

affect the communities of Indian tribal governments when analyzed under the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Therefore, the funding and consultation requirements of this Executive Order would not apply.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires us to consider whether our proposals will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). This rulemaking may reasonably be expected to affect small businesses or entities that currently own documented fishing vessels, fish processing vessels, or fish tender vessels, that have financed such vessels, or that are engaging in the fisheries of the United States with such vessels. The Small Business Administration defines businesses within the fishing industry that have annual receipts of \$3 million or less as small businesses, 13 CFR 121.201. We believe that any cost to small business entities to comply with this final rule will be minimal, if any, because this final rule allows waiver of procedural (i.e., administrative) requirements that may cause a vessel owner to lose its fishery endorsement. Therefore, MARAD certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Environmental Impact Statement

We have analyzed this rule for purposes of compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and have concluded that under the categorical exclusions provision in section 4.05 of Maritime Administrative Order 600-1, "Procedures for Considering Environmental Impacts," 50 FR 11606 (March 22, 1985), the preparation of an Environmental Assessment, and an Environmental Impact Statement, or a Finding of No Significant Impact for this rulemaking is not required. This rulemaking involves administrative and procedural regulations that clearly have no environmental impact.

Paperwork Reduction Act

This rulemaking does not establish any new requirement for the collection of information.

Unfunded Mandates Reform Act of 1995

This final rule will not impose an unfunded mandate under the Unfunded Mandates Reform Act of 1995. It will not result in costs of \$100 million or more, in the aggregate, to any of the following: State, local, or Native American tribal governments, or the private sector. This final rule is the least burdensome alternative that achieves the objective of the rule.

Regulation Identifier Number

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 46 CFR Part 356

Citizenship and naturalization, Fishery endorsement, Fishing vessels, Mortgages, Mortgage trustee, Penalties, Preferred mortgages, Reporting and recordkeeping requirements, Vessels.

For the reasons discussed in the preamble, MARAD amends 46 CFR part 356 as follows:

PART 356—REQUIREMENTS FOR VESSELS OF 100 FEET OR GREATER IN REGISTERED LENGTH TO OBTAIN A FISHERY ENDORSEMENT TO THE VESSEL'S DOCUMENTATION

1. The authority citation for 46 CFR part 356 is revised to read as follows:

Authority: 46 App. U.S.C. 12102; Public Law 105-277, Division C, Title II, Subtitle I, section 203 (46 App. U.S.C. 12102 note), section 210(e), and section 213(g), 112 Stat. 2681; 49 CFR 1.66.

2. For the convenience of the reader, 3356.2 is republished to read as follows:

§ 356.2 Waivers.

In special circumstances and for good cause shown, we may waive the procedures prescribed in this part, provided the waiver is consistent with the requirements of the AFA and with the intent of this part.

Dated: March 11, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02-6304 Filed 3-15-02; 8:45 am]

BILLING CODE 4910-81-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 000816233-1154-02; 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, and Bed Classification

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

ACTION: Final rule.

SUMMARY: NMFS has partially approved a regulatory amendment under the Fishery Management Plan for Precious Coral Fisheries of the Western Pacific Region (FMP) submitted by the Western Pacific Fishery Management Council (Council) and is issuing a final rule that will implement gear restrictions, size limits, and definitions governing the harvest of precious coral resources managed under the FMP. Precious coral management measures that were published in the proposed rule that apply only to the Northwestern Hawaiian Islands (NWHI) are not being implemented by NMFS because they were determined to be inconsistent with certain provisions of Executive Order 13178 and Executive Order 13196, which together establish the NWHI Coral Reef Ecosystem Reserve (Reserve). **DATES:** Effective April 17, 2002.

ADDRESSES: Copies of the background documents, including an environmental assessment/initial regulatory flexibility analysis/regulatory impact review (EA/IRFA/RIR) (March 2001) and an RIR/final regulatory flexibility analysis (FRFA), (March 2002) are available from Dr. Charles Karnella, Administrator, NMFS, Pacific Islands Area Office (PIAO), 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814.

