

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 665**

[Docket No. 070720400-7483-01]

RIN 0648-AV30

Fisheries in the Western Pacific; Precious Corals Fisheries; Black Coral Quota and Gold Coral Moratorium

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

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would designate the Au'au Channel, Hawaii, black coral bed as an "Established Bed" with a harvest quota of 5,000 kg every two years that applies to Federal and State of Hawaii waters, and would establish a 5-year moratorium on the harvest of gold coral throughout the U.S. western Pacific. The proposed rule is intended to prevent overfishing and achieve optimum yields of black coral resources, and to prevent overfishing and stimulate research on gold corals.

DATES: Comments on the proposed rule must be received by July 14, 2008.

ADDRESSES: Comments on the amendment, identified by 0648-AV30, may be sent to either of the following addresses:

- Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal www.regulations.gov; or

- Mail: William L. Robinson, Regional Administrator, NMFS, Pacific Islands Region (PIR), 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814-4700.

Instructions: All comments received are a part of the public record and will generally be posted to www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the commenter may be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the Fishery Management Plan for the Precious Corals Fisheries of the Western Pacific Region (Precious Corals FMP), and proposed FMP Amendment 7, which includes an

environmental assessment, regulatory impact review (RIR), and initial regulatory flexibility analysis (IRFA), are available from the Western Pacific Fishery Management Council (Council), 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel. 808-522-8220, fax 808-522-8226, or website www.wpcouncil.org.

FOR FURTHER INFORMATION CONTACT: Brett Wiedoff, NMFS PIR, 808-944-2272.

SUPPLEMENTARY INFORMATION: This Federal Register document is also accessible at the Office of the Federal Register at www.gpoaccess.gov/fr.

Precious corals (also called deep sea corals) belong to the class of animals, Anthozoa, which includes corals, jellyfish, sea anemones, and their relatives. Gold corals are found in deep water (100-1,500 m) on solid substrates where bottom currents are strong. Black corals also live on solid substrates, but generally at depths of 30-110 m. Precious corals are suspension feeders, thriving in areas swept by strong currents, and are most abundant on substrates of shell sandstone, limestone, or basaltic rock with a limestone veneer. All precious corals are slow-growing and are characterized by low rates of natural mortality and recruitment. Unexploited populations are relatively stable, and a wide range of age classes is generally present. This life-history pattern (longevity and many age classes) has two important consequences with respect to exploitation. First, the population response to harvesting is drawn out over many years. Second, because of the great longevity of individuals and the associated slow population turnover rates, a long period of reduced fishing effort is required to restore a stock's ability to produce at the maximum sustainable yield if a stock has been over exploited for several years.

Beds of gold, pink, and bamboo corals have been found in eight locations in the U.S. EEZ around Hawaii. They likely occur in the U.S. EEZ around American Samoa, the Commonwealth of the Northern Mariana Islands (CNMI), Guam, and the Pacific Remote Island Areas (PRIA, i.e., Baker Isl., Howland Isl., Jarvis Isl., Wake Atoll, Johnston Atoll, Kingman Reef, Midway Atoll, and Palmyra Atoll), but their distribution and abundance are unknown in areas beyond Hawaii. The species composition and density of corals vary considerably in these beds, and the beds are small--only two have an area greater than 1 km² and the largest is 3.6 km². In addition to the beds of gold, pink, and bamboo corals, there are also three

known major black coral beds and several smaller ones. Most of these are located in State of Hawaii waters (0-3 nm from shore), but the largest bed, the Au'au Channel Bed, extends into Federal waters.

The Precious Corals FMP and Federal regulations require permits and data reporting, and allow harvesting of precious corals only with selective gear (e.g., submersibles or hand harvest). There are also bed-specific quotas, refuges from fishing (refugia), and size limits. Since the implementation of the Precious Corals FMP in 1980, no precious corals harvester has received a Federal permit to fish in U.S. EEZ waters around American Samoa, the CNMI, Guam, or the PRIA; there are currently no permitted operations for gold corals in the western Pacific.

Black corals in Hawaii have historically been harvested by divers using conventional scuba gear. Hand-held tools are used to remove the black coral from the substrate, and float bags are used to lift the harvested colonies to the surface. The number of people participating in the commercial black coral fishery in Hawaii has been decreasing in recent years as experienced fishermen retire without new divers taking their place. In 2007, fewer than three fishermen applied for and received Federal permits to harvest precious corals in Hawaii.

From 1990-97, the annual harvest of black coral in Hawaii averaged 1,400 kg (3,084 lb). More recent landings of black corals are not presented in detail due to confidentiality requirements, but recent black coral landings have generally increased. Mixed-gas diving methods and rebreathers now enable divers to reach the maximum depths at which colonies of black coral are known to occur (about 110 m). Other technological advances, such as the global positioning system (GPS) and multibeam bathymetry maps, assist divers in harvesting black corals. These advances may lead to greater fishing pressure on black corals.

Since 1980, almost all of the black coral harvested around the Hawaiian Islands has been taken from the Au'au Channel Bed. The Precious Corals FMP designates the Au'au Channel as Essential Fish Habitat (EFH) for precious corals. The bed is also a Habitat Area of Particular Concern (HAPC) for precious corals because of the ecological function it provides, rarity of the habitat type, sensitivity to human-induced environmental degradation, and commercial importance.

Research has shown that the biomass of the Au'au Channel black coral

population has decreased by at least 25 percent in the last 30 years. Data collected during submersible dives showed a decline in both recruitment and relative abundance of legal-sized black coral colonies. The decline in recruitment may be related to both fishing pressure and competition with alien coral species. The highly-invasive soft coral, *Carijoa riisei*, or snowflake

coral, has been found overgrowing large areas of black coral habitat. A recent submersible survey of the Au'au Channel Bed found *Carijoa* overgrowing and killing up to 70 percent of the black coral colonies at depths of 68–114 m. Although the fishery primarily harvests black coral at depths shallower than 70 m, the potentially-devastating snowflake coral, combined with fishing pressure,

warrants management action and further research.

This proposed rule would designate the Au'au Channel as an "Established Bed" (Fig. 1) with a harvest quota for black coral of 5,000 kg (11,023 lb) every two years. This quota would apply in both Federal and State of Hawaii waters, and all other existing Federal restrictions would continue to apply.

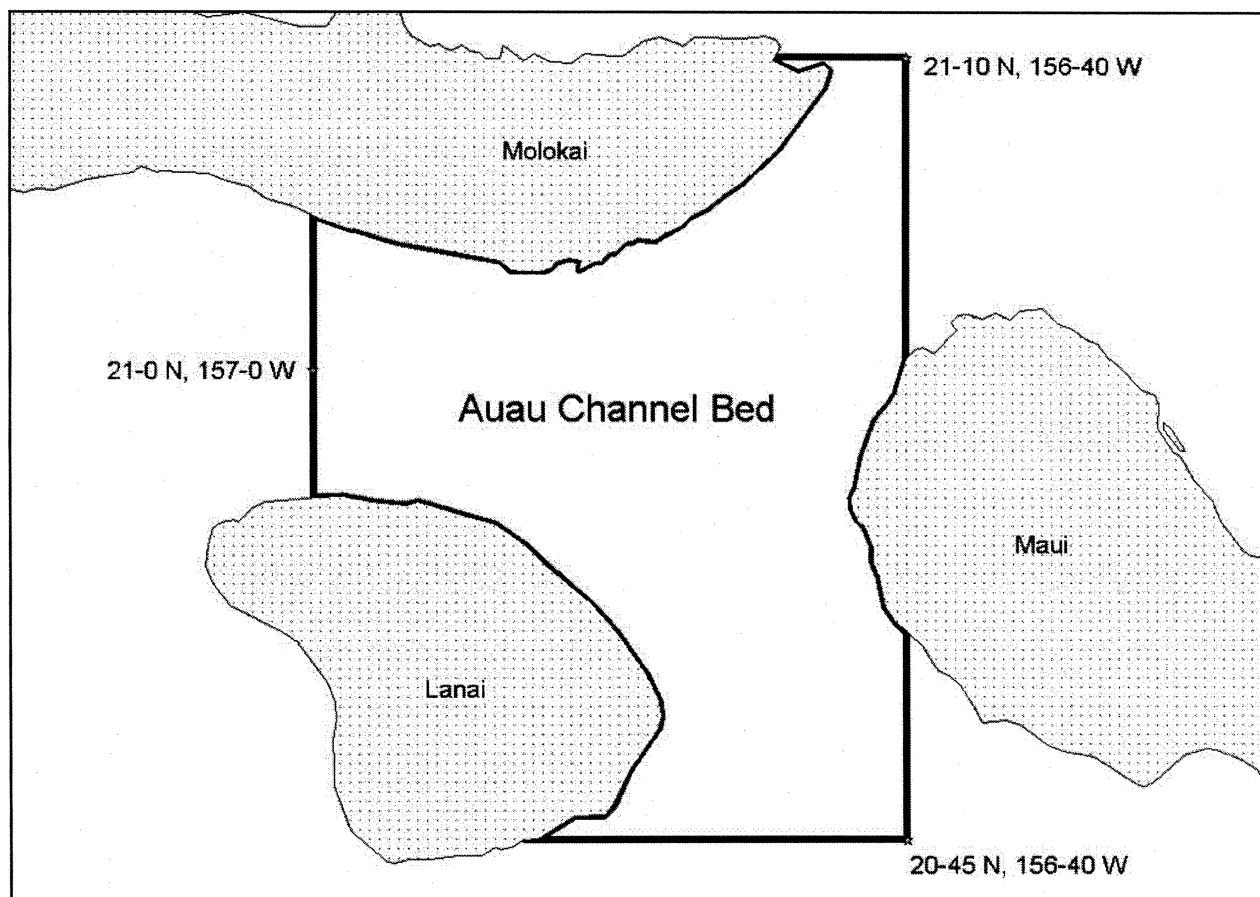


Figure 1. Proposed Au'au Channel Established Precious Corals Bed

Currently-accepted estimates of the linear growth rate for gold coral are about 6.6 cm/yr, suggesting that large colonies are relatively young. These estimates are based on the assumption that growth rings are laid down annually, as in other precious corals (e.g., black and pink corals). Recent research, however, on the aging of gold corals using radiometric dating on three samples collected from the Makapu'u Bed and off of the island of Hawaii found that gold coral may grow at a much slower rate, possibly 0.004 to 0.0014 cm/yr, making some samples 450–2,740 years old. Similar research on large Atlantic gold coral colonies estimated their ages to be about 1,800

years. (By comparison, the oldest black corals observed in the Au'au Channel Bed are thought to be 75 years old, but black corals may live longer.) The slow growth rates of gold corals indicate that some gold coral colonies are thousands of years old and, thus, highly-susceptible to over-harvesting.

Unlike the active black coral fishery in Hawaii, the gold coral fishery in the U.S. western Pacific is dormant. With recent research results challenging current assumptions about gold coral growth rates, this proposed rule would place a five-year moratorium on the harvest of gold corals from all EEZ waters of the western Pacific region. Additional research results on gold

coral age structures, growth rates, and correlations between length and age would be considered by the Council and NMFS prior to the expiration of the 5-year moratorium.

This proposed rule is intended to prevent overfishing and achieve optimum yields of black corals, and to prevent overfishing and stimulate research on gold corals.

To be considered, comments on this proposed rule must be received by July 14, 2008, not postmarked or otherwise transmitted by that date. In addition to soliciting public comments on this proposed rule, NMFS is soliciting comments on proposed FMP Amendment 7 through July 22, 2008, as

stated in the Notice of Availability published on May 23, 2008. Public comments on this proposed rule, if received by July 22, 2008, will also be considered in the approval/disapproval decision for Amendment 7. Comments received after that date will be considered for this proposed rule, but not in the approval/disapproval decision for Amendment 7.

Classification

Pursuant to section 304 (b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Precious Corals FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

The Council prepared an Environmental Assessment for Amendment 7 that evaluates the potential impacts of the proposed action and alternatives. Copies of the environmental assessment are available from the Council (see **ADDRESSES**). The purpose and need for the proposed action is twofold: (a) to reduce the effect that harvesting has on the decline in black coral biomass, thereby preventing overfishing and achieving optimum yield, and (b) to prevent the gold coral fishery from resuming, thereby preventing overfishing while research on growth rates is conducted. The anticipated impacts, as compared to the no-action alternative, of the preferred alternatives are summarized below.

Au'au Channel Black Coral Harvest Quota

Under the preferred alternative (designation of the Au'au Channel black coral bed as an Established Bed with a harvest quota of 5000 kg every two years), the potential risk of overfishing black corals in the Au'au channel would be reduced because the proposed quota is significantly lower than recent harvests and would reduce fishing pressure on these resources. For this alternative to be fully effective, the entire bed would need to be managed by the quota; the State is developing management measures for a black coral quota in State waters of the Au'au Channel that would complement the proposed Federal quota there. The preferred alternative would have little to no impact on non-target species, as only selective gear can be used to harvest precious corals, eliminating most of the potential for catches of non-target species or degradation of their habitat. There would be neutral or beneficial impacts to protected resources (marine mammals, sea turtles, and seabirds),

EFH, and HAPC, because this alternative would not lead to changes in fishing operations or to increased fishing effort. In the short-term, this alternative would likely reduce the harvests by some commercial fishermen in the Au'au channel fishery if the black coral fishery is closed as a result of reaching the quota. Stockpiled black coral (that which has been harvested but not yet sold) may serve to offset potential losses in the short- to medium-term following a closure of the Au'au Channel fishery. In the long-term, keeping harvests below the harvest quota would contribute to the sustainability of the fishery. The charter and recreational fishing sectors would not be affected under this alternative, as these sectors are not involved in the harvest of black corals. Fishing communities would not be affected by this alternative, as there are no communities that are substantially dependent on the harvest of precious corals to meet social and economic needs.

Gold Coral Harvest Moratorium

Under the preferred alternative (a 5-year moratorium on harvest of live and dead gold coral), the potential risk of overfishing gold corals would be eliminated for five years, during which time further research into gold coral growth rates would be conducted. This would ensure that harvests of gold coral are sustainable. There would be neutral or beneficial impacts on non-target species and their habitat, protected resources, EFH, and HAPC. In the short-term this alternative could adversely impact potential commercial gold coral harvesters. Charter and recreational fishing sectors would not be affected, as these sectors are not involved in the harvest of precious corals. In the short-term, there could be adverse impacts on the region's economy by prohibiting the potential harvest of gold coral for five years and, in the long-term, there would be a positive impact on the regional economy by preserving opportunities for the future development of a sustainable and profitable gold coral fishery.

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

An IRFA was prepared, as required by section 603 of the Regulatory Flexibility Act. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A

copy of this analysis is contained in Amendment 7, available from the Council (see **ADDRESSES**). The analysis follows.

NMFS prepared an IRFA for this rulemaking. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble. There are no recordkeeping, reporting, or other compliance requirements associated with this rule. There are no Federal rules that duplicate, overlap, or conflict with this proposed rule. Furthermore, there are no disproportionate impacts from this rule by vessel size, gear type, or geographical location.

Description of Affected Entities

There are three permitted vessels in the fishery for black coral, but only two have reported landings in Hawaii. Both vessels are considered to be small entities under the Small Business Administration definition of a small entity, i.e., they are engaged in the business of fish harvesting, are independently-owned or operated, are not dominant in their field of operation, and have annual gross receipts not in excess of \$4 million. Specific net revenues by individual vessels cannot be analyzed in this IRFA due to confidentiality restraints, but potential economic impacts are discussed below. The fishery for gold coral also includes the same three vessels permitted to harvest black corals under a generic precious corals permit issued by NMFS. However, these vessels are currently dormant in the gold coral fishery, having no identifiable harvest in 2006, although modest commercial quotas of 20 kg (44 lb) for sites in the Main Hawaiian Islands and 67 kg (149 lb) for sites in the Northwestern Hawaiian Islands are specified.

Description of Alternatives

Au'au Channel Black Coral Harvest Quota

Alternative A1: No Action. This alternative would continue to regulate the black coral fishery based on minimum sizes, not by maximum sustainable yield or geographic area.

Alternative A2: Designate the Au'au Channel black coral bed as an Established Bed with an annual harvest quota of 5,000 kg every two years for the entire bed including State and Federal waters (Preferred Alternative). The Au'au Channel black coral bed would be designated as an Established Bed and harvests would be limited to 5,000 kg every two years from both State and Federal waters combined. All other regulations would continue to apply. Minimum size regulations and gear restrictions would continue to apply.

Alternative A3: Designate the Au'au Channel black coral bed as an Established Bed with an annual harvest quota of 5,000 kg every two years for Federal waters only. The Au'au Channel black coral bed would be designated as an Established Bed and harvests would be limited to 5,000 kg every two years from Federal waters only. All other

regulations would continue to apply. Minimum size regulations and gear restrictions would continue to apply.

Western Pacific Gold Coral Moratorium

Alternative B1: No Action. Gold coral harvests would continue to be regulated based on harvest quotas by area and gear restrictions, and no moratorium would be implemented.

Alternative B2: Implement a five-year moratorium on live and dead gold corals (Preferred Alternative). A five-year moratorium on the harvest of live and dead gold corals would be implemented for the western Pacific while an associated research program further examines linear/axial growth, recruitment/mortality, and deterioration rates of gold coral. Bed-specific quotas and gear restrictions would not be required during this period. The moratorium may be renewed if the research program is not completed within the five years.

Alternative B3: Implement a five-year moratorium on live gold coral. A five-year moratorium on the harvest of live gold corals would be implemented for the western Pacific while an associated research program further examines linear/axial growth, recruitment and mortality, and deterioration rates of gold coral. Bed quotas and gear restrictions would not be required during this period. The moratorium may be renewed if the research program is not completed within the five years.

Alternative B4: Reduce the harvest quota by 50 percent of gold coral in all precious coral beds. Harvest quotas for gold coral would be reduced by 50 percent in all precious coral beds throughout the western Pacific. Gear restrictions would continue to apply. In 2002, the Council recommended suspending the harvest quota for gold coral at the Makapu'u Bed as a precautionary measure expected to increase the probability that a recovery in the number of gold coral colonies at the Makapu'u Bed eventually occurs.

Economic Impacts to Small Entities

Alternative A1. The implementation of the no-action alternative would have no economic impact to the two vessels currently engaged in the harvest of black corals in the Au'au Channel.

Alternative A2 (Preferred). This alternative would reduce the harvests of black coral and, thus, could adversely affect both vessels currently engaged in the fishery. Due to confidentiality agreements, the amounts of the reductions, both absolute and on a relative basis, could not be reported here.

Alternative A3. This alternative would not likely reduce the harvest, as most of the

harvest comes from State waters, thus resulting in no or little economic impact to the two vessels engaged in the fishery.

