

from the Hazardous Materials Advisory Council (HMAC) seeking an extension of the comment period in order to have more time to evaluate the proposals contained in the NPRM. RSPA concurs with this request and is extending the comment period by 30 days.

DATES: Comments must be received by November 20, 1995.

ADDRESSES: Address comments to Dockets Unit (DHM-30), Hazardous Materials Safety, RSPA, U.S. Department of Transportation, Washington, DC 20590-0001. Comments should identify the docket and notice number and five copies should be submitted, when possible. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed, stamped postcard. The Dockets Unit is located in Room 8421 of the Nassif Building, 400 Seventh Street, SW, Washington, D.C. 20590-0001. Office hours are 8:30 am to 5:00 pm, Monday through Friday, except on public holidays when the office is closed.

FOR FURTHER INFORMATION CONTACT: John J. O'Connell, Jr., Director, Office of Hazardous Materials Enforcement, (202) 366-4700; or Edward H. Bonekemper, III, Office of the Chief Counsel, (202) 366-4400, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street SW, Washington DC 20590-0001.

SUPPLEMENTARY INFORMATION: On August 21, 1995, RSPA published a notice of proposed rulemaking (NPRM) in the Federal Register which invited public comment on a proposal to implement a pilot program for ticketing of certain hazardous materials transportation violations [Docket HM-207E, Notice 95-10, 60 FR 43430]. Under the program, RSPA would issue tickets for violations that do not have substantial impacts on safety. These violations may include, among others, operating under an expired exemption, failing to register, failing to maintain training records, and failing to file incident reports. Procedures under this pilot program would be less complicated than current procedures for civil penalty actions, and penalties would be substantially reduced for persons who elect to pay the amounts assessed in the tickets.

HMAC, in its request for extension of the comment period, cited the broad effect of this proposal upon industry and how it would directly impact the enforcement process if implemented. HMAC believed a 30-day extension of the comment period would provide industry a reasonable amount of time to more fully consider the implications of

the proposal. RSPA agrees additional time should be allowed and is granting an extension of 30 days for submitting comments.

Issued in Washington, DC on October 11, 1995, under authority delegated in 49 CFR part 106, appendix A.

Robert A. McGuire,
*Acting Associate Administrator for
Hazardous Materials Safety.*

[FR Doc. 95-25680 Filed 10-16-95; 8:45 am]

BILLING CODE 4910-60-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 638

[Docket No. 950929242-5242-01; I.D. 091295A]

RIN 0648-AH74

Coral and Coral Reefs Off the Southern Atlantic States; Amendment 3

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to implement Amendment 3 to the Fishery Management Plan for Coral and Coral Reefs off the Southern Atlantic States (FMP). Amendment 3 would: Establish an aquacultured live rock permit system applicable to the exclusive economic zone (EEZ) off the southern Atlantic states; prohibit chipping of aquacultured live rock; prohibit octocoral harvest north of Cape Canaveral, FL; and prohibit anchoring of fishing vessels in the Oculina Bank habitat area of particular concern (HAPC). In addition, NMFS proposes changes to correct and clarify certain regulations, or conform them to current standards. The intended effect is to establish a management program for live rock aquaculture and to protect fishery habitat.

DATES: Written comments must be received on or before November 27, 1995.

ADDRESSES: Comments on the proposed rule must be sent to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Requests for copies of Amendment 3, which includes a regulatory impact review, a social impact assessment, and an environmental assessment, should be sent to the South Atlantic Fishery

Management Council, Southpark Building, Suite 306, 1 Southpark Circle, Charleston, SC 29407-4699, telephone: 803-571-4366, FAX: 803-769-4520.

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

SUPPLEMENTARY INFORMATION: The FMP was prepared by the South Atlantic Fishery Management Council (Council) and is implemented through regulations at 50 CFR part 638 under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). Upon implementation of Amendment 3, if approved, the title of the FMP would be changed to the Fishery Management Plan for Coral, Coral Reefs, and Live/Hard Bottom Habitats of the South Atlantic Region. This title change reflects the Council's intent to manage and protect essential live/hard bottom habitats as well as coral resources.

