

Dated: August 4, 2008.

David M. Verhey,

Acting Assistant Secretary for Fish and Wildlife and Parks.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 070720400-81019-02]

RIN 0648-AV30

Fisheries in the Western Pacific; Precious Corals Fisheries; Black Coral Quota and Gold Coral Moratorium

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

ACTION: Final rule.

SUMMARY: This final rule implements Amendment 7 to the Fishery

Management Plan for Precious Coral Fisheries of the Western Pacific Region (Precious Corals FMP). The rule designates the Au'au Channel, Hawaii, black coral bed as an "Established Bed" with a harvest quota of 5,000 kg every two years that applies to Federal and State of Hawaii waters, and implements a 5-year moratorium on the harvest of gold coral throughout the U.S. western Pacific. This rule is intended to prevent overfishing and achieve optimum yields of black coral resources, and to prevent overfishing and stimulate research on gold corals.

DATES: This final rule is effective September 12, 2008.

ADDRESSES: Amendment 7 is available from the Western Pacific Fishery Management Council (Council), 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808-522-8220, fax 808-522-8226, or www.wpcouncil.org.

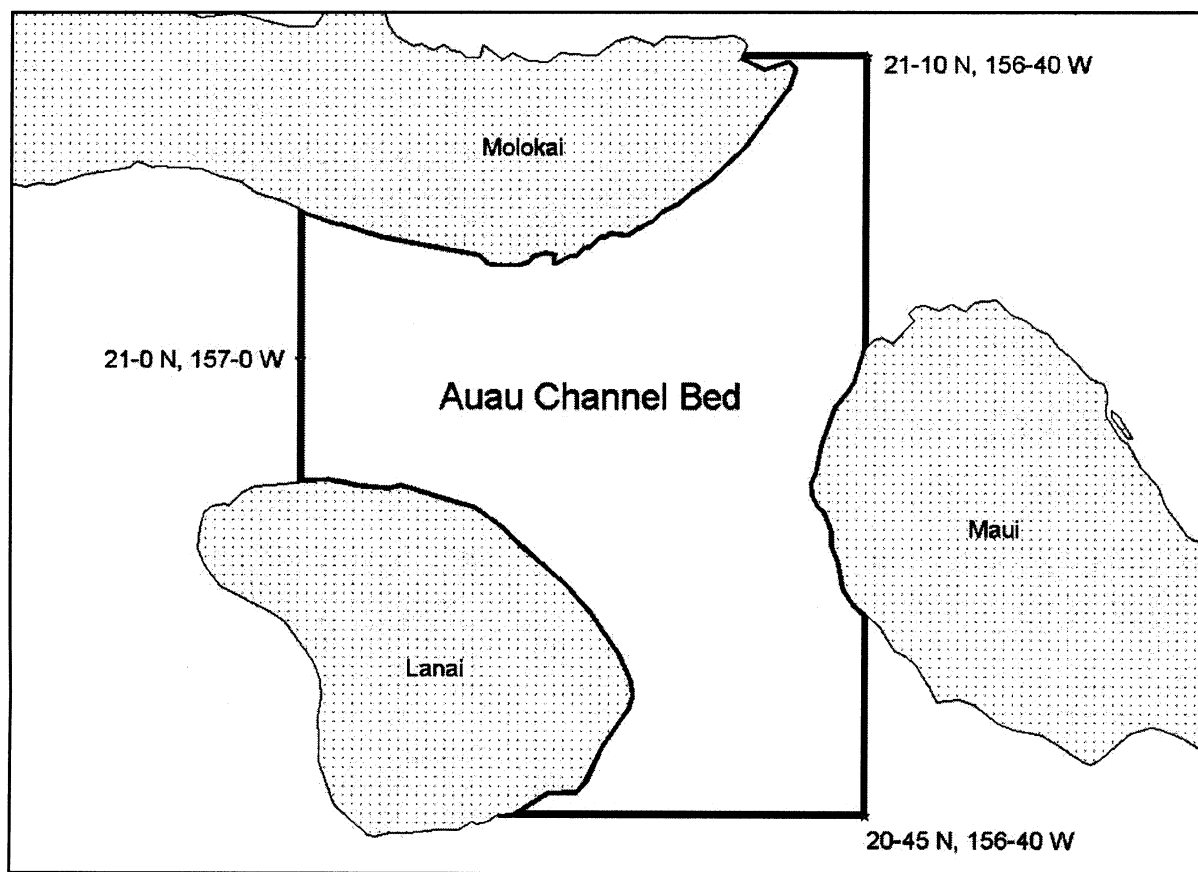
FOR FURTHER INFORMATION CONTACT: Brett Wiedoff, NMFS PIR, 808-944-2272.

