

extension of the comment period for the proposed designations and non-designations of critical habitat for plant species on the island of Hawaii. We will accept public comments on the proposal for the island of Hawaii until November 30, 2002. The extension of the comment period gives all interested parties the opportunity to comment on the proposal. Comments already submitted on the proposed designations and non-designations of critical habitat for plant species from the island of Hawaii need not be resubmitted as they will be fully considered in the final determinations. Extension of the comment period will enable us to respond to the requests for a public hearing on the proposed action. Written comments should be submitted to the Service office listed in the **ADDRESSES** section. The comment period now closes on November 30, 2002.

#### Author

The primary author of this notice is Christa Russell (*see* **ADDRESSES** section).

**Authority:** The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: September 16, 2002.

**Craig Manson,**

*Assistant Secretary for Fish and Wildlife and Parks.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 660

[Docket No. 020508114-2114-01; I. D. 030702C]

**RIN 0648-AM97**

#### Fisheries of West Coast States and in the Western Pacific; Coral Reef Ecosystems Fishery Management Plan for the Western Pacific

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS issues a proposed rule that would implement those parts of the Fishery Management Plan for Coral Reef Ecosystems of the Western Pacific Region (CREFMP) that have been approved by NMFS. Coral reef ecosystem fisheries in federally managed waters of the western Pacific

U.S. exclusive economic zone (U.S. EEZ) are currently unregulated under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The CREFMP, which was developed by the Western Pacific Fishery Management Council (Council), would apply ecosystem principles to fisheries management to conserve and protect coral reef fisheries, their ecosystems, and associated habitats in the U.S. EEZ around American Samoa, Guam, Hawaii (main Hawaiian Islands), the Commonwealth of the Northern Mariana Islands (CNMI), and the U.S. Pacific remote island areas (PRIA): Howland Island, Baker Island, Jarvis Island, Wake Island, Kingman Reef, Palmyra Atoll, and Johnston Atoll. **DATES:** Comments must be submitted in writing by October 24, 2002.

**ADDRESSES:** Written comments should be sent to Dr. Charles Karnella, Pacific Islands Area Office (PIAO), NMFS, 1601 Kapiolani Blvd, Suite 1110, Honolulu, HI 96814. Comments will not be accepted if submitted via e-mail or the internet. Copies of the CREFMP, environmental impact statement (EIS), regulatory impact review (RIR), and initial regulatory flexibility analysis (IRFA) are available at the Council website, [www.wpcouncil.org](http://www.wpcouncil.org). Requests for a CD or paper copy of these documents can be made by contacting [Jarad.Makaiau@noaa.gov](mailto:Jarad.Makaiau@noaa.gov). A copy of the Record of Decision issued by NMFS for the partially approved CREFMP is available at the PIAO website, <http://swr.nmfs.noaa.gov/piao>. Send comments regarding the reporting burden estimate or any other aspect of the collection-of-information requirements in this proposed rule to the NMFS address and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC00503 (Attn: NOAA Desk Officer).

#### FOR FURTHER INFORMATION CONTACT:

Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, at (808) 522-8220 or Dr. Charles Karnella, Administrator, PIAO, at (808) 973-2937.

**SUPPLEMENTARY INFORMATION:** The Council began development of the CREFMP in 1996, with the preparation of an assessment of the coral reef ecosystem resources. Initial scoping hearings were conducted by the Council in June 1999 to obtain public input on a new fishery management plan for these resources. A notice of availability soliciting public comment on the CREFMP's draft environmental impact statement (DEIS) was published in the **Federal Register** on January 12, 2001

(66 FR 1945). Although the comment period ended on February 26, 2001, additional comments were accepted during the month following the closing date.

Four major agency reviews were conducted to ensure completeness, accuracy, and compliance of the draft CREFMP with applicable laws. The Council also conducted 59 public meetings and hearings to receive comments on the draft document. These comments were incorporated into the text of the final CREFMP. The Council adopted the final CREFMP on June 20, 2001, and transmitted it to NMFS on March 8, 2002. A notice of availability was published in the **Federal Register** on March 18, 2002, 67 FR 11971. On June 14, 2002, NMFS partially approved the CREFMP and parallel amendments to the Council's management plans for bottomfish and seamount groundfish fisheries (Bottomfish FMP), pelagic fisheries (Pelagics FMP), precious coral fisheries, and crustacean fisheries of the western Pacific region. The CREFMP was approved, except for that portion of the CREFMP that governs fishing in waters of the U.S. EEZ around the Northwestern Hawaiian Islands (NWHI) west of 160°50' W. long. NMFS disapproved a portion of the plan because it would be inconsistent with, or duplicate, certain provisions of Executive Order 13178 and 13196s, which together establish the NWHI Coral Reef Ecosystem Reserve (Reserve), as authorized by section 6(g) of Public Law 106-513. The Reserve encompasses a portion of the U.S. EEZ around the NWHI from the seaward boundary of the State of Hawaii, out to a distance of 50 nautical miles (nm). Specifically, section 7(b)(5) of Executive Order 13178, one of two executive orders that established the Reserve, prohibits the harvest of almost all living and non-living resources throughout the Reserve, while the CREFMP would actively manage the same species within the same geographical area. The bottomfish fishery in the NWHI will continue to be managed under existing management measures for the Bottomfish FMP, as authorized by the Magnuson-Stevens Act, while the process to designate a national marine sanctuary in the NWHI as directed by section 6(g) of Public Law 106-513, is ongoing. Coral reefs are highly complex, integrated ecosystems. The vast majority of the total area covered by coral reefs under U.S. jurisdiction is located in the western Pacific region and would be managed either by this new fishery management plan or by the NWHI Reserve management regime. The CREFMP

adopts a precautionary approach by addressing the potential for problems before they occur, and by establishing management measures that can be adapted rapidly in response to changes in the fishery. Although state and territorial regulations control most impacts from coral reef ecosystem fisheries in near-shore areas, the CREFMP would complement those regulations by implementing measures to manage coral reef ecosystems in adjacent Federal waters of the U.S. EEZ. In general, these areas have been minimally exploited, but potential fisheries, including those for live fish markets in Southeast Asia, coral and "live rock" for the U.S. aquarium trade, and marine bioprospecting for pharmaceutical uses, may develop and are addressed within the CREFMP.

