

and willful" standard—to act as an essential element of the enforcement mechanism under which this Commission gains compliance with the statute.

I also have substantial doubts as to whether this interim rule and the analysis provided as to its potential impact complies with the intent and the spirit of the Paperwork Reduction Act, as set forth in 44 U.S.C. sec. 3507. While I have specific disagreements with the data and conclusions of the analysis as it regards the number and percentage of small business entities affected, both the direct and opportunity cost of bond compliance, and of possible economic consequences such as possible cargo diversions to other countries—I am most concerned that the impact analysis fails to consider the anti-competitive impact of the bond requirement as structured in the interim rule. In addition to failing, in my opinion, to meet the actual risk requirements of the law, the single bond level will adversely affect competition by working to establish an unnecessary and comparatively larger burden on the cost structure of the small entity than on the larger one. While a large NVO will no doubt be able to obtain a bond at a low cost, many, if not most, small—particularly foreign—NVO's will have to provide collateral for such a bond. The use of the undifferentiated minimum bond level not only fails to meet the risk and liability requirements of the statute, but thus perversely and unnecessarily acts to increase the anti-competitive impact of the bonding requirement itself. This is the very impact against which a proper impact and alternatives analysis is intended to guard, particularly as it may affect small businesses.

Finally, I oppose the interim rule because I believe strongly that the public deserves an opportunity to comment, and to have such comments answered, prior to the imposition of regulations that will govern them and their responsibilities under the law. To solicit such comments after, rather than before, the implementation of such interim regulations, while provided for under the legislation, simply does not comport with the intent of the established rulemaking process—particularly given the large amount of controversy and uncertainty surrounding the implementation of these regulations.

[FR Doc. 91-1089 Filed 1-14-91; 8:45 am]

BILLING CODE 6730-01-0

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 61

(FCC 90-426)

#### Revises Notice Period for Tariff Filings

AGENCY: Federal Communications Commission.

ACTION: Final rule.

**SUMMARY:** This action revises the notice period for various types of tariff filings. This revision will extend the maximum

notice period for tariff filings from 90 days to 120 days.

EFFECTIVE DATE: January 7, 1991.

FOR FURTHER INFORMATION CONTACT: Kelly Cameron, 1919 M Street, NW., Washington, DC 20554 (202) 632-6917.

#### SUPPLEMENTARY INFORMATION:

##### Order

Adopted: December 26, 1990; Released: January 7, 1991

1. By the Federal Communications Commission Authorization Act of 1990, Public Law 101-396 (FCCAA), the United States Congress, *inter alia*, amended section 203 of the Communications Act, 47 U.S.C. 203, to extend the maximum notice period for tariff filings from 90 to 120.<sup>1</sup> The current § 61.58 of the Commission's rules, 47 CFR 61.58, establishes notice periods for various types of tariff filings. Section 61.58(a)(2) delegates to the Chief, Common Carrier Bureau, authority to defer the effective date of any tariff filing to a maximum of 90 days.<sup>2</sup>

2. In order to allow the Chief, Common Carrier Bureau, to continue to exercise the full statutory authority granted this Commission to defer the effective date of tariff filings, § 61.58 is hereby amended to conform to the amended section 203 of the Communications Act.<sup>3</sup>

3. Accordingly, it is ordered that pursuant to sections 4(i), 4(j), 203(b)(1), and 203(b)(2) of the Communications Act, 47 U.S.C. 154(i), 154(j), 203(b)(1), 203(b)(2), and 1.412(b)(5) of the Commission's rules, 47 CFR 1.412(b)(5), § 61.58(a)(2), of the Commission's rules, 47 CFR 61.58(a)(2), is amended as set forth below. Pursuant to 5 U.S.C. 553(d)(3), and in order expeditiously to implement the clear congressional mandate, this Order is effective January 7, 1991.

#### List of Subjects in 47 CFR Part 61

Communications Common carriers.

<sup>1</sup> Section 7 of the FCCAA amends section 203(b)(1) and (2) of the Communications Act "by striking out 'ninety days' and inserting in lieu thereof 'one hundred and twenty days.'"

