

(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; phase out wild live rock harvests in the South Atlantic EEZ south of the Dade/Broward County line by 1996; phase out wild live rock harvests in the Gulf EEZ off Florida north of Monroe County by 1997; establish restrictions on live rock harvesting and possession and require permits and reporting during the phase-out periods; and allow and facilitate live rock aquaculture. In addition, NMFS proposes changes to the regulations to correct and conform them to current standards.

DATES: Written comments must be received on or before November 7, 1994.

ADDRESSES: Requests for copies of Amendment 2, which includes a regulatory impact review (RIR)/initial regulatory flexibility analysis (IRFA) and a final supplemental environmental impact statement (FSEIS), should be sent to the Gulf of Mexico Fishery Management Council, 5401 W. Kennedy Boulevard, Suite 331, Tampa, FL 33609-2486, FAX 813-225-7015, or to the South Atlantic Fishery Management Council, Southpark Building, One Southpark Circle, Suite 306, Charleston, SC 29407-4699, FAX 803-769-4520.

Comments on the proposed rule, Amendment 2, the RIR/IRFA, and the FSEIS must be sent to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Comments regarding the collection-of-information requirements contained in this proposed rule should be sent to Edward E. Burgess, Southeast Regional Office, 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).

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

SUPPLEMENTARY INFORMATION: The FMP was prepared by the Gulf of Mexico Fishery Management Council (Gulf Council) and the South Atlantic Fishery Management Council (South Atlantic Council) and is implemented through regulations at 50 CFR part 638 under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

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

by scuba divers and sold to the marine aquarium industry, which markets it as the basis for minireef aquaria. Live rock is a nonrenewable resource providing essential fishery habitat in the South Atlantic and Gulf.

In the recent public review process during the development of Amendment 2, the Gulf and South Atlantic Councils received testimony concerning serious damage to reefs, ledges, and other hard bottom habitats from live rock harvesting activities. 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). These rules were intended to slow the rate of harvest, prevent serious damage to habitat, and prevent geographical extension of harvest until permanent measures could be implemented through Amendment 2.

In the South Atlantic EEZ, Amendment 2 would: (1) Prohibit the harvest and possession of wild live rock north of the Dade/Broward County line in Florida; (2) south of the Dade/Broward County line, phase out harvesting of wild live rock by January 1, 1996, establish an annual quota on harvests of wild live rock of 485,000 lb (219,992 kg) for calendar years 1994 and 1995, and prohibit the taking of wild live rock by chipping during those years; and (3) provide for a permit system for the harvest and possession of live rock from aquaculture operations that will be implemented when appropriate criteria are developed through a subsequent amendment.

In the Gulf EEZ, Amendment 2 would: (1) Prohibit the harvest and possession of wild live rock off Texas, Louisiana, Mississippi, Alabama, and south of the Monroe/Collier County line in Florida; (2) from the Monroe/Collier County line to the Florida/Alabama boundary, phase out harvesting of wild live rock by January 1, 1997, contingent upon development of a Federal aquaculture permitting system; (3) from the Pasco/Hernando County line in Florida to the Florida/Alabama boundary, prohibit the taking of wild live rock by chipping during the phase-out period; (4) from the Pasco/Hernando County line to the Monroe/Collier County line, limit the taking of wild live rock by chipping to nonpower-assisted,

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 638

[Docket No. 940973-4273; 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: Proposed rule.

SUMMARY: NMFS issues this proposed rule to implement Amendment 2 to the Fishery Management Plan for Coral and Coral Reefs of the Gulf of Mexico and South Atlantic (FMP). Amendment 2 would prohibit the taking of wild live rock in the exclusive economic zone (EEZ) off the southern Atlantic states

hand-held hammers and chisels during the phase-out period; (5) from the Monroe/Collier County line to the Florida/Alabama boundary, establish a daily vessel possession limit for wild live rock during the phase-out period; (6) require a permit to harvest or possess live rock from aquaculture operations; and (7) provide an exception to the taking of prohibited corals as part of the aquaculture permit.

For both the South Atlantic and Gulf, Amendment 2 would: (1) Define live rock and add it to the fishery management unit; (2) redefine allowable octocorals to ensure that individual colonies and not whole rocks are taken under the octocoral quota; (3) establish a Federal permit and reporting system for wild live rock harvesting during harvest phase-out periods; (4) allow and facilitate live rock aquaculture; (5) require a permit to harvest and possess live rock in the EEZ for scientific, educational, or restoration purposes; and (6) provide for separate management of coral and coral reef resources by each Council in its geographical area of authority.

A description of the fishery and the rationale and effects of live rock harvesting restrictions during the phase-out periods in the Gulf EEZ off Florida and prohibitions on harvesting in the EEZ off Alabama and in the South Atlantic north of the Dade/Broward County line in Florida were contained in the emergency interim rules and are not repeated here. Rationales for prohibitions on harvest and possession in other areas, the phaseout of harvesting in remaining areas off Florida, permits and reporting, the redefinition of allowable octocorals, and separation of management between the Councils are discussed below.

