

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Parts 600 and 660**

[Docket No. 020508114-3291-02; I.D. 030702C]

RIN 0648-AM97

Fisheries Off 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: Final rule.

SUMMARY: NMFS publishes this final rule to implement the Fishery Management Plan for Coral Reef Ecosystems of the Western Pacific Region (CREFMP). The rule establishes a coral reef ecosystem regulatory area, marine protected areas (MPAs), permitting and reporting requirements, no-anchoring zone, gear restrictions, and a framework regulatory process. This rule also pertains to the other four western Pacific fishery management plans with respect to fishing activities in the U.S. exclusive economic zone (U.S. EEZ) of the western Pacific region and implements Amendment 10 to the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (Pelagics FMP), Amendment 11 to the Fishery Management Plan for the Crustacean Fisheries of the Western Pacific Region (Crustaceans FMP), Amendment 7 to the Fishery Management Plan for the Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region (Bottomfish and Seamount Groundfish FMP), and Amendment 5 to the Fishery Management Plan for the Precious Coral Fisheries of the Western Pacific Region (Precious Corals FMP).

DATES: Effective March 25, 2004.

ADDRESSES: CD or paper copies of the CREFMP, Environmental Impact Statement (EIS) for the CREFMP, regulatory impact review/final regulatory impact flexibility analysis (RIR/FRFA) may be obtained from Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council (Council), 1164 Bishop Street, Suite 1400, Honolulu, HI 96813. Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to Alvin Katekaru, Pacific

Islands Region, NMFS, 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814. Comments will not be accepted by NMFS if submitted via the Internet. Comments may also be submitted by e-mail to David_Rostker@omb.eop.gov, or faxed to 202-395-7285.

FOR FURTHER INFORMATION CONTACT: Jarad Makaiau, Council staff, at (808) 522-8220 or Alvin Katekaru at 808-973-2937.

SUPPLEMENTARY INFORMATION:**Electronic Access**

This final rule is also accessible via the Internet at the Office of the Federal Register's Web site at <http://www.gpoaccess.gov/fr/index.html>.

Background

Coral reef ecosystem fisheries in federally managed waters of the western Pacific U.S. EEZs are currently unregulated under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The CREFMP would apply ecosystem principles to fisheries management to conserve and protect coral reef fisheries, their ecosystems and associated habitats in the Council's management area which includes U.S. EEZ waters around American Samoa, Guam, Hawaii, Commonwealth of the Northern Mariana Islands (CNMI) and the U.S. Pacific remote island areas (PRIA).

On June 14, 2002, NMFS partially approved the CREFMP and parallel amendments to the Council's management plans for the Bottomfish FMP, Pelagics FMP, Precious Corals FMP, and the Crustaceans FMP. 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 Orders 13178 and 13196, 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 establishing 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.

On September 24, 2002, NMFS published a proposed rule (67 FR 59813) for those provisions of the CREFMP that were approved by NMFS. These provisions govern fishing activities in the coral reef ecosystem regulatory area defined as waters of the U.S. EEZs around American Samoa, Guam, Hawaii, (except for the waters of the U.S. EEZ around the NWHI west of 160°50' W. long.), CNMI (except for the portion of the U.S. EEZ 0-3 nm off the coastline), and the remote U.S. Pacific islands in the central Pacific Ocean, consisting of Kingman Reef, Jarvis, Howland, Baker and Wake Islands and Johnston and Palmyra Atolls. No-take and low-use MPAs are established in the coral reef ecosystem regulatory area, where fishing for marine species is prohibited and where only controlled harvest of CREFMP management unit species is allowed with a special permit, respectively. Any person who operates under a CREFMP special permit or transshipment permit in the coral reef ecosystem regulatory area must record and submit catch and effort data to NMFS. Large (>15.25 m or 50 ft in length) fishing vessels are prohibited from anchoring on the offshore southern banks located in the U.S. EEZ off Guam. The final rule also contains gear restrictions, such as no spear fishing at night with SCUBA in the U.S. EEZ off the remote U.S. Pacific islands, and establishes a framework process to allow regulatory adjustments to the coral reef ecosystem management program. Except for permitting and reporting requirements that are unique to fishing for CREFMP management unit species, the CREFMP regulations apply to fishing activities governed under the other four existing western Pacific fishery management plans for pelagics, crustaceans, bottomfish and seamount groundfish, and precious corals.

The preamble to the proposed rule presented substantial background information on the purpose and objectives of the CREFMP, description of the principle management actions that would be implemented under the CREFMP, and a summary of potential impacts resulting from the proposed rule on small business entities. Also, the preamble presented background information on NMFS' June 14, 2002, partial approval of the CREFMP and parallel amendments to the Fishery Management Plan (FMP) for the Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region, FMP for the Pelagic Fisheries of the Western Pacific Region, and FMP for the Precious Coral Fisheries of the Western Pacific Region. Background information

may be found in the preamble to the proposed rule and is not presented here.

NMFS will make technical corrections to 50 CFR 600.502 in Table 1 to include the address of the Regional Administrator for the new NMFS Pacific Islands Region and Director of the new NMFS Pacific Islands Fisheries Science Center. Corrections will also be made to Table 2 with respect to the area of responsibility/fishery of the NMFS Pacific Islands Regional Administrator.

NMFS will also make technical corrections to 50 CFR part 660 subpart B, subpart C, subpart D, subpart E, and subpart F to correct an outdated title of an organization.

Comments and Responses

Comment 1: Two commenters requested that the final rule contain a definition of the U.S. Pacific remote island areas (PRIA) and a description of the various jurisdictions associated with the PRIA and Rose Atoll in American Samoa, including maps depicting these areas appearing in the CREFMP.

Response: NMFS published a definition of the PRIA (consisting of Palmyra Atoll, Kingman Reef, Jarvis Island, Baker Island, Howland Island, Johnston Atoll, Wake Island and Midway Atoll) in the **Federal Register** on September 4, 2002 (67 FR 56501). This definition is contained in § 660.12 of 50 CFR part 660, subpart B. Regarding the descriptions and maps of various jurisdictions in the PRIA and Rose Atoll, the CREFMP and accompanying EIS contain nearly 40 pages of text and tables, and 13 pages of maps describing and illustrating the various jurisdictions and authorities in the PRIA. NMFS will make available to fishermen in a "small entity compliance guide" maps illustrating the jurisdictional authorities and description of the management measures implemented by the final rule.

Comment 2: Several commenters questioned NMFS' authority to implement management measures in certain waters of the U.S. EEZ within the boundaries of National Wildlife Refuges (NWRs) in the Pacific insular areas and the Naval Defensive Sea Area around Wake Island. They requested that NMFS include language in the final rule stating that the CREFMP management measures, as well as all other management measures contained in other western Pacific FMPs, begin seaward of the outer boundary of the NWRs and the Naval Defensive Sea Area around Wake Island.

Response: The Magnuson-Stevens Act authorizes NMFS to protect, conserve, and manage fishery resources in the U.S. EEZ, including Federal waters around the PRIA. For this reason, NMFS

will not abdicate its responsibilities to manage fishery resources in waters of the U.S. EEZ within the boundaries of NWRs in the Pacific insular areas and the Naval Defensive Sea Area around Wake Island. However, NMFS will continue to work closely with the Council, Department of the Interior, U.S. Fish and Wildlife Service (USFWS), and the Department of Defense to protect fishery resources and marine habitats in waters of the U.S. EEZ in the western Pacific region which encompasses the NWRs and the Naval Defensive Sea Area around Wake Island. NMFS did not include the requested language in the final rule. First, the FMP covers the entire U.S. EEZ of the western Pacific region, except for the waters of the U.S. EEZ around the NWHI west of 160°50' W. long. and the portion of the U.S. EEZ 0–3 nm off the coastline of CNMI. Second, it is not uncommon for multiple agencies to be vested with concurrent authority to manage resources in the same areas. As stated above, NMFS will continue to work closely with the Council, Department of the Interior, USFWS, and the Department of Defense to protect fishery resources and marine habitats in waters of the U.S. EEZ in the western Pacific region which encompasses the NWRs and the Naval Defensive Sea Area around Wake Island.

Comment 3: Several commenters requested that the final rule include language to prohibit fishing in all no-take MPAs established under the CREFMP, and within the boundaries of Palmyra Atoll NWR, Kingman Reef NWR, Johnston Atoll NWR, Rose Atoll NWR, Baker Island NWR, Howland Island NWR, and Jarvis Island NWR, unless authorized by the USFWS.

Response: The final rule prohibits fishing in all no-take MPAs. The final rule also prohibits fishing activities, governed under 50 CFR part 660 subpart J, within the boundary of a NWR unless specifically authorized by the Secretary of the Interior, regardless of whether that refuge was established by action of the President or the Secretary of the Interior.

Comment 4: Several commenters requested that the final rule should include language stating that the NWHI bottomfish fishery is also governed by Executive Orders 13178 and 13196 that specify, among other things, catch and effort limits, boundary limits, and gear type limits.

Response: Executive Orders 13178 and 13196 are currently in effect, including Reserve Preservation Areas and certain other conservation measures that either completely prohibit fishing or allow fishing in accordance with

restrictions that are applicable in the Reserve. The CREFMP does not contain these measures and therefore they are not included in this final rule.

Comment 5: Several commenters recommended that fishing vessels be required to post bonds to mitigate adverse impacts to coral reef ecosystem resources in the event of vessel groundings. Also, vessels should be required to operate 24-hour vessel monitoring systems (VMS) by which vessel positions can be tracked when approaching an MPA or reef, bank or atoll.

Response: The Council proposed an insurance requirement for all vessels managed under the western Pacific FMPs while operating in or transiting through coral reef ecosystem MPAs. This was intended to mitigate reef damage in the event of vessel groundings or oil spills, including coverage of costs due to wreck removals and reef recovery activities. The CREFMP however did not provide sufficient details on administering and implementing this complex and novel approach to mitigation. However, NMFS is working with the Council and other agencies to develop appropriate strategies, including a measure on vessel insurance, to protect and restore coral reef ecosystem resources from vessel groundings or oil spills.

VMS has proven to be a viable technology and effective tool in fisheries management. VMS is currently required on all Hawaii-based pelagic longline fishing vessels. Although it is a valuable monitoring tool, because logistics and management needