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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Parts 204 and 638**

[Docket No. 940973-4352; I.D. 082394A]

RIN 0648-AF85

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

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

**ACTION:** Final rule; notice of OMB control numbers.

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**SUMMARY:** NMFS issues this final rule to implement Amendment 2 to the Fishery Management Plan (FMP) for Coral and Coral Reefs of the Gulf of Mexico and South Atlantic. Amendment 2: Prohibits the taking of wild live rock in the exclusive economic zone (EEZ) off the southern Atlantic states (South Atlantic) from the North Carolina/Virginia boundary to the Dade/Broward County line in Florida and in the EEZ of the Gulf of Mexico (Gulf), except off Florida north of Monroe County; phases out wild live rock harvests in the South Atlantic EEZ south of the Dade/Broward County line by 1996; phases out wild live rock harvests in the Gulf EEZ off Florida north of Monroe County by 1997; establishes restrictions on live rock harvesting and possession and requires permits and reporting during the phase-out periods; and allows and facilitates live rock aquaculture. In addition, NMFS amends the regulations

to correct and conform them to current standards, informs the public of the approval by the Office of Management and Budget (OMB) of new collection-of-information requirements contained in this rule, and publishes the OMB control number for those collections.

**EFFECTIVE DATE:** December 22, 1994, except that § 638.25(c)(3) is effective December 22, 1994, through December 31, 1994, and §§ 638.4(a)(1)(iv)(A) and (h)(2) and 638.7(a)(4) are effective March 1, 1995.

**FOR FURTHER INFORMATION CONTACT:** Georgia Cranmore, 813-570-5305.

**SUPPLEMENTARY INFORMATION:** The FMP for Coral and Coral Reefs of the Gulf of Mexico and South Atlantic was prepared by the South Atlantic Fishery Management Council (South Atlantic Council) and the Gulf of Mexico Fishery Management Council (Gulf Council) and is implemented through regulations at 50 CFR part 638 under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). With implementation of Amendment 2, the single FMP is separated into two FMPS—the FMP for Coral and Coral Reefs off the Southern Atlantic States under the purview of the South Atlantic Council and the FMP for Coral and Coral Reefs of the Gulf of Mexico under the purview of the Gulf Council. Regulations implementing both FMPS remain in 50 CFR part 638.

At the request of the Gulf Council, NMFS published an emergency interim rule on May 16, 1994 (59 FR 25344), effective May 16 through August 14, 1994, and extended the rule, with modifications, through November 12, 1994 (59 FR 42533; August 18, 1994). At the request of the South Atlantic Council, NMFS published an emergency interim rule on June 27, 1994 (59 FR 32938), effective through September 26, 1994, and extended the rule through December 25, 1994 (59 FR 47563; September 16, 1994). When the 1994 quota was reached, the live rock fishery in the South Atlantic EEZ was closed November 1, 1994, through December 25, 1994 (59 FR 54841; November 2, 1994). These rules were intended to slow the rate of harvest, prevent serious damage to habitat, and prevent geographical extension of harvest until long-term measures could be implemented through Amendment 2. This final rule implements the measures contained in Amendment 2, which include the basic measures in the emergency interim rules.

The rationale for the measures in Amendment 2 and for additional measures proposed by NMFS were contained in the proposed rule (59 FR

49377, September 28, 1994) and are not repeated here.

#### Comments and Responses

Comments on the proposed rule were received through November 7, 1994, and are summarized below, according to subject, followed by NMFS' response:

##### *Harvests off the Florida Panhandle*

*Comment:* The Florida Marine Fisheries Commission (Florida), Georgia Department of Natural Resources (Georgia), the Professional Association of Diving Instructors (PADI), and the Center for Marine Conservation (CMC) recommend that NMFS close the EEZ off the Florida Panhandle to live rock harvesting during the harvest phase-out period. The following local groups also requested an immediate ban on harvesting: Okaloosa County Board of Commissioners; City of Destin, Destin Charter Boat Association, Destin Fisherman's Cooperative Association, Inc., Okaloosa County Economic Development Council, Destin Fishing Fleet, Inc., Emerald Coast Convention and Visitors Bureau, South Walton Tourist Development Council, 16 local businesses, including nine dive shops, and 24 private citizens. These commenters requested closure of the EEZ off the Panhandle because hard bottom areas in the northern Gulf are scarce, and thus more vulnerable to overfishing. They indicated that similar environments off Alabama, Louisiana, Mississippi, and Texas will be closed to live rock harvesting under Amendment 2 and that closures in the South Atlantic will result in shifting of harvesting effort to the Gulf area where harvesting is still allowed. They also indicated there will be adverse economic impacts on sport fishing, diving, and tourism in the Florida Panhandle due to destruction of valuable reef habitats.

*Response:* At its November meeting, the Gulf Council decided to include among options being considered in FMP Amendment 3 a management measure to close the EEZ off the Panhandle area. Amendment 3 is on the agenda for the next Gulf Council meeting in January 1995. NMFS' options were, however, to approve, disapprove, or partially disapprove the Council's recommendations in Amendment 2; disapproval of Amendment 2 would not have resulted in an immediate prohibition on harvests.

##### *National Standard 4 of the Magnuson Act*

*Comment:* Florida and PADI claim that the Gulf Council has violated national standard 4 of the Magnuson Act by treating Florida residents

differently from residents of Texas, Alabama, Mississippi, and Louisiana. They assert that only in the Gulf off Florida, and especially in the Panhandle area, is the harvest of wild live rock allowed to continue during a phase-out period. These commenters believe that Florida fishermen and citizens are being denied the protections that are being extended to the other states.

*Response:* NMFS disagrees. National standard 4 states:

Conservation and management measures shall not discriminate between residents of different states. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (A) fair and equitable to all such fishermen, (B) reasonably calculated to promote conservation, and (C) carried out in such a manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

The Gulf Council's recommendation, and NMFS' decision, to allow wild live rock harvests off Florida merely continues existing fishing practices and has no discriminatory effect. Citizens of other states may participate in the fishery off Florida, however, the only known landings of live rock from this area have been made by Florida citizens. Amendment 2 does not violate national standard 4 by allowing live rock harvesting off Florida during the phase-out period, especially since it also establishes mitigating or restrictive measures limiting the extent and effects of this harvest, such as gear limitations and a daily vessel limit.