FOR FURTHER INFORMATION CONTACT: Alvin Katekaru, PIAO, 808-973-2937. **SUPPLEMENTARY INFORMATION:** On September 5, 2000, NMFS published a proposed rule (65 FR 53692) on regulatory adjustments governing the harvest of precious coral resources managed under the FMP. The rule contained eight measures intended to conserve and reduce the risk of overfishing the precious coral resource; promote optimal utilization of the resource and minimize waste; and

protect the precious coral beds in the NWHI that provide foraging habitat for the endangered Hawaiian monk seal. In December 2000, and January 2001, President Clinton issued Executive Order 13178 and Executive Order 13196, respectively, which together established the Reserve. NMFS has determined that two of the proposed precious coral measures that apply only to precious coral beds around the NWHI are inconsistent with Executive Order 13178 and Executive Order 13196.

This final rule implements the following six measures: (1) Suspends the harvest of gold coral at Makapu'u Bed off the Island of Oahu; (2) redefines "dead precious coral" as coral that has no live coral polyps or tissue, and redefines "live precious coral" accordingly; (3) applies minimum size restrictions only to live precious corals; (4) prohibits the harvest of black coral unless it has attained a minimum stem diameter of 1 inch (2.54 cm) or a minimum height of 48 inches (122 cm), except in certain cases; (5) prohibits the use of non-selective fishing gear to harvest precious corals; and (6) applies the current minimum size restriction for pink coral to all permit areas.

Comment and Response

One letter was received commenting on the proposed rule.

Comment: The measures to define live coral as coral harboring living polyps and to apply size and quota restrictions to live coral only, mean that the harvest of dead gold coral will be unregulated. Unrestricted takes of dead gold coral may have negative impacts on live gold coral as there is some evidence from the NWHI that dead coral may be the preferred substrate for resettlement (i.e., seeding) of new gold coral colonies.

Response: NMFS shares this concern. The amount of information on the relationship between dead gold coral and the seeding of new colonies is limited at this time. NMFS however believes the concern is mitigated by restrictions imposed on commercial harvesting of precious corals, under Executive Order 13178 and Executive Order 13196 establishing the Reserve.

NMFS is not implementing two precious coral measures that would have (a) revised the boundaries of the Brooks Banks Bed, NWHI, reduced this bed's harvest quota for pink coral, and suspended the harvest quota (i.e., reduced to zero) for gold coral; and (b) established a NWHI precious coral permit area, French Frigate Shoals (FFS) Gold Pinnacles Bed, and classified this bed as a "conditional" bed with a zero harvest quota for all species of precious corals. The final rule is changed from

the proposed rule because continued management of precious coral fisheries around the NWHI is inconsistent with Executive Order 13178 and Executive Order 13196. Specifically, the measures establishing pink and gold coral harvest quotas at NWHI Brooks Banks Bed are inconsistent with section 7(b)(5) of the Executive Order 13178 and Executive Order 13196. In this section, the Executive Order establishes zero harvest in the Reserve where the Brooks Banks Bed is located. Establishment of a quota for pink coral at Brooks Banks Bed also conflicts with the Executive Order 13178 and Executive Order 13196 since they generally prohibit the harvest of living and nonliving resources throughout the Reserve. Although creation of a new FFS Gold Pinnacles Bed and its classification as a "conditional" bed are not literally contrary to the E.O.s, a zero harvest quota duplicates restrictions in the E.O.s, and therefore is unnecessary.

Another change between the final rule and proposed rule is that § 660.86 (b)(2) has been revised to allow for expedient issuance of exemptions from black coral harvest size requirements. This change allows NMFS to streamline the exemption process by relying on a State of Hawaii precious corals database to determine eligible harvesters.

The final rule contains a technical correction to the location of the Wespac Bed, Permit Area R-1, by redefining the current position of 28°50.2' N. lat. to 23°18' N. lat.

Classification

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

NMFS prepared a FRFA describing the impact of the action on small entities. The IRFA was summarized in the proposed rule published on September 5, 2000 (65 FR 53692). None of the comments received on the proposed rule directly or indirectly addressed the results of the IRFA, which also provided analysis on the proposed measures that are not included in the final rule. The following is a summary of the FRFA (March 1, 2002).