SUPPLEMENTARY INFORMATION: This final rule is accessible on the internet at: www.gpoaccess.gov/fr/.

Since 1980, almost all of the black coral harvested around the Hawaiian Islands has been taken from the Au'au Channel Bed. The biomass of the Au'au Channel black coral population has decreased by at least 25 percent in the last 30 years, and data collected during submersible dives has shown a decline in both recruitment and relative abundance of legal-sized black coral colonies. The decline may be related to both fishing pressure and competition with the highly-invasive soft coral, *Carijoa riisei*, or snowflake coral, which has been found overgrowing large areas of black coral habitat. The potentially-devastating snowflake coral, combined with fishing pressure, warrants management action and further research.

This final rule designates the Au'au Channel Bed (Fig. 1) as an "Established Bed" with a harvest quota for black coral of 5,000 kg (11,023 lb) every two years. This quota applies in both Federal and State of Hawaii waters, and all other existing Federal restrictions continue to apply.

Figure 1. Au'au Channel Established Precious Corals Bed



For gold corals, the currently-accepted estimate of the linear growth rate is about 6.6 cm/yr, suggesting that large colonies are relatively young. These estimates are based on the assumption that growth rings are laid down annually, as in other precious corals (e.g., black and pink corals). Recent research on the aging of gold corals using radiometric dating, however, indicates that gold corals may grow at a much slower rate, possibly 0.004 to 0.0014 cm/yr, making some samples 450–2,740 years old. These research results challenge current assumptions about gold coral growth rates, and indicate that some gold coral colonies are thousands of years old and, thus, highly-susceptible to over-harvesting. This rule implements a five-year moratorium on the harvest of gold corals from all waters of the U.S. Exclusive Economic Zone of the western Pacific region. Additional research results on gold coral age structures, growth rates, and correlations between length and age will be considered by the Council and NMFS prior to expiration of the 5-year moratorium.

Additional background information on this final rule may be found in the preamble to the proposed rule published on May 30, 2008 (73 FR 31047), and is not repeated here.

Comments and Responses

On May 23, 2008, NMFS announced in the **Federal Register** the availability of Amendment 7 for public comments (73 FR 30038), and on May 30, 2008, NMFS published a proposed rule and request for public comments (73 FR 31047). The public comment period for Amendment 7 ended on July 22, 2008, and the proposed rule comment period ended on July 14, 2008. NMFS did not receive any public comments on the proposed rule.

Changes From the Proposed Rule

This final rule updates Table 1 to 50 CFR part 665 by adding the Commonwealth of the Northern Mariana Islands (CNMI) Exploratory Area coral bed. In 2006, CNMI precious coral beds were classified as Exploratory Areas under the FMP (71 FR 53605, September 12, 2006), but Table 1 was not updated to reflect the change. This inadvertency was identified only after the current proposed rule was published; this final rule corrects the error.

Classification

The Regional Administrator, Pacific Islands Region, NMFS, determined that Precious Corals FMP Amendment 7 is necessary for the conservation and management of precious corals, and that

it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

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

NMFS prepared a final regulatory flexibility analysis (FRFA). The FRFA incorporates the initial regulatory flexibility analysis (IRFA) prepared in support of the proposed rule, and a summary of the analyses completed to support the action, as follows:

The reasons why action by the agency is being taken and the objectives of the action are explained in the preambles to the proposed rule and final rule, and are not repeated here. This action does not duplicate, overlap, or conflict with any other Federal rules. It is taken under authority of the Magnuson-Stevens Fishery Conservation and Management Act and regulations at 50 CFR part 665.

IRFA Comments/responses. There were no comments received on the IRFA.

There are three permitted vessels in the fishery for black coral, but only two have reported landings in Hawaii. Both vessels are considered to be small entities under the Small Business Administration definition of a small entity, i.e., they are engaged in the business of fish harvesting, are independently-owned or operated, are not dominant in their field of operation, and have annual gross receipts not in excess of \$4 million. Therefore, there are no disproportionate economic impacts among large and small vessels based on this definition.

Specific net revenues of individual vessels could not be analyzed due to confidentiality restraints, but recent black coral landings have generally increased. The potential economic impacts are discussed below. The fishery for gold coral also includes the same three vessels permitted to harvest black corals under a generic Precious Corals fishing permit issued by NMFS. However, these vessels are currently dormant in the gold coral fishery, with no identifiable harvest in 2006, although modest commercial quotas of 20 kg (44 lb) are specified for sites in the Main Hawaiian Islands and 67 kg (149 lb) for sites in the Northwestern Hawaiian Islands.

