DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 000816233–0233–0233–01; I.D. 050200A]

RIN 0648–AK23

Fisheries off West Coast States and in the Western Pacific; Precious Corals Fisheries; Harvest Quotas, Definitions, Size Limits, Gear Restrictions, Bed Classification

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

ACTION: Proposed rule, request for comments.

SUMMARY: NMFS proposes a rule that would make eight changes to the regulations implementing the Fishery Management Plan for Precious Coral Fisheries of the Western Pacific Region (FMP). This proposed rule would: Suspend the harvest for gold coral at the established Makapuu Bed, Oahu; redefine ''dead precious coral'' as coral without living coral polyps or tissue and redefine ''live precious coral'' accordingly; apply minimum size restrictions only to live precious corals; prohibit the harvest of black coral unless it has attained a minimum stem diameter of 2.54 cm (1 in) or a minimum height of 122 cm (48 in), except in certain cases; prohibit the use of non-selective fishing gear to harvest precious corals; apply the current minimum size restriction for pink coral to all permit areas; revise the boundaries of the Brooks Bank Bed, Northwestern Hawaiian Islands (NWHI), reduce its harvest quota for pink coral, and suspend the Bed's harvest quota for gold coral; and establish a new NWHI precious coral permit area, French Frigate Shoals (FFS) Gold Pinnacles Bed, and classify this Bed as a conditional bed with a zero harvest quota for all species of precious corals. This comprehensive set of management measures is intended to conserve and reduce the risk of overfishing the precious coral resources, promote optimal utilization of the resource and minimize waste, facilitate effective monitoring and enforcement of harvest quotas, and protect precious coral beds that provide foraging habitat for the endangered Hawaiian monk seal.

DATES: Comments on this proposed rule will be accepted through October 20, 2000.

ADDRESSES: Written comments on this proposed rule must be mailed to Dr. Charles Karnella, Administrator, Pacific Islands Area Office (PIAO), NMFS, 1601 Kapiolani Blvd., Rm. 1101, Honolulu HI 96814; or sent via facsimile (fax) to 808–973–2941. Comments will not be accepted if submitted via e-mail or Internet. Copies of the background document on the proposed regulatory adjustments, including an Environmental Assessment and Initial Regulatory Flexibility Analysis (IRFA), may be obtained from Kitty Simonds, Executive Director, Western Pacific Regional Fishery Management Council, 1164 Bishop St., Rm 1400, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Alvin Katekaru, PIAO, 808–973–2937.

SUPPLEMENTARY INFORMATION: The FMP defines precious coral as any coral of the genus Corallium, consisting of pink corals, as well as gold, bamboo, and black coral species. Pink, gold, and bamboo corals are found in deep water (350 – 1500 m) on solid substrate where bottom currents are strong. Black coral also occurs on solid substrate, but generally at depths less than 100 m. Precious corals typically are solitary and form colonies; however, they do not build reefs. All precious corals are slow growing and are characterized by low rates of mortality and recruitment. Precious corals are known to occur in waters of the U.S. exclusive economic zone (EEZ) around Hawaii (seven locations) and very likely exist off American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Pacific Remote Island Areas. The domestic fishery for precious corals in Hawaii has been dormant for nearly two decades, with the exception of a limited black coral fishery involving less than 10 divers. Recently, several new firms have become interested in harvesting precious corals using manned submersibles in the EEZ around Hawaii. One firm with a permit has been harvesting precious coral from the established Makapuu Bed off the Island of Oahu. Also, recent research and surveys have provided new information on the size and condition of certain precious coral beds off the Hawaiian Islands, on the presence of a new precious coral bed at FFS, NWHI, and on the use of certain precious coral beds as foraging areas for the endangered Hawaiian monk seal. In response to this new information and a reactivated precious coral fishery, in June 1999, the Western Pacific Fishery Management Council (Council) discussed the need for alternative management measures governing the precious coral fisheries. Subsequently, at its October 1999 meeting, under FMP framework procedures, the Council approved eight changes to the regulations implementing the FMP. These regulatory changes were developed by the Council's Precious Coral Plan Team, and reviewed by the Precious Coral Advisory Panel and the Scientific and Statistical Committee.

The first change would be to suspend the harvest quota for gold coral at the established Makapuu Bed based on 1998 surveys that indicated a relatively low gold coral recruitment rate since this bed was last harvested in 1978. A no action alternative and a minimum size for harvesting gold coral at the Makapuu Bed were both rejected because there are insufficient data to show that these alternatives could effectively reduce the risk of overharvesting the gold coral resource.

