

take action and provide the public with any relevant analyses and opportunity to comment on any possible actions. After receiving public comment, the Council must take action (to approve, modify, disapprove, or table) on the recommendation at the Council meeting following the meeting at which it first received the recommendations. Documentation and analyses for the framework adjustment shall be available at least 2 weeks before the final meeting.

(2) After developing management actions and receiving public testimony, the Council may make a recommendation to the Regional Administrator. The Council's recommendation shall include supporting rationale, an analysis of impacts required under paragraph (a)(1) of this section and a recommendation to the Regional Administrator on whether to issue the management measures as a final rule. If the Council recommends that the management measures should be issued directly as a final rule, the Council shall consider at least the following factors and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season;

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the Council's recommended management measures;

(iii) Whether there is an immediate need to protect the resource or to impose management measures to resolve gear conflicts;

(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(3) If the Regional Administrator concurs with the Council's recommended management measures, they shall be published in the FEDERAL REGISTER. If the Council's recommendation is first published as a proposed rule and the Regional Administrator concurs with the Council's rec-

ommendation after receiving additional public comment, the measures shall then be published as a final rule in the FEDERAL REGISTER.

(4) If the Regional Administrator approves the Council's recommendations, the Secretary may, for good cause found under the standard of the Administrative Procedure Act, waive the requirement for a proposed rule and opportunity for public comment in the FEDERAL REGISTER. The Secretary, in so doing, shall publish only the final rule. Submission of recommendations does not preclude the Secretary from deciding to provide additional opportunity for prior notice and comment in the FEDERAL REGISTER.

(5) The Regional Administrator may approve, disapprove, or partially disapprove the Council's recommendation. If the Regional Administrator does not approve the Council's specific recommendation, the Regional Administrator must notify the Council in writing of the reasons for the action prior to the first Council meeting following publication of such decision.

(b) [Reserved]

§ 648.262 Effort-control program for red crab limited access vessels.

(a) *General.* A vessel issued a limited access red crab permit may not fish for, catch, possess, transport, land, sell, trade, or barter, greater than 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, except during a DAS as allocated under and in accordance with the applicable DAS program described in this section, unless otherwise provided in this part.

(1) *End-of-year carry-over.* With the exception of vessels that held a Confirmation of Permit History as described in § 648.4(a)(13)(i)(J) for the entire fishing year preceding the carry-over year, limited access vessels that have unused DAS on the last day of February of any year may carry over a maximum of 10 unused DAS, or 10 percent of the total allocated DAS, whichever is less, into the next fishing year. Any DAS that have been forfeited due to an enforcement proceeding will be deducted from all other unused DAS in

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determining how many DAS may be carried over.

(2) [Reserved]

(b) *DAS program*—(1) *For fishing year 2002.* For the fishing year beginning March 1, 2002, each limited access permit holder's allocation of DAS shall be based on a baseline of 130 DAS per vessel and, if necessary, adjusted as specified in this paragraph (b). Based upon the best available information, the Regional Administrator shall estimate the landings from May 15, 2002, which is the first day following the expiration of the red crab Secretarial interim rule, up to the implementation date of the red crab limited access program. These estimated total landings shall be deducted from the target TAC and the percentage of the TAC that remains available shall be used to reduce the initial baseline of DAS (i.e., a percentage of 130 DAS to an equivalent percentage). For example, if estimated landings equal 20 percent of the target TAC, thereby leaving 80 percent of the target TAC, the DAS allocation shall be reduced by 20 percent to 104 DAS. Each vessel shall be allocated the adjusted DAS for the remainder of the fishing year. The Regional Administrator shall notify permit holders by letter of the newly calculated DAS allocation.

(2) *For fishing years 2003 and thereafter.* Each limited access permit holder shall be allocated 156 DAS unless one or more vessels declares out of the fishery consistent with § 648.4(a)(13)(B)(2) or the TAC is adjusted consistent with § 648.260.

(3) *Accrual of DAS.* Any portion of a day in which a vessel is out of port, after having declared into the DAS fishery, shall count as a full DAS. For example, if a vessel calls into the fishery at 11 p.m. on Thursday and calls out of the fishery at 10 p.m. on Friday, the next day, that vessel shall be assessed 2 full DAS (48 hours) for the fishing trip, even though the trip lasted only 23 hours.

(4) *Good Samaritan credit.* Same as § 648.53(f).

(5) *Declaring red crab DAS.* A vessel's owner or authorized representative shall notify the Regional Administrator of a vessel's participation in the red crab DAS program using the notifi-

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cation requirements specified in § 648.10.

(6) *Adjustments in annual red crab DAS allocations.* Adjustments to the annual red crab DAS allocation, if required to meet fishing mortality goals, may be implemented pursuant to § 648.260.

[67 FR 63233, Oct. 10, 2002, as amended at 69 FR 10177, Mar. 4, 2004]

§ 648.263 Red crab possession and landing restrictions.

(a) *Vessels issued limited access red crab permits*—(1) *Possession and landing restrictions.* (i) A vessel or operator of a vessel that has been issued a valid limited access red crab permit under this subpart may fish for, catch, possess, transport, land, sell, trade, or barter, up to 75,000 lb (34,019.4 kg) per trip, unless adjusted consistent with paragraph (a)(1)(ii) of this section, of whole red crab, or its equivalent in weight as specified at paragraphs (a)(2)(i) and (ii) of this section, when fishing under a red crab DAS.

(ii) A vessel owner or operator who shows credible proof of landings on at least one trip higher than 75,000 lb (34,019.4 kg) during the limited access qualification period shall qualify for a larger trip limit, rounded to the nearest 5,000 lb (2,268 kg) of the higher trip landed. Such proof must be in writing and received by NMFS within 30 days after receipt of a vessel owner's application for an initial limited access red crab vessel permit. A vessel owner shall fish consistent with the provisions and trip limit specified at paragraph (a)(1)(i) of this section until credible proof of a trip higher than 75,000 lb (34,019.4 kg) is approved by NMFS.

(2) *Conversion to whole crab weight.* (i) For red crab that is landed in half sections, with all gills and other detritus still intact, the recovery rate is 64 percent of a whole red crab, which is equal to the weight of red crab half sections multiplied by 1.56.

(ii) For red crab that is landed in half sections, with all gills and other detritus removed, the recovery rate is 58 percent of a whole red crab, which is equal to the weight of red crab half sections multiplied by 1.72.