

describe the lack of natural reproduction as the most serious concern for the long-term survival of Eagle Lake rainbow trout. Due to passage barriers and habitat degradation in Pine Creek (the only major tributary for spawning), no significant natural reproduction of Eagle Lake rainbow trout has occurred for over 40 years. Though efforts by the Forest Service to improve fish passage and riparian habitat may not be completed for 5 years, these efforts to restore natural spawning in Pine Creek are now underway.

In making a finding as to whether a petition presents substantial commercial and scientific information to indicate the petitioned action may be warranted, the Service must consider whether the petition is accompanied by a detailed narrative justification [50 CFR § 424.14 (b)(2)(ii)]. The regulations require the Service to "consider whether such petition \* \* \* [p]rovides information regarding the status of the species over all or a significant portion of its range" [50 CFR § 424.14 (b)(2)(iii)], including current distributional and threat information. Furthermore, the Service is required to "consider whether such petition \* \* \* [i]s accompanied by appropriate supporting documentation in the form of bibliographic references, reprints of pertinent publications, copies of reports or letters from authorities, and maps" [50 CFR § 424.14 (b)(2)(iv)].

Despite the limited distribution of the Eagle Lake trout, the petition included insufficient information regarding present fish population numbers and trends. In addition, the petition failed to provide substantial threat data concerning projected and ongoing management considerations with respect to the existing popular sport fishery and the stocking program for the trout. The petition also did not address the extent to which threats have been lessened by the significant recovery efforts now underway. More importantly, the future status of the subspecies may improve because of the significant recovery efforts now underway and the ongoing stocking program. Therefore, the Service finds that the petition does not present substantial information indicating that the listing of the Eagle Lake rainbow trout may be warranted.

The Service has reviewed the petition, literature cited in the petition, and other literature and information available in the Service's files. On the basis of the best scientific and commercial information available, the Service finds the petition does not present substantial information indicating that the

petitioned actions may be warranted. The Eagle Lake rainbow trout will remain a species of concern to the Service, and the Service will continue to seek information regarding the status or threats to the subspecies. If additional information becomes available in the future, the Service may reassess the listing priority for this subspecies or the need for listing.

The petitioner also requested that critical habitat be designated and a recovery plan be developed. If the Service decides in the future to propose the fish for listing, the Service will determine whether designation of critical habitat is prudent at the time a species is listed under the Act. Recovery planning efforts begin once a species is listed.

#### Author

The primary author of this document is Kevin Stubbs, Sacramento Field Office (see ADDRESSES section).

#### Authority

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

Dated: July 25, 1995.

#### John G. Rogers,

*Director, Fish and Wildlife Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 638

[Docket No. 950725190-5190-10; I.D. 062695A]

RIN 0648-AH71

### Coral and Coral Reefs of the Gulf of Mexico; Amendment 3

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

**ACTION:** Proposed rule.

**SUMMARY:** NMFS issues this proposed rule to implement Amendment 3 to the Fishery Management Plan for Coral and Coral Reefs of the Gulf of Mexico (FMP). Amendment 3 would prohibit the taking of wild live rock in the exclusive economic zone (EEZ) of the Gulf of Mexico (Gulf) off Florida north and west of the Levy/Dixie County line; remove the prohibition on taking wild live rock in the EEZ by chipping between the Pasco/Hernando County and Levy/Dixie

County, Florida lines; establish annual quotas for wild live rock harvesting for 1995 and 1996 in the Gulf EEZ; and reduce the amount of substrate that may be taken with allowable octocorals in the Gulf EEZ. The intended effect is to protect the live rock resource and fishery habitat in the Gulf EEZ and to simplify the regulations implementing the FMP.

**DATES:** Written comments must be received on or before September 18, 1995.

**ADDRESSES:** Comments on the proposed rule must be sent to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Requests for copies of Amendment 3, which includes a regulatory impact review and an environmental assessment, or for copies of a minority report on Amendment 3 by two Council members, should be sent to the Gulf of Mexico Fishery Management Council, 5401 W. Kennedy Boulevard, Suite 331, Tampa, FL 33609-2486, FAX 813-225-7015.

**FOR FURTHER INFORMATION CONTACT:** Georgia Cranmore, 813-570-5305.

**SUPPLEMENTARY INFORMATION:** The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council) and is implemented through regulations at 50 CFR part 638 under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

#### Background

Under Amendment 2 to the FMP, the harvest of wild live rock in the Gulf EEZ off Florida north of Monroe County is being phased out and the taking of wild live rock elsewhere in the Gulf is prohibited. Effective January 1, 1997, all wild live rock harvests are prohibited in the Gulf EEZ. Amendment 2 also established certain restrictions on wild live rock harvesting and possession, required permits and reporting during the phase-out period, and established an aquacultured live rock permit system. The intent of Amendment 2 was to protect an essentially nonrenewable resource and prevent a net loss of fishery habitat. Florida has the only reported live rock landings from the EEZ; live rock harvesting is banned in Florida waters. The final rule to implement Amendment 2 was published December 28, 1994 (59 FR 66776).

During development of Amendment 2, the Council was concerned about the continuing effects of wild live rock harvesting in the northern Gulf, especially the Florida Panhandle area, because live rock is relatively scarce in

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

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

### Amendment 3

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

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

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

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

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

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

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

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

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

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

Additional background and rationale for the measures discussed above are contained in Amendment 3, the availability of which was announced in the **Federal Register** on July 13, 1995 (60 FR 36093).

### Minority Report

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

### Classification

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

determination, will take into account the data, views, and comments received during the comment period.

This proposed rule 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 that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. Under a previous rulemaking all current participants in the wild live rock fishery must cease business by 1997. This proposed rule merely accelerates the phaseout of wild live rock harvesting off the Panhandle area and is expected to affect up to 5 small businesses, which may relocate their operations from the closed area and continue operations until 1997. The measures in Amendment 3 would not: (1) Reduce annual gross revenues in excess of 5 percent; (2) significantly increase compliance or production costs of participants; (3) require capital investment to comply with the rule; or (4) require current participants to cease business. All entities involved are small entities. 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: July 31, 1995.

**Gary Matlock,**

*Program Management Officer, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 638 is proposed to be amended as follows:

**PART 638—CORAL AND CORAL REEFS OF THE GULF OF MEXICO AND SOUTH ATLANTIC**

1. The authority citation for part 638 continues to read as follows:

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

2. In § 638.2, the definition for "Allowable octocoral" is revised to read as follows:

**§ 638.2 Definitions.**

\* \* \* \* \*

*Allowable octocoral* means an erect, nonencrusting species of the subclass Octocorallia, except the seafans *Gorgonia flabellum* and *G. ventalina*, plus the attached substrate within 1 inch (2.54 cm) of an allowable octocoral.

\* \* \* \* \*

3. In § 638.7, paragraphs (m), (n), and (p) are revised to read as follows:

**§ 638.7 Prohibitions.**

\* \* \* \* \*

(m) Harvest or possess wild live rock in the EEZ off the southern Atlantic states north of 25°58.5' N. lat., as specified in § 638.25(a), or in the Gulf of Mexico EEZ north and west of a line extending in a direction of 235° from true north from the Levy/Dixie County, Florida boundary or south of 25°20.4' N. lat., as specified in § 638.26(a).

(n) Harvest wild live rock by chipping or possess wild live rock taken by chipping in the EEZ off the southern Atlantic states south of 25°58.5' N. lat., as specified in § 638.25(b).

\* \* \* \* \*

(p) Harvest or possess in the Gulf of Mexico EEZ from a line extending in a direction of 235° from true north from the Levy/Dixie County, Florida boundary to 25°20.4' N. lat. wild live rock taken other than by hand or by chipping with a nonpower-assisted, hand-held hammer and chisel, as specified in § 638.26(b).

\* \* \* \* \*

4. Section 638.26, is revised to read as follows:

**§ 638.26 Wild live rock in the Gulf of Mexico.**

(a) *Closed areas.* No person may harvest or possess wild live rock in the Gulf of Mexico EEZ—

(1) North and west of a line extending in a direction of 235° from true north from the Levy/Dixie County, Florida boundary, that is, from a point at the mouth of the Suwannee River at 29°17.25' N. lat., 83°09.9' W. long.; or

(2) South of 25°20.4' N. lat. (extension of the Monroe/Collier County, Florida boundary).

(b) *Gear limitations.* In the Gulf of Mexico EEZ from the line described in paragraph (a)(1) of this section to 25°20.4' N. lat., wild live rock may be harvested only by hand, without tools, or by chipping with a nonpower-assisted, hand-held hammer and chisel, and no person may possess in that area wild live rock taken other than by hand, without tools, or by chipping with a nonpower-assisted, hand-held hammer and chisel.

(c) *Harvest and possession limits.* Through December 31, 1996, a daily vessel limit of twenty-five 5-gallon (19-L) buckets, or volume equivalent (16.88 ft<sup>3</sup> (478.0 L)), applies to the harvest or possession of wild live rock in or from the Gulf of Mexico EEZ from the line described in paragraph (a)(1) of this section south to 25°20.4' N. lat., regardless of the number or duration of trips. Commencing January 1, 1997, the daily vessel limit is zero.

(d) *Quota and closure.*

(1) The annual quota for wild live rock from the EEZ from the line described in paragraph (a)(1) of this section south to 25°20.4' N. lat. is 500,000 lb (226,796 kg) for the fishing years that begin January 1, 1995, and January 1, 1996. Commencing with the fishing year that begins January 1, 1997, the quota is zero.

(2) When the quota specified in paragraph (d)(1) of this section is reached, or is projected to be reached, the Assistant Administrator will file notification to that effect with the Office of the **Federal Register**. Harvest and purchase, barter, trade, or sale, or attempted purchase, barter, trade, or sale of wild live rock taken on or after the effective date of such notification would be prohibited. But the prohibition on purchase, barter, trade, or sale, or attempted purchase, barter, trade, or sale, of wild live rock in or from the EEZ of the Gulf of Mexico, after the effective date of the closure, would not apply to wild live rock harvested and landed prior to that date.

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