The CREFMP has eight objectives: (1) Foster sustainable use of coral reef ecosystem resources in an ecologically and culturally sensitive manner; (2) provide a flexible and responsive management program for coral reef ecosystem resources that allows for rapid adjustments to management measures in response to changes in resource abundance, new scientific information, or changes in fishing patterns; (3) establish integrated resource data collection and permitting systems, including a research and monitoring program to collect fishery and other ecological information necessary to make informed management decisions about coral reef ecosystems in the U.S. EEZ; (4) minimize adverse human impacts on coral reef ecosystem resources by establishing new and improving existing marine protected areas (MPAs), managing fishing pressure, controlling wasteful harvest practices, reducing other anthropogenic stressors directly affecting coral reef ecosystem resources (through the conservation and protection of essential fish habitat (EFH) and allowing the recovery of naturally balanced reef ecosystems); (5) improve public and government awareness and understanding of coral reef ecosystems, their vulnerability and resource potential so as to reduce adverse human impacts and foster support for science-based management; (6) facilitate collaborative effort among agencies and organizations concerned with the conservation of coral reef ecosystems in order to share in decision-making, data, and resources needed to effectively monitor the vast and complex coral reef ecosystems managed under the CREFMP; (7) encourage and promote surveillance and enforcement in support of CREFMP management measures; and

(8) provide for sustainable participation by fishing communities in coral reef ecosystem fisheries and, to the extent practicable, minimize adverse economic impacts on such communities.

#### *Relation to Other Laws*

In order to ensure consistency between the management regimes of different Federal agencies, NMFS is adding language to the proposed rule that states that unless specifically authorized by the U.S. Fish and Wildlife Service (USFWS), fishing authorized under Subpart J—Western Pacific Coral Reef Ecosystem Fisheries is not allowed within the boundary of a wildlife refuge regardless of whether that refuge was established by action of the President or the Secretary of the Interior. Contact the USFWS at 808-541-1291 for more information and boundary details.

#### *Amendments to Existing FMPS*

To ensure consistency with the proposed regulations of the CREFMP, the Council would amend its existing fishery management plans for bottomfish and seamount groundfish fisheries, crustacean fisheries, pelagic fisheries, and precious coral fisheries. Fishing for management unit species (MUS) included in these existing plans would be prohibited in the CREFMP no-take MPAs. The Council initially proposed an insurance requirement for all vessels managed under these fishery management plans while operating in or transiting through the coral reef ecosystem MPAs. This measure was intended to provide the means for mitigating reef damage in the event of a vessel grounding or an oil spill in the coral reef ecosystems, including the possibility for wreck removal and reef recovery activities. The FMP did not set forth the details of this complex and novel issue. As a result, the insurance requirement is not included in this proposed rule; however, the Council will continue to address appropriate means to provide for reef protection. Finally, the MUS list for the Pelagics FMP would be amended to include only the following species of pelagic sharks: *Alopias pelagicus* (pelagic thresher shark), *Alopias superciliosus* (bigeye thresher shark), *Alopias vulpinus* (common thresher shark), *Carcharhinus falciformis* (silky shark), *Carcharhinus longimanus* (oceanic whitetip shark), *Prionace glauca* (blue shark), *Isurus oxyrinchus* (shortfin mako shark), *Isurus paucus* (longfin mako shark), and *Lamna ditropis* (salmon shark). The remaining coastal sharks currently listed as MUS in the Pelagics FMP would become CREFMP MUS. Dogtooth tuna would also change from a Pelagics FMP

MUS to a CREFMP MUS. This revision to the Pelagics FMP MUS would closely reflect the species associated with the respective ecosystems for each plan and provide for more accurate data gathering without affecting fisheries operations.

#### *Management Area*

The coral reef ecosystem management area consists of the U.S. EEZ around American Samoa, Guam, Hawaii, PRIA, and the Commonwealth of the Northern Mariana Islands (CNMI). For American Samoa, Guam, and Hawaii, the management area would generally occur between 3 nm and 200 nm from shore; in some areas, the outer boundary of the U.S. EEZ is truncated by adjacent international maritime boundaries. Management measures are proposed only for the "offshore zone", which consists of those waters from 3 to 200 nm. The management area for the PRIA (Kingman Reef, Johnston and Palmyra Atolls, and Jarvis, Howland, Baker, and Wake Islands) begins at the shoreline and extends offshore 200 nm (seaward boundary of the U.S. EEZ). Kingman Reef, Johnston and Palmyra Atolls, and Jarvis, Howland, and Baker Islands are National Wildlife Refuges managed by the USFWS. Fisheries management responsibilities in the PRIA and Rose Atoll will be shared by the Council, NMFS and the USFWS. Because the CNMI EEZ includes all waters from the shoreline to 200 nm, this would comprise the management area. For the purposes of this rule, those waters for which management measures are proposed are collectively termed the "coral reef ecosystem regulatory area", which includes the U.S. EEZ waters of the western Pacific region, with the exception of EEZ waters within 3 miles of the shoreline of the CNMI and the EEZ around the NWHI west of 160°50' W. long.

#### *Coral Reef Ecosystem MUS*

CRE-MUS are defined as those taxa listed in Table 1. 2 and 1. 3 of the CREFMP that spend the majority of their non-pelagic (post-settlement) life stages within waters less than or equal to 50 fathoms in total depth. These MUS are separated into two lists: "Currently harvested coral reef taxa" (CHCRT) and "potentially harvested coral reef taxa" (PHCRT). CHCRT consists of coral reef associated species, families, or subfamilies, as described in Table 1. 2 to the CREFMP, that have annual landings greater than 454.54 kg (1,000 lb) as reported on individual state, commonwealth, or territory catch reports or through creel surveys. Fisheries and research data for many of these species have been analyzed by

regional management agencies. PHCRT consists of coral reef associated species, families, or subfamilies, as described in Table 1. 3 to the CREFMP, for which little or no information is available beyond general taxonomic and distribution descriptions. These species have either not been caught in the past or have been harvested annually in amounts less than 454. 54 kg (1,000 lb). Species that occur in the coral reef ecosystem that are not managed, i. e., not listed as management unit species under the Council's other fishery management plans, would be similarly categorized. NMFS is specifically soliciting public comments on these MUS definitions.

#### *Principal Management Measures*

The proposed rule contains four types of management measures, (MPAs, permits and monitoring, fishing gear methods, and other management measures) which, unless otherwise specified, would apply throughout the regulatory area.