Alternatives B1, B2 (Preferred), B3, and B4. Because the gold coral fishery is currently dormant, there would be no impact to vessels from this rulemaking resulting from alternatives B1, B2, and B3. If the permitted vessels chose to reenter the fishery under alternative B4 (quota reduction), it would appear that there were positive economic impacts because of the movement from no fishing to fishing. However, a 50 percent quota reduction from current quota levels could not be construed to have positive economic impacts. For a discussion of impacts to the economy, please see the RIR in FMP Amendment 7.

List of Subjects in 50 CFR Part 665

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

Dated: May 23, 2008.

Samuel D. Rauch III,
Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 665 is proposed to be amended as follows:

PART 665—FISHERIES IN THE WESTERN PACIFIC

1. The authority citation for part 665 continues to read as follows:

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

2. In § 665.12, in the definition of "Precious coral permit area", the introductory text is republished and paragraph (1) is revised to read as follows:

§ 665.12 Definitions.

* * * * *

Precious coral permit area means the area encompassing the precious coral beds in the management area. Each bed is designated by a permit area code and assigned to one of the following four categories:

(1) Established beds. (i) Makapu'u (Oahu), Permit Area E-B-1, includes the area within a radius of 2.0 nm of a point at 21° 18.0' N. lat., 157° 32.5' W. long.

(ii) Au'au Channel (Maui), Permit Area E-B-2, includes the area west and south of a point at 21° 10' N. lat., 156° 40' W. long., and east of a point at 21° N. lat., 157° W. long., and west and north of a point at 20° 45' N. lat., 156° 40' W. long.

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3. In § 665.82, add a new paragraph (b)(5) to read as follows:

§ 665.82 Prohibitions.

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(b) * * *

(5) In a bed that has been closed pursuant to §§ 665.85 or 665.90.

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4. Revise § 665.83 to read as follows:

§ 665.83 Seasons.

The fishing year for precious corals begins on July 1 and ends on June 30 the following year, except at the Makapu'u and Au'au Channel Beds, which have a two-year fishing period that begins July 1 and ends June 30, two years later.

5. In § 665.85, revise paragraph (a) to read as follows:

§ 665.85 Closures.

(a) If the Regional Administrator determines that the harvest quota for any coral bed will be reached prior to the end of the fishing year, or the end of the 2-year fishing period at Makapu'u Bed or Au'au Channel Bed, NMFS shall publish a notice to that effect in the **Federal Register** and shall use other means to notify permit holders. Any such notice must indicate the reason for the closure, the bed being closed, and the effective date of the closure.

* * * * *

6. Under subpart F, add a new § 665.90 to read as follows:

§ 665.90 Gold coral harvest moratorium.

Fishing for, taking, or retaining any gold coral in any precious coral permit area is prohibited through June 30, 2013.

7. Revise Table 1 to part 665 to read as follows:

TABLE 1 TO PART 665 PRECIOUS CORAL QUOTAS

Type of coral bed	Name of coral bed	Harvest quota in kilograms	Number of years
Established Beds	Au'au Channel	Black: 5,000	2
	Makapu'u	Pink: 2,000 Gold: 0 (zero) Bamboo: 500	2 -- 2

TABLE 1 TO PART 665 PRECIOUS CORAL QUOTAS—Continued

Type of coral bed	Name of coral bed	Harvest quota in kilograms	Number of years
Conditional Beds	180 Fathom Bank	Pink: 222 Gold: 67 Bamboo: 56	1 1 1
	Brooks Bank	Pink: 17 Gold: 133 Bamboo: 111	1 1 1
	Kaena Point	Pink: 67 Gold: 20 Bamboo: 17	1 1 1
	Keahole Point	Pink: 67 Gold: 20 Bamboo: 17	1 1 1
Refugia	Westpac	All: 0 (zero)	--
Exploratory Areas	Hawaii, American Samoa, Guam, U.S. Pacific Remote Island Areas	1,000 per area (all species combined except black corals)	1

Notes:

1. No fishing for coral is authorized in refugia.
2. A moratorium on gold coral harvesting is in effect through June 30, 2013.

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