these areas. Accordingly, Amendment 2 included a prohibition on taking of wild live rock by chipping north of the Pasco/Hernando County, Florida line, but allowed harvest of loose, rubble rock in the EEZ north of that line.

Subsequent testimony by local governments, recreational divers, and environmental groups indicated that the measures of Amendment 2 were insufficient to protect hard bottom resources, especially north and west of the Levy/Dixie County line, where the abundance of hard bottom resources declines sharply.

Amendment 3

Amendment 3 proposes the following measures: Prohibit the taking of wild live rock in the Gulf EEZ off Florida north and west of the Levy/Dixie County line—the Panhandle area; remove the prohibition on taking wild live rock by chipping between the Pasco/Hernando County and Levy/Dixie County, Florida lines; establish a 500,000 lb (226,796 kg) annual quota for 1995 and 1996 in the Gulf EEZ off Florida north of Monroe County to the Levy/Dixie County line, which is the only area that would remain open to live rock harvesting in the Gulf EEZ; and reduce the amount of substrate that may be taken at the base of an allowable octocoral in the Gulf EEZ from 3 inches (7.6 cm) to 1 inch (2.5 cm). These measures constitute minor changes to the management regime established for live rock in Amendment 2.

Prohibiting the harvest of wild live rock off the Panhandle area would address the concerns discussed above regarding relative scarcity of the resource in that area. According to testimony received by the Council, this measure would benefit reef fish fishermen and recreational divers who depend on the fishery habitat provided by live rock resources in this area.

A total of 5 individuals in the Panhandle area are eligible for vessel permits to take wild live rock until 1997. Closure of the Panhandle area to commercial harvesting is not expected to have a significant adverse impact on the live rock industry because: (1) This area accounts for a relatively small percentage of total harvest; (2) eligible participants can relocate operations to areas unaffected by this closure; and (3) all current participants will have to cease wild harvest operations by 1997, whether or not Amendment 3 is implemented.

The Council proposes removal of the prohibition on chipping of wild live rock between the Pasco/Hernando County and Levy/Dixie County, Florida lines because this 3-county area most

closely resembles the southern counties, in terms of availability of live rock and the characteristics of the fishery, than the Panhandle area to the north. Leaving the prohibition in place would result in three different kinds of management regimes during the phase out—no taking of live rock in the Panhandle area, taking of loose rubble rock only in the adjoining 3-county area, and taking by chipping in the area to the south. Thus, the removal of the prohibition on chipping for the 3-county area would simplify the regulations and enhance enforcement by standardizing the harvesting restrictions throughout the range of allowable wild live rock harvesting, i.e., from the Collier/Monroe County line to the Levy/Dixie County

Amendment 3 proposes a cap on the allowable harvest of wild live rock from the Gulf EEZ at the approximate current harvest level of 500,000 lb (226,796 kg) for 1995 and 1996. This quota would prevent increases in harvest levels during the phaseout due to increased demand and possible effort shifts from the Florida Keys to the Gulf EEZ. The live rock fishery in the Atlantic EEZ off the Florida Keys will close when the quota for that area is reached in 1995 and will not reopen in 1996 because the quota for 1996 and subsequent years is zero. Some permitted vessels are expected to move into the Gulf and continue harvesting during 1996.

Harvest and sale of wild live rock taken on or after the effective date of the closure would be prohibited. But the prohibition on sale of wild live rock after the effective date of the closure would not apply to wild live rock harvested and landed prior to that date—wild live rock is frequently maintained by harvesters for weeks or months before sale. This would be consistent with the current rule for a closure of the EEZ off the southern Atlantic states (§ 638.25(c)(2)).

During the development of Amendment 2, some individuals who harvest octocorals in the EEZ off Florida for sale to the aquarium industry testified that attached substrate is needed to anchor the octocoral in the aquarium. Such substrate could include live rock, possibly in violation of the restrictions on the harvest of live rock. Accordingly, Amendment 2 defined allowable octocorals to include the substrate within 1 inch (2.5 cm) of the octocoral in the EEZ off the southern Atlantic states and the substrate within 3 inches (7.6 cm) in the Gulf. However, in accordance with 50 CFR 638.3(c), if a state has a landing regulation that is more restrictive than a Federal landing restriction for octocorals, a person

landing in that state must comply with the more restrictive state regulation.

Florida recently implemented a rule allowing only 1 inch (2.5 cm) of substrate from the attachment of the octocoral. Therefore, an individual harvesting octocoral from the Gulf EEZ and landing in Florida must comply with the more restrictive 1-inch (2.5-cm) rule. There are no reported landings of octocorals outside Florida. The Council and NMFS agree with Florida's finding that a 3-inch (7.6 cm) rule would allow the continued taking of excessive amounts of live rock as bycatch under the octocoral quota. Therefore, Amendment 3 would redefine allowable octocorals taken in the Gulf EEZ to include only the substrate within 1 inch (2.5 cm) of an allowable octocoral. This FMP change would result in an octocoral substrate measure for the Gulf of Mexico that is consistent with the provision for the EEZ off the southern Atlantic states and with the Florida rule. This change would have negligible effects on industry practices and income. Taking of an octocoral with more than 1 inch (2.5 cm) of attached substrate would constitute taking of live rock

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 July 13, 1995 (60 FR 36093).

Minority Report

A minority report signed by two Council members raises objections to Amendment 3's closure of the Panhandle area to live rock harvesting before the 1997 closure of the Gulf EEZ established under Amendment 2. These members believe that this measure is a reversal of the Council's earlier commitment to allow Panhandle fishermen sufficient time to convert to live rock aquaculture. Copies of the minority report are available (see ADDRESSES). The final rule for Amendment 3 will include responses to comments received on the proposed rule, including the issue raised in the minority report.

Classification

Section 304(a)(1)(D) of the Magnuson Act requires the regulations proposed by a council to be published within 15 days of receipt of an amendment and regulations. At this time, the Assistant Administrator for Fisheries, NOAA, (AA) has not determined that Amendment 3 is consistent with the National Standards, other provisions of the Magnuson Act, and other applicable laws. The AA, in making that