#### *MPAs*

Based on their natural resource values, human use and historic values, impacts of human activities, and management concerns, this rule would establish MPAs within the U.S. EEZ waters around the PRIA and Rose Atoll in American Samoa. Ecologically sensitive areas would be designated as no-take MPAs, in which all harvesting activities would be prohibited. These no-take MPAs would be located in waters of the U.S. EEZ seaward from the shoreline to the 50-fathom (fm) (91.5-m) curve (isobath) at Jarvis, Howland, and Baker Islands, Kingman Reef and Rose Atoll. Low-use MPAs would be located in waters of the U.S. EEZ between the shoreline and the 50-fm (91.5-m) curve around Johnston Atoll, Palmyra Atoll, and Wake Island.

In low-use MPAs, most existing fishing activities, primarily recreational fishing by residents on Palmyra, could be permitted under special permits. The CREFMP does not abolish or amend prohibitions or restrictions on fishing imposed under other Federal laws, such as the National Wildlife Refuge System Administration Act. In other words, no special permits issued under these regulations would allow fishing within the boundary of a national wildlife refuge unless such fishery is also authorized by the USFWS. Fisheries governed under the Council's other fishery management plans and operating in low-use MPAs would continue to abide by the permit and reporting requirements established under those plans. Minimum insurance coverage

against vessel groundings and oil spills is not included in this proposed rule at this time for reasons explained earlier; however, the Council will continue to explore options to help mitigate adverse impacts resulting from potential vessel groundings in the coral reef ecosystems in the U.S. EEZ. Although not an MPA in the sense of having fishing or permitting restrictions, Guam's Southern Banks is designated as a no-anchoring zone.

#### *Permits and Monitoring*

In general, any person who harvests coral reef ecosystem MUS in low-use MPAs would be required to have a Federal special permit issued by NMFS. Issuance of special permits would be on a case-by-case basis and based upon several factors including the potential for bycatch, the sensitivity of the area to the type of fishing proposed, and the level of fishing occurring in relation to the level considered sustainable in a low-use MPA. A person permitted and targeting non-CRE MUS under other fishery management plans would not be required to obtain a special permit to fish in low-use MPAs. In addition to the permit requirement for low-use MPAs, special permits would be required for any directed fisheries on PHCRT within the regulatory area. The harvest of live rock and living corals would be prohibited throughout the federally managed U.S. EEZ waters of the region (except 0–3 miles around CNMI); however, under special permits with conditions specified by NMFS following consultation with the Council, indigenous people could be allowed to harvest live rock or coral for traditional uses, and aquaculture operations could be permitted to harvest seed stock. The proposed rule would implement a Federal reporting system for all fishing under special permits. Resource monitoring systems administered by state, territorial, and commonwealth agencies would continue to collect fishery data on the existing coral reef fisheries that do not require special permits.

#### *Fishing Gears and Methods*

Fishing gear has the potential to adversely impact coral reef ecosystems. The CREFMP lists both allowable fishing gear types and fishing methods for targeting MUS. The listing of allowable gear types and methods is based on: (1) Impact on habitat; (2) potential for bycatch; and (3) degree to which fish may find refuge from capture. The proposed list of allowable gear types is: (1) Hand harvest; (2) spear; (3) slurp gun; (4) hand/dip net; (5) hoop net for Kona crab; (6) throw net; (7)

barrier net; (8) surround/purse net that is attended at all times; (9) hook-and-line (powered and unpowered handlines, rod and reel, and trolling); (10) crab and fish traps with vessel ID number affixed; and (11) remote operating vehicles/submersibles. New fishing gears that are not included in the allowable gear list may be allowed under the special permit provision. The proposed rule would prohibit SCUBA-assisted spearfishing at night within U.S. EEZ waters around the PRIA.

#### *Other Management Measures*

##### *Adaptive Management*

A framework process, providing for an administratively simplified procedure to facilitate adjustments to management measures previously analyzed in the CREFMP, is an important component of the CREFMP. These potential framework measures include designating "no-anchoring" zones and establishing mooring buoys, requiring vessel monitoring systems on board fishing vessels, designating areas for the sole use of indigenous peoples, and including species not specifically listed as PHCRT under the "special permit" regime as warranted. A general fishing permit program could also be established for all U.S. EEZ coral reef ecosystem fisheries under the framework process of the CREFMP.

##### *Other Actions*

The CREFMP also contains non-regulatory measures consistent with CREFMP objectives that would be undertaken by the Council outside of the regulatory regime. These include a process and criteria for EFH consultations; formal plan team coordination to identify and to address coral reef ecosystem impacts from existing FMPs fisheries; a system to facilitate consistent state and territorial level management; and research and education efforts.

##### *Classification*

With the exception of provisions of the CREFMP that have been disapproved, NMFS has determined that the CREFMP and the parallel amendments to the bottomfish and seamount groundfish fisheries, pelagic fisheries, crustacean fisheries, and precious coral fisheries fishery management plans that this rule would implement are consistent with the national standards of the Magnuson-Stevens Act and other applicable laws.

The Council prepared an Final Environmental Impact Statement (EIS) for the CREFMP; a notice of availability was published on May 10, 2002 (67 FR

31801). On June 14, 2002, in partially approving the CREFMP, NMFS issued a Record of Decision identifying the selected alternative, a variation of the preferred alternative in the EIS. The intent of the partially approved CREFMP and its proposed implementing rule (i. e., selected alternative) is to prevent harmful activities and adverse impacts to the environment before they occur. This proposed rule is expected to maintain the sustainability of target and non-target species; safeguard against substantial damage to the ocean and coastal habitats and/or EFH; protect endangered or threatened species, marine mammals, and critical habitat; help ensure public health and safety; prevent the occurrence of cumulative adverse effects that could have a substantial effect on the target species or non-target species; promote biodiversity and ecosystem function within the affected area; and minimize, if not eliminate, negative social or economic impacts.

This proposed rule has been determined to be significant for purposes of Executive Order 12866.

The Council prepared an IRFA that describes the economic impact this proposed rule, if adopted, would have on small entities. The IRFA is available from the Council (see ADDRESSES). A summary of the IRFA follows.

The need for and objectives of this proposed rule are stated in the **SUMMARY** and **SUPPLEMENTARY INFORMATION** sections of this document and are not repeated here. This action is taken under authority of the Magnuson-Stevens Act and regulations at 50 CFR part 660.

All commercial fishing operations affected by this proposed rule are considered to be small entities under guidelines issued by the Small Business Administration because they are independently owned and operated, and have annual receipts not in excess of \$3.5 million. Based on information provided in the IRFA, this proposed rule would potentially affect 24 to 63 entities, including commercial harvesters of food fish, ornamental fish collectors, charter sportsfishing operations, and research entities. It is difficult to predict how many entities would alter their planned operations by fishing in state waters or moving to other target species to avoid applying for special permits and complying with increased reporting requirements under this proposed rule. However, NMFS believes that initially approximately five special permit applications will be received each year.