<sup>2</sup> Section 61.58(a)(2) reads as follows: "(2) The Chief, Common Carrier Bureau may require the deferral of the effective date of any tariff filing made on less than 90 days' notice, so as to provide for a maximum total of 90 days' notice, regardless of whether petitions under § 1.773 of the Commission's rules have been filed.

<sup>3</sup> Notice and public comment are not required to effect this change. See § 1.412(b)(5) of the Commission's rules, 47 CFR 1.412(b)(5). See also 5 U.S.C. 553(b)(A).

Federal Communications Commission.  
Donna R. Searcy,  
Secretary.

#### Amendments to the Code of Federal Regulations

Title 47 of the Code of Federal Regulations, part 61, is amended as follows:

#### PART 61—TARIFFS

1. The authority citation for part 61 continues to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply Sec. 203, 48 Stat. 1070; 47 U.S.C. 203.

2. Section 61.58 is amended by revising paragraph (a)(2) to read as follows:

#### § 61.58 Notice requirements.

(a) \* \* \*

(2) The Chief, Common Carrier Bureau, may require the deferral of the effective date of any tariff filing made on less than 120 days' notice, so as to provide for a maximum total of 120 days' notice, or of such other maximum period of notice permitted by section 203(b) of the Communications Act, regardless of whether petitions under § 1.773 of the Commission's Rules have been filed.

[FR Doc. 91-884 Filed 1-14-91; 8:45 am]

BILLING CODE 6712-01-0

## DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

### 50 CFR Part 638

[Docket No. 901069-0344]

RIN 0648-AD28

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

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

ACTION: Final rule.

**SUMMARY:** NOAA issues this rule to implement Amendment 1 to the Fishery Management Plan for Coral and Coral Reefs of the Gulf of Mexico and the South Atlantic (FMP) and to revise the existing regulations implementing the FMP to clarify them and conform them to current usage. This rule (1) provides for a limited harvest of certain octocorals; (2) requires a permit to take such octocorals; (3) requires reports of harvest by selected persons who are permitted to take such octocorals; (4)



limits the recreational harvest of such octocorals; (5) conditions the renewal of coral permits on the submission of all required reports during the 12 months preceding the renewal application; and (6) makes other changes to the existing regulations to clarify them and conform them to current usage. The intended effect of this rule is to conserve and manage the coral resources in the Exclusive Economic Zone (EEZ).

**EFFECTIVE DATE:** February 14, 1991.

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

**SUPPLEMENTARY INFORMATION:** Coral and coral reefs in the EEZ off the South Atlantic coastal states and in the Gulf of Mexico are managed under the FMP prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The FMP is implemented by regulations appearing at 50 CFR part 638. Amendment 1 to the FMP provides for a limited harvest of certain octocorals, implements conservation and management measures for such octocorals, adds to the FMP a definition of overfishing, and restates the FMP's determination of optimum yield (OY) to include octocorals. NOAA proposed additional changes to clarify the regulations and conform them to current usage. The rationale for the conservation and management measures of Amendment 1 and for the additional changes proposed by NOAA was included in the proposed rule (55 FR 43008, October 25, 1990) and is not repeated here.

No comments were received on the proposed rule.

#### Changes from the Proposed Rule

In § 638.4(d)(1)(i), the fee for a commercial permit is changed from \$20 to \$26. Section 304(d) of the Magnuson Act authorizes the Secretary of Commerce (Secretary) to establish the level of any fees authorized to be charged for permits pursuant to a fishery management plan. The level of such fees may not exceed the administrative costs incurred in issuing the permits. Amendment 1 authorizes permit fees. When the Council was drafting Amendment 1, \$20 was a reasonable approximation of the administrative cost to issue a permit. A more recent, detailed analysis of the direct and indirect administrative costs of issuing permits, including current information on Department of Commerce and NOAA overhead and other costs, rounded to whole dollar amounts, indicates that the current fee should be \$26. In accordance

with the intent of the Councils, as an incentive for an applicant to apply for a recreational permit in lieu of a commercial permit, NOAA chooses to charge a \$5 fee for each recreational permit, as was specified in the proposed rule, even though the administrative costs for recreational permits are the same as for commercial permits. Without such incentive, an applicant would be inclined to obtain a commercial permit, thus avoiding the daily possession limit of six colonies of allowable octocoral applicable to a recreational permit holder. NOAA believes the reduced fee for a recreational permit will contribute to conservation of the resource.

