

## CORAL REEF RESOURCES

### DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 670

[Docket No. 950825218-5263-02; I.D. 073195A]

RIN 0648-AE47

**Coral Reef Resources of Puerto Rico and the U.S. Virgin Islands; Initial Regulations; OMB Control Numbers**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement the approved measures of the Fishery Management Plan for Corals and Reef Associated Plants and Invertebrates of Puerto Rico and the U.S. Virgin Islands (FMP). This rule restricts the taking of coral reef resources in or from the exclusive economic zone (EEZ) around Puerto Rico and the U.S. Virgin Islands. NMFS disapproved two measures of the FMP that would have adopted state permit and reporting

requirements, because the state permit systems are not yet fully developed, and the state regulations authorizing these permits, where they exist, do not satisfy the requirements of the Administrative Procedure Act, the Magnuson Fishery Conservation and Management Act (Magnuson Act), and other applicable laws. In addition, NMFS informs the public of the approval by the Office of Management and Budget (OMB) of the collection-of-information requirements contained in this rule and publishes the OMB control numbers for these collections. The intended effect of this rule is to protect important marine resources.

**EFFECTIVE DATES:** December 27, 1995, except for § 670.23(b), which becomes effective March 1, 1996.

**ADDRESSES:** Comments regarding the collection-of-information requirements contained in this rule should be sent to Edward E. Burgess, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, and to the Office of Information and Regulatory Affairs, OMB, Washington, DC 20503 (Attention: NOAA Desk Officer).

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

**SUPPLEMENTARY INFORMATION:** The FMP was prepared by the Caribbean Fishery Management Council (Council) under the authority of the Magnuson Act.

The background and rationale for the measures in the FMP, and the rationale for disapproval of two measures that would have adopted state permit and reporting requirements, were included in the proposed rule (60 FR 46806, September 8, 1995) and are not repeated here.

#### Comments and Responses

Comments were received from the U.S. Coast Guard (USCG), the U.S. Fish and Wildlife Service (USFWS), and the Center for Marine Conservation (CMC). The USCG noted that it was involved in the development of the FMP and had no enforcement or safety concerns.

**Comment:** USFWS offered its "strongest possible support for the measures" and recommended that the Commonwealth of Puerto Rico work closely with the U.S. Department of Agriculture, Animal and Plant Health Inspection Service, and the U.S. Customs Service, in its enforcement and implementation of compatible permit and enforcement programs.

**Response:** NMFS agrees with this comment.

**Comment:** USFWS notes that the FMP specifically addresses the aquarium trade in live organisms but does not fully address the collection of coral reef resources for the curio trade. USFWS points out that some mollusks such as triton's trumpet (*Charonia variegata*) and helmet shells (*Cassia* spp.) may become increasingly rare due to commercial shell collecting.

**Response:** Although some coral reef resources are used in local handicrafts, most organisms sold as curios and used in handicrafts in Puerto Rico are imported, primarily from the Philippines. Commercial shell collecting does not appear to be a problem, at least not in Puerto Rico. However, the FMP's restrictions on taking of coral reef resources apply equally to harvest and sale of live organisms and harvest and sale of organisms taken for eventual use in the curio trade.

**Comment:** USFWS recommended that specific information on scientific and other permitting procedures be included as part of the FMP.

**Response:** NMFS agrees and has advised the Council to incorporate this information through an amendment to the FMP once the states have completed the development of their respective permit systems.

**Comment:** CMC supports the rule and further notes the importance of live rock

as fishery habitat. CMC believes that harvest of coral reef resources can threaten local economies that may be dependent on healthy reef systems for fishing and nonconsumptive uses.

**Response:** NMFS agrees with the CMC's comments.

#### Classification

The Regional Director, Southeast Region, NMFS, determined that the FMP is necessary for the conservation and management of coral reef resources of Puerto Rico and the U.S. Virgin Islands and that it is consistent with the Magnuson Act and other applicable law, with the exception of those measures that were previously disapproved. (See the proposed rule (60 FR 46806, September 8, 1995) for a discussion of the disapproved measures.)

This action has been determined to be not significant for purposes of E.O. 12866.

The Council prepared a final environmental impact statement (FEIS) for the FMP; a notice of availability for public comment was published on August 8, 1995 (60 FR 40340). According to the FEIS, the restrictions in the FMP would benefit the natural environment by prohibiting activities that damage live bottom habitat areas.

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 rule would not have a significant economic impact on a substantial number of small entities. The reasons were published in the proposed rule (60 FR 46806, September 8, 1995). As a result, a regulatory flexibility analysis was not prepared.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB control number.

This rule contains two collection-of-information requirements subject to the PRA. The first is the requirement for vessel identification. The second is a documentation of origin of prohibited species that are for sale in Puerto Rico or the U.S. Virgin Islands. These collections have been approved by OMB under OMB control numbers 0648-0306 and 0303. The public reporting burdens for these collections of information are estimated to average 15 minutes and 45 minutes per response, respectively. This includes the time for reviewing instructions, searching existing data

sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this reporting burden estimate, or any other aspect of the collection of information, including suggestions for reducing the burden, to NMFS and OMB (see ADDRESSES).

#### List of Subjects

##### 15 CFR Part 902

Reporting and recordkeeping requirements.

##### 50 CFR Part 670

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: November 20, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 15 CFR chapter IX and 50 CFR chapter VI are amended as follows:

#### 15 CFR Chapter IX

#### PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. In § 902.1, paragraph (b) the table is amended by adding in the left column under 50 CFR, in numerical order, "670.6" and "670.23", and in the right column, in corresponding positions, the control numbers "- 0306," and "-0303."

#### 50 CFR Chapter VI

3. Part 670 is added to read as follows:

#### PART 670—CORAL REEF RESOURCES OF PUERTO RICO AND THE U.S. VIRGIN ISLANDS

##### Subpart A—General Provisions

Sec.

- 670.1 Purpose and scope.
- 670.2 Definitions.
- 670.3 Relation to other laws.
- 670.4 Permits. [Reserved]
- 670.5 Recordkeeping and reporting.
- 670.6 Vessel identification.
- 670.7 Prohibitions.
- 670.8 Facilitation of enforcement.
- 670.9 Penalties.

##### Subpart B—Management Measures

- 670.20 Fishing year.
- 670.21 Harvest limitations.
- 670.22 Gear restrictions.
- 670.23 Restrictions on sale or purchase.
- 670.24 Specifically authorized activities.

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

**Subpart A—General Provisions****§ 670.1 Purpose and scope.**

(a) The purpose of this part is to implement the Fishery Management Plan for Corals and Reef Associated Plants and Invertebrates of Puerto Rico and the U.S. Virgin Islands prepared by the Caribbean Fishery Management Council under the Magnuson Act.

(b) This part governs conservation and management of coral reef resources in or from the EEZ around Puerto Rico and the U.S. Virgin Islands. "EEZ" in this part refers to the EEZ in those geographical areas, unless the context clearly indicates otherwise.

**§ 670.2 Definitions.**

In addition to the definitions in the Magnuson Act and in § 620.2 of this chapter, the terms used in this part have the following meanings:

**Coral reef resource** means one or more of the following, or a part thereof, whether living or dead:

**Sponges—Class Demospongiae**

- Aphimedon compressa*, Erect rope sponge
- Chondrilla nucula*, Chicken liver sponge
- Cynachirella alloclada*
- Geodia neptuni*, Potato sponge
- Haliclona* sp., Finger sponge
- Myriastria* sp.
- Niphates digitalis*, Pink vase sponge
- N. erecta*, Lavender rope sponge
- Spinosella polycifera*
- S. vaginalis*
- Tethya crypta*

