

Classification

The Regional Director determined that Amendment 3 is necessary for the conservation and management of the coral and coral reef resources and live/hard bottom habitats off the southern Atlantic states and that it is consistent with the Magnuson Act and other applicable law.

This action 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 when the proposed rule was published that it would not have a significant economic impact on a substantial number of small entities. The reasons for this certification were published in the preamble to the proposed rule (60 FR 53731, October 17, 1995) and are not repeated here. 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: December 20, 1995.

Nancy Foster,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 638 is 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 § 638.4, 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.

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5. 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 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).

6. Section 638.21 is revised to read as follows:

§ 638.21 Harvest limitations.

(a) *Incidental harvest.* Except as authorized by a Federal permit or a Florida permit as specified in § 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.

7. 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°30' 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.

8. 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.

* * * * *

(b) * * *

(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.

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(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