This rule will reduce the harvests of black coral in the Au'au Channel, and, thus, could adversely affect both vessels currently engaged in the fishery. Due to confidentiality agreements, the amounts of the reductions both absolute and relative bases could not be reported here. This rule will also implement a 5-year moratorium on the harvest of gold corals. Because the gold coral fishery is currently dormant, this rule will have no immediate economic impact to vessels licensed to harvest gold corals.

Any adverse economic impact resulting from the quota change to the black coral fishery could not be avoided because the objective of this rule is to ensure an economically sustainable fishery in the future. Therefore, NMFS has determined that there is no opportunity to both meet the

objective of the Amendment 7 and lessen any adverse economic costs resulting from this rule.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide was prepared and will be sent to all permit holders that have historic landings in the precious coral fishery. The guide and this final rule will be available upon request.

List of Subjects in 50 CFR Part 665

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

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

Dated: August 7, 2008.

James W. Balsiger,
Acting Assistant Administrator for Fisheries,
National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 665 is amended as follows:

PART 665—FISHERIES IN THE WESTERN PACIFIC

■ 1. The authority citation for part 665 continues to read as follows:

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

■ 2. In § 665.12, in the definition of "Precious coral permit area", revise paragraph (1) to read as follows:

§ 665.12 Definitions.

* * * * *

Precious coral permit area * * *

(1) *Established beds.* (i) Makapu'u (Oahu), Permit Area E-B-1, includes the area within a radius of 2.0 nm of a point at 21°18.0' N. lat., 157°32.5' W. long.

(ii) Au'au Channel (Maui), Permit Area E-B-2, includes the area west and south of a point at 21°10' N. lat., 156°40' W. long., and east of a point at 21° N. lat., 157° W. long., and west and north of a point at 20°45' N. lat., 156°40' W. long.

* * * * *

■ 3. In § 665.82, add a new paragraph (b)(5) to read as follows:

§ 665.82 Prohibitions.

* * * * *

(b) * * *

(5) In a bed that has been closed pursuant to §§ 665.85 or 665.90.

* * * * *

■ 4. Revise § 665.83 to read as follows:

§ 665.83 Seasons.

The fishing year for precious corals begins on July 1 and ends on June 30 the following year, except at the Makapu'u and Au'au Channel Beds, which have a two-year fishing period that begins July 1 and ends June 30, two years later.

■ 5. In § 665.85, revise paragraph (a) to read as follows:

§ 665.85 Closures.

(a) If the Regional Administrator determines that the harvest quota for any coral bed will be reached prior to the end of the fishing year, or the end of the 2-year fishing period at Makapu'u Bed or Au'au Channel Bed, NMFS shall publish a notice to that effect in the **Federal Register** and shall use other means to notify permit holders. Any such notice must indicate the reason for

the closure, the bed being closed, and the effective date of the closure.

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■ 6. Under Subpart F, add a new § 665.90 to read as follows:

§ 665.90 Gold coral harvest moratorium.

Fishing for, taking, or retaining any gold coral in any precious coral permit area is prohibited through June 30, 2013.

■ 7. Revise Table 1 to Part 665 to read as follows:

TABLE 1 TO PART 665—PRECIOUS CORAL QUOTAS

Type of coral bed	Name of coral bed	Harvest quota in kilograms	Number of years
Established Beds	Au'au Channel	Black: 5,000	2
	Makapu'u	Pink: 2,000	2
		Gold: 0 (zero)	--
		Bamboo: 500	2
Conditional Beds	180 Fathom Bank	Pink: 222	1
		Gold: 67	1
		Bamboo: 56	1
	Brooks Bank	Pink: 17	1
		Gold: 133	1
		Bamboo: 111	1
	Kaena Point	Pink: 67	1
		Gold: 20	1
		Bamboo: 17	1
	Keahole Point	Pink: 67	1
		Gold: 20	1
		Bamboo: 17	1
Refugia	Westpac	All: 0 (zero)	--
Exploratory Areas	Hawaii, American Samoa, Guam, CNMI, U.S. Pacific Remote Island Areas	1,000 per area (all species combined except black corals)	1

Notes:

1. No fishing for coral is authorized in refugia.
2. A moratorium on gold coral harvesting is in effect through June 30, 2013.