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Author

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List of Subjects in 50 CFR Part 17

Endangered and threatened species, Imports, Exports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order under "MAMMALS", to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
Rat, rice (-silver rice).....	<i>Oryzomys palustris</i> natator [- <i>O. argentatus</i>].	U.S.A. (FL).....	Lower FL Keys (west of the Seven Mile Bridge).	E	NA	NA

Dated: October 19, 1990.
 Richard M. Smith,
 Director, Fish and Wildlife Service.
 [FR Doc. 90-25196 Filed 10-24-90; 8:45 am]
 BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 638

[Docket No. 901069-0269]

RIN 0648-AD28

Coral and Coral Reefs of the Gulf of Mexico and the South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA issues this proposed rule to implement Amendment 1 to the Fishery Management Plan for Coral and Coral Reefs of the Gulf of Mexico and the South Atlantic (FMP). This proposed rule would (1) Provide for a limited harvest of certain octocorals; (2) require a permit to take such octocorals; (3) provide for reports of harvest by

selected persons who are permitted to take such octocorals; (4) limit the recreational harvest of such octocorals; (5) condition the renewal of coral permits on the submission of all required reports during the 12 months preceding the renewal application; and (6) make other changes to clarify the regulations and conform them to current usage. The intended effect of this rule is to conserve and manage the coral resources.

DATES: Written comments must be received on or before December 6, 1990.

ADDRESSES: Requests for copies of the FMP, which includes a regulatory impact review/environmental assessment (RIR/EA) should be sent to the Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, Florida 33609, or the South Atlantic Fishery Management Council, Southpark Building, Suite 306, One Southpark Circle, Charleston, South Carolina 29407-4699

Comments on the proposed rule should be sent to Michael E. Justen, Southeast Region, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702

Comments on the information collection requirements should be sent to Edward E. Burgess, Southeast Region,

NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702, and to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Washington, DC 20503 (Attention: Desk Officer for NOAA).

FOR FURTHER INFORMATION CONTACT: Michael E. Justen, 813-893-3722.

SUPPLEMENTARY INFORMATION: Coral and coral reefs in the exclusive economic zone (EEZ) off the South Atlantic coastal states and in the Gulf of Mexico are managed under the FMP prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils), and its implementing regulations at 50 CFR part 638, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). Amendment 1 to the FMP would provide for a limited harvest of certain octocorals, implement conservation and management measure for such octocorals, add to the FMP a definition of overfishing, and restate the FMP's determination of optimum yield (OY) to include octocorals.

Allowable octocorals, which are octocorals other than seafans, are harvested in small quantities, estimated

to be less than 20,000 colonies per year, by the aquarium trade. Such harvest is considered to be within the capability of octocorals to regenerate. Accordingly, Amendment 1 would authorize such harvest with appropriate management measures.

To control the harvest of allowable octocorals, most of which occur in waters adjacent to Florida, a commercial or recreational permit to take these octocorals in the EEZ would be required. In lieu of a Federal permit, a state permit for the state of landing would suffice. Florida provides for a commercial marine life license and a recreational salt water fishing license, either of which would meet the permit requirement. An individual holding a commercial permit would not be restricted to a bag and possession limit, but a holder of a recreational permit would be limited to six colonies of allowable octocorals per day. The cost of the Federal commercial permit would not exceed the administrative cost of processing the application, \$20. The cost of the Federal recreational permit would be \$5.

Allowable octocoral taken as incidental catch without a permit would have to be returned to the sea. Allowable octocoral incidentally taken in fisheries such as the groundfish and scallop fisheries, where catch is not sorted on board, would be allowed to be landed but could not be sold, traded, or bartered, as is the case with prohibited coral.

A person fishing for allowable octocoral in the EEZ with either a Federal or state of landing permit or license would agree to be subject to the regulations in this part or, if the state of landing catch, landing, or gear requirements were more restrictive, to the state requirements. The applicable Federal or state of landing catch, landing, or gear requirements, except for seasonal closures, would apply without regard to whether fishing occurs in the EEZ or landward of the EEZ and without regard to where the allowable octocoral or gear are possessed, taken, or landed.

A person with a Federal permit to take allowable octocoral and who is selected by the Science and Research Director would be required to report harvests of such octocoral. This requirement to report would be exercised only in the event that there are significant numbers of Federal permit holders who would not be included in the statistical reporting requirements of Florida. In any event, a means would be provided for determining the level of annual harvest so that the annual quota is not exceeded.