##### *Live Rock Quota in the Gulf*

*Comment:* Florida, Georgia, CMC, and PADI urged NMFS to impose a quota in the Gulf to prevent serious depletion of resources during the harvest phase-out period. They are especially concerned that when South Atlantic quotas are met the Gulf will become the sole domestic source of wild live rock.

*Response:* NMFS cannot use Amendment 2 to impose measures not recommended (or rejected) by the Councils. The Gulf Council is preparing Amendment 3 to the FMP specifically to address live rock quotas. Amendment 3 will be under consideration at the Gulf Council's meeting in January 1995.

##### *Octocorals*

*Comment:* Florida asked NMFS not to approve the provision that allows the harvest in the Gulf of Mexico off Florida of rock substrate within 3 inches (7.6 cm) of the base of an allowable octocoral. At recent State public hearings on the issue, live rock

harvesters testified that, especially in the Florida Keys, it would be easy to pick up 6-inch (15.2-cm) rocks with small octocorals attached and that this provision will allow the harvest of wild live rock to continue under the octocoral quota. Under recently published State rules, only the substrate within 1 inch (2.5 cm) of the holdfast will be allowed to be landed anywhere in Florida under the octocoral quota.

*Response:* Individuals harvesting octocorals for the aquarium industry testified that they need some attached substrate to anchor the octocoral in the aquarium. This rule defines "allowable octocorals" to include the substrate within 1 inch (2.5 cm) of the octocoral in the EEZ off the southern Atlantic states and the substrate within 3 inches (7.6 cm) of the octocoral in the Gulf EEZ. However, according to a long-standing policy on octocoral regulations, the more restrictive state or Federal rule applies. (See old § 638.4(a)(2)(ii) or new § 638.3(c)). In this case, since Florida now has a 1-inch (2.5-cm) rule, § 638.3(c) would require a person landing allowable octocorals in Florida (on both the east and Gulf coasts) to comply with the more restrictive State regulation. Individuals harvesting allowable octocorals in the Gulf EEZ and landing outside Florida would still be able to take attached substrate up to 3 inches (7.6 cm) from the octocoral.

##### *Separation of the FMP into Two Jurisdictions*

*Comment:* The U.S. Fish and Wildlife Service and the State of Georgia recommended that NMFS approve the separation of the FMP into two fishery management plans, one covering coral and coral reef resources in the Gulf EEZ and one for such resources in the EEZ of the South Atlantic. Florida does not oppose separation but is concerned that it will result in management objectives and regulations that are inconsistent between Florida's east and west coasts. One live rock harvester asked for consistent rules in both jurisdictions and two harvesters claimed that the inconsistent regulations give Florida west coast firms an unfair commercial advantage over the southeast commercial interests.

*Response:* NMFS approved the separation of the FMP into two fishery management plans because: both Councils have requested it; the resource is sessile and will not move between adjacent Council jurisdictions; and the public may benefit due to decreased travel costs for attending Council meetings—members of the public who use the resource under the jurisdiction

of only one or the other Council will only need to attend the meetings of one Council. It does appear that there may be an increasing divergence between the management regimes of the two Councils. Any economic advantage accruing to the west coast dealers in live rock will be short-lived since the harvest of wild live rock in the Gulf will end on January 1, 1997. The Gulf Council is considering adopting harvest quotas for wild live rock for 1995 and 1996.

#### *Accuracy of Scientific Data*

*Comment:* Two live rock harvesters questioned the accuracy of scientific data in Amendment 2, specifically the relationship between live rock harvest and reef fish habitat availability and the nonrenewable nature of the live rock resource.

*Response:* The NMFS Southeast Fisheries Science Center has certified that the management measures contained in Amendment 2 are based on the best scientific information available.

#### *Phase-out Dates*

*Comment:* The Pet Industry Joint Advisory Council (PIJAC), American Aquarist Society (AAS), Marine Aquarium Societies of North America (MASNA), six pet shops, and five individuals objected to the January 1, 1996, termination date for wild live rock harvests in the South Atlantic area. These commenters believe that there may not be enough time to develop aquaculture to replace these wild harvests. On the other hand, PADI asked NMFS to move up the phase-out dates to 1995 in the South Atlantic and 1996 in the Gulf EEZ. The Environmental Defense Fund (EDF) said that waiting to ban live rock collection, in certain areas off Florida, until an aquaculture industry is in place creates no incentives for the development of the industry. EDF believes that it is not NMFS' responsibility to ensure that an aquaculture industry exists to replace fisheries that must be shut down because they are unsustainable.

*Response:* NMFS has approved the phase-out dates requested by the Councils as part of Amendment 2. Approval of these dates by NMFS was based on an agency determination that these dates represent a reasonable balancing of concerns for the live rock resource and concerns for the effect of immediate closures on the aquarium industry. Following a series of public hearings and discussions beginning in 1993, the South Atlantic Council weighed the requests of live rock harvesters for time to produce a marketable aquaculture product against

the continuing loss of fisheries habitat and the potential degradation of the Florida Reef Tract from wild live rock harvests in the South Atlantic area. The Council decided that January 1, 1996, or approximately a 1-year delay in a ban on commercial harvests was reasonable, especially since testimony indicated that a marketable product could be produced from base rock in about one year. Eliminating or reducing the phase-out periods, as some commenters suggested, were options rejected by the Councils because of the unacceptable adverse economic impacts on live rock harvesters.

#### *Personal-Use Harvests*

*Comment:* PIJAC, AAS, MASNA, six pet shops, and five individuals asked for a personal-use allowance of a 5-gal bucket (19-L) container of live rock per person per day. EDF believes that this allowance is an excessive amount to maintain one aquarium and is concerned about enforcement problems and the potential for abuse. EDF requests that the potential impacts of such a provision be closely examined.

*Response:* In developing Amendment 2, the Council and NMFS rejected a personal-use harvest that could result in a total of up to 1,825 gal (6,908 L) of live rock per person per year. The harvest of wild live rock is a take of an essentially nonrenewable resource and results in a net loss of fishery habitat. While NMFS agreed with the Councils' final recommendation to delay the ban on commercial harvests in order to mitigate adverse economic impacts on the industry and allow a transition to live rock aquaculture, this justification is not applicable to the recreational sector. Further, live rock is likely to contain prohibited corals. Commercial harvesters testified that they must carefully choose pieces to avoid taking prohibited corals. Occasional recreational divers are less likely to be able to make these distinctions and any allowable recreational take of live rock could result in increased takes of prohibited corals. Finally, the State of Florida banned both commercial and recreational harvest of live rock from State waters in 1989. A personal-use harvest from the EEZ off Florida could seriously complicate State enforcement efforts. The Gulf Council intends to reconsider this issue during development of FMP Amendment 3.

#### *Aquaculture Permits*

*Comment:* Florida, Georgia, and the CMC support the live rock aquaculture provisions. Pet industry groups and two commercial harvesters are concerned about delays in development of permit

systems for aquaculture. PADI believes that aquaculture development should occur away from the natural environment so as to provide supervisory agencies the ability to monitor aquaculture activities without ambiguity between what may be harvesting aquacultured versus wild live rock. The South Atlantic Council forwarded the minutes of its Coral Advisory Panel (AP) meeting that resulted in recommended changes to the draft aquacultured live rock permit criteria. The AP was particularly concerned that any required site evaluation report be prepared by an independent source to eliminate bias and that placement of rocks used for aquaculture be conducted in an environmentally sound manner.

*Response:* NMFS and the U.S. Army Corps of Engineers (COE) are developing a coordinated permit system for live rock aquaculture that will expedite applications. Rather than requiring application to both agencies, one to CO for deposition of materials in Federal waters and one to NMFS for harvest and possession of live rock in the EEZ, permits will be issued by NMFS that will, among other things, authorize individuals to deposit materials under COE general permit. Several individuals will be "grandfathered" into the COE permit because they already hold COE individual permits under the authority of the Rivers and Harbors Act, and have placed rocks in designated sites for the purpose of live rock aquaculture. These individuals will still need to apply for a NMFS harvest and possession permit and abide by NMFS' reporting and other regulatory requirements. The COE general permit is expected to be available in January 1995. Land-based aquaculture, as suggested by PADI, was opposed by the live rock harvesting industry representatives that attended State of Florida and Council public hearings on this issue because it is costly and technically more difficult than open-water aquaculture.

As a result of the Coral AP's recommendations, NMFS has made certain changes from the proposed rule. The site survey, which is required to be submitted with an application for an aquacultured live rock permit, must be prepared pursuant to generally accepted industry standards. Additionally, clarifications have been made to the deposition procedures for live rock aquaculture to further the intent of the permit criteria, namely, the protection of natural hardbottom areas. Thus, this final rule explains that the rocks must be placed by hand or lowered completely to the bottom under restraint, that is, not allowed to fall

freely, and must be placed from a vessel that is anchored to help ensure that the deposited materials do not drift onto natural hardbottom or vegetated areas.

#### Concerns of the South Atlantic Council

*Comment:* The South Atlantic Council expressed its concern about certain proposed measures. It reiterated that allowable octocorals in the South Atlantic include only the substrate covered by and within 1 inch (2.5 cm) of the holdfast and noted that Florida intended to establish this definition in its waters. Also, the Council reiterated its request for a separate FMP for coral and coral reef resources in the area of its jurisdiction and noted its intent to prohibit chipping under aquaculture permits through a subsequent FMP amendment.

*Response:* NMFS refers the Council to discussions above regarding the amount of substrate that can be landed with an allowable octocoral. In light of Florida's recent publication of a rule allowing the landing of only 1 inch (2.5 cm) of substrate surrounding the octocoral, individuals landing allowable octocorals in Florida will have to abide by the more restrictive State rule. NMFS has agreed to the South Atlantic Council's request and divided the single, joint Council FMP into two FMPs, each under the respective jurisdiction of the Gulf and South Atlantic Councils. Regarding chipping, the final rule prohibits this practice in areas of the South Atlantic where wild live rock harvesting is allowed, i.e., south of the Dade/Broward County line in Florida. Amendment 2 does not give NMFS the authority to address aquaculture permits in the South Atlantic. However, the Council is free to include a chipping prohibition in the aquaculture measures it intends to forward for NMFS approval early next year.

#### Approval of Amendment 2

On November 25, 1994, the Director, Southeast Region, NMFS (Regional Director), approved Amendment 2.

#### Changes from the Proposed Rule

As discussed above, § 638.4(b)(4) is revised to require that the site survey, which is required to be submitted with an application for an aquacultured live rock permit, be prepared pursuant to generally accepted industry standards.

By emergency interim rule, a quota for wild live rock from the EEZ off the southern Atlantic states was established for the current fishing year. That quota was reached and the fishery was closed effective November 1, 1994. Accordingly, the quota for the current

fishing year is removed from § 638.25(c)(1) and provisions for continuing the closure through December 31, 1994, are temporarily added at § 638.25(c)(3).

As noted above, § 638.27(b)(2) is revised to require that material deposited on an aquaculture site must be placed on the site by hand or lowered completely to the bottom under restraint (that is, not allowed to fall freely) and must be placed from a vessel that is anchored.

#### Classification

The Regional Director determined that Amendment 2 is necessary for the conservation and management of coral and coral reefs off the southern Atlantic states and in the Gulf of Mexico and that it is consistent with the Magnuson Act and other applicable law.

This action has been determined to be not significant for purposes of E.O. 12866.

The Councils prepared a final supplemental environmental impact statement (FSEIS) for Amendment 2; a notice of availability was published on August 29, 1994 (59 FR 44398). According to the FSEIS, the measures contained in Amendment 2 will benefit the natural environment by phasing out activities that result in damage to live bottom habitat areas. Potential adverse economic impacts on fishermen will be mitigated by the harvest of aquacultured live rock.