It is estimated that the costs to these small entities will primarily consist of a special permit application fee of between \$50 and \$100 per application. It is not anticipated that many additional entities (beyond those holding special permits) will be affected by this measure, as the proposed MPAs are located far from inhabited areas and the majority of other fisheries operate outside of proposed MPA waters utilizing gears that would continue to be allowed under this proposed rule. However, small entities using fish or crab traps to target CRE MUS throughout the regulatory area will be required to affix identification markers to each trap on board a vessel or deployed in the water. Based on similar requirements in other fisheries, the cost of this requirement is anticipated to be minimal, as identification markings may be inexpensively made using permanent ink, paint, or dye. Other, non-quantifiable, potential costs include revenue impacts resulting from the implementation of no-take MPAs. This action has information collection requirements that are addressed elsewhere in this classification section.

Several alternatives to these proposed measures are examined in the IRFA. Please note that the impacts of the proposed measures (selected alternative) will be less than the preferred alternative because the NWHI commercial bottomfish fishery will not be affected under the partially approved CREFMP (see Record of Decision). The first alternative is the no action alternative, which would not impose any economic costs on small entities. This alternative was rejected on the basis that it could lead to unsustainable levels of fishing effort and eventual degradation of coral reef ecosystems and their component resources. The second alternative examined is similar to the selected alternative with the following exceptions. It would not designate any no-take MPAs (low-use MPAs would be designated). It would not implement any prohibitions on nighttime fishing for coral reef ecosystem MUS with SCUBA/hookah gear, and it would not prohibit the take of live rock or coral throughout the regulatory area. This alternative was also rejected on the basis that it would not provide sufficient protection to coral reef ecosystems or their component resources. Finally, the third alternative examined would designate no-take MPAs out to 100 fathoms around all western Pacific islands and atolls (no low-use MPAs would be designated); require general permits for harvest of all CHCRT and special permits for harvest of all PHCRT

throughout the western Pacific U.S. EEZ; prohibit all spearfishing with SCUBA/hookah throughout the U.S. EEZ; and prohibit the take of live rock or coral throughout the U.S. EEZ. This alternative was rejected on the basis that it would unnecessarily impede the sustainable use of coral reef ecosystem resources, as the selected alternative would provide adequate conservation and protection for these resources.

A copy of this analysis is available from the Council for public review and comment.

This proposed rule contains collection-of-information requirements subject to review and approval by OMB under the Paperwork Reduction Act (PRA). These requirements have been submitted to OMB for approval. Public reporting burden for these collections of information is estimated to average 2 hours per response for a permit application, 3 hours for a permit appeal, 30 minutes per day for a fishing record, 15 minutes per day for a transshipment log, 3 minutes for an at-sea notification prior to landing, and 2 minutes per trap to mark fishing gear. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these and any other aspects of the collection regarding these burden estimates or any other aspect of the collection of information to PIAO at the **ADDRESSES** above, and to the OMB at the Office of Information and Regulatory Affairs, OMB, Washington, DC20503 (Attention:NOAA Desk Officer).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless the collection of information displays a currently valid OMB Control Number.

On March 7, 2002, an informal Endangered Species Act section 7 consultation was completed by NMFS' Southwest Region, Office of Sustainable Fisheries, and concluded by NMFS'

Southwest Region, Office of Protected Resources regarding the CREFMP. It was determined that the proposed action is not likely to adversely affect any endangered or threatened resources or critical habitat under NMFS's jurisdiction. On May 22, 2002, the USFWS concurred with the determination of NMFS that the activities proposed in the CREFMP are not likely to adversely affect listed species (i. e., seabirds and terrestrial plants) and listed species shared with NMFS (i. e., sea turtles under its jurisdiction).

This proposed 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, and Reporting and recordkeeping requirements.

Dated: September 13, 2002.

William T. Hogarth,

Assistant Administrator for Fisheries,  
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is proposed to be 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 § 660.11, paragraph (b) is revised, and a new paragraph (c) is added to read as follows:

#### § 660.11 Purpose and scope.

\* \* \* \* \*

(b) Regulations specific to individual fisheries are included in subparts C, D, E, F, and J of this part.

(c) Nothing in subparts C, D, E, F, and J of this part is intended to supercede any valid state or Federal regulations that are more restrictive than those published here.

3. Section 660.12 is amended by revising the introductory text and the definition for "Pacific pelagic management unit species"; and adding definitions for the "Commonwealth of the Northern Mariana Islands (CNMI)", "CNMI offshore area", "Coral reef ecosystem management area", "Coral reef ecosystem management unit species", "Coral reef ecosystem regulatory area", "Hookah breather", "Live rock", "Low use marine protected area", "No-take marine protected area", and "Special permit", alphabetically to § 660.12 to read as follows:

#### § 660.12 Definitions.

In addition to the definitions in the Magnuson-Stevens Act, and in § 600. 10, the terms used in subparts B through F and subpart J of this part have the following meanings:

\* \* \* \* \*

*Commonwealth of the Northern Mariana Islands* (CNMI) means Northern Mariana Islands.

*CNMI offshore area* means the portion of the U.S. EEZ around the CNMI extending seaward from

(1) a line drawn 3 nautical miles from the baseline around the CNMI from which the territorial sea is measured, to

(2) the outer boundary of the U.S. EEZ, which to the south means those points which are equidistant between Guam and the island of Rota in the CNMI.

\* \* \* \* \*

*Coral Reef ecosystem management area* means the U.S. EEZ waters

surrounding American Samoa, Guam, Hawaii, CNMI and the U.S. Pacific remote island areas (PRIA).

*Coral reef ecosystem management unit species* (MUS) means all of the taxa listed in Table 1. 2 and 1. 3 of the Coral Reef Ecosystems Fishery Management Plan (CREFMP) that spend the majority of their non-pelagic (post-settlement) life stages within waters less than or equal to 50 fathoms in total depth. Table 1. 2 contains a listing of Currently Harvested Coral Reef Ecosystem MUS, and Table 1. 3 contains a listing of Potentially Harvested Coral Reef Ecosystem MUS.

*Coral reef ecosystem regulatory area* means the U.S. EEZ waters around American Samoa, Guam, Hawaii, CNMI and the PRIA except for the portion of EEZ waters 0–3 miles around the CNMI, and EEZ waters around the NWHI.

