-0007, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal

e-Rulemaking portal. Go to

www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2020-0007, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

- *Mail:* Submit written comments to Michael Pentony, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (*e.g.*, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publically accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

Copies of the specifications document, including the Regulatory Flexibility Act Analysis and other supporting documents for the specifications, are available from Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950 or at

<https://www.nefmc.org/management-plans/red-crab>. The specifications document is also accessible via the Internet at: <https://www.greateratlantic.fisheries.noaa.gov/>.

FOR FURTHER INFORMATION CONTACT: Allison Murphy, Fishery Policy

Analyst, (978) 281-9122.

SUPPLEMENTARY INFORMATION:

Background

The Atlantic deep-sea red crab fishery is managed by the New England Fishery Management Council. The Atlantic Deep-Sea Red Crab Fishery Management Plan (FMP) includes a specification process that requires the Council to recommend, on a triennial basis, an acceptable biological catch (ABC), an annual catch limit (ACL), and total allowable landings (TAL). The Council's Scientific and Statistical Committee (SSC) provides a recommendation to the Council for the ABC. The Council makes a recommendation to us that cannot exceed the ABC recommendation of its SSC.

The Council's recommendations must include supporting documentation concerning the environmental, economic, and social impacts of the recommendations. We are responsible for reviewing these recommendations to ensure that they achieve the FMP objectives and are consistent with all applicable laws. Following this review, we then publish proposed specifications in the *Federal Register*. After considering public comment, we will publish final specifications in the *Federal Register*.

The FMP was implemented in 2002 and was originally managed under a target total allowable catch (TAC) and days-at-sea (DAS) system that allocated DAS equally across the small fleet of limited access permitted vessels. Amendment 3 to the FMP removed a trip limit restriction, and replaced the target TAC and DAS allocation with a catch limit structure consistent with the ACL and accountability measure requirements of the Magnuson-Stevens Fishery Conservation and Management Act. Under Amendment 3

(76 FR 60379; September 29, 2011), the 2011-2013 red crab specifications were set with an ABC equal to the long-term average landings of the directed red crab fishery (1,775 metric tons (mt)). These specifications were continued for fishing years 2014-2016 (79 FR 24356; April 30, 2014) and 2017-2019 (82 FR 11322, February 22, 2017; 83 FR 4849, February 2, 2018; 83 FR 66161, December 26, 2018).

Proposed Specifications

The biological and management reference points currently in the FMP are used to determine whether overfishing is occurring or if the stock is overfished. There is insufficient information on the species to establish the maximum sustainable yield, optimum yield, or overfishing limit (OFL). ABC is defined in terms of landings instead of total catch because there is insufficient information to estimate dead discards of red crab.

The Council's recommendation for the 2020-2023 red crab specifications are based on the results of the most recent peer-reviewed assessment of the red crab fishery carried out by the Data Poor Stocks Working Group in 2009 and the recommendations of the Council's SSC. The recommended specifications include a 12.7-percent increase for 2020-2023 when compared to the previous specifications. While an OFL has not been determined for the stock, the Council and its SSC assert that the increased catch limit will not result in overfishing and adequately accounts for scientific uncertainty due to past performance of underharvesting past specifications.

Recent landings, landing per unit of effort, port samples, discard information, and economic data suggest there has been no change in the size of the red crab stock since Amendment 3 was implemented in 2011. On August 21, 2019, the SSC recommended a

2,000-mt ABC for fishing years 2020-2023 for the directed fishery. The Council approved the 2,000-mt ABC, ACL, and TAL on September 24, 2019. We are proposing the Council-recommended specifications for fishing year 2020. By providing projected quotas for 2021-2023, we hope to assist fishery participants in planning ahead.

At the end of each fishing year, we evaluate catch information and determine if the quota has been exceeded. If a quota is exceeded, the regulations at 50 CFR 648.262(b) require a pound-for-pound reduction in a subsequent fishing year, through notification consistent with the Administrative Procedure Act. We would publish a notice in the *Federal Register* of any revisions to the projected specifications if an overage occurs. We expect, based on the performance of the red crab fishery over time, that such adjustments would be unlikely. Current fishery projections indicate that no adjustment would be necessary for fishing year 2020. We will provide notice of the final 2021-2023 quotas prior to the start of each respective fishing year.