The Council considered eight adjustments to management measures in the FMP. Six of those management measures are discussed below. The remaining two management measures, that involve the Reserve, were not approved by NMFS for the reasons stated above. This partial disapproval is not expected to have any economic impact because no commercial precious coral harvest is currently occurring in the Reserve.

Under Management Objective 1, (reduce the potential for overfishing of gold coral at the Makapu'u Bed), four alternatives were considered including the preferred alternative. Under the preferred alternative, the harvest quota for gold coral at the Makapu'u Bed will be suspended until further information on the impact of harvesting on subsequent recruitment of gold coral is available. A gold coral quota of zero would likely have some adverse economic impact on potential harvesters. However, the density of gold coral at the Makapu'u Bed is already very low. It is likely that any harvest effort occurring at Makapu'u bed will be directed mainly toward pink coral because this coral is relatively abundant at the bed and has a higher market value than gold coral (\$440/kg for pink coral (*C. secundum*) vs. \$330/kg for gold coral according to Maui Divers of Hawaii, Ltd.). A suspension of the quota is not expected to have an adverse economic impact on processors of precious corals in Hawaii. The fishery in the EEZ around Hawaii for deep-water species of precious coral, including pink, gold and bamboo coral, has been nearly dormant for two decades. Consequently, the processors of these corals in Hawaii have relied almost exclusively on imported material.

Three alternatives were considered and rejected for the first management objective. The first rejected alternative would have maintained the biennial gold coral quota of 600 kg (132 lb) at Makapu'u Bed. Maintaining the current biennial harvest quota of 600 kg (132 lb) for gold coral at Makapu'u Bed would continue to make available to prospective harvesters a quantity of gold coral worth \$198,000 every two years (\$99,000 annually) if the actual stock is of sufficient size to support such a harvest. However, a recent survey of the bed revealed that the current standing stock of gold coral is low and may not yield the current harvest quota. In addition, the adverse economic impacts over the long term would be significant if further harvesting diminishes the number of colonies to the point that no recovery is possible.

The second rejected alternative would have suspended the harvest quota for gold coral at all established and conditional beds until additional information is available on the impact of harvesting on subsequent recruitment of gold coral. The total harvest quota for gold coral at all established and conditional beds is 1,080 kg (238 lb) every two years, with an estimated dockside value of \$356,400. However, the gold coral quota at the Makapu'u Bed accounts for more than half of this

total. As noted above, the current standing stock of gold coral at the Makapu'u Bed may not yield the current biennial harvest quota of 600 kg (132 lb). If no gold coral is harvested from the Makapu'u Bed the amount of potential gross revenues foregone by suspending the harvest quota at all established and conditional beds is estimated to be about \$158,400 every two years.

The third rejected alternative would have implemented a minimum size limit for gold coral at the Makapu'u Bed. This alternative was rejected because the calculation of an appropriate minimum size requires estimates of growth rates, mortality rates and size at reproductive maturity. These data estimates are lacking for gold coral. Without this information the size limit established may be too low, thereby insufficiently protecting the coral from overfishing and eventually leading to reduced economic returns, or may be too high, thereby resulting in an overly conservative size limit that unnecessarily reduces potential economic returns.

Under Management Objective 2 (reduce the potential for harvest of coral which has live coral polyps or tissue), three alternatives were considered including the preferred alternative. Under the preferred alternative, dead precious coral will be defined as precious coral that no longer has any live coral polyps or tissue, and live precious coral will be defined as precious coral that has live polyps or tissue. Only live coral will be counted toward the quotas limiting the amount of precious coral that may be taken in any permit area during the fishing year. It is possible that some of the coral at a given bed that was regarded as dead under the current definition would be regarded as live under the alternative definition, and therefore be subject to the harvest quota for that bed. However, the amount of additional coral that would be subject to the quota is likely to be small, as coral colonies that contain holes from borers or are discolored or encrusted generally no longer have any living polyps or tissue. There is insufficient information on the amount of coral meeting this definition at different beds to quantify this economic impact.