Aquacultured Live Rock Permits

Amendment 3 proposes to adopt in the EEZ off the southern Atlantic states (South Atlantic EEZ) the aquacultured live rock permit system implemented for the Gulf of Mexico (Gulf) EEZ under Amendment 2 to the Fishery Management Plan for Coral and Coral Reefs of the Gulf of Mexico and South Atlantic, with two special conditions: (1) Aquaculture substrates must be geologically distinguishable from the naturally occurring substrate, and (2) no chipping of aquacultured live rock is permitted.

Under Amendment 2, the Gulf of Mexico Fishery Management Council and the South Atlantic Council agreed to allow and facilitate live rock aquaculture to replace the wild harvest that is being phased out. Amendment 2 established an aquacultured live rock permit for the harvest and possession of live rock from aquaculture operations in the Gulf EEZ, under specific criteria designed to protect natural hard bottom areas, as specified in § 638.27. The aquaculture permit also authorizes an exception to the prohibition on taking and possession of prohibited corals; a permitted individual harvesting aquacultured live rock is exempt from the prohibition on taking prohibited coral with regards to the prohibited coral attached to the aquacultured live rock. Otherwise, an aquaculturalist would be prevented from harvesting the aquaculture product if small polyps of such species were detected on the aquaculture substrates.

Under the criteria for issuance of aquacultured live rock permits, established under Amendment 2 for the Gulf EEZ, materials deposited on the aquaculture site must be geologically or

otherwise distinguishable from the naturally occurring substrate or be indelibly marked or tagged. Amendment 3 proposes to require in the South Atlantic EEZ that the rock be geologically distinguishable, without exception, to eliminate the possibility of marking wild live rock and selling it as aquacultured product.

Prohibition on Chipping Aquacultured Live Rock

Chipping means breaking up rocks into fragments, usually with a chisel and hammer. Amendment 3 proposes to prohibit chipping of aquacultured live rock in the South Atlantic EEZ to prevent harvest of naturally occurring corals under the guise of aquaculture. Otherwise, the Council anticipates that individuals might claim prohibited corals in their possession were chipped from aquacultured live rock when, in fact, they were taken from natural substrates. This would confine harvesters to loose, rubble rock only.

Restriction on Octocoral Harvest

The existing regulations provide an annual quota of 50,000 allowable octocoral colonies. In the South Atlantic EEZ, allowable octocoral means an erect, nonencrusting species of the subclass Octocorallia, except the sea fans *Gorgonia flabellum* and *G. ventalina*, plus the attached substrate within 1 inch (2.54 cm) of the allowable octocoral. Live octocorals are sold for display in marine aquaria.

Amendment 3 proposes to prohibit the taking of octocorals north of Cape Canaveral, FL. No landings have been reported from this area. The Council intends to prevent a shift of effort from south Florida, where landing of about 20,000 colonies of octocorals are reported annually, to northeast Florida, Georgia, South Carolina, and North Carolina. Octocoral/sponge assemblages are the primary component of live bottom communities in the area south of Cape Hatteras, NC, to Cape Canaveral, FL, and an essential element of the available fisheries habitat, according to the Council's Coral Advisory Panel.

Prohibition on Anchoring in the Oculina Bank HAPC

The FMP established HAPCs to provide special protection to environmentally significant coral areas. The Oculina Bank HAPC is a 4 x 23 nautical mile (nm) (7.4 x 42.6 km) area in the South Atlantic EEZ off central Florida characterized by extensive tree-like colonies of *Oculina* spp. The FMP prohibits fishing with bottom longlines, traps, pots, dredges, or bottom trawls in the Oculina Bank HAPC. Amendment 3

proposes to add a prohibition on anchoring of fishing vessels. Anchors can break fragile coral colonies, dislodge reef framework, and scar corals, thereby opening lesions for infection.