A sentence concerning permit conditions was deleted from § 638.4(a)(2)(ii) as unnecessary.

The Secretary has approved Amendment 1, and the proposed rule is implemented as final with the changes discussed above.

#### Classification

The Secretary determined that Amendment 1 is necessary for the conservation and management of coral and coral reefs and that it is consistent with the Magnuson Act and other applicable law.

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), determined that this rule is not a "major rule" requiring the preparation of a regulatory impact analysis under E.O. 12291.

The Councils prepared a regulatory impact review that analyzes the economic impacts of this rule and describes its effects on small business entities. A summary of those impacts and effects was included in the proposed rule and is not repeated here. The General Counsel of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis was not prepared.

The Councils prepared an environmental assessment (EA) that discusses the impact on the environment as a result of this rule. Based on the EA, the Assistant Administrator concluded that there will be no significant adverse impact on the human environment as a result of this rule.

The Councils determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the federally approved coastal management programs of

Alabama, Florida, Louisiana, Mississippi, North Carolina, and South Carolina. Georgia and Texas do not have a federally approved coastal management program. These determinations were submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. Florida and North Carolina agreed with the determination. The other states did not comment within the statutory time period; therefore, consistency is conclusively presumed.

This rule contains two new collections of information subject to the Paperwork Reduction Act, namely, applications for annual Federal permits to take allowable octocorals and catch reports from selected Federal permittees. These collections have been approved by the Office of Management and Budget (OMB). OMB control numbers 0648-0205 and 0648-0016 apply. The public reporting burdens for these collections of information are estimated to average 15 minutes each, per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This rule restates for clarity the application procedures for permits to take prohibited coral and to use an allowable chemical in a coral area. Those collections of information were previously approved and OMB control number 0648-0205 applies. The public reporting burden for those collections of information was estimated to average 15 minutes each, per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of the above collections of information, including suggestions for reducing the burdens, to Edward E. Burgess, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attn: Paperwork Reduction Act Project 0648-0016 and 0648-0205).

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12812.

#### List of Subjects in 50 CFR Part 638

Fisheries, Fishing, Reporting and recordkeeping requirements.



Dated: January 9, 1991.

Michael F. Tillman,  
Acting Assistant Administrator for Fisheries,  
National Marine Fisheries Service.

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

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

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

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

**§ 638.1 [Amended]**

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

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

**§ 638.2 Definitions.**

*Allowable chemical* means a substance, generally used to immobilize marine life so that it can be captured alive, that, when introduced into the water—

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

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

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

*Prohibited coral* means—

- (a) A species of coral belonging to the Class Hydrozoa (fire corals and hydrocorals);
- (b) A species of coral belonging to the Class Anthozoa, Subclass Zooantharia (stony corals and black corals);
- (c) A seafan, *Gorgonia flabellum* or *G. ventalina*;
- (d) A coral reef, except for allowable octocorals; or
- (e) Coral in an HAPC.

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

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

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

**§ 638.4 Permits and fees.**

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

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

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

(ii) A state of landing permit or license applicable to allowable octocorals is acceptable in lieu of the Federal permit to take an allowable octocoral in the EEZ. If a regulation in this part and a catch, landing, or gear regulation of a state of landing differ, a person issued a permit under paragraph (c)(3) of this section or using a valid state permit or license to take an allowable octocoral from the EEZ must comply with the more restrictive regulation. In the event there is no equivalent regulation in this part to a state of landing catch, landing, or gear regulation, a person issued a permit under paragraph (c)(3) of this section or using a valid state permit or license applicable to an allowable octocoral harvested from the EEZ must comply with such state regulation.