\* \* \* \* \*

*Hookah breather* means a tethered underwater breathing device that pumps air from the surface through one or more hoses to divers at depth.

\* \* \* \* \*

*Live rock* means any natural, hard substrate, including dead coral or rock, to which is attached, or which supports, any living marine life-form associated with coral reefs.

\* \* \* \* \*

*Low use marine protected area* (MPA) means an area of the U.S. EEZ where fishing operations have specific restrictions in order to protect the coral reef ecosystem, as specified under area restrictions.

\* \* \* \* \*

*No-take Marine Protected Area* (MPA) means an area of the U.S. EEZ that is closed to fishing for or harvesting of MUS from every Western Pacific Council Fishery Management Plan.

\* \* \* \* \*

*Pacific Pelagic Management Unit Species* means the following fish:

Common Name	Scientific Name
Mahimahi (dolphinfish)	<i>Coryphaena spp.</i>
Indo-Pacific blue marlin	<i>Makaira mazara</i>
Black marlin	<i>M. indica</i>
Striped marlin	<i>Tetrapturus audax</i>
Shortbill spearfish	<i>T. angustirostris</i>
Swordfish	<i>Xiphias gladius</i>
Sailfish	<i>Istiophorus platypterus</i>
Pelagic thresher shark	<i>Alapiaspelagicus</i>
Bigeye thresher shark	<i>Alopias</i>
Common thresher shark	<i>Alopias vulpinus</i>
Silky shark	<i>Carcharhinus falciformis</i>
Oceanic whitetip shark	<i>Carcharhinus longimanus</i>
Blue shark	<i>Prionace glauca</i>
Shortfin mako shark	<i>Isurus oxyrinchus</i>
Longfin mako shark	<i>Isurus paucus</i>

Common Name	Scientific Name
salmon shark	<i>Lamna ditropis</i>
Albacore	<i>Thunnus alalunga</i>
Bigeye tuna	<i>T. obesus</i>
Yellowfin tuna	<i>T. albacore</i>
Northern bluefin tuna	<i>T. thynnus</i>
Skipjack tuna	<i>Katsuwonus pelamis</i>
Kawakawa	<i>Euthynnus affinis</i>
Wahoo	<i>Acanthocybium solandri</i>
Moonfish	<i>Lampris spp.</i>
Oilfish family	<i>Gempylidae</i>
Pomfret	family Bramidae
Other tuna relatives	<i>Auxis spp.</i> , <i>Scomber spp.</i> ; <i>Allothunus spp.</i>

\* \* \* \* \*

*Special permit* means a permit issued to allow fishing for coral reef ecosystem resources in low-use MPAs or to fish for any potentially harvested coral reef taxa.

\* \* \* \* \*

4. In § 660.13, paragraph (a), the first sentence of paragraph (c)(1), the first and second sentences of paragraph (c)(2), and paragraphs (e), (f)(2), and (g)(1) are revised to read as follows:

#### § 660.13 Permits and fees.

\* \* \* \* \*

(a) *Applicability.* The requirements for permits for specific Western Pacific fisheries are set forth in subparts C, D, E, F and J of this part.

\* \* \* \* \*

(c) *Application.* (1) A Southwest Regional Federal fisheries permit application form may be obtained from the Pacific Islands Area Office (PIAO) to apply for a permit or permits to operate in any of the fisheries regulated under subparts C, D, E, F, and J of this part.

\* \* \*

(2) A minimum of 15 days should be allowed for processing a permit application for fisheries under subparts C, D, E, and F of this part. A minimum of 60 days should be allowed for processing a permit application for fisheries under subpart J of this part.

\* \*

\* \* \* \* \*

(e) *Issuance.* (1) After receiving a complete application, the Regional Administrator will issue a permit to an applicant who is eligible under §§ 660.21, 660.41, 660.61, and 660.81.

(2) After receiving a complete application, the PIAO Administrator may issue a special permit in accordance with § 660.601(d)(3).

(f) *Fees.* \* \* \*

(2) PIAO will charge a fee for each application for a Hawaii longline limited access permit, a Mau zone limited access permit, and a coral reef ecosystem special permit (including permit transfers and permit renewals). The amount of the fee is calculated in accordance with the procedures of the

NOAA Finance Handbook, for determining the administrative costs of each special product or service. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application. Failure to pay the fee will preclude issuance of any of the permits listed in this section.

(g) *Expiration.* (1) Permits issued under subparts C, D, E, F, and J of this part are valid for the period specified on the permit unless transferred, revoked, suspended, or modified under 15 CFR part 904.

\* \* \* \* \*

5. In § 660.14, paragraphs (a), (b), and (g) are revised and paragraph (f)(4) is added to read as follows:

#### § 660.14 Reporting and recordkeeping.

(a) *Fishing record forms.* The operator of any fishing vessel subject to the requirements of §§ 660.21, 660.41, 660.81, or 660.601 must maintain on board the vessel an accurate and complete record of catch, effort and other data on report forms provided by the PIAO Administrator. All information specified on the forms must be recorded on the forms within 24 hours after completion of each fishing day. Each form must be signed and dated by the fishing vessel operator. For the fisheries managed under §§ 660.21, 660.41, and 660.81, the original logbook form for each day of the fishing trip must be submitted to the PIAO Administrator within 72 hours of each landing of MUS. For the fisheries managed under § 660.601, the original logbook form for each day of the fishing trip must be submitted to the PIAO Administrator within 30 days of each landing of MUS.

(b) *Transshipment logbooks.* Any person subject to the requirements of § 660.21(c) or 660.601(a)(2) must maintain on board the vessel an accurate and complete NMFS transshipment logbook containing report forms provided by the PIAO Administrator. All information specified on the forms must be recorded on the

forms within 24 hours after the day of transshipment. Each form must be signed and dated by the receiving vessel operator. The original logbook for each day of transshipment activity must be submitted to the PIAO Administrator within 72 hours of each landing of Pacific pelagic management unit species. The original logbook for each day of transshipment activity must be submitted to the PIAO Administrator within 7 days of each landing of coral reef ecosystem MUS.

\* \* \* \* \*

(f) \* \* \*

(4) *Coral Reef Ecosystem MUS.* Any person who has a special permit and who is required by state laws and regulations to maintain and submit records of catch and effort, landings and sales for coral reef ecosystem MUS by this subpart and subpart J of this part must make those records immediately available for Federal inspection and copying upon request by an authorized officer as defined in § 600.10.