An annual quota would be established of 50,000 colonies of allowable octocoral from the EEZ. When the quota is reached, or is projected to be reached, no further harvest of allowable octocoral from the EEZ would be allowed.

Amendment 1 would define overfishing of coral and coral reef as an annual harvest that exceeds OY, which is zero for prohibited coral and 50,000 colonies of allowable octocoral per year from the EEZ. Further information on this definition, on the revised statement of OY for corals, and on allowable octocorals and their management measures is contained in Amendment 1, the availability of which was announced in the Federal Register on September 26, 1990 (55 FR 39310).

In addition to the changes contained in Amendment 1, NOAA proposes additional changes to clarify the regulations and conform them to current usage. The purpose and scope section (§ 638.1(b)) would be modified to express the scope of the regulations in the broadest terms consistent with the FMP. NOAA has determined that the public is better served by a general expression of scope in this section, with the specific scope of each management provision or measure specified in that provision or measure. This approach avoids the possibility of misleading fishermen, dealers, and processors as to the scope of the regulations in this part.

To clarify the use of chemicals to take fish and other marine organisms, the terms "allowable chemical" and "toxic chemical" would be defined. In accordance with the intent of the FMP, an allowable chemical may be used with a permit, while a toxic chemical may not be used.

The definition of "management unit" would be removed because that term is not used in the regulations.

The existing permit requirements would be reordered for clarity and to conform them to current usage. Additional identifying information would be required of applicants for permits, and the renewal of permits would be conditioned on compliance with all applicable reporting requirements during the 12 months immediately preceding the renewal application. NOAA believes that a permittee who has not complied with applicable reporting requirements should not receive renewal of his permit.

The prohibitions section (§ 638.5) would be rewritten to provide a specific prohibition applicable to each management measure. Other minor changes are proposed for clarity and to remove redundancies.

Specific authority would be added to cover the existing data collection program that is carried out by NMFS statistical reporting agents and to require that coral be made available, upon request, to an authorized officer.

Classification

Section 304(a)(1)(D)(ii) of the Magnuson Act, as amended by Public Law 99-659, requires the Secretary of Commerce (Secretary) to publish regulations proposed by a Regional Fishery Management Council within 15 days of receipt of an FMP amendment and regulations. At this time, the Secretary has not determined that Amendment 1, which this proposed rule would implement, is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the data, views, and comments received during the comment period.

This proposed rule is exempt from the procedures of E.O. 12291 under section 8(a)(2) of that order. It is being reported to the Director, Office of Management and Budget, with an explanation of why it is not possible to follow the procedures of that order.

The Assistant Administrator for Fisheries, NOAA, has initially determined that this proposed rule is not a "major rule" requiring the preparation of a regulatory impact analysis under E.O. 12291. This proposed rule, if adopted, is not likely to result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Councils prepared a regulatory impact review (RIR), which concludes that Amendment 1, if adopted, would have the economic effects summarized as follows. The setting of an annual level of harvest of octocoral above the current level of harvest will provide for expansion of the fishery without jeopardizing the biological integrity of the stock. Requiring a Federal permit to harvest allowable octocoral from the EEZ, or a state of landing permit or license, will affect few harvesters as most harvest of allowable octocoral takes place in waters adjacent to Florida where harvesters are licensed. A bag and possession limit of six colonies of allowable octocoral for recreational

users collecting for personal aquaria will be ample, according to public testimony obtained at hearings.

The Councils concluded that this rule will not have a significant economic impact on a substantial number of small entities for the reasons summarized as follows. The number of commercial harvesters of allowable octocoral is not known but is believed to be less than 100. Current harvest of octocoral is thought to be less than 20,000 colonies per year. An allowable harvest of 50,000 colonies per year would not adversely impact commercial users. The number of recreational harvesters who take octocorals is also not known, but a bag and possession limit of six colonies was recommended by these harvesters. Only a few individuals are expected to take coral from the EEZ without a Florida permit, thus few Federal permits will be required. However, if this number becomes significant, the Science and Research Director may monitor the catch by requiring reporting by these individuals. Accordingly, the General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. No regulatory flexibility analysis was prepared.

The Councils prepared an environmental assessment (EA) that discusses the impact on the environment as a result of this rule. A copy of the EA may be obtained at the address listed above and comments on it are requested.

The Councils have determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Alabama, Florida, Louisiana, Mississippi, North Carolina, and South Carolina. Georgia and Texas do not participate in the coastal zone management program. These determinations have been submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act.

This proposed rule contains two new collections of information subject to the Paperwork Reduction Act, namely, applications for annual Federal permits to take allowable octocorals and catch reports from selected Federal permittees. Requests to make these collections have been submitted to the Office of Management and Budget (OMB) for approval. The public reporting burdens for these collections of information are estimated to average 15 minutes each per response, including the time for reviewing instructions,

searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This proposed rule restates for clarity the application procedures for permits to take prohibited coral and to use an allowable chemical in a coral area. Those collections of information were previously approved and OMB control number 0648-0205 applies. The public reporting burden for those collections of information were estimated to average 15 minutes each per response including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burdens, to Edward E. Burgess, NMFS, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (see ADDRESSES, above).

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 638

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: October 19, 1990.

Samuel W. McKeen,
Acting Assistant Administrator for Fisheries,
National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 638 is proposed to be amended as follows:

PART 638--CORAL AND CORAL REEFS OF THE GULF OF MEXICO AND THE SOUTH ATLANTIC

1. The authority citation for part 638 continues to read as follows:

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

§ 638.1 [Amended]

2. In § 638.1, in paragraph (b), the phrase "by fishing vessels of the United States" is removed.

3. In § 638.2, the definition for *Management area* is removed; new definitions for *Allowable chemical*, *Allowable octocoral*, *Colony*, and *Toxic chemical* are added in alphabetical order; and the definitions for *Prohibited coral* and *Take* are revised to read as follows:

§ 638.2 Definitions.

* * * * *

Allowable chemical means a substance, generally used to immobilize marine life so that it can be captured

alive, that, when introduced into the water:

(a) Does not take prohibited coral; and
(b) Is allowed by Florida for the harvest of tropical fish (e.g., quinaldine, quinaldine compounds, or similar substances).

Allowable octocoral means a species of coral outside an HAPC and belonging to the Subclass Octocorallia, except the seafans *Gorgonia flabellum* and *G. ventalina*.

Colony means a continuous group of coral polyps forming a single unit.

* * * * *

Prohibited coral means—

(a) A species of coral belonging to the Class Hydrozoa (fire corals and hydrocorals),

(b) A species of coral belonging to the Class Anthozoa, Subclass Zooantharia (stony corals and black corals),

(c) A seafan, *Gorgonia flabellum* or *G. ventalina*,

(d) A coral reef, except for allowable octocorals, or

(e) Coral in an HAPC.

* * * * *

Take means to damage, harm, kill, possess, or attempt to damage, harm, kill, or possess.

Toxic chemical means any substance, other than an allowable chemical, that, when introduced into the water, can stun, immobilize, or take marine life.

4. In § 638.4, paragraphs (a) and (c) through (g) are revised and new paragraphs (h) through (m) are added to read as follows:

§ 638.4 Permits and fees.

(a) *Applicability*—(1) *Federal permits*. A Federal permit is required each fishing year for a person to—

(i) Take prohibited coral in the EEZ,
(ii) Use an allowable chemical to collect fish or other marine organisms in a coral area in the EEZ, or
(iii) Take an allowable octocoral in the EEZ.

(2) *Acceptable state permits*—(i) A Florida permit is acceptable in lieu of the Federal permit to use an allowable chemical to collect fish or other marine organisms in a coral area in the EEZ.

(ii) A state of landing permit or license applicable to allowable octocorals is acceptable in lieu of the Federal permit to take an allowable octocoral in the EEZ. A person who applies for a permit to take an allowable octocoral under paragraph (c)(3) of this section, or who uses a valid state of landing permit or license to take an allowable octocoral in the EEZ, must agree as a condition of using either permit that his/her catch, landing, or gear (without regard to whether fishing occurs in the EEZ or

landward of the EEZ, and without regard to where allowable octocoral or gear is possessed, taken, or landed) will be subject to the requirements of this part. If a regulation in this part and a catch, landing, or gear regulation of a state of landing differ, a person issued a permit under paragraph (c)(3) of this section or using a valid state permit or license to take an allowable octocoral from the EEZ must comply with the more restrictive regulation. In the event there is not equivalent regulation in this part to a state of landing catch, landing, or gear regulation, a person issued a permit under paragraph (c)(3) of this section or using a valid state permit or license applicable to an allowable octocoral harvested from the EEZ must comply with such state regulation.

(c) *Application.* An application for a Federal permit must be signed and submitted by the applicant on an appropriate form, which may be obtained from the Regional Director. The application should be submitted to the Regional Director at least 45 days prior to the date on which the applicant desires to have the permit made effective. An applicant must provide the following information.

- (1) *For a prohibited coral permit:*
 - (i) Name, mailing address including zip code, and telephone number of the applicant;
 - (ii) Social security number and date of birth of the applicant;
 - (iii) Name and address of harvester, company, institution, or affiliation;
 - (iv) Amount of coral to be fished for by species;
 - (v) Size of each species;
 - (vi) Projected use of each species;
 - (vii) Collection techniques (vessel types, gear, number of trips);
 - (viii) Period of fishing; and
 - (ix) Location of fishing.
- (2) *For an allowable chemical permit:*
 - (i) Name, mailing address including zip code, and telephone number of the applicant;
 - (ii) Social security number and date of birth of the applicant;
 - (iii) Type of chemical to be used;
 - (iv) Period of fishing; and
 - (v) Location of fishing.
- (3) *For an allowable octocoral permit:*
 - (i) Name, mailing address including zip code, and telephone number of the applicant;
 - (ii) Social security number and date of birth of the applicant;
 - (iii) Whether applicant desires a commercial or recreational permit (see paragraph (d) of this section for appropriate fees and § 638.21(b) for the recreational bag and possession limit);

(iv) Estimated number of colonies to be taken during the fishing year;

(v) If the applicant is a corporation, the name and position of the signer; and

(vi) A sworn statement that the applicant agrees to conform to each regulation on allowable octocoral of this part or to any catch, landing, or gear regulation on allowable octocoral of the state of landing, if such state regulation is more restrictive than the regulation in this part or there is no equivalent regulation in this part, regardless of where such allowable octocoral or gear is possessed, taken, or landed.

(d) *Fees.* (1) A fee will be charged for each application submitted under paragraph (c)(3) of this section for an allowable octocoral permit as follows:

- (i) Application for a commercial permit—\$20.
- (ii) Application for a recreational permit—\$5.

(2) The appropriate fee must accompany each permit application.

(e) *Issuance.* (1) The Regional Director will issue a permit at any time during the fishing year to an applicant if:

- (i) The application is complete; and
- (ii) The applicant has complied with all applicable reporting requirements of § 638.7 during the 12 months immediately preceding the application.

(2) Upon receipt of an incomplete application, or an application from a person who has not complied with all applicable reporting requirements of § 638.7 during the 12 months immediately preceding the application, the Regional Director will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days of the Regional Director's notification, the application will be considered abandoned.

(f) *Permit conditions.* (1) It is a condition of each permit issued under paragraph (c)(3) of this section or any state permit used to take octocorals in the EEZ that each regulation on allowable octocoral in this part or any catch, landing, or gear regulation on allowable octocoral of the state of landing, if such state regulation is more restrictive than the regulation in this part or there is not equivalent regulation in this part, applies to the permittee, regardless of where such allowable octocoral is possessed, taken, or landed.

(2) Other conditions and restrictions that may be necessary for the conservation and management of corals may be specified on a permit.

(g) *Duration.* A permit remains valid for the remainder of the fishing year for which it is issued unless revoked, suspended, or modified pursuant to support D of 15 CFR part 904.

(h) *Transfer.* A permit issued under this section is not transferable or assignable.

(i) *Display.* A Federal permit issued under this section, or an acceptable state permit or license as specified in paragraph (a)(2) of this section, must be in the possession of the permittee while fishing for prohibited coral in the EEZ, using an allowable chemical in a coral area in the EEZ, or fishing for an allowable octocoral in the EEZ. Such Federal permit, or acceptable state permit or license, must be presented for inspection upon the request of an authorized officer. A permittee must have in possession documentation to establish identity as the permittee (e.g., driver's license).

(j) *Sanctions and denials.* Procedures governing enforcement-related permit sanctions and denials are found at subpart D of 15 CFR part 904.

(k) *Alteration.* A permit that is altered, erased, or mutilated is invalid.

(l) *Replacement.* A replacement permit may be issued upon request. An application for a replacement permit will not be considered a new application.

(m) *Change in application information.* A permittee must notify the Regional Director within 30 days after any change in the application information required by paragraphs (c)(1) through (c)(3) of this section. A permit is void if any change in the information is not reported within 30 days.

5. Section 638.5 is revised to read as follows:

§ 638.5 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

(a) Take prohibited coral in the EEZ without a Federal permit; use an allowable chemical to collect fish or other marine organisms in a coral area in the EEZ without a Federal permit or acceptable state permit; or take an allowable octocoral in the EEZ without a Federal permit or an acceptable state permit, as specified in § 639.4(a).

(b) Falsify information specified in § 638.4(c) on an application for a Federal permit.

(c) Fail to comply with a catch, landing, or gear regulation on allowable octocoral of a state of landing, if such state regulation is more restrictive than the regulation in this part or there is no equivalent regulation in this part, as specified in § 638.4(f)(1).

(d) Fail to comply with a permit condition or restriction, as specified in accordance with § 638.4(f)(2).

(e) Fail to display a Federal permit, or an acceptable state permit or license, as specified in § 638.4(i).

(f) Fail to notify the Regional Director after a change in the information provided on an application for a Federal permit, as specified in § 638.4(m).

(g) Falsify or fail to provide information required to be submitted or reported, as required by § 638.7 (a) or (b).

(h) Fail to make prohibited coral or allowable octocoral available for inspection, as required by § 638.7(c).

(i) Fail to return to the sea prohibited coral and allowable octocoral taken as incidental catch, as specified in § 638.21(a).

(j) In those fisheries in which the entire catch is landed, land sorted prohibited coral or allowable octocoral, or sell, trade, or barter prohibited coral or allowable octocoral, as specified in § 638.21(a).

(k) Exceed the bag and possession limit when fishing under a recreational permit to take allowable octocoral, as specified in § 638.21(b).

(l) Use prohibited fishing gear in an HAPC, as specified in § 638.22(a)(2), (b)(2), and (c)(2).

(m) Use a toxic chemical to take fish or other marine organisms, as specified in § 638.23.

(n) Take allowable octocoral after harvest from the EEZ is prohibited, as specified in § 638.25.

6. In § 638.7, the existing text is designated as paragraph (a) and new paragraphs (b) and (c) are added to read as follows:

§ 638.7 Recordkeeping and reporting

* * * * *

(b) A person with a Federal permit to take allowable octocoral in the EEZ, if selected by the Science and Research Director, must submit a report of his harvest to the Science and Research Director on a form available from the Science and Research Director. These forms must be submitted to the Science and Research Director on a quarterly basis within 25 days of the end of each quarter. The following information must be included on the forms:

- (1) Federal permit number;
- (2) Name of permit holder;
- (3) Quarter when fishing occurred;
- (4) Number of colonies harvested by month and by species name if known;
- (5) Area fished;
- (6) Signature of the person submitting the form; and
- (7) Other information deemed necessary by the Science and Research Director.

(c) Additional data will be collected by authorized statistical reporting agents, as designees of the Science and Research Director, and by authorized officers. An owner or operator of a fishing vessel and a dealer or processor are required upon request to make prohibited coral or allowable octocoral available for inspection by the Science and Research Director or an authorized officer.

7. Section 638.21 is revised to read as follows:

§ 638.21 Harvest limitations.

(a) Prohibited coral and allowable octocoral taken as incidental catch to other fishing activities by a person who does not have a permit must be returned

to the sea in the general area of fishing immediately. In those fisheries, such as scallops and groundfish, where the entire catch is landed, unsorted prohibited coral and unsorted allowable octocoral may be landed but not sold, traded, or bartered.

(b) A person who has a recreational permit to take allowable octocoral may not possess during a single day, regardless of the number of trips or the duration of a trip, allowable octocoral in excess of six colonies.

8. Section 638.23 is revised to read as follows:

§ 638.23 Gear limitations.

A toxic chemical may not be used to take fish or other marine organisms in or on a coral area.

9. Section 638.24 is redesignated as § 638.26, and new §§ 638.24 and 638.25 are added to read as follows:

§ 638.24 Quota.

The quota of allowable octocoral is 50,000 colonies from the EEZ each fishing year.

§ 638.25 Closure.

When the quota specified in § 638.24 is reached, or is projected to be reached, the Secretary will publish a notice to that effect in the Federal Register. After the effective date of such notice, for the remainder of the fishing year, the harvest of allowable octocoral from the EEZ is prohibited.

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