The Councils prepared an initial regulatory flexibility analysis (RFA) for this action. The initial RFA has been adopted as final without change. The initial and final RFAs conclude that this action may have a significant economic impact on a substantial number of small entities. The specifics of that conclusion are summarized in the proposed rule and are not repeated here. Copies of the document may be obtained from the Gulf of Mexico Fishery Management Council, 5401 W. Kennedy Boulevard, Suite 331, Tampa, FL 33609-2486, FAX 813-225-7015, or from the South Atlantic Fishery Management Council, Southpark Building, One Southpark Circle, Suite 306, Charleston, SC 29407-4699, FAX 803-769-4520.

This final rule contains collection-of-information requirements subject to the Paperwork Reduction Act—specifically, applications for permits to take wild live rock, applications for permits to take aquacultured live rock, site evaluation reports for aquacultured live rock, reports of live rock harvests, and notification of intent to harvest aquacultured live rock. These collections of information have been approved by OMB under OMB control

numbers 0648-0205, and 0648-0016. The public reporting burdens for these collections of information are estimated to average 15, 15, 45, 15, and 2 minutes per response, respectively, 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 rule also revises a collection-of-information requirement subject to the Paperwork Reduction Act—namely, applications for prohibited coral, allowable chemical, and allowable octocoral permits. This collection of information is estimated to average 15 minutes per response and was previously approved by OMB under OMB control number 0648-0205. Send comments regarding these burden estimates or any other aspect of the collections of information, including suggestions for reducing the burdens, to Edward E. Burgess, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702 and to the Office of Information and Regulatory Affairs, OMB, Washington, DC 20503 (Attention: NOAA Desk Officer).

In the EEZ off the southern Atlantic states, the substantive measures in this final rule, that is, non-administrative measures that affect the conservation of coral and coral reefs, are currently in effect under an emergency interim rule. In the EEZ of the Gulf of Mexico, the substantive measures were in effect through November 12, 1994, under an emergency interim rule. It is in the public interest to continue the effectiveness of these measures off the southern Atlantic states without hiatus and to minimize the period of time that these measures are not in effect in the Gulf of Mexico. The other measures in this final rule are continuations or clarifications of existing measures or administrative measures that do not affect current fishing practices. Delay in effectiveness of these other measures serves no useful purpose and is not in the public interest. Accordingly, the Assistant Administrator for Fisheries, NOAA, finds for good cause, under section 553(d)(3) of the Administrative Procedure Act, that the effectiveness of this final rule should not be delayed.

#### List of Subjects

50 CFR Part 204

Reporting and recordkeeping requirements.

50 CFR Part 638

Fisheries, Fishing, Reporting and recordkeeping requirements

Dated: December 21, 1994.  
**Charles Karnella,**  
*Acting Program Management Officer,*  
*National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR parts 204 and 638 are amended as follows:

**PART 204—OMB CONTROL NUMBERS FOR NOAA INFORMATION COLLECTION REQUIREMENTS**

1. The authority citation for part 204 continues to read as follows:

Authority: Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520 (1982).

**§ 204.1 [Amended]**

2. In § 204.1(b), the table is amended by removing from the left column "638.4(g)" and "638.7", and their corresponding entries in the right column, and by adding in their place, in the left column, in numerical order, "638.4", "638.5", and "638.27(d)" and in the right column, in corresponding positions, the control numbers "-0205", "-0205", and "-0016".

**PART 638—CORAL AND CORAL REEFS OF THE GULF OF MEXICO AND THE SOUTH ATLANTIC**

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

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

4. Section 638.1 is revised to read as follows:

**§ 638.1 Purpose and scope.**

(a) The purpose of this part is to implement the Fishery Management Plan for Coral and Coral Reefs off the Southern Atlantic States and the Fishery Management Plan for Coral and Coral Reefs of the Gulf of Mexico developed under the Magnuson Act by the South Atlantic Fishery Management Council and the Gulf of Mexico Fishery Management Council, respectively.

(b) This part governs conservation and management of coral, coral reefs, and live rock in the EEZ off the southern Atlantic states and in the Gulf of Mexico. "EEZ" in this part 638 refers to the EEZ in those geographical areas, unless the context clearly indicates otherwise.

5. In § 638.2, the definition of "Scientific and educational purpose" is removed; in the definition of "Allowable chemical", paragraphs (a) and (b) are redesignated as paragraphs (1) and (2), respectively; the definitions of "Allowable octocoral", "HAPC", "Prohibited coral", and "Regional Director" are revised; and new definitions of "Aquacultured live rock", "Chipping", "Gulf of Mexico", "Live

rock", "Off the southern Atlantic states", "Scientific, educational, or restoration purpose", "Trip", and "Wild live rock" are added in alphabetical order to read as follows:

**§ 638.2 Definitions.**

*Allowable octocoral* means an erect, nonencrusting species of the subclass Octocorallia, except the seafans *Gorgonia flabellum* and *G. ventalina*, plus the attached substrate—

(1) Within 1 inch (2.54 cm) of an allowable octocoral in or from the EEZ off the southern Atlantic states; and

(2) Within 3 inches (7.62 cm) of an allowable octocoral in or from the Gulf of Mexico EEZ.

*Aquacultured live rock* means live rock that is harvested under an aquacultured live rock permit issued pursuant to § 638.4.

*Chipping* means breaking up reefs, ledges, or rocks into fragments, usually by means of a chisel and hammer.

*Gulf of Mexico* means the waters off the southern states from the boundary between the Atlantic Ocean and the Gulf of Mexico, as specified in § 601.11(c) of this chapter, to the Texas/Mexico border.

*HAPC* means habitat area of particular concern.

*Live rock* means living marine organisms, or an assemblage thereof, attached to a hard substrate, including dead coral or rock (excluding individual mollusk shells).