To prevent effort shifting from the current areas of harvest, Amendment 2 would prohibit wild live rock harvesting and possession in the EEZ off Texas, Louisiana, and Mississippi, in addition to areas closed under the emergency interim rules. No landings of live rock have been reported from these areas. Coral habitats are at such a premium in the northern Gulf that local governments and private organizations are considering construction of artificial reefs to supplement scarce natural hard bottom habitats. Amendment 2 would close the Gulf EEZ off Monroe County to all harvest and possession in order to prevent effort shifting from the South Atlantic EEZ following closures in that adjoining jurisdiction.

About 99 percent of reported live rock landings are from the Gulf EEZ off Florida north of Monroe County and from the South Atlantic EEZ south of

the Dade/Broward County line. All landings of live rock to date have been of "wild" live rock, that is, non-aquacultured live rock. The Councils propose to phase out these landings and replace them with aquacultured products from either state or EEZ waters. The delay in implementation of a harvest and possession prohibition in these areas is designed to allow live rock harvesters additional time and resources to make the transition to aquaculture.

The Councils propose to redefine allowable octocorals to close a potential loophole that could allow harvest of live rock as part of the 50,000 colony annual quota for allowable octocorals. The revised definition would include as allowable octocoral only a limited amount of the attached substrate—one inch (2.54 cm) in the South Atlantic EEZ and 3 inches (7.62 cm) in the Gulf EEZ.

Currently, a Federal permit for prohibited coral is issued only when the prohibited coral is for a scientific or educational purpose. The Councils propose to add restoration to the purposes for which these permits are available. This addition recognizes the benefits of habitat restoration following ship groundings and other environmental perturbations. The Councils also propose to allow the harvest of live rock under a Federal permit issued for a scientific, educational, or restoration purpose.

The Councils propose to require permits for and reporting of wild live rock harvest during the phase-out periods in the Gulf EEZ off Florida north of Monroe County and in the South Atlantic EEZ south of the Dade/Broward County line. Permits would be limited to persons who legally participated in the fishery on or prior to February 3, 1994, and to the number of vessels that operated in the commercial fishery for live rock on or prior to February 3, 1994, as documented on trip tickets received by the Florida Department of Environmental Protection prior to March 15, 1994. The date of February 3, 1994, was published in the *Federal Register* (59 FR 5179, February 3, 1994) as the control date for entry into the commercial fishery for live rock. All commercial landings of live rock have been permitted and reported under Florida's permitting and reporting requirements. Those requirements include a Saltwater Products License with a Restricted Species Endorsement and a Marine Life Endorsement, and the submission of trip tickets. These limitations on permits are intended to stabilize harvest during the phase-out period to near the 1992 level and to

limit participants to those already in the fishery. To accomplish these intended effects, NMFS finds it necessary to identify owners with the requisite permit history and the number of vessels, by owner, that operated in the commercial fishery on or prior to the control date. Vessel permits would be issued to such owners in corresponding numbers.

The Councils intend to allow and facilitate live rock aquaculture to replace the wild harvest. Amendment 2 proposes to require an aquacultured live rock permit for the harvest and possession of live rock from aquaculture operations in the Gulf EEZ, under specific criteria designed to protect natural hard bottom areas as specified in this rule. The aquaculture permit would also authorize an exception to the prohibition on taking and possession of otherwise prohibited corals. Otherwise, an aquaculturist could be prevented from harvesting the aquaculture product if small polyps of such species are detected on the rocks.

Amendment 2 would establish a permit requirement for the harvest and possession of live rock from aquaculture operations in the South Atlantic EEZ, but aquaculture permits for this area will be issued only after appropriate criteria are developed and implemented through a subsequent rulemaking.

Both Councils have agreed that management of coral, coral reefs, live rock, and any other part of the management unit in the FMP will be the responsibility of the Council in whose jurisdiction it occurs. Under this arrangement, Amendment 2 proposes to eliminate the current requirement that both Councils approve all measures in any FMP amendment submitted for agency review. This requirement exists because the FMP was designated by NMFS as a joint management plan prepared by the two Councils.

Additionally, the South Atlantic Council has requested designation of a separate FMP for the South Atlantic because it believes (1) the habitats in the Gulf and South Atlantic are different, (2) the resource does not move between the South Atlantic and the Gulf, (3) it should have authority to coordinate all habitat concerns and policies in the South Atlantic, (4) there are additional management needs in the South Atlantic, (5) the Councils have different management philosophies, and (6) a separate FMP will improve timeliness of management adjustments and reduce constituent costs. The Gulf Council concurs in the South Atlantic's request. NMFS requests comments on the proposal to separate the FMP into an

FMP for the South Atlantic and an FMP for the Gulf of Mexico.