The second change would be to redefine ''dead precious coral'' as coral devoid of living coral polyps or tissue and to redefine ''live coral precious coral'' as coral that has living coral polyps or tissue. These changes are needed to prohibit the harvest of precious coral under a minimum size with live coral polyp or tissue; conversely, corals without any living polyp or tissue (dead coral) may be harvested. The current definition for dead coral is any precious coral that contains holes from borers or is discolored or encrusted at the time of removal from the seabed. This definition is too broad because it allows the unrestricted harvest of precious coral colonies that have holes, are discolored, and may be encrusted yet may still have living polyps. Given that scientists, using a submersible at FFS, observed a monk seal foraging around gold coral colonies containing living coral polyps, it is important that living precious corals be given optimal protection.

The third change would be to apply minimum size limits to live precious corals only to maximize the economic yield of the fishery by allowing the harvest of dead coral, regardless of its size. A no action alternative was rejected because it prevents dead corals below the minimum size that have economic value from being harvested.

The fourth change would be to prohibit the harvest of black coral unless it has a minimum stem diameter of 2.54 cm (1 in) or a minimum height of 122 cm (48 in). In order to complement State of Hawaii black coral regulations, the proposed rule would allow fishermen who can document, via State records, landings of black coral during the last 5 years to continue to

harvest black coral, under an exemption. These black coral would have to be harvested in accordance with the State's minimum harvest size (1.91 cm or 3/4 in stem diameter), provided the black coral is harvested by hand. Alternatives to applying the State's minimum harvest size for all fishermen (no exemption) were considered, but were rejected by the Council. The alternative of adopting the State's minimum size would not provide sufficient protection to the reproductive capability of the black coral stock if harvest levels increase significantly. Another alternative that contained no exemption to the Council's proposed minimum size for black coral would result in unacceptable economic burden on a small number of precious coral divers, who have previously landed black corals and operate at very low harvest levels in the fishery. An alternative that would have set a black coral harvest quota based on total pounds harvested was also rejected because it may not be effective in preventing overfishing, and because it would be difficult to enforce.

The fifth change would be to prohibit the use of non-selective gear to harvest any precious coral in the EEZ of the western Pacific region. This measure would eliminate the use of destructive and inefficient gear, such as bottom dredges and tangle nets, that damage essential fish habitat and waste up to 60 percent of the precious corals that are not harvested yet are knocked down by non-selective gear. A no action alternative, as well as an alternative that would have prohibited the use of non-selective gear only in certain permit areas, were both rejected as providing inadequate protection to essential fish habitat and promoting inefficient harvest methods.

The sixth change would be to apply the current minimum harvest size limit (25.4 cm or 10 in minimum height) for pink corals at established beds to all permit areas to prevent the harvest of pink coral colonies that are immature and have not reached full reproductive potential. A no action alternative and an alternative that would apply pink coral size limits only in certain permit areas were rejected because they would not adequately reduce the potential for overharvesting the pink coral resources.

The seventh change would be to modify the boundaries of the Brooks Bank Bed, reduce the Bed's annual pink coral quota from 444 kg (979 lb) to 200 kg (441 lb), and suspend the gold coral quota. These changes reflect new information on the size and composition of the Bed obtained during a survey of the area in 1998, as well as concerns related to the foraging habits of a Hawaiian monk seal colony nearby at FFS. Several monk seals from this colony were observed spending considerable time at the depths where precious corals occur. It is believed that the seals may have been feeding on eels and fish that aggregate around the vertical relief provided by the standing gold coral colonies at Brooks Bank. A no action alternative was rejected on the basis that it could lead to overharvesting of pink corals, as well as affecting the foraging success of monk seals. An alternative that would have revised the Brooks Bed boundaries and classified as a refugium with a prohibition on the harvest of any precious coral was rejected. It was rejected because of the economic impact on fishermen who harvest dead gold and pink corals found mainly as rubble lying on the seabed. It is believed that dead coral rubble, which have economic value, do not provide foraging habitat for the Hawaiian monk seal.

The eighth change would be to classify the newly discovered NWHI precious coral bed near FFS as a conditional bed to be designated as the ''French Frigate Shoals Gold Pinnacles Bed'' with a zero harvest quota for all precious coral species. This bed has an abundance of gold coral with an estimated standing stock of 3,000 kg (6,614 lb) and an estimated annual maximum sustainable yield of 80 kg (176 lb), but only a few small pink coral colonies that are less than 12.7 cm or 5 inches in height. This classification would protect live pink and gold coral colonies that may be providing foraging habitat for the monk seals. A no action alternative was rejected because without some type of classification, this bed would be included in the Hawaiian Islands exploratory permit area, which consists of all non-classified precious coral beds in Hawaii's EEZ and subject to an area-wide annual quota of 1,000 kg (2,200 lb). Under this scenario, the entire 1,000 kg (2,2000 lb) quota potentially could be harvested from the FFS Gold Pinnacles Bed with significant negative impact on pink and gold corals, and possible depletion of the foraging habitat of monk seals. A second alternative would have classified the FFS Gold Pinnacles Bed as a refugium and prohibited the take of any corals, both living and dead. This alternative was rejected because prohibiting the harvest of dead coral has significant economic impacts. A third rejected alternative would have classified the Bed as a conditional bed and set the annual quota for gold coral at the Bed at 80 kg (176 lb). This alternative was seen as failing to protect monk seal foraging habitat.

Classification

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared an IRFA describing the impact the proposed rule, if adopted, would have on small entities. Due to the low level of participation in the western Pacific precious coral fishery (estimated to be less than 10 divers harvesting black coral and one firm using a submersible to harvest precious corals during the past 20 years), aggregate economic impacts resulting from implementation of the proposed measures will be minimal unless there is a significant increase in the number of participants in the fishery. This analysis, however, found that those proposed measures that restrict the harvest of gold coral at the Makapuu Bed, establish a minimum harvest size for all pink corals, limit the harvest of pink coral and restrict the harvest of gold coral at the Brooks Bank Bed, and restrict the harvest of all precious corals from the FFS-Gold Pinnacles Bed would likely have a negative impact on potential fishery revenues.

Maximum potential revenues forgone from the proposed restrictions on gold coral harvest at the Makapuu Bed would total approximately $100,000 annually in the short-run if the actual stock is of sufficient size to support such a harvest. However, it is believed that the current standing stock of gold coral is low enough that this harvest level would not be sustainable. The cost of forgone short-term revenues would be recouped in the long-term through better management of the Makapuu Bed.

Potential revenues lost from the universal application of size restrictions for pink corals are difficult to predict since there is a scarcity of size composition data on existing coral resources; nevertheless, it is believed that a minimum size would result in positive benefits for potential fishery participants through the long-term maintenance of maximum sustainable yields.

Limitations on pink coral harvest from the Brooks Bank Bed is anticipated to result in the loss of potential short-run annual revenues of up to $146,000, but positive long-term benefits would be expected through the long-term maintenance of maximum sustainable yields. Restrictions on gold coral harvest at the Brooks Bank Bed would result in forgone revenues of up to $44,000, while restrictions on the harvest of all precious corals from the FFS-Gold

Pinnacles Bed would be projected to result in a short-run annual loss of $26,000 in potential revenues, primarily from a prohibition on the harvest of gold coral. However, these latter two measures are considered vital to the protection of foraging habitat for the endangered Hawaiian monk seal.

Imposing a minimum harvest size for black corals could also have a negative economic impact on fishery revenues. Given that the proposed rule would provide an exemption for historical participants who continue to rely on hand harvest methods, no effect on current participants would be expected. However, new entrants into the fishery would have to adhere to the Council's proposed minimum size governing the harvest of black coral. It is estimated that 50 percent of the annual average 204.5 kg (450 lbs) of black coral annually harvested from the EEZ meets or exceeds the proposed minimum size.

A prohibition on the use of non-selective gear could result in additional costs for future participants, although only selective gear (e.g., manned submersibles) is being considered by new businesses currently interested in entering this fishery. Hand harvesters would be unaffected by this prohibition. Future participants who wish to use other harvesting methods would be required to invest in manned submersibles, remotely operated vehicles or other new technologies. The exact costs of these new technologies are unknown. It is believed that a remotely operated vehicle can now be obtained for $50,000, which may be approximately equal to the cost of setting up a non-selective harvest operation using tangle nets. Further, the effective yield is higher for submersibles compared to the wasteful practice of non-selective gear used to harvest precious corals. A copy of the IRFA is available from the Council (see **ADDRESSES**).

NMFS has initiated consultation under Section 7 of the Endangered Species Act for this proposed rule. This consultation examines Hawaii's precious coral fishery, managed under the proposed rule, and the likelihood of it having an adverse effect on Hawaiian monk seals. This consultation is expected to be concluded soon.

The President has directed Federal agencies to use plain language in their communications with the public, including regulations. To comply with this directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this rule. Comments should be sent to Dr. Charles Karnella, PIAO, (see **ADDRESSES**).

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing gear, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: August 28, 2000.

William T. Hogarth,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is proposed to be amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

1. The authority citation for part 660 continues to read as follows:

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

2. In § 660.12, the definitions of ''dead coral'', ''live coral'', paragraph (2)(iii) under ''Precious coral permit area'', and paragraph (3) under ''Precious coral permit area'' are revised and a new paragraph (2)(v) under ''Precious coral permit area'' is added, to read as follows:

§ 660.12 Definitions.

* * * * *

Dead coral means any precious coral that no longer has any live coral polyps or tissue.

* * * * *

Live coral means any precious coral that has live coral polyps or tissue.

* * * * *

Precious coral permit area * * *

(2) * * *

(iii) Brooks Bank, Permit Area C–B–3, includes the area within a radius of 2.5 nm of a point 23°58.8' N. lat., 166°42.0' W. long.

* * * * *

(v) FFS-Gold Pinnacles Bed, Permit Area C–B–5, includes the area within a radius of 0.25 nm of a point at 23°55.0' N. lat., 165°23.11' W. long.

* * * * *

(3) Refugia. Westpac Bed, Permit Area R–1, includes the area within a radius of 2.0 nm of a point at 23°18' N. lat., 162°35' W. long.

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3. In § 660.82, paragraph (c) introductory text is revised to read as follows:

§ 660.82 Prohibitions.

* * * * *

(c) Take and retain, possess, or land any live pink coral or live black coral from any precious coral permit area that is less than the minimum height specified in § 660.86 unless:

* * * * *

4. Section 660.86 is revised to read as follows:

§ 660.86 Size restrictions.

The height of a live coral specimen shall be determined by a straight line measurement taken from its base to its most distal extremity. The stem diameter of a living coral specimen shall be determined by measuring the greatest diameter of the stem at a point no less than 1 inch (2.54 cm) from the top surface of the living holdfast.

(a) Live pink coral harvested from any precious coral permit area must have attained a minimum height of 10 inches (25.4 cm).

(b) Live black coral harvested from any precious coral permit area must have attained either a minimum stem diameter of 1 inch (2.54 cm), or a minimum height of 48 inches (122 cm).

(1) An exemption permitting a person to hand harvest from any precious coral permit area black coral that has attained a minimum base diameter of 3/4 inch (1.91 cm), measured on the widest portion of the stem at a location just above the holdfast, will be issued to a person who had made a landing of black coral that is documented by the State of Hawaii, Department of Land and Natural Resources, within 5 years before the effective date of the final rule.

(2) A person seeking an exemption under this section must submit a letter requesting an exemption to the NMFS Pacific Islands Area Office.

5. Section 660.88 is revised to read as follows:

§ 660.88 Gear restrictions.

Only selective gear may be used to harvest coral from any precious coral permit area.

6. Table 1 to Part 660 is revised to read as follows:

TABLE 1 TO PART 660—QUOTAS FOR PRECIOUS CORALS PERMIT AREAS

Name of coral bed	Type of bed	Harvest quota	Number of years
Makapuu (Oahu)	Established	P–2,000 kg	2
		G–Zero (0 kg)	n/a
		B–500 kg	2
Keahole Point (Hawaii)	Conditional	P–67 kg	1
		G–20 kg	1
		B–17 kg	1
Kaena Point (Oahu)	Conditional	P–67 kg	1
		G–20 kg	1
		B–17 kg	1
Brooks Bank (NWHI)	Conditional	P–200 kg	1
		G–Zero (0 kg)	n/a
		B–111 kg	1
180 Fathom Bank (NWHI)	Conditional	P–222 kg	1
		G–67 kg	1
		B–56 kg	1
FFS-Gold Pinnacles Bed (NWHI)	Conditional	P–Zero (0 kg)	n/a
		G–Zero (0 kg)	n/a
		B–Zero (0 kg)	n/a
Westpac Bed (NWHI)	Refugium	Zero (0 kg)	n/a
Hawaii, American Samoa, Guam, U.S. Pacific Island possessions	Exploratory	X–1,000 kg (all species combined except black corals) per area.	1

[1.] Types of corals: P=Pink G=Gold B=Bamboo
[2.] No authorized fishing for coral in refugia.

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