*Off the southern Atlantic states* means the waters off the east coast from 36°34'55" N. lat. (extension of the Virginia/North Carolina boundary) to the boundary between the Atlantic Ocean and the Gulf of Mexico, as specified in § 601.11(c) of this chapter.

*Prohibited coral* means—

(1) Coral belonging to the Class Hydrozoa (fire corals and hydrocorals);

(2) Coral belonging to the Class Anthozoa, Subclass Hexacorallia, Orders Scleractinia (stony corals) and Antipatharia (black corals);

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

(4) Coral in a coral reef, except for allowable octocoral; or

(5) Coral in an HAPC, including allowable octocoral.

*Regional Director* means the Director, Southeast Region, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, telephone 813-570-5301; or a designee.

*Scientific, educational, or restoration purpose* means the objective of gaining

knowledge for the benefit of science, humanity, or management of coral or returning a disturbed habitat as closely as possible to its original condition.

*Trip* means a fishing trip, regardless of number of days duration, that begins with departure from a dock, berth, beach, seawall, or ramp and that terminates with return to a dock, berth, beach, seawall, or ramp.

*Wild live rock* means live rock other than aquacultured live rock.

6. In § 638.3, in paragraph (a), the reference to "paragraph (b) of this section" is revised to read "paragraphs (b) and (c) of this section"; and paragraph (c) is added to read as follows:

**§ 638.3 Relation to other laws.**

(c) If a state has a catch, landing, or gear regulation that is more restrictive than a catch, landing, or gear regulation in this part, a person landing in such state allowable octocoral taken from the EEZ must comply with the more restrictive state regulation.

**§§ 638.8, 638.6 [Redesignated as §§ 638.9, 638.8]**

7. Section 638.8 is redesignated as § 638.9; § 638.6 is redesignated as § 638.8; §§ 638.4, 638.5, and 638.7 are revised, and new § 638.6 is added to read as follows:

(Note: This revision supersedes the amendments to § 638.5 published in the emergency interim rule on June 27, 1994 (59 FR 32933) and extended on September 16, 1994 (59 FR 47563).)

**§ 638.4 Permits and fees.**

(a) *Applicability.* (1) *Federal permits.* Federal permits are required for specified activities in the EEZ as follows:

(i) *Prohibited coral.* A Federal permit is required for an individual to take or possess prohibited coral and will be issued only when the prohibited coral will be used for a scientific, educational, or restoration purpose.

(ii) *Allowable chemical.* A Federal permit is required for an individual to take or possess fish or other marine organisms with an allowable chemical in a coral area, other than fish or other marine organisms that are landed in Florida.

(iii) *Allowable octocoral.* A Federal permit is required for an individual to take or possess allowable octocoral, other than allowable octocoral that is landed in Florida.

(iv) *Wild live rock.* (A) A Federal permit is required for a vessel to take or possess wild live rock. A wild live rock

vessel permit will not be issued unless the current owner of the vessel for which the permit is requested had the required Florida permit and endorsements for live rock on or before February 3, 1994, and a record of landings of live rock on or before February 3, 1994, as documented on trip tickets received by the Florida Department of Environmental Protection before March 15, 1994. For landings other than in Florida, equivalent state permits/endorsements, if required, and landing records may be substituted for the Florida permits/endorsements and trip tickets. An owner will not be issued permits in numbers exceeding the number of vessels for which the owning entity had the requisite reported landings. An owner of a permitted vessel may transfer the vessel permit to another vessel owned by the same person by returning the existing permit with an application for a vessel permit for the replacement vessel.

(B) A Federal permit is required for an individual to take or possess wild live rock for a scientific, educational, or restoration purpose and an individual permit will be issued only for such purpose. Such individual wild live rock permit may authorize the taking and possession of wild live rock in or from areas not otherwise allowed by the regulations in this part.

(v) Aquacultured live rock. A Federal permit is required for a person to take or possess aquacultured live rock. Each aquacultured live rock permit will be issued for a specific site, which may not exceed 1 acre (0.4 ha). Aquacultured live rock permits are available only for harvests in the Gulf of Mexico.

(2) *Florida permits*. Appropriate Florida permits and endorsements are required for the following activities, without regard to whether they involve activities in the EEZ or Florida's waters:

- (i) Landing in Florida fish or other marine organisms taken with an allowable chemical in a coral area.
- (ii) Landing allowable octocoral in Florida.
- (iii) Landing live rock in Florida.

(b) *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 must be submitted to the Regional Director at least 30 days prior to the date on which the applicant desires to have the permit made effective. Information must be provided as follows:

(1) *Basic information*. (i) Name, mailing address including zip code, telephone number, social security

number, and date of birth of the applicant.

(ii) Name and address of any affiliated company, institution, or organization.

(iii) Information concerning vessels and harvesting gear/methods requested by the Regional Director.

(iv) Any other information that may be necessary for the issuance or administration of the permit.

(2) *Scientific, educational, or restoration purpose*. An applicant for a prohibited coral permit or a wild live rock permit for a scientific, educational, or restoration purpose must specify the amount and size of prohibited coral or wild live rock to be harvested, by species, its intended use, and proposed locations and periods of fishing.

(3) *Allowable chemical*. An applicant for an allowable chemical permit must specify the type of chemical to be used, species to be harvested and their intended use, and proposed locations and periods of fishing.

(4) *Aquacultured live rock*. An applicant for an aquacultured live rock permit must identify each vessel that will be depositing material on or harvesting aquacultured live rock from the proposed aquacultured live rock site, must specify the port of landing of aquacultured live rock, and must provide a site evaluation report prepared pursuant to generally accepted industry standards that—

(i) Provides accurate coordinates of the proposed harvesting site so that it can be located using LORAN or Global Positioning System equipment;

(ii) Shows the site on a chart in sufficient detail to determine its size and allow for site inspection;

(iii) Discusses possible hazards to safe navigation or hindrance to vessel traffic, traditional fishing operations, or other public access that may result from aquacultured live rock at the site;

(iv) Describes the naturally occurring bottom habitat at the site; and

(v) Specifies the type and origin of material to be deposited on the site and how it will be distinguishable from the naturally occurring substrate.

