

Dated: August 17, 2009.

Samuel D. Rauch III,

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

■ Accordingly, 50 CFR part 223 is corrected by making the following correcting amendment:

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

■ 1. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531–1543.

■ 2. In § 223.102, paragraph (c)(25) is added to the table to read as follows:

§ 223.102 Enumeration of threatened marine and anadromous species.

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Species ¹		Where Listed	Citation(s) for Listing Determination(s)	Citation(s) for Critical Habitat Designation(s)
Common Name	Scientific Name			
(c) * * *				
(25) Upper Columbia River steelhead	<i>Oncorhynchus mykiss</i>	U.S.A., WA, Distinct Population Segment including all naturally spawned anadromous <i>O. mykiss</i> (steelhead) populations below natural and manmade impassable barriers in streams in the Columbia River Basin upstream from the Yakima River, Washington, to the U.S.-Canada border, as well as six artificial propagation programs: the Wenatchee River, Wells Hatchery (in the Methow and Okanogan Rivers), Winthrop NFH, Omak Creek, and the Ringold steelhead hatchery programs.	71 FR 834; January 5, 2006	70 FR 52630; September 2, 2005
*	*	*	*	*

¹Species includes taxonomic species, distinct population segments (DPSs) (for a policy statement, see 61 FR 4722, February 7, 1996) and evolutionarily significant units (ESUs) (for a policy statement, see 56 FR 58612, November 20, 1991).

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 090206152–9249–01]

RIN 0648–AX61

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

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

ACTION: Temporary rule; emergency action extended.

SUMMARY: NMFS is continuing emergency measures to reduce the target total allowable catch (TAC) and associated days-at-sea (DAS) allocations in the Atlantic deep-sea red crab fishery, based on recent scientific information. The red crab stock was assessed by the Data Poor Stocks Working Group in the fall of 2008, and a final report published in January 2009 indicates that the current estimate of maximum sustainable yield (MSY) for red crab is no longer reliable. This action is

necessary to comply with the objectives of the Deep-Sea Red Crab Fishery Management Plan (FMP), as well as to ensure compliance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This action is intended to prevent unsustainable fishing of the red crab resource while the New England Fishery Management Council (Council) develops specifications and measures to address the new assessment results.

DATES: The expiration date of the emergency rule published March 6, 2009 (74 FR 9770); is extended to February 28, 2010, or until superseded by another final rule which will publish in the **Federal Register**.

ADDRESSES: Copies of the Small Entity Compliance Guide, the Regulatory Impact Review (RIR), and the Environmental Assessment (EA) prepared for the March 6, 2009, emergency interim final rule are available from Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930.

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

SUPPLEMENTARY INFORMATION: NMFS published a rule that implemented emergency measures to prevent unsustainable fishing in the Atlantic deep-sea red crab fishery in response to

results from the Northeast Fisheries Science Center's Data Poor Stocks Working Group and Review Panel. A temporary rule justifying emergency action and soliciting public comment on the emergency management measures was published on March 6, 2009 (74 FR 9970), and NMFS accepted comments through April 6, 2009. The measures implemented by the emergency interim final rule include: (1) a reduction in the 2009 target total allowable catch from 5.928 million lb (2,689 mt) to 3.56 million lb (1,615 mt); and (2) a reduction in the number of DAS initially allocated to each of the five limited access permit holders from 156 DAS to 116 DAS. However, as has occurred each year since 2003, one of the limited access permits has been declared out of the fishery for the 2009 fishing year. Therefore, the total fleet-wide allocation of 582 DAS is reallocated, and the resulting DAS allocation remains 146 DAS for each of the active four limited access permit holders. These measures became effective on April 6, 2009, and remain in effect for a period of 180 calendar days, expiring on September 2, 2009. A more detailed explanation and background for this action was provided in the rule published on March 6, 2009, and is not repeated here. This action extends these regulations through the end of the red crab fishing year. The

Council intends to incorporate the results of the Data Poor Stocks Workshop and Review Panel into the development of specifications for the 2010 fishing year and an upcoming amendment to the FMP.

NMFS has determined that this action complies with agency guidance for implementation of emergency measures under section 305(c) of the Magnuson-Stevens Act (August 21, 1997, 62 FR 44421). This rule is intended to address: (1) results from the recently published (January 20, 2009) final report of the Data Poor Stocks Working Group and Review Panel indicating that, based on the best available scientific information, the MSY for red crab is 33–40 percent less than previously estimated; (2) serious conservation and management problems in the fishery, which, if left unaddressed, would likely result in unsustainable fishing of the red crab stock; and (3) the need to immediately reduce the annual target TAC and DAS allocations for the 2009 fishing year in order to prevent unsustainable fishing. Without this action, unsustainable fishing is likely, which could cause more significant long-term impacts on the red crab resource and fishery than the short-term impacts to the fishery expected from this emergency action. The basis for taking this action is ecological in nature in that it is intended to prevent unsustainable fishing.

Comments and Responses to the March 6, 2009 Emergency Rule

Two comments were received from the New England Red Crab Harvester's Association, one on March 23, 2009, and a second on April 7, 2009. Both comments opposed the structure of the emergency rule and suggested alternative management measures. The

first comment suggested eliminating DAS as a management measure for this fishery and converting the target TAC to a "hard" TAC, meaning that when the TAC is achieved, the fishery would be closed. The second comment requested that the DAS not be divided equally among the fleet, but rather used as a fleet-wide DAS allocation, allowing the New England Red Crab Harvester's Association to independently decide how many DAS each vessel would fish. The emergency rule was, and is, intended as a temporary stop-gap measure, based on recently developed results of the Data Poor Stocks Working Group to prevent unsustainable fishing within the confines of the current FMP while the Council develops new or additional measures and specifications for the FMP. It would not be appropriate, or even possible, to significantly change, within the timeframe of this rule, the management scheme as suggested by the commenter because such changes are beyond the scope of this temporary stop-gap measure and should be done through the Council process, not unilaterally by NMFS. Moreover, the type of changes suggested by the commenter are allocative in nature and would be administratively difficult, if not impossible, to implement in the time period needed to address unsustainable fishing for this fishing year.

Classification

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

The Assistant Administrator for Fisheries, NOAA (AA) finds good cause under U.S.C. 553(b)(B) to waive any further prior notice and the opportunity for public comment on this action. This action continues emergency measures

implemented on April 6, 2009, for up to 186 days beyond the current expiration date of September 2, 2009. The conditions prompting the initial emergency action still remain. In addition, there was opportunity to comment on the emergency measures continued by this temporary rule. Therefore, the AA finds that it would be impracticable and contrary to the public interest to delay the implementation of these measures by providing additional opportunities for public comment.

The AA also finds good cause under U.S.C. 553(d)(3) to waive the delayed effectiveness of this temporary rule. A 30-day delayed effectiveness period would be impracticable and contrary to the public interest by causing confusion among the industry, as it would change the regulations in the middle of a fishing year, and potentially lead to vessels overfishing their allocated DAS.

Pursuant to section 305(d) of the Magnuson-Stevens Act, the Assistant Administrator for Fisheries, NOAA, has determined that this rule is consistent with the FMPs of the NE Region, other provisions of the Magnuson-Stevens Act, and other applicable law.

For the reason set forth in the preamble, the expiration date of the temporary rule (74 FR 9770) that published on May 6, 2009, is extended to February 28, 2010, or until it is superseded by another final rule, whichever comes first.

Dated: August 19, 2009.

Samuel D. Rauch III,

Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.

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