Additional background and rationale for the measures discussed above are contained in Amendment 2, the availability of which was announced in the Federal Register on August 29, 1994 (59 FR 44398).

Additional Measures Proposed by NMFS

This proposed rule would eliminate unnecessary language; change the scientific names of corals to conform to current standards of the American Fisheries Society; add definitions of additional terms; correct the address and telephone number of the Regional Director, Southeast Region, NMFS; clarify that all coral in a habitat area of particular concern (HAPC), including allowable octocoral, is prohibited coral; require identification markings on vessels in the live rock fishery; prohibit the use or possession of a toxic chemical in the EEZ; prohibit the possession of coral in the Flower Garden Banks HAPC; prohibit the use of dredges in the Flower Garden Banks HAPC; prohibit making a false statement to an authorized officer concerning the taking of coral, coral reefs, or live rock; and prohibit interference with an investigation, search, seizure, or disposition of seized property in connection with enforcement of the Magnuson Act. The requirement for identification markings and the added prohibitions are necessary for effective enforcement of existing and added management measures and would conform the regulations to current standards applicable to other federally-managed fisheries in the Gulf of Mexico and off the southern Atlantic states.

NMFS proposes to simplify the existing permitting and reporting requirements. Specifically, this rule proposes to remove the requirement for Federal permits for and reports on taking allowable octocoral that are landed in Florida and for taking fish with an allowable chemical that are landed in Florida. Florida requires permits and reports for these activities, whether or not the allowable octocoral or fish are harvested in the EEZ or State waters. Currently, all but one of the Federal permits for these activities involve landings in Florida. Duplicate Federal/State permitting and reporting serve no useful purpose.

NMFS proposes to broaden the ban on the use of power-assisted tools. Amendment 2 proposes to ban the use of power-assisted tools for the taking of aquacultured live rock, wild live rock in the Gulf EEZ during the phase-out period, and allowable octocoral. Since

chipping of wild live rock would be banned in the South Atlantic EEZ during the phase-out period, power-assisted tools implicitly would be banned in the EEZ in that area. Amendment 2 does not explicitly address prohibited coral in either area or allowable octocoral in the South Atlantic EEZ. NMFS believes the rationale for the ban on power-assisted tools is equally applicable to prohibited coral and allowable octocoral throughout the EEZ—extension of the ban to those species and additional areas is necessary to enhance enforcement.

Classification

Section 304(a)(1)(D) of the Magnuson Act requires the Secretary of Commerce (Secretary) to publish regulations proposed by a council within 15 days of receipt of an amendment and regulations. At this time the Secretary has not determined that Amendment 2 is consistent with the national standards, other provisions of the Magnuson Act, and other applicable laws. The Secretary, in making that determination, will take into account the data, views, and comments received during the comment period.

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

The Councils prepared an FSEIS for Amendment 2 that will be filed with the Environmental Protection Agency for public review and comment; a notice of its availability for public comment for 30 days will be published in the Federal Register. According to the FSEIS, the proposed actions would benefit the natural environment by phasing out activities that result in damage to live bottom habitat areas. Potential adverse economic impacts on fishermen would be mitigated by the harvest of aquacultured live rock.

The Councils prepared an IRFA as part of the RIR which describes the impact this proposed rule would have on small entities, if adopted. The IRFA concludes that this proposed rule, if adopted, may have a significant economic impact on a substantial number of small entities. Specifically, the required change from harvest of wild live rock to aquaculture may result in significant increases in the operating and capital costs to fishermen. An unknown number of current participants may be forced to cease business as live rock harvesters. All current participants are small entities. A copy of this analysis is available (see ADDRESSES).

This rule contains five new collection-of-information requirements

subject to the Paperwork Reduction Act—namely, 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 requirements 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, 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 reporting burden estimates or any other aspect of the collections of information, including suggestions for reducing the burdens, to NMFS and OMB (see ADDRESSES).

List of Subjects in 50 CFR Part 638

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 22, 1994.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries,
National Marine Fisheries Service.

For the reasons set out 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.*

2. 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.

3. 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.

4. 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.

5. 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:

§ 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 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) Harvest wild live rock other than by hand or by chipping with a nonpower-assisted, hand-held hammer and chisel in the Gulf of Mexico EEZ from 28°26' N. lat. to 25°20.4' N. lat. or possess in that area wild live rock taken otherwise, as specified in § 638.(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.

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

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	Latitude	Longitude
A	28°42.5' N. ...	84°24.8' W.
B	28°42.5' N. ...	84°16.3' W.
C	28°11.0' N. ...	84°00.0' W.
D	28°11.0' N. ...	84°07.0' W.
E	28°26.6' N. ...	84°24.8' W.
A	28°42.5' N. ...	84°24.8' W.

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) per fishing year during the fishing years that begin January 1, 1994, and 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.

§ 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 otherwise.

(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 ft³ (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 issued pursuant to § 638.4. 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; and must be nontoxic.

(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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