(c) *Change in application information*. An individual, the owner of a vessel, or a person with a permit must notify the Regional Director within 30 days after any change in the application information specified in paragraph (b) of this section. The permit is void if any change in the information is not reported within 30 days.

(d) *Fees*. A fee is charged for each permit application submitted under paragraph (b) of this section. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook for

determining the administrative costs of each special product or service. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application.

(e) *Issuance*. (1) The Regional Director will issue a permit at any time to an applicant if the application is complete. An application is complete when all requested forms, information, and documentation have been received and the applicant has submitted all applicable reports specified at § 638.5.

(2) Upon receipt of an incomplete application, the Regional Director will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days of the date of the Regional Director's letter of notification, the application will be considered abandoned.

(f) *Duration*. A permit remains valid for the period specified on it unless it is revoked, suspended, or modified pursuant to subpart D of 15 CFR part 904 or the permitted vessel is sold.

(g) *Transfer*. A permit issued pursuant to this section is not transferable or assignable, except as provided under paragraph (a)(1)(iv)(A) of this section for a wild live rock vessel permit. An individual or person who desires to conduct an activity for which a permit is required must apply for a permit in accordance with the provisions of paragraph (b) of this section. The application must be accompanied by a copy of a signed bill of sale or equivalent acquisition papers if the application involves a current permit for aquacultured live rock.

(h) *Display*. (1) An individual permit issued pursuant to this section must be available when the permitted activity is being conducted, including the landing of species taken as a result of that activity.

(2) A vessel permit for wild live rock issued pursuant to this section must be carried on board the vessel and such vessel must be identified as required by § 638.6.

(3) An aquacultured live rock permit issued pursuant to this section, or a copy, must be carried on board a vessel depositing or possessing material on an aquacultured live rock site or harvesting or possessing live rock from an aquacultured live rock site, and such vessel must be identified as provided for in § 638.6.

(4) The operator of a vessel or an individual must present the permit for inspection upon the request of an authorized officer.

(i) *Sanctions and denials*. A permit issued pursuant to this section may be revoked, suspended, or modified, and a

permit application may be denied, in accordance with the procedures governing enforcement-related permit sanctions and denials found at subpart D of 15 CFR part 904.

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

(k) *Replacement.* A replacement permit may be issued. An application for a replacement permit will not be considered a new application. A fee, the amount of which is stated with the application form, must accompany each request for a replacement.

#### § 638.5 Recordkeeping and reporting.

(a) An individual with a Federal prohibited coral or wild live rock permit for a scientific, educational, or restoration purpose must submit a report of harvest to the Regional Director. Specific reporting requirements will be provided with the permit.

(b) An individual with a Federal allowable octocoral permit must submit a report of harvest to the Science and Research Director. Specific reporting requirements will be provided with the permit.

(c) A person with an aquacultured live rock permit must report to the Regional Director each deposition of material on a site. Such reports must be postmarked not later than 7 days after deposition and must contain the following information:

(1) Permit number of site and date of deposit.

(2) Geological origin of material deposited.

(3) Amount of material deposited.

(4) Source of material deposited, that is, where obtained, if removed from another habitat, or from whom purchased.

(d) The owner of a vessel that takes wild live rock, and a person who takes aquacultured live rock that is landed in Florida, must submit Florida trip tickets as required by Florida statutes and regulations.

(e) A person who takes aquacultured live rock that is landed other than in Florida must submit a report of harvest to the Regional Director. Specific reporting requirements will be provided with the permit.

(f) 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, an individual or person with a coral permit issued pursuant to § 638.4, and a dealer or processor are required upon request to make prohibited coral, fish or other marine organisms taken with an allowable

chemical, allowable octocoral, or live rock available for inspection by the Science and Research Director or an authorized officer.

#### § 638.6 Vessel identification.

(a) *Official number.* A vessel with a Federal permit for wild live rock or operating under an aquacultured live rock permit, issued pursuant § 638.4, must display its official number—

(1) On the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck, so as to be clearly visible from an enforcement vessel or aircraft;

(2) In block arabic numerals in contrasting color to the background;

(3) At least 18 inches (45.7 cm) in height for fishing vessels over 65 ft (19.8 m) in length and at least 10 inches (25.4 cm) in height for all other vessels; and

(4) Permanently affixed to or painted on the vessel.

(b) *Duties of operator.* The operator of each fishing vessel must—

(1) Keep the official number clearly legible and in good repair; and

(2) Ensure that no part of the fishing vessel, its rigging, fishing gear, or any other material aboard obstructs the view of the official number from any enforcement vessel or aircraft.

#### § 638.7 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) Without a Federal permit, take or possess in the EEZ—

(1) Prohibited coral,

(2) Fish or other marine organisms with an allowable chemical in a coral area,

(3) Allowable octocoral,

(4) Wild live rock, or

(5) Aquacultured live rock—as specified in § 638.4(a)(1).

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

(c) Fail to display or present a permit, as specified in § 638.4(h).

(d) Falsify or fail to submit required reports or trip tickets, as specified in § 638.5(a), (b), (c), (d), and (e).

(e) Fail to make prohibited coral, fish or other marine organisms taken with an allowable chemical, allowable octocoral, or live rock available for inspection, as specified in § 638.5(f).

(f) Falsify or fail to display and maintain vessel identification, as required by § 638.6.

(g) Fail to return immediately to the sea prohibited coral, allowable octocoral, or live rock taken as incidental catch, or, in fisheries in

which the entire catch is landed unsorted, sell, trade, or barter, or attempt to sell, trade, or barter prohibited coral, allowable octocoral, or live rock; as specified in § 638.21.

(h) Use or possess a toxic chemical in a coral area in the EEZ, as specified in § 638.22(a).

(i) Use a power-assisted tool in the EEZ to take prohibited coral, allowable octocoral, or live rock, or possess in the EEZ such coral or live rock taken with a power-assisted tool, as specified in § 638.22(b).