(g) *State reporting.* Any person who has a permit under § 660.21, 660.61, or 660.601 of this chapter and who is regulated by state laws and regulations to maintain and submit records of catch and effort, landings and sales for vessels regulated by subparts C, E and J of this part must maintain and submit those records in the exact manner required by state laws and regulations.

6. In § 660.15, paragraphs (f) and (k) are revised and a new paragraph (l) is added to read as follows:

#### § 660.15 Prohibitions.

\* \* \* \* \*

(f) Fail to affix or maintain vessel or gear markings, as required by §§ 660.16, 660.24, 660.47, and 660.605.

\* \* \* \* \*

(k) Fail to notify officials as required in §§ 660.23, 660.28, 660.43, 660.63, and 660.603.

(l) Fish for, take or retain within a no-take MPA, defined in § 660.18, any Bottomfish MUS, Coral reef ecosystem

MUS, Crustacean MUS, Pelagic MUS, Precious coral MUS or Seamount groundfish.

\* \* \* \*

7. In subpart B, § 660.18 is added to read as follows:

**§ 660.18 Area restrictions.**

(a) Fishing is prohibited in all no-take MPAs designated in this section.

(b) Anchoring by all fishing vessels over 50 ft (15.25 m) LOA is prohibited in the U.S. EEZ seaward of the Territory of Guam west of 144 °30' E. long. except in the event of an emergency caused by ocean conditions or by a vessel malfunction that can be documented.

(c) *MPAs.*—(1) *No-take MPAs.* The following U.S. EEZ waters in the Western Pacific Region are no-take MPAs:

(i) Landward of the 50-fathom (fm) (91.5-m) curve at Jarvis, Howland, and Baker Islands, and Kingman Reef; as depicted on National Ocean Survey Chart Numbers 83116 and 83153;

(ii) Landward of the 50-fm (91.5-m) curve around Rose Atoll, as depicted on National Ocean Survey Chart Number 83484.

(2) *Low-use MPAs.* The following U.S. EEZ waters in the Western Pacific Region are low-use MPAs:

(i) All waters between the shoreline and the 50-fm (91.5-m) curve around Johnston Atoll, Palmyra Atoll, and Wake Island, as depicted on National Ocean Survey Chart Numbers 83637, 83157 and 81664.

(ii) [Reserved]

8. A new subpart J is added to read as follows:

**Subpart J—Western Pacific Coral Reef Ecosystem Fisheries**

Sec.

660.601 Relation to other laws

660.602 Permits and fees.

660.603 Prohibitions.

660.604 Notifications.

660.605 Allowable gear and gear restrictions.

660.606 Gear identification.

660.607 Framework for regulatory adjustments.

660.608 Regulatory Area.

660.609 Annual reports.

**Subpart J—Western Pacific Coral Reef Ecosystem Fisheries**

**§ 660.601 Relation to other laws.**

To ensure consistency between management regimes of different Federal agencies with shared management responsibilities of fishery resources within the Coral reef ecosystem management area, fishing authorized under this subpart will not

be allowed within the boundary of a national wildlife refuge regardless of whether that refuge was established by action of the President or the Secretary of Commerce.

**§ 660.602 Permits and fees.**

(a) *Applicability.* Unless otherwise specified in this subpart, § 660.13 applies to coral reef ecosystem permits.

(1) *Special Permit.* Any person of the United States fishing for, taking or retaining coral reef ecosystem MUS must have a special permit if they, or a vessel which they operate, is used to fish for any:

(i) Coral reef ecosystem MUS in low-use MPAs as defined in § 660.18;

(ii) Potentially harvested coral reef ecosystem MUS in the regulatory area; or

(iii) Coral reef ecosystem MUS in the regulatory area with any gear not specifically allowed in this subpart.

(2) *Transshipment permit.* A receiving vessel must be registered for use with a transshipment permit if that vessel is used in the regulatory area to land or tranship potentially harvested coral reef ecosystem MUS species, or any coral reef ecosystem MUS harvested within low-use MPAs.

(3) *Exceptions.* The following persons are not required to have a permit under this section:

(i) Any person incidentally harvesting coral reef ecosystem MUS while targeting MUS listed under a separate FMP. It will be considered a rebuttable presumption that such a person is targeting coral reef ecosystem MUS if the total weight or number of pieces of landed coral reef ecosystem MUS comprise more than 20 percent of the total landed weight or number of pieces respectively, on any one trip;

(ii) Any person targeting currently harvested coral reef ecosystem species outside of an MPA, who does not retain any incidentally caught potentially harvested coral reef ecosystem MUS; and

(iii) Any person collecting marine organisms for scientific research as described in § 600.745 of this chapter.

(b) *Validity.* Each permit will be valid for fishing only in the fishery management subarea specified on the permit.

(c) *General requirements.* General requirements governing application information, issuance, fees, expiration, replacement, transfer, alteration, display, sanctions, and appeals for permits are contained in § 660.13.

(d) *Low use MPAs special permit.* No direct harvest of coral reef ecosystem MUS species may be conducted in low use MPAs unless authorized by a

special permit issued by the PIAO Administrator in accordance with the criteria and procedures specified in this section.

(1) *Application.* An applicant for a special or transshipment permit issued under this section must complete and submit to the PIAO Administrator, a Special Coral Reef Ecosystem Fishing Permit Application Form issued by NMFS. Information in the application form must include, but is not limited to a statement describing the objectives of the fishing activity for which a special permit is needed, including a general description of the expected disposition of the resources harvested under the permit (i. e., stored live, fresh, frozen, preserved; sold for food, ornamental, research, or other use, and a description of the planned fishing operation, including location of fishing and gear operation, amount and species (directed and incidental) expected to be harvested and estimated habitat and protected species impacts).

(2) *Incomplete applications.* The PIAO Administrator may request from an applicant additional information necessary to make the determinations required under this section. An applicant will be notified of an incomplete application within 10 working days of receipt of the application. An incomplete application will not be considered until corrected in writing.

(3) *Issuance.* (i) If an application contains all of the required information, the PIAO Administrator will forward copies of the application within 30 days to the Council, the U.S. Coast Guard, the fishery management agency of the affected state, and other interested parties who have identified themselves to the Council, and the USFWS.