Additional background and rationale for the measures discussed above are contained in Amendment 3, the availability of which was announced in the Federal Register on September 21, 1995 (60 FR 48960).

Additional Changes Proposed by NMFS

NMFS proposes to change the title of part 638 from Coral and Coral Reefs of the Gulf of Mexico and the South Atlantic to Coral and Coral Reefs of the Gulf of Mexico and off the Southern Atlantic States in order to more correctly indicate the geographical scope of the regulations. NMFS also proposes changes to the regulations to correct errors in existing cross-references and to restructure the regulations for consistency and clarity. A note has been added to the definition of "Allowable octocoral" to clarify the distinction between allowable octocoral and live rock.

Classification

Section 304(a)(1)(D) of the Magnuson Act requires NMFS to publish regulations proposed by a Council within 15 days of receipt of an amendment and regulations. At this time, NMFS has not determined that Amendment 3 is consistent with the national standards, other provisions of the Magnuson Act, and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

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

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. All participants in the live rock fishery are considered small entities for purposes of the Regulatory Flexibility Act. The proposed rule would establish an aquaculture live rock permit system that is a minor modification of the permit system already in place in the Gulf of Mexico EEZ. Aquaculture is expected to benefit live rock fishermen by providing an alternative to the wild live rock harvest that is being phased out under a previous FMP amendment because of its damage to natural fishery habitats. No adverse economic effects

are expected from the prohibition on taking of octocorals north of Cape Canaveral, Florida, since currently there are no reported landings in this area. The proposed prohibition on the anchoring of fishing vessels in the Oculina Bank HAPC off east central Florida is expected to have only minimal impact on fishermen in this area since anchoring while fishing for snapper-grouper is already prohibited under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic. As a result, a regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 638

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: October 10, 1995.

Rolland A. Schmitten,

Assistant Administrator for Fisheries,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 638 is proposed to be amended as follows:

PART 638—CORAL AND CORAL REEFS OF THE GULF OF MEXICO AND OFF THE SOUTHERN ATLANTIC STATES

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

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

2. The title of part 638 is revised to read as set forth above.

§ 638.1 [Amended]

3. In § 638.1, in paragraph (a), the phrase "Fishery Management Plan for Coral and Coral Reefs off the Southern Atlantic States" is removed and "Fishery Management Plan for Coral, Coral Reefs, and Live/Hard Bottom Habitats of the South Atlantic Region" is added in its place.

4. In § 638.2, a note is added to the end of paragraph (2) of the definition for "Allowable octocoral", to read as follows:

§ 638.2 Definitions.

* * * * *

Allowable octocoral * * * (2) * * *
Note: An erect, nonencrusting species of the subclass Octocorallia, except the seafans *Gorgonia flabellum* and *G. ventalina*, with attached substrate exceeding 1 inch (2.54 cm) or 3 inches (7.62 cm) in or from the EEZ off the southern Atlantic states or the Gulf of Mexico, respectively, is considered to be live rock and not allowable octocoral.

* * * * *

5. In § 638.4, the last sentence in paragraph (a)(1)(v) is revised to read as follows:

§ 638.4 Permits and fees.

(a) * * *
(1) * * *
(v) * * * A person who has been issued an aquacultured live rock permit is exempt from the requirement to obtain a permit for prohibited coral that is attached to aquacultured live rock.
* * * * *

6. In § 638.7, in paragraph (k), the reference to "(c)" is removed and "(c)(1)" is added in its place; in paragraph (q), the reference to "§ 635.26(c)" is removed and "§ 638.26(c)" is added in its place; and new paragraphs (x), (y), and (z) are added to read as follows:

§ 638.7 Prohibitions.

(x) Harvest allowable octocoral in the EEZ off the southern Atlantic states, north of Cape Canaveral, FL (28° 35.1' N. lat.—due east of the NASA Vehicle Assembly Building) or possess allowable octocoral in or from that area, as specified in § 638.21(b).