(j) Fish for or possess prohibited coral or allowable octocoral in the West and East Flower Garden Banks HAPC or the Florida Middle Grounds HAPC, except as authorized by a permit, as specified in § 638.23(a)(1) and (b)(1).

(k) Use prohibited fishing gear in an HAPC, as specified in § 638.23(a)(2), (b)(2), and (c).

(l) After the fishery for allowable octocoral is closed, harvest or possess allowable octocoral in the EEZ, or purchase, barter, trade, or sell allowable octocoral so harvested or possessed, or attempt any of the foregoing, as specified in § 638.24(b).

(m) Harvest or possess wild live rock in the EEZ off the southern Atlantic states north of 25°58.5' N. lat., or in the Gulf of Mexico EEZ west of 87°31'06" W. long. or south of 25°20.4' N. lat., as specified in §§ 638.25(a) and 638.26(a).

(n) Harvest wild live rock by chipping or possess wild live rock taken by chipping in the EEZ off the southern Atlantic states south of 25°58.5' N. lat. or in the Gulf of Mexico EEZ from 87°31'06" W. long. east and south to 28°26' N. lat., as specified in §§ 638.25(b) and 638.26(b)(1).

(o) After the fishery for wild live rock is closed in the EEZ off the southern Atlantic states, harvest or possess wild live rock in that area, or purchase, barter, trade, or sell wild live rock so harvested or possessed, or attempt any of the foregoing, as specified in § 638.25(c).

(p) In the Gulf of Mexico EEZ from 28°26' N. lat. to 25°20.4' N. lat., harvest or possess wild live rock taken other than by hand or by chipping with a nonpower-assisted, hand-held hammer and chisel, as specified in § 638.26(b)(2).

(q) Exceed the daily vessel harvest and possession limit applicable to the harvest or possession of live rock in or from the Gulf of Mexico EEZ, as specified in § 635.26(c).

(r) Fail to comply with the restrictions applicable to aquacultured live rock sites specified in § 638.27(b).

(s) Mechanically dredge or drill, or otherwise disturb, aquacultured live

rock or harvest live rock other than by hand, as specified in § 638.27(c).

(t) Falsify or fail to provide information 24 hours prior to harvesting aquacultured live rock, as specified in § 638.27(d).

(u) Harvest live rock from a site for which the person does not have an aquacultured live rock permit, as specified in § 638.27(e).

(v) Make any false statement, oral or written, to an authorized officer concerning the taking, catching, harvesting, landing, purchase, sale, possession, or transfer of allowable octocoral, prohibited coral, or live rock.

(w) Interfere with, obstruct, delay, or prevent by any means an investigation, search, seizure, or disposition of seized property in connection with enforcement of the Magnuson Act.

**Subpart B—Management Measures**

8. Subpart B of part 638 is revised to read as follows:

(Note: This revision supercedes the amendments to subpart B published in the emergency interim rule on June 27, 1994 (59 FR 32933) and extended on September 16, 1994 (59 FR 47563).)

**Subpart B—Management Measures**

- 638.20 Fishing years.
- 638.21 Harvest limitations.
- 638.22 Gear restrictions.
- 638.23 Habitat areas of particular concern.
- 638.24 Octocoral quota and closure.
- 638.25 Wild live rock off the southern Atlantic states.
- 638.26 Wild live rock in the Gulf of Mexico.
- 638.27 Aquacultured live rock.
- 638.28 Specifically authorized activities.

**Subpart B—Management Measures**

**§ 638.20 Fishing years.**

The fishing year for live rock begins on January 1 and ends on December 31. The fishing year for prohibited coral and allowable octocoral begins on October 1 and ends on September 30.

**§ 638.21 Harvest limitations.**

Except as authorized by a permit issued pursuant to § 638.4, prohibited coral, allowable octocoral, and live rock taken as incidental catch must be returned immediately to the sea in the general area of fishing. In fisheries where the entire catch is landed unsorted, such as the scallop and groundfish fisheries, unsorted prohibited coral, allowable octocoral, and live rock are exempt from the requirement for a Federal permit and may be landed; however, no person may sell, trade, or barter or attempt to sell, trade, or barter such prohibited coral, allowable octocoral, or live rock.

**§ 638.22 Gear restrictions.**

(a) A toxic chemical may not be used or possessed in a coral area in the EEZ.

(b) A power-assisted tool may not be used in the EEZ to take prohibited coral, allowable octocoral, or live rock, and the possession in the EEZ of such corals or live rock taken with a power-assisted tool is prohibited.

**§ 638.23 Habitat areas of particular concern.**

The following areas are designated as HAPCs:

(a) *West and East Flower Garden Banks.* The West and East Flower Garden Banks are geographically centered at 27°52'14.21" N. lat., 93°48'54.79" W. long. and 27°55'07.44" N. lat., 93°36'08.49" W. long., respectively. On each bank, the HAPC extends from its geographical center to the 50-fathom (300-ft) (91.4-m) isobath. The following restrictions apply in the HAPC:

(1) Fishing for or possessing prohibited coral or allowable octocoral is prohibited, except as authorized by a permit issued pursuant to § 634.4; and

(2) Fishing with bottom longlines, traps, pots, dredges, or bottom trawls is prohibited.

(b) *Florida Middle Grounds.* The Florida Middle Grounds is bounded by rhumb lines connecting the following points:

Point	North latitude	West longitude
A .....	28°42.5'	84°24.8'
B .....	28°42.5'	84°16.3'
C .....	28°11.0'	84°00.0'
D .....	28°11.0'	84°07.0'
E .....	28°26.6'	84°24.8'
A .....	28°42.5'	84°24.8'

The following restrictions apply in the HAPC:

(1) Fishing for or possessing prohibited coral or allowable octocoral is prohibited, except as authorized by a permit issued pursuant to § 634.4; and

(2) Fishing with bottom longlines, traps, pots, dredges, or bottom trawls is prohibited.

(c) *Oculina Bank.* The Oculina Bank is located approximately 15 nautical miles east of Fort Pierce, FL, at its nearest point to shore, and is bounded on the north by 27°53' N. lat., on the south by 27°30' N. lat., on the east by 79°56' W. long., and on the west by 80°00' W. long. In the HAPC, fishing with bottom longlines, traps, pots, dredges, or bottom trawls is prohibited. See § 646.26(d) of this chapter for prohibitions on fishing for snapper-grouper in the Oculina Bank HAPC.

**§ 638.24 Octocoral quota and closure.**

(a) The quota for allowable octocoral from the EEZ is 50,000 colonies per fishing year.

(b) When the quota specified in paragraph (a) of this section is reached or is projected to be reached, the Assistant Administrator will file notification to that effect with the Office of the Federal Register. On and after the effective date of such notification, for the remainder of the fishing year, allowable octocoral may not be harvested or possessed in the EEZ and the purchase, barter, trade, or sale, or attempted purchase, barter, trade, or sale, of allowable octocoral in or from the EEZ is prohibited. The latter prohibition does not apply to allowable octocoral that was harvested and landed prior to the effective date of the notification in the Federal Register.

**§ 638.25 Wild live rock off the southern Atlantic states.**

(a) *Closed area.* No person may harvest or possess wild live rock in the EEZ off the southern Atlantic states north of 25°58.5' N. lat. (extension of the Dade/Broward County, Florida, boundary).

(b) *Gear limitation.* In the EEZ off the southern Atlantic states south of 25°58.5' N. lat., no person may harvest wild live rock by chipping and no person may possess in that area wild live rock taken by chipping.

(c) *Quota and closure.* (1) The quota for wild live rock from the EEZ off the southern Atlantic states is 485,000 lb (219,992 kg) for the fishing year that begins January 1, 1995. Commencing with the fishing year that begins January 1, 1996, the quota is zero.

(2) When the quota specified in paragraph (c)(1) of this section is reached, or is projected to be reached, the Assistant Administrator will file notification to that effect with the Office of the Federal Register. On and after the effective date of such notification, for the remainder of the fishing year, wild live rock may not be harvested or possessed in the EEZ off the southern Atlantic states and the purchase, barter, trade, or sale, or attempted purchase, barter, trade, or sale, of wild live rock in or from the EEZ off the southern Atlantic states is prohibited. The latter prohibition does not apply to wild live rock that was harvested and landed prior to the effective date of the notification in the Federal Register.

(3) The 1994 quota for wild live rock from the EEZ off the southern Atlantic states was reached and the fishery was closed effective November 1, 1994. The provisions of paragraph (c)(2) of this section regarding harvest or possession

of wild live rock and the purchase, barter, trade, or sale, or attempts thereof, of wild live rock are effective December 22, 1994, through December 31, 1994.

**§ 638.26 Wild live rock in the Gulf of Mexico.**

(a) *Closed areas.* No person may harvest or possess wild live rock in the Gulf of Mexico EEZ—

(1) West of 87°31'06" W. long. (extension of the Alabama/Florida boundary); or

(2) South of 25°20.4' N. lat. (extension of the Monroe/Collier County, Florida boundary).

(b) *Gear limitations.* (1) In the Gulf of Mexico EEZ from 87°31'06" W. long. east and south to 28°26' N. lat. (extension of the Pasco/Hernando County, FL, boundary), no person may harvest wild live rock by chipping and no person may possess in that area wild live rock taken by chipping.

(2) In the Gulf of Mexico EEZ from 28°26' N. lat. to 25°20.4' N. lat., wild live rock may be harvested only by hand, without tools, or by chipping with a nonpower-assisted, hand-held hammer and chisel, and no person may possess in that area wild live rock taken other than by hand, without tools, or by chipping with a nonpower-assisted, hand-held hammer and chisel.

(c) *Harvest and possession limits.* Through December 31, 1996, a daily vessel limit of twenty-five 5-gallon (19-L) buckets, or volume equivalent (16.88 ft<sup>3</sup> (478.0 L)), applies to the harvest or possession of wild live rock in or from the Gulf of Mexico EEZ from 87°31'06" W. long. east and south to 25°20.4' N. lat., regardless of the number or duration of trips. Commencing January 1, 1997, the daily vessel limit is zero.

**§ 638.27 Aquacultured live rock.**

(a) Aquacultured live rock may be harvested from the Gulf of Mexico EEZ only under a permit, as required by § 638.4(a)(1)(v). A person harvesting aquacultured live rock is exempt from the prohibition on taking prohibited coral for such prohibited coral as attaches to aquacultured live rock.

(b) The following restrictions apply to individual aquaculture activities:

(1) No aquaculture site may exceed 1 acre (0.4 ha) in size.

(2) Material deposited on the aquaculture site must be geologically or otherwise distinguishable from the naturally occurring substrate or be indelibly marked or tagged; may not be placed over naturally occurring reef outcrops, limestone ledges, coral reefs, or vegetated areas; must be free of contaminants; must be nontoxic; must be placed on the site by hand or lowered

completely to the bottom under restraint, that is, not allowed to fall freely; and must be placed from a vessel that is anchored.

(3) A minimum setback of at least 50 ft (15.2 m) must be maintained from natural vegetated or hard bottom habitats.

(c) Mechanically dredging or drilling, or otherwise disturbing, aquacultured live rock is prohibited, and aquacultured live rock may be harvested only by hand.

(d) Not less than 24 hours prior to harvest of aquacultured live rock, the owner or operator of the harvesting vessel must provide the following information to the NMFS Law Enforcement Office, Southeast Area, St. Petersburg, FL, telephone (813) 570-5344:

(1) Permit number of site to be harvested and date of harvest.

(2) Name and official number of the vessel to be used in harvesting.

(3) Date, port, and facility at which aquacultured live rock will be landed.

(e) Live rock on a site may be harvested only by the person, or his or her employee, contractor, or agent, who has been issued the aquacultured live rock permit for the site.

**§ 638.28 Specifically authorized activities.**

The Regional Director may authorize, for the acquisition of information and data, activities otherwise prohibited by the regulations in this part.

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