Two alternatives were considered and rejected for the second management objective. The first rejected alternative would have maintained the current definition of dead precious coral as any precious coral that contains holes from borers or is discolored or encrusted at the time of removal from the seabed. This alternative was rejected because allowing the harvest of coral that is

currently defined as dead and is believed to provide foraging habitat to the endangered Hawaiian monk seal may lead to emergency closures of specific sites or alterations of fishing operations. The economic impact of closures or other measures would depend on the length of time that these measures are in effect.

The second rejected alternative would have defined dead precious coral as precious coral that is no longer standing upright, and define live precious coral as precious coral that is standing upright. However, the amount of additional coral that would be subject to the quota is likely to be small, as coral colonies that contain holes from borers or are discolored or encrusted are often no longer standing upright. There is insufficient information on the amount of coral meeting this definition at different beds to quantify this economic impact.

Under Management Objective 3, (allow greater utilization of dead coral resources), two alternatives were considered including the preferred alternative. Under the preferred alternative, size limits will be applied only to live coral. This alternative will allow greater utilization of dead coral resources and thus increase potential income to harvesters. There is insufficient information on the quantity of dead coral at different beds to quantify this economic impact.

The rejected alternative would have maintained the application of minimum size limits to both live and dead coral. This alternative was rejected because it prohibits the harvest of dead coral that is below the minimum size limit despite the fact that the harvest of dead coral is not considered to be detrimental. There is insufficient information on the quantity of dead coral at different beds to quantify the economic impact.

Under Management Objective 4 (regulate the harvest of black coral), four alternatives were considered including the preferred alternative. Under the preferred alternative, the harvest of black coral will be prohibited unless it has attained either a minimum stem diameter of 1 inch (2.54 cm), measured no less than 1 inch (2.54 cm) from the top of the living holdfast, or a minimum height of 48 inches (122 cm), measured from the base to the greatest distal extremity of the colony. Persons who reported a landing of black coral to the State of Hawaii within 5 years before the effective date of the final rule may apply for an exemption which allows the hand harvest of black coral that has attained a 3/4 inch (1.905 cm) base diameter, measured on the widest portion of the

skeleton at a location just above the holdfast.

Three alternatives were considered and rejected for this management objective. The first rejected alternative would have maintained the current situation of no restrictions on the harvest of black coral. This alternative was rejected because it would allow fishing pressure to increase in an uncontrolled manner and could lead to overfishing of black coral.

The second rejected alternative would have prohibited the harvest of black coral unless it has attained a minimum base diameter of 3/4 inch (1.905 cm), which is believed to inadequately protect black coral resources from overfishing.

The third rejected alternative would have established a weight quota for black coral and was rejected because a weight quota may not be as effective as a size limit in avoiding overfishing of the resource. Information on the standing stock and sustainable yield of managed species of black coral is limited. The use of minimum size limits based on knowledge of the reproductive biology of precious corals is the preferred basis for management of the fishery when selective harvesting is expected to be economically feasible as information on the standing stock and its sustainable yield in terms of weight is limited.

Under Management Objective 5 (protect precious coral resources and essential fish habitat (EFH) from the effects of ecologically destructive and wasteful harvest gear), three alternatives were considered including the preferred alternative. The preferred alternative will require that selective gear be used to harvest precious corals from all permit areas. The cost of purchasing an unmanned submersible (i.e., remotely operated vehicle) may be as low as \$50,000, which is roughly equal to the capital investment in gear required to initiate a non-selective harvest operation using tangle nets. Although the capital and operating costs of manned submersibles may be high, they are not economically prohibitive, as is evidenced by the recent interest of two firms in using this type of selective gear to harvest precious corals in the waters around Hawaii. In addition, it is likely that some harvesters of precious coral will be able to defray the costs of using selective gear by finding other lucrative uses for the gear, such as salvage and research. The use of non-selective gear to harvest precious corals is an inefficient use of fishery resources. Non-selective gear tends to damage the precious coral trees as it harvests them, thereby greatly reducing the value of the

coral. In contrast, selective gear harvests coral so that it retains its highest value.