(y) Anchor a fishing vessel, or use an anchor and chain or grapple and chain on board a fishing vessel, in the Oculina Bank HAPC, as specified in § 638.23(c)(2).

(z) Harvest aquacultured live rock by chipping in the EEZ off the southern Atlantic states; possess chipped aquacultured live rock in or from that area; remove allowable octocoral or prohibited coral from aquacultured live rock; or, while in possession of aquacultured live rock, possess prohibited coral not attached to aquacultured live rock or allowable octocoral, as specified in § 638.27(c).

7. Section 638.21 is revised to read as follows:

§ 638.21 Harvest limitations.

(a) *Incidental harvest.* Except as authorized by a permit issued pursuant to § 638.4, prohibited coral, allowable octocoral, and live rock taken as incidental catch must be returned immediately to the sea in the general

area of fishing. In fisheries where the entire catch is landed unsorted, such as the scallop and groundfish fisheries, unsorted prohibited coral, allowable octocoral, and live rock are exempt from the requirement for a Federal permit and may be landed; however, no person may sell, trade, or barter or attempt to sell, trade, or barter such prohibited coral, allowable octocoral, or live rock.

(b) *Allowable octocoral harvest.* Harvest of allowable octocoral in the EEZ off the southern Atlantic states, north of Cape Canaveral, FL (28° 35.1' N. lat.—due east of the NASA Vehicle Assembly Building) or possession of allowable octocoral in or from that area is prohibited. See the note included in the definition of "Allowable octocoral" for clarification of the distinction between allowable octocoral and live rock.

8. In § 638.23, in paragraphs (a)(1) and (b)(1), the references to "§ 634.4" are removed and "§ 638.4" is added in both places; and paragraph (c) is revised to read as follows:

§ 638.23 Habitat areas of particular concern.

(c) *Oculina Bank.* The Oculina Bank is located approximately 15 nautical miles east of Fort Pierce, FL, at its nearest point to shore, and is bounded on the north by 27° 53' N. lat., on the south by 27° N. lat., on the east by 79° 56' W. long., and on the west by 80° 00' W. long. The following restrictions apply in the HAPC:

(1) Fishing with bottom longlines, traps, pots, dredges, or bottom trawls is prohibited. See § 646.26(d) of this chapter for prohibitions on fishing for snapper-grouper in the Oculina Bank HAPC.

(2) Anchoring of fishing vessels, or using an anchor and chain or grapple and chain on board a fishing vessel, is prohibited.

9. In § 638.27, in the first sentence of paragraph (a), the phrase "from the Gulf of Mexico EEZ" is removed; paragraph

(b)(2) is revised; and two sentences are added at the end of paragraph (c) to read as follows:

§ 638.27 Aquacultured live rock.

(2) Material deposited on the aquaculture site—

(i) May not be placed over naturally occurring reef outcrops, limestone ledges, coral reefs, or vegetated areas;

(ii) Must be free of contaminants;

(iii) Must be nontoxic;

(iv) Must be placed on the site by hand or lowered completely to the bottom under restraint, that is, not allowed to fall freely;

(v) Must be placed from a vessel that is anchored;

(vi) In the Gulf of Mexico EEZ must be distinguishable, geologically or otherwise (for example, be indelibly marked or tagged), from the naturally occurring substrate; and

(vii) In the EEZ off the southern Atlantic states must be geologically distinguishable from the naturally occurring substrate and, in addition, may be indelibly marked or tagged.

(c) * * * In addition, the following activities are prohibited off the southern Atlantic states: Chipping of aquacultured live rock in the EEZ; possession of chipped aquacultured live rock in or from the EEZ; removal of allowable octocoral or prohibited coral from aquacultured live rock in or from the EEZ; and possession of prohibited coral not attached to aquacultured live rock or allowable octocoral, while aquacultured live rock is in possession. See the note included in the definition of "Allowable octocoral" for clarification of the distinction between allowable octocoral and live rock.