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

- (1) *For a prohibited coral permit*. (i) Name, mailing address including zip code, and telephone number of the applicant;
- (ii) Social security number and date of birth of the applicant;
- (iii) Name and address of harvester, company, institution, or affiliation;
- (iv) Amount of coral to be fished for, by species;
- (v) Size of each species;
- (vi) Projected use of each species;
- (vii) Collection techniques (vessel types, gear, number of trips);
- (viii) Period of fishing; and
- (ix) Location of fishing.

(2) *For an allowable chemical permit*. (i) Name, mailing address including zip code, and telephone number of the applicant;

- (ii) Social security number and date of birth of the applicant;
- (iii) Type of chemical to be used;
- (iv) Period of fishing; and
- (v) Location of fishing.

(3) *For an allowable octocoral permit*.

(i) Name, mailing address including zip code, and telephone number of the applicant;

- (ii) Social security number and date of birth of the applicant;
- (iii) Whether applicant desires a commercial or recreational permit (see paragraph (d) of this section for appropriate fees and § 638.21(b) for the recreational bag and possession limit);
- (iv) Estimated number of colonies to be taken during the fishing year;
- (v) If the applicant is a corporation, the name and position of the signer; and
- (vi) A sworn statement that the applicant agrees to conform to each regulation on allowable octocoral of this part or to any catch, landing, or gear regulation on allowable octocoral of the state of landing, if such state regulation is more restrictive than the regulation in this part or there is no equivalent regulation in this part, regardless of where such allowable octocoral or gear is possessed, taken, or landed.

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

- (i) Application for a commercial permit—\$26.
  - (ii) Application for a recreational permit—\$5.
- (2) The appropriate fee must accompany each permit application.
- (e) *Issuance*. (1) The Regional Director will issue a permit at any time during the fishing year to an applicant if:
- (i) The application is complete; and
  - (ii) The applicant has complied with all applicable reporting requirements of § 638.7 during the 12 months immediately preceding the application.
- (2) Upon receipt of an incomplete application, or an application from a person who has not complied with all applicable reporting requirements of § 638.7 during the 12 months immediately preceding the application, the Regional Director will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days of the Regional Director's notification, the application will be considered abandoned.

(f) *Permit conditions*. (1) It is a condition of each permit issued under paragraph (c)(3) of this section or any



state permit used to take octocorals in the EEZ that each regulation on allowable octocoral in this part or any catch, landing, or gear regulation on allowable octocoral of the state of landing, if such state regulation is more restrictive than the regulation in this part or there is no equivalent regulation in this part, applies to the permittee, regardless of where such allowable octocoral is possessed, taken, or landed.

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

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

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

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

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

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

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

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

5. Section 638.5 is revised to read as follows:

**§ 638.5 Prohibitions.**

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

(a) Take prohibited coral in the EEZ without a Federal permit; use an

allowable chemical to collect fish or other marine organisms in a coral area in the EEZ without a Federal permit or acceptable state permit; or take an allowable octocoral in the EEZ without a Federal permit or an acceptable state permit, as specified in § 638.4(a).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**§ 638.7 Recordkeeping and reporting.**

\* \* \* \* \*

(b) A person with a Federal permit to take allowable octocoral in the EEZ, if selected by the Science and Research Director, must submit a report of his harvest to the Science and Research

Director on a form available from the Science and Research Director. These forms must be submitted to the Science and Research Director on a quarterly basis within 25 days of the end of each quarter. The following information must be included on the forms:

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

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

7. Section 638.21 is revised to read as follows:

**§ 638.21 Harvest limitations.**

(a) Prohibited coral and allowable octocoral taken as incidental catch to other fishing activities by a person who does not have a permit must be returned to the sea in the general area of fishing immediately. In those fisheries, such as scallops and groundfish, where the entire catch is landed, unsorted prohibited coral and unsorted allowable octocoral may be landed but not sold, traded, or bartered.

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

8. Section 638.23 is revised to read as follows:

**§ 638.23 Gear limitations.**

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

**§ 638.24 [Redesignated as § 638.26]**

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

**§ 638.24 Quota.**

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





**§ 638.25 Closure.**

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

[FR Doc. 91-910 Filed 1-14-91; 8:45 am]

BILLING CODE 3510-22-M