Two alternatives were considered and rejected for the fifth management objective to protect precious coral resources and EFH from the effects of ecologically destructive and wasteful harvest gear.

The first rejected alternative would have maintained the current regulations requiring selective gear only at the Makapu'u, Keahole Point, and Kaena Point Beds. This alternative was rejected because the use of non-selective gear to harvest precious corals is not an efficient use of fishery resources. The value of precious coral colonies is dependent on its size, color and condition. Large, completely intact trees of coral have the greatest value. Non-selective gear such as dredges harvest pieces of broken coral knocked down by the dredge stone and entangled in the nets as the dredge is pulled along the sea floor. Breakage may reduce a coral's value by as much as 80 percent.

Allowing the continued use of this relatively inexpensive gear in exploratory areas may encourage the discovery and exploration of new beds. However, the use of non-selective gear is unlikely to provide sufficient data to develop reliable estimates of the standing stock and maximum sustained yield (MSY) for newly discovered beds because this gear cannot discriminate or differentiate between types, size, quality or characteristics of living or dead corals. Further, the degradation of precious coral beds may reduce monk seal foraging habitat. The economic impact of such adverse modifications would be likely to include emergency closures of specific sites, including Brooks Bank, or alteration of fishing operations. The specific cost of closures or other measures would depend on the length of time that these measures are in effect.

The second rejected alternative would have required that selective gear be used to harvest precious corals from all established and conditional beds. This alternative was rejected as it would fail to protect those precious coral resources located outside of these beds.

Under Management Objective 6 (reduce the potential for overfishing of pink coral at conditional beds and exploratory areas), three alternatives were considered including the preferred alternative. Under the preferred alternative, the current 10 inch size limit for pink coral will be applied to all established beds, conditional beds, and exploratory areas. The feasibility of this alternative is contingent on a prohibition on the use of non-selective gear to harvest precious corals for

commercial purposes in all permit areas. Applying the size limit for pink coral to all permit areas is unlikely to have a significant negative economic impact because the potential financial return from harvesting colonies of pink coral that are less than 10 inches (25.4 cm) in height is low. According to Maui Divers of Hawaii, Ltd., harvesting colonies less than 10 inches (25.4 cm) is not economically practical, because the return does not justify the time spent harvesting.

Two alternatives were considered and rejected for the sixth management objective. The first rejected alternative would have maintained the application of the 10-inch (25.4 cm) size limit for pink coral at the established Makapu'u, Keahole Point, and Kaena Point Beds only, and was rejected because long-term negative impacts on harvest levels and gross revenues could be potentially large if the resources are overfished. Given the life-history characteristics of pink coral, such as slow growth and long generation time, overfishing could degrade the productivity of affected precious coral beds for many years.

The second rejected alternative would have applied the current 10-inch (25.4 cm) size limit for pink coral only to established and conditional beds. This alternative would have had economic impacts similar to the preferred alternative. However, it was rejected because it would not provide protection for the minimum sizes to pink corals located in exploratory areas.

This final rule could affect five to seven small businesses. There are three to five small-boat fishermen who harvest black coral using scuba gear in beds overlapping State of Hawaii and Federal waters, as well as two historical or potential operations targeting other precious corals. Between 1990 and 1997, the total annual harvest of black coral in Hawaii varied from a low of 864 lbs (391 kg) to a high of 6,017 lbs (272 kg), with a yearly average of 3,084 lbs (139 kg). The 415 lbs (188 kg) of black coral sold in 1997 had a dockside value of about \$10,394, assuming a price of \$25/lb. NMFS cannot determine the proportions of the harvest of black coral made in State and Federal waters based on the available information. Details on the harvest of other precious corals cannot be released due to confidentiality requirements as there have been less than three operations active in the past decade.