Proposed Clarifications

We are proposing the following clarifications to specifications regulations based on Council recommendations. First, we are proposing to change the red crab specifications cycle from 3 to 4 years. The Northeast Region Coordinating Council (NRCC), consisting of the New England and Mid-Atlantic Councils, the Atlantic States Marine Fisheries Commission, and NMFS Greater Atlantic Regional Fisheries Office and Northeast Fisheries Science Center recently developed a stock assessment prioritization process to identify assessment needs and schedule stock assessments. In 2018, the NRCC unanimously approved a new assessment process that changed the frequency of

assessments for many stocks. Because of its low level of biological information, relatively low economic value, and lower biological vulnerability, and because of constraints on scientific resources, the NRCC changed the Atlantic deep-sea red crab assessment from a 3-year to a 4-year assessment cycle. Consequently, the Council sought to align the specifications cycle with the new 4-year assessment cycle. Thus, this action proposes specification for 4 years.

Second, under the authority of section 305(d) to the Magnuson-Stevens Act, in compliance with Executive Order 13771, and at the recommendation of the Council, we are proposing to remove the requirements for the Red Crab Plan Development Team (PDT) to meet annually and for the Red Crab Committee to meet before forwarding actions to the Council. Requiring the PDT to meet annually to review the status of the fishery is duplicative and unnecessary. We must monitor fishery catch throughout the year to determine if an accountability measure is necessary. Accountability measures for the fishery require that we close the directed fishery if the TAL has been harvested and implement a pound-for-pound reduction in a subsequent fishing year if an overage occurs, through notification consistent with the Administrative Procedure Act. We would publish a notice in the *Federal Register* of any revisions to these proposed specifications if an overage occurs. Requiring the PDT to review this information would duplicate NMFS effort. Additionally, for the past several specifications cycles, the PDT has forwarded recommendations directly to the Council and no Red Crab Committee has met. This rule proposes to streamline the Council process by removing the requirement for the Red Crab Committee to meet.

Classification

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

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

This proposed rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 13866.

The Chief Counsel for Regulation, Department of Commerce, certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The Council prepared an analysis of the potential economic impacts of this action, which is included in the Council's document for this action (see **ADDRESSES** to obtain a copy of the supplemental information report) and supplemented by information contained in the preamble of this proposed rule. For Regulatory Flexibility Act (RFA) purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR part 200). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide. Using this definition,

there are two distinct ownership entities and four fishing vessels based on available permit data that are directly regulated by this action. As there are only two business entities, the degree of ownership is not known. A review of revenue data from 2016-2018 indicates that the total value of landings of red crab and other species over the last 3 years averaged \$3.47 million, so it is safe to assume that all business entities in the harvesting sector can be categorized as small businesses for purpose of the RFA.

There is no reason to believe small entities will be substantially affected by the proposed action. The proposed action will affect both business entities and the four vessels that participate in the directed red crab fishery, but it is not expected to have any negative impact on the gross or average revenues for the fishery because it increases the quota by 12.7 percent. In addition, this quota is substantially higher than landings in recent years (fishing years 2016 through 2018 landings averaged 1,494 mt (3.29 million lb)). As a result, the proposed action is not expected to constrain landings markets for red crab and is not expected to have a significant economic impact on a substantial number of small entities.

As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

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

Dated: February 12, 2020.

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 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 § 648.260, revise paragraphs (a) introductory text, (a)(1) through (3), and (b) to read as follows:

§ 648.260 Specifications.

(a) *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 every 4 years, or as directed by the Council, to review Stock Assessment reports and generate a Fishery Evaluation (SAFE) Report, 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 review. Based on this review, the Red Crab PDT shall provide guidance to 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 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 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 4 fishing years.

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(b) *SAFE Report.* (1) The Red Crab PDT shall prepare a SAFE Report at least every 4 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 4 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 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.

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