

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 665**

[Docket No. 0612242929-7038-01]

RIN 0648-AT93

Fisheries in the Western Pacific; Precious Corals Fisheries

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

ACTION: Proposed rule; request for comments.

SUMMARY: Black coral resources in the Au'au Channel, Hawaii, have declined, possibly due to fishing pressure and alien invasive species. Current fishing regulations impose size requirements for the harvest of living black coral colonies of 48 inches (122 cm) in height or one inch (2.54 cm) in stem diameter. Current regulations also exempt certain fishermen from the minimum stem diameter requirement, allowing the harvest of black coral with a 3/4 inch (1.91 cm) stem diameter by anyone who reported black coral harvests to the State of Hawaii within the five years prior to April 17, 2002. This proposed rule would remove that exemption, and is intended to reduce the impacts of fishing on Au'au Channel black coral resources.

DATES: Comments on the proposed rule must be received by September 6, 2007.

ADDRESSES: You may submit comments, identified by "AT93BlackCoral", by any of the following methods:

- E-mail: AT93BlackCoral@noaa.gov. Include "AT93" in the subject line of the message. Comments sent via e-mail, including all attachments, must not exceed a file size of 10 megabytes.

- Federal e-Rulemaking Portal: www.regulations.gov. Follow the instructions for submitting comments.

- Mail: William L. Robinson, Regional Administrator, NMFS Pacific Islands Region (PIR), 1601 Kapiolani Blvd. 1110, Honolulu, HI 96814.

The regulatory amendment is available from Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council (Council), 1164 Bishop St. 1400, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Karla Gore, NMFS PIR, 808-944-2273.

SUPPLEMENTARY INFORMATION:**Electronic Access**

This **Federal Register** document is also accessible via the World Wide Web at the Office of the Federal Register: www.gpoaccess.gov/fr/index.html.

Background

The fishery for black coral in Federal waters around Hawaii is managed under the Fishery Management Plan for Precious Corals of the Western Pacific Region (FMP). The FMP was developed by the Council under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). Regulations implementing the FMP appear at Subpart F of 50 CFR part 665 and subpart H of 50 CFR part 600.

Black corals are slow-growing and have low rates of natural mortality and recruitment. Natural populations are relatively stable and a wide range of age classes is generally present. These life-history characteristics (longevity and many year classes) have two important consequences with respect to exploitation: the response of the population to over-harvesting is drawn out over many years, and, because of the longevity of individuals and the associated slow rates of turnover in the populations, a long period of reduced fishing effort is required to restore the ability of the stock to produce at the maximum sustainable yield (MSY) if a stock has been over-exploited for several years.

Since the harvesting of Hawaii black coral began in the late 1950s, generally fewer than 10 fishermen have been active in the fishery at any time. Participation has probably been limited by the relatively small market for black coral in Hawaii, and by the dangers of fishing operations--harvesting is done by hand using scuba at depths as great as 230 ft (70 m). Most of the catch comes from the Au'au Channel, south of Maui. Three commercial black coral harvesters are permitted by the State of Hawaii, and one is Federally-permitted. Nonetheless, landings of black coral have increased over the past two decades, and landings in the last seven years have comprised 58 percent of the total catch since 1985.

Black coral biomass in the Au'au Channel decreased almost 25 percent between 1976 and 2001. The causes of the reduction in biomass appear to be a combination of fishing pressure and the invasion of *Carijoa riisei*, an alien species of snowflake coral that smothers black coral colonies. The purpose of this proposed rule is to reduce the impacts of fishing on black coral resources in Federal waters of the Au'au Channel.

Current regulations at 50 CFR 665.86(b)(1) contain minimum size

requirements for the harvest of black coral colonies in the Exclusive Economic Zone (EEZ) around Hawaii. Colonies must be 48 inches (122 cm) tall or one inch (2.54 cm) in stem diameter. The stem measurement must be made no closer than one inch (2.54 cm) from the top of the living holdfast. Current regulations also contain a provision at 50 CFR 665.86(b)(2) that exempts certain fishermen from the minimum stem diameter requirement, allowing the harvest of black coral with a 3/4 inch (1.91 cm) stem diameter by anyone who reported harvests to the State of Hawaii within the five years prior to April 17, 2002. In response to concerns about the declining black coral resource, the Council examined a range of alternatives and has recommended removing that exemption, limiting all further harvests of live black corals to those colonies that are at least 48 inches (122 cm) tall or one inch (2.54 cm) in stem diameter.

At its 129th Meeting on October 18, 2005, the Council voted to recommend that NMFS amend the regulations governing the minimum size requirements for the black coral fishery in Hawaii to remove the stem diameter exemption. The revised regulations would require that all harvested living black coral have a stem diameter of one inch (2.54 cm) or a height of 48 inches (122 cm). The Council prepared a regulatory amendment that contains background information on the issue, biological and economic impact analyses, and proposed regulatory changes.

Classification

NMFS has determined that the proposed rule is consistent with the FMP, and has preliminarily determined that the rule is consistent with the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and other applicable laws.

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

NMFS, based on the Council's analysis, prepared the following initial regulatory flexibility analysis (IRFA), as required by section 603 of the Regulatory Flexibility Act. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the SUMMARY section of the preamble.

There are three permitted vessels in the fishery, 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 not independently-owned or operated, are not dominant in its field of operation, and have annual gross receipts not in excess of \$4 million. Specific net revenues by individual vessels cannot be presented in this IRFA due to confidentiality restraints, but the potential economic impacts are discussed below. There are no disproportionate impacts between vessels participating in the fishery based on home port, vessel size, or gear type.

Description of Alternatives

Six alternatives were considered by the Council. Preferred Alternative 3 would remove the minimum size exemption provision; the minimum stem diameter requirement of one inch (2.54 cm) and minimum height of 48 inches (122 cm) would be in effect for all participants fishing in EEZ waters of the Au'au Channel. Under Alternative 1, the no-action alternative, the black coral fishery would continue to be conducted according to existing regulations. Alternative 2 would modify existing regulations to remove the black coral minimum height requirement. Alternative 4 would modify existing regulations to remove the black coral minimum base diameter requirement and the exemption. Alternative 5 would modify existing regulations to remove the minimum height requirement, and remove the base diameter exemption. Alternative 6 would modify existing regulations to establish a moratorium for black coral harvest in the Au'au

Channel for five years, during which time scientific research would be conducted on recruitment and stock recovery.

Economic Impacts of Alternatives

The preferred Alternative 3, which would remove the exemption from minimum size requirements, and Alternative 6, which would implement a 5-year moratorium on black coral landings, would cause adverse economic impacts to the three entities that comprise the current fishery because they would not be allowed to harvest black coral in the way they are now allowed to under the current management regime, thus potentially limiting their landings. It is estimated that black coral harvesters would be impacted by a reduction of approximately 15 percent gross receipts under Alternative 6, and could be impacted by as much as a 15 percent reduction in gross receipts under the preferred Alternative 3. A 15 percent reduction would occur only if all corals currently harvested in Federal waters are harvested under the base requirement exemption. Otherwise, gross receipt reductions of 0 to 15 percent would occur under the preferred alternative depending upon the relative contribution of currently exempted products to the overall harvest. All other alternatives described above, excluding the no-action Alternative 1, which represents no change in net benefits to the affected small entities, could yield potential beneficial impacts to the fishery participants relative to the proposed alternative. However, these alternatives

were not chosen since they would not be consistent with the objectives of the FMP and the MSA in that they would weaken the regulatory protection to black corals resources by removing size restrictions.

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.

Dated: July 31, 2007.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 665 is proposed to be 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 § 665.86, revise paragraph (b) to read as follows:

§ 665.86 Size restrictions.

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(b) *Black Coral.* Live black coral harvested from any precious coral permit area must have attained either a minimum stem diameter of 1 inch (2.54 cm), or a minimum height of 48 inches (122 cm).

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