**Hydrocorals—Class Hydrozoa****Hydroids—Order Athecatae**

- Family Milleporidae
- Millepora* spp., Fire corals
- Family Stylasteridae
- Stylaster roseus*, Rose lace corals

**Anthozoans—Class Anthozoa****Soft corals—Order Alcyonacea**

- Family Anthothelidae
- Erythropodium caribaeorum*,

**Encrusting gorgonian**

- ICTILGORGIA schrammi*, Deepwater sea fan

**Family Briaridae**

- Briareum asbestinum*, Corky sea finger

**Family Clavulariidae**

- Cariljoa ritsei*
- Telesto* spp.

**Gorgonians—Order Gorgonacea**

- Family Ellisellidae
- Ellisella* spp., Sea whips
- Family Gorgoniidae
- Gorgonia flabellum*, Venus sea fan

- G. mariae*, Wide-mesh sea fan
- G. ventalina*, Common sea fan
- Pseudopterogorgia acerosa*, Sea plume

**Family Plexauridae**

- P. albatrossae*
- P. americana*, Slimy sea plume
- P. bipinnata*, Bipinnate plume
- P. rigida*
- Pterogorgia anceps*, Angular sea whip
- P. citrina*, Yellow sea whip
- Family Plexauridae
- Eunicea calyculata*, Warty sea rod
- E. clavigera*
- E. fusca*, Doughnut sea rod
- E. knighti*
- E. laciniata*
- E. laxispica*
- E. mammosa*, Swollen-knob
- E. succinea*, Shelf-knob sea rod
- E. touneforti*
- Muricea atlantica*
- M. elongata*, Orange spiny rod
- M. laxa*, Delicate spiny rod
- M. muricata*, Spiny sea fan
- M. pinnata*, Long spine sea fan
- Muriceopsis* sp.
- M. flavida*, Rough sea plume
- M. sulphurea*
- Plexaura flexuosa*, Bent sea rod
- P. homomalla*, Black sea rod
- Plexaurella dichotoma*, Slit-pore sea rod
- P. fusifera*
- P. grandiflora*
- P. grisea*
- P. nutans*, Giant slit-pore
- Pseudoplexaura crucis*
- P. flagellosa*
- P. porosa*, Porous sea rod
- P. wagneri*

**Hard Corals—Order Scleractinia**

- Family Acroporidae
- Acropora cervicornis*, Staghorn coral
- A. palmata*, Elkhorn coral
- A. prolifera*, Fused staghorn
- Family Agaricidae
- Agaricia agaricities*, Lettuce leaf coral
- A. fragilis*, Fragile saucer
- A. lamarcki*, Lamarck's sheet
- A. tenuifolia*, Thin leaf lettuce
- Leptoseris cucullata*, Sunray lettuce
- Family Astrocoeniidae
- Stephanocoenia michelini*, Blushing star
- Family Caryophyllidae
- Eusmilia fastigiata*, Flower coral
- Tubastrea aurea*, Cup coral
- Family Faviidae
- Cladocora arbuscula*, Tube coral
- Colpophyllia natans*, Boulder coral
- Diploria clivosa*, Knobby brain coral
- D. labyrinthiformis*, Grooved brain
- D. strigosa*, Symmetrical brain
- Favia fragum*, Golfball coral
- Manicina areolata*, Rose coral
- M. mayori*, Tortugas rose coral
- Montastrea annularis*, Boulder star coral

- M. cavernosa*, Great star coral
- Solenastrea bournoni*, Smooth star coral
- Family Meandrinidae
- Dendrogyra cylindrus*, Pillar coral
- Dichocoenia stellaris*, Pancake star
- D. stokesi*, Elliptical star
- Meandrina meandrites*, Maze coral
- Family Mussidae
- Isophyllastrea rigida*, Rough star coral
- Isophyllia sinuosa*, Sinuous cactus
- Mussa angulosa*, Large flower coral
- Mycetophyllia alliclae*, Thin fungus coral
- M. danae*, Fat fungus coral
- M. ferox*, Grooved fungus
- M. lamarckiana*, Fungus coral
- Scolymia cubensis*, Artichoke coral
- S. lacera*, Solitary disk
- Family Oculinidae
- Oculina diffusa*, Ivory bush coral
- Family Pocilloporidae
- Madracis decactis*, Ten-ray star coral
- M. mirabilis*, Yellow pencil
- Family Poritidae
- Porites astreoides*, Mustard hill coral
- P. branneri*, Blue crust coral
- P. divaricata*, Small finger coral
- P. porites*, Finger coral
- Family Rhizangiidae
- Astrangia solitaria*, Dwarf cup coral
- Phyllangia americana*, Hidden cup coral
- Family Siderastreidae
- Siderastrea radians*, Lesser starlet
- S. siderea*, Massive starlet
- Black Corals—Order Antipatharia
- Antipathes* spp., Bushy black coral
- Stichopathes* spp., Wire coral
- Anemones—Order Actiniaria
- Aiptasia tagetes*, Pale anemone
- Bartholomea annulata*, Corkscrew anemone
- Condylactis gigantea*, Giant pink-tipped anemone
- Hereractis lucida*, Knobby anemone
- Lebrunia* spp., Staghorn anemone
- Stichodactyla helianthus*, Sun anemone
- Colonial Anemones—Order Zoanthidea
- Zoanthus* spp., Sea mat
- False Corals—Order Corallimorpharia
- Discosoma* spp. (formerly *Rhodactis*), False coral
- Ricordia florida*, Florida false coral
- Polychaetes—Class Polychaeta
- Family Sabellidae, Feather duster worms
- Sabellastarte* spp., Tube worms
- S. magnifica*, Magnificent duster
- Family Serpulidae
- Spirobranchus giganteus*, Christmas tree worm
- Gastropods—Class Gastropoda
- Family Elysiidae

*Tridachia crispata*, Lettuce sea slug  
Family Olividae  
*Oliva reticularis*, Netted olive  
Family Ovulidae  
*Charonia tritonis*, Atlantic triton trumpet  
*Cyphoma gibbosum*, Flamingo tongue  
Family Strombidae, Winged conchs  
*Strombus* spp. (except Queen conch, *S. gigas*)

Bivalves—Class Bivalvia  
Family Limidae  
*Lima* spp., Fileclams  
*L. scabra*, Rough fileclam  
Family Spondylidae  
*Spondylus americanus*, Atlantic thorny oyster

Cephalopods—Class Cephalopoda

Octopuses—Order Octopoda  
Family Octopodidae  
*Octopus* spp. (except the Common octopus, *O. vulgaris*)

Crustaceans—Class Crustacea

Decapods—Order Decapoda  
Family Alpheidae  
*Alpheus armatus*, Snapping shrimp  
Family Diogenidae  
*Paguristes* spp., Hermit crabs  
*P. cadenati*, Red reef hermit  
Family Grapsidae  
*Percnon gibbesi*, Nimble spray crab  
Family Hippolytidae  
*Lysmata* spp., Peppermint shrimp  
*Thor amboinensis*, Anemone shrimp  
Family Majidae, Coral crabs  
*Mithrax* spp., Clinging crabs  
*M. cinctimanus*, Banded clinging  
*M. sculptus*, Green clinging  
*Stenorhynchus seticornis*, Yellowline arrow  
Family Majidae, Coral crabs  
*Mithrax* spp., Clinging crabs  
*M. cinctimanus*, Banded clinging  
*M. sculptus*, Green clinging  
*Stenorhynchus seticornis*, Yellowline arrow

Family Palaemonida  
*Periclimenes* spp., Cleaner shrimp  
Family Squillidae, Mantis crabs  
*Gonodactylus* spp.  
*Lysiosquilla* spp.  
Family Stenopodidae, Coral shrimp  
*Stenopus hispidus*, Banded shrimp  
*S. scutellatus*, Golden shrimp

Bryozoans—Phylum Bryozoa

Starfish—Class Stelleroida  
*Analcidometra armata*, Swimming crinoid  
*Astropecten* spp., Sand stars  
*Astrophyton muricatum*, Giant basket star  
*Davidaster* spp., Crinoids  
*Linckia guildingii*, Common comet star

*Nemaster* spp., Crinoids  
*Ophidiaster guildingii*, Comet star  
*Ophioderma* spp., Brittlestars  
*Ophioderma* spp., Brittlestars  
*O. rubicundum*, Ruby brittlestar  
*Oreaster reticulatus*, Cushion sea star

Sea Urchins—Class Echinoidea  
*Diadema antillarum*, Long-spined urchin  
*Echinometra* spp., Purple urchin  
*Eucidaris tribuloides*, Pencil urchin  
*Lytechinus* spp., Pin cushion urchin  
*Tripneustes ventricosus*, Sea egg

Sea Cucumbers—Class Holothuroidea  
*Holothuria* spp., Sea cucumbers

Tunicates—Subphylum Urochordata

Green Algae—Phylum Chlorophyta  
*Caulerpa* spp., Green grape algae  
*Halimeda* spp., Watercress algae  
*Penicillus* spp., Neptune's brush  
*Udotea* spp., Mermaid's fan  
*Ventricaria ventricosa*, Sea pearls

Red Algae—Phylum Rhodophyta

Sea grasses—Phylum Angiospermae  
*Halodule wrightii*, Shoal grass  
*Halophila* spp., Sea vines  
*Ruppia maritima*, Widgeon grass  
*Syringodium filiforme*, Manatee grass  
*Thalassia testudinum*, Turtle grass  
Gorgonian means a coral reef resource of the Class Anthozoa, Subclass Octocorallia, Order Gorgonacea.  
Live rock means a coral reef resource attached to a hard substrate, including dead coral or rock (excluding individual mollusk shells).

*Prohibited species* means a gorgonian, a live rock, or a stony coral, or a part thereof.

*Regional Director* means the Director, Southeast Region, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, telephone: 813-570-5301; or a designee.

*Science and Research Director* means the Science and Research Director, Southeast Fisheries Science Center, NMFS, 75 Virginia Beach Drive, Miami, FL 33149, telephone 305-361-5761; or a designee.

*Scientific, educational, or restoration purpose* means the objective of gaining knowledge for the benefit of science, humanity, or management of coral reef resources or restoring a disturbed habitat as closely as possible to its original condition.

*Stony coral* means a coral reef resource—

- (1) Of the Class Hydrozoa (fire corals and hydrocorals); or
- (2) Of the Class Anthozoa, Subclass Hexacorallia, Orders Scleractinia (stony corals) and Antipatharia (black corals).

#### § 670.3 Relation to other laws.

The relation of this part to other laws is set forth in § 620.3 of this chapter.

#### § 670.4 Permits. [Reserved]

#### § 670.5 Recordkeeping and reporting.

A person possessing a coral reef resource in or from the EEZ is required upon request to make such coral reef resource available for inspection by the Science and Research Director or an authorized officer.

#### § 670.6 Vessel identification.

(a) *Official number*. A vessel that fishes for or possesses coral reef resources in or from the EEZ must display its official number—

(1) On the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck, so as to be clearly visible from an enforcement vessel or aircraft;

(2) In block arabic numerals in contrasting color to the background;

(3) At least 18 inches (45.7 cm) in height for fishing vessels over 65 ft (19.8 m) in length and at least 10 inches (25.4 cm) in height for all other vessels; and

(4) Permanently affixed to or painted on the vessel.

(b) *Duties of operator*. The operator of a vessel that fishes for or possesses coral reef resources in or from the EEZ must—

(1) Keep the official number clearly legible and in good repair; and

(2) Ensure that no part of the fishing vessel, its rigging, fishing gear, or any other material on board obstructs the view of the official number from an enforcement vessel or aircraft.

#### § 670.7 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

(a) Fail to make a coral reef resource in or from the EEZ available for inspection, as specified in § 670.5.

(b) Falsify or fail to display and maintain vessel identification, as required by § 670.6.

(c) Fish for or possess a prohibited species in or from the EEZ, as specified in § 670.21.

(d) Use an explosive to harvest a coral reef resource in the EEZ or possess dynamite or a similar explosive substance on board a vessel, as specified in § 670.22(a).

(e) Use a chemical, plant, or plant derived toxin to harvest a coral reef resource in the EEZ, as specified in § 670.22(b).

(f) Harvest a coral reef resource in the EEZ other than as specified in § 670.22(c).

(g) Purchase, barter, trade, or sell, or attempt to purchase, barter, trade, or

sell, a prohibited species harvested in the EEZ, as specified in § 670.23(a).

(h) Make any false statement, oral or written, to an authorized officer concerning the taking, catching, harvesting, landing, purchase, sale, possession, or transfer of a coral reef resource.

(i) Interfere with, obstruct, delay, or prevent by any means an investigation, search, seizure, or disposition of seized property in connection with enforcement of the Magnuson Act.

**§ 670.8 Facilitation of enforcement.**

See § 620.8 of this chapter.

**§ 670.9 Penalties.**

See § 620.9 of this chapter.

**Subpart B—Management Measures**

**§ 670.20 Fishing year.**

The fishing year for coral reef resources begins on January 1 and ends on December 31.

**§ 670.21 Harvest limitations.**

No person may fish for or possess a prohibited species in or from the EEZ. The taking of a prohibited species in the EEZ as incidental catch will not be considered unlawful possession of a prohibited species provided it is returned immediately to the sea in the general area of fishing.

**§ 670.22 Gear restrictions.**

(a) An explosive may not be used to harvest a coral reef resource in the EEZ. Dynamite or a similar explosive substance may not be possessed on board a vessel that possesses a coral reef resource in or from the EEZ.

(b) No person may use a chemical, plant, or plant derived toxin to harvest a coral reef resource in the EEZ.

(c) A coral reef resource in the EEZ may be harvested only with a hand-held dip net or slurp gun, or by hand in a manner that does not injure or destroy a coral reef resource or its habitat. For the purposes of § 670.7(f) and this paragraph (c), a hand-held slurp gun is a device that rapidly draws seawater containing fish into a self-contained chamber.

**§ 670.23 Restrictions on sale or purchase.**

(a) No person may purchase, barter, trade, or sell, or attempt to purchase, barter, trade, or sell, a prohibited species harvested in the EEZ.

(b) Effective March 1, 1996, a prohibited species that is sold or exchanged, or offered for sale or exchange, in Puerto Rico or the U.S. Virgin Islands will be presumed to have been harvested in the EEZ unless it is accompanied by documentation

showing that it was harvested elsewhere. Such documentation must contain:

(1) The information specified in 50 CFR part 246 for marking containers or packages of fish or wildlife that are imported, exported, or transported in interstate commerce;

(2) The name and home port of the vessel, or the name and address of the individual, harvesting the prohibited species;

(3) The port and date of landing the prohibited species; and

(4) A statement signed by the person selling or exchanging, or offering for sale or exchange, the prohibited species attesting that, to the best of his or her knowledge, information, and belief, such prohibited species was harvested other than in the EEZ or the waters of Puerto Rico or the U.S. Virgin Islands.

**§ 670.24 Specifically authorized activities.**

The Regional Director may authorize the harvest and possession of a prohibited species in or from the EEZ for a scientific, educational, or restoration purpose and may authorize activities otherwise prohibited by the regulations in this part for the acquisition of information and data.

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