(ii) Within 60 days following receipt of a complete application, the PIAO Administrator will consult with the Council through the Executive Director, USFWS, and the Director of the affected state fishery management agency concerning the permit application and will receive their recommendations for approval or disapproval of the application based on:

(A) Information provided by the applicant,

(B) The current domestic annual harvesting and processing capacity of the directed and incidental species for which a special permit is being requested,

(C) The current status of resources to be harvested in relation to the overfishing definition in the FMP,

(D) Estimated ecosystem, habitat, and protected species impacts of the proposed activity, and



(E) Other biological and ecological information relevant to the proposal. The applicant will be provided with an opportunity to appear in support of the application.

(iii) Following a review of the Council's recommendation and supporting rationale, the PIAO Administrator may:

(A) Concur with the Council's recommendation and, after finding that it is consistent with the goals and objectives of the FMP, the national standards, the Endangered Species Act, and other applicable laws, approve or deny a special permit; or

(B) Reject the Council's recommendation, in which case, written reasons will be provided by the PIAO Administrator to the Council for the rejection.

(iv) If the PIAO Administrator does not receive a recommendation from the Council within 60 days of Council receipt of the permit application, the PIAO Administrator can make a determination of approval or denial independently.

(v) Within 30 working days after the consultation in paragraph (a)(3)(ii) of this section, or as soon as practicable thereafter, NMFS will notify the applicant in writing of the decision to grant or deny the special permit and, if denied, the reasons for the denial. Grounds for denial of a special permit include the following:

(A) The applicant has failed to disclose material information required, or has made false statements as to any material fact, in connection with his or her application.

(B) According to the best scientific information available, the directed or incidental catch in the season or location specified under the permit would detrimentally affect any coral reef resource or coral reef ecosystem in a significant way, including, but not limited to issues related to, spawning grounds or seasons, protected species interactions, EFH, and habitat areas of particular concern (HAPC).

(C) Issuance of the special permit would inequitably allocate fishing privileges among domestic fishermen or would have economic allocation as its sole purpose.

(D) The method or amount of harvest in the season and/or location stated on the permit is considered inappropriate based on previous human or natural impacts in the given area.

(E) NMFS has determined that the maximum number of permits for a given area in a given season has been reached and allocating additional permits in the same area would be detrimental to the resource.

(F) The activity proposed under the special permit would create a significant enforcement problem.

(vi) The PIAO Administrator may attach conditions to the special permit, if it is granted, consistent with the management objectives of the FMP, including but not limited to:

(A) The maximum amount of each resource that can be harvested and landed during the term of the special permit, including trip limits, where appropriate.

(B) The times and places where fishing may be conducted.

(C) The type, size, and amount of gear which may be used by each vessel operated under the special permit.

(D) Data reporting requirements.

(E) Such other conditions as may be necessary to ensure compliance with the purposes of the special permit consistent with the objectives of the FMP.

(4) *Appeals of permit actions.* (i) Except as provided in subpart D of 15 CFR part 904, any applicant for a permit or a permit holder may appeal the granting, denial, conditioning, or suspension of their permit or a permit affecting their interests to the Regional Administrator. In order to be considered by the Regional Administrator, such appeal must be in writing, must state the action(s) appealed, and the reasons therefore, and must be submitted within 30 days of the original action(s) by the Regional Administrator. The appellant may request an informal hearing on the appeal.

(ii) Upon receipt of an appeal authorized by this section, the Regional Administrator will notify the permit applicant, or permit holder as appropriate, and will request such additional information and in such form as will allow action upon the appeal. Upon receipt of sufficient information, the Regional Administrator will rule on the appeal in accordance with the permit eligibility criteria set forth in this section and the FMP, as appropriate, based upon information relative to the application on file at NMFS and the Council and any additional information, the summary record kept of any hearing and the hearing officer's recommended decision, if any, and such other considerations as deemed appropriate. The Regional Administrator will notify all interested persons of the decision, and the reasons therefor, in writing, normally within 30 days of the receipt of sufficient information, unless additional time is needed for a hearing.

(iii) If a hearing is requested, or if the Regional Administrator determines that one is appropriate, the Regional Administrator may grant an informal

hearing before a hearing officer designated for that purpose after first giving notice of the time, place, and subject matter of the hearing in the **Federal Register**. Such a hearing shall normally be held no later than 30 days following publication of the notice in the **Federal Register**, unless the hearing officer extends the time for reasons deemed equitable. The appellant, the applicant (if different), and, at the discretion of the hearing officer, other interested parties, may appear personally or be represented by counsel at the hearing and submit information and present arguments as determined appropriate by the hearing officer. Within 30 days of the last day of the hearing, the hearing officer shall recommend in writing a decision to the Regional Administrator.

(iv) The Regional Administrator may adopt the hearing officer's recommended decision, in whole or in part, or may reject or modify it. In any event, the Regional Administrator will notify interested persons of the decision, and the reason(s) therefore, in writing, within 30 days of receipt of the hearing officer's recommended decision. The Regional Administrator's action constitutes final action for the agency for the purposes of the Administrative Procedure Act.

(5) Any time limit prescribed in this section may be extended for good cause, for a period not to exceed 30 days by the Regional Administrator, either upon his or her own motion or upon written request from the Council, appellant or applicant stating the reason(s) therefore.

#### **§ 660.603 Prohibitions.**

In addition to the general prohibitions specified in § 600.725 of this chapter and § 660.15 of this part, it is unlawful for any person to do any of the following:

(a) Fish for, take, retain, possess or land any coral reef ecosystem MUS in any low-use MPA as defined in § 660.18(c)(1) and (c)(2) unless:

(1) A valid permit has been issued for the hand harvester or the fishing vessel operator that specifies the applicable area of harvest;

(2) A permit is not required, as outlined in the permit section of these regulations;

(3) The coral reef ecosystem MUS possessed on board the vessel originated outside the regulatory area and this can be demonstrated through receipts of purchase, invoices, fishing logbooks or other documentation.

(b) Fish for, take, or retain any coral reef ecosystem MUS species:



(1) That is determined overfished with subsequent rulemaking by the PIAO Administrator.

(2) By means of gear or methods prohibited under § 660.604.

(3) In a low-use MPA without a valid special permit.

(4) In violation of any permit issued under § 660.13 or § 660.601.

(c) Fish for, take, or retain any wild live rock or live hard coral except under a valid special permit for scientific research, aquaculture seed stock collection or traditional and ceremonial purposes by indigenous people.

#### **§ 660.604 Notifications.**

Any special permit holder subject to the requirements of this subpart must contact the appropriate NMFS enforcement agent in American Samoa, Guam, or Hawaii at least 24 hours before landing any coral reef ecosystem MUS unit species harvested under a special permit, and report the port and the approximate date and time at which the catch will be landed.

#### **§ 660.605 Allowable gear and gear restrictions.**

(a) Coral reef ecosystem MUS may be taken only with the following allowable gear and methods:

- (1) Hand harvest;
- (2) Spear;
- (3) Slurp gun;
- (4) Hand net/dip net;
- (5) Hoop net for Kona crab;
- (6) Throw net;
- (7) Barrier net;
- (8) Surround/purse net that is attended at all times;
- (9) Hook-and-line (includes handline (powered or not)), rod-and-reel, and trolling);
- (10) Crab and fish traps with vessel ID number affixed; and
- (11) Remote-operating vehicles/submersibles.

(b) Coral reef ecosystem MUS may not be taken by means of poisons, explosives, or intoxicating substances. Possession or use of these materials by any permit holder under this subpart who is established to be fishing for coral reef ecosystem MUS in the regulatory area is prohibited.

(c) Coral reef ecosystem MUS may not be taken by means of spearfishing with scuba at night (from 6 p. m. to 6 a. m.) in the U.S. EEZ waters around Howland Island, Baker Island, Jarvis Island, Wake Island, Kingman Reef, Johnston Atoll and Palmyra Atoll.

(d) Existing FMP fisheries shall follow the allowable gear and methods outlined in their respective plans.

(e) Any person who intends to fish with new gear not included in § 660.604

must describe the new gear and its method of deployment in the special permit application. A decision on the permissibility of this gear type will be made by the PIAO Administrator after consultation with the Council and the director of the affected state fishery management agency.

#### **§ 660.606 Gear identification.**

(a) The vessel number must be affixed to all fish and crab traps on board the vessel or deployed in the water by any vessel or person holding a permit under § 660.13 or § 660.601 or that is otherwise established to be fishing for coral reef ecosystem MUS in the regulatory area.

(b) *Enforcement action.* (1) Traps not marked in compliance with paragraph (a) of this section and found deployed in the regulatory area will be considered unclaimed or abandoned property, and may be disposed of in any manner considered appropriate by NMFS or an authorized officer;

(2) Unattended surround nets or bait seine nets found deployed in the regulatory area will be considered unclaimed or abandoned property, and may be disposed of in any manner considered appropriate by NMFS or an authorized officer.

#### **§ 660.607 Framework for regulatory adjustments.**

(a) *Procedure for established measures.* (1) Established measures are management measures that, at some time, have been included in regulations implementing the FMP, or for which the impacts have been evaluated in Council/NMFS documents in the context of current conditions;

(2) Following framework procedures of the CREFMP, the Council may recommend to the Regional Administrator that established measures be modified, removed, or re-instituted. Such recommendation shall include supporting rationale and analysis, and shall be made after advance public notice, public discussion and consideration of public comment. NMFS may implement the Council's recommendation by rulemaking if approved by the Regional Administrator.

(b) *Procedure for new measures.* (1) New measures are management measures that have not been included in regulations implementing the FMP, or for which the impacts have not been evaluated in Council/NMFS documents in the context of current conditions. New measures include but are not limited to catch limits, resource size limits, closures, effort limitations,

reporting and recordkeeping requirements;

(2) Following the framework procedures of the FMP, the Regional Administrator will publicize, including by **Federal Register** document, and solicit public comment on, any proposed new management measure. After a Council meeting at which the measure is discussed, the Council will consider recommendations and prepare a document summarizing the Council's deliberations, rationale, and analysis for the preferred action, and the time and place for any subsequent Council meeting(s) to consider the new measure. At subsequent public meeting(s), the Council will consider public comments and other information received to make a recommendation to the Regional Administrator about any new measure. NMFS may implement the Council's recommendation by rule making if approved by the Regional Administrator.

(i) The Regional Administrator will consider the Council's recommendation and supporting rationale and analysis, and, if the Regional Administrator concurs with the Council's recommendation, will propose regulations to carry out the action. If the Regional Administrator rejects the Council's proposed action, the Regional Administrator will provide a written explanation for the denial within 2 weeks of the decision.

(ii) The Council may appeal denial by writing to the Assistant Administrator, who must respond in writing within 30 days.

(iii) The Regional Administrator and the Assistant Administrator will make their decisions in accordance with the Magnuson-Stevens Act, other applicable laws, and the CREFMP.

(iv) To minimize conflicts between the Federal and state/territorial/commonwealth management systems, the Council will use the procedures in paragraph (a)(2) in this section to respond to state/territorial/commonwealth management actions. Council consideration of action would normally begin with a representative of the state, territorial or commonwealth government bringing a potential or actual management conflict or need to the Council's attention.

#### **§ 660.608 Regulatory area.**

(a) The regulations in this subpart govern fishing for coral reef ecosystem management unit species by vessels of the United States or persons who operate or are based inside the outer boundary of the U.S. EEZ off:

(1) The Hawaiian Islands Archipelago lying to the east of 160°50' W. long.

(2) Guam.

(3) American Samoa.

(4) Offshore area of the CNMI or that portion of the U.S. EEZ around the CNMI between three nautical miles offshore and the outer boundary of the U.S. EEZ.

(5) Baker Island, Howland Island, Jarvis Island, Wake Island, Johnston Atoll, Palmyra Atoll and Kingman Reef.

(b) The inner boundary of the regulatory area is as follows:

(1) The shoreline of Baker Island, Howland Island, Jarvis Island, Wake Island, Johnston Atoll, Palmyra Atoll and Kingman Reef.

(2) The seaward boundaries of the State of Hawaii, the Territory of Guam, the Territory of American Samoa; and

(3) A line three nautical miles seaward from the shoreline of the CNMI.

(c) The outer boundary of the regulatory area is the outer boundary of the U.S. EEZ or adjacent international maritime boundaries. The CNMI and Guam regulatory area is divided by a line intersecting these two points: 148° E. long., 12° N. lat., and 142° E.

#### **§ 660.609 Annual reports.**

(a) *Annual reports.* By July 31 of each year, a Council-appointed coral reef ecosystem plan team will prepare an annual report on the fisheries in the management area. The report will contain, among other things, fishery performance data, summaries of new

information and assessments of need for Council action.

(b) *Recommendation for Council action.*

(1) The Council will evaluate the annual report and advisory body recommendations and may recommend management action by either the state/territorial/commonwealth governments or by Federal regulation;

(2) If the Council believes that management action should be considered, it will make specific recommendations to the PIAO Administrator after considering the views of its advisory bodies.

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