Due to the low level of participation in the western Pacific precious coral fishery, aggregate economic impacts resulting from the final rule will be minimal. The analysis, however, shows that prohibiting the harvest of gold coral

at Makapu'u Bed could result in the loss of potential revenues of approximately \$100,000 annually in the short term, if the actual stock is of sufficient size to support the current harvest quota. Establishment of a universal minimum harvest size for all pink coral management unit species could result in a positive economic impact in the form of long-term maintenance of MSYs. On the other hand, imposing a minimum harvest size for black corals could have a negative economic impact on fishery revenues, except for five harvesters expected to be exempt from the minimum harvest size requirement. A prohibition on the use of non-selective gear to harvest precious corals could result in additional costs for future participants. Hand-harvesters for black corals would be unaffected by this prohibition. The exact costs of selective gear technologies are unknown, although a remotely operated submersible coral harvester 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. The effective yield is higher for selective harvesting of precious corals using submersibles compared to the wasteful practice of harvesting precious corals using non-selective gear.

Due to a lack of information on the long term effects of alternative management measures on coral stocks, harvest effort or catch rates, a detailed quantitative analysis of the costs and benefits of alternative management measures is not possible at this time.

Although long-term data are unavailable, analysis of this fishery is ongoing, and may lead to simulation models capable of predicting the biological (and economic) effects of each alternative. From a conceptual point of view, the precious corals fishery represents a difficult economic analysis. Although standard bioeconomic theory suggests that the harvest rate should be no more than the growth rate of the coral population at its MSY (accounting for economic production cost relationships and the discount rate), the growth rate of coral is so slow that a mining approach might be considered preferable, i.e., that the resource might be allowed to be over-fished in the short-term, and then harvesting prohibited for the many years which would be required for it to be fully restored. However, this approach was rejected because it would be inconsistent with National Standard 1 of the Magnuson-Stevens Act which prohibits overfishing. It is anticipated by NMFS that by allowing the coral populations to maintain their long-term

sustainability, there will be a larger standing stock of corals which will optimize harvest rates and reduce the relative costs of harvesting (due to increased density). By limiting the harvest rates to those allowed by MSY, the likelihood that long-term benefits will exceed costs is increased. In addition, these restrictions may preclude new entry into the fishery, therefore improving social benefits (i.e., avoiding over-capacity). To the extent that these initial explorations are successful in identifying additional coral resources for harvesting, and as new economic information is acquired, a re-evaluation of the relative benefits and costs of these management measures would be warranted.

None of the alternatives considered is expected to have significant social impacts on fishery participants or Hawaii fishing communities in terms of employment, enjoyment of the fishery, vessel and crew safety, social or cultural activity in the fishery, or other social factors.

To minimize impact, this final rule removes size limits for dead corals. However, this revision could cause some risk to certain corals, such as gold corals, that may use dead corals for resettlement of new colonies.

This final rule does not contain any reporting or record-keeping requirements.

An informal consultation under the Endangered Species Act was conducted to determine whether this regulatory amendment was likely to affect any endangered or threatened species, including Hawaiian monk seals. This consultation was completed on December 20, 2000, and concluded that this regulatory amendment is not likely to adversely affect any endangered or threatened resources. The disapproval of the two NWHI measures does not affect that determination.

This final rule is consistent with Executive Order 13089, which is intended to preserve and protect the biodiversity, health, heritage, and social and economic value of U.S. coral reef

ecosystems and the marine environment.

List of Subjects in 50 CFR Part 660

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

Dated: March 12, 2002.

Rebecca Lent,
Deputy Assistant Administrator for
Regulatory Programs, National Marine
Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is 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" and "Live coral" are revised, and under the definition of "Precious coral permit area", paragraph (3) is revised 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 * * *

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(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) *Black coral*. (1) Except as provided in paragraph (b)(2) of this section, 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).

(2) The NMFS Pacific Islands Area Office will issue an exemption permitting hand-harvesting of live black coral that has attained a minimum base diameter of 3/4 inches (1.91 cm), measured on the widest portion of the skeleton at a location just above the holdfast, to any person who reported a landing of black coral to the State of Hawaii within 5 years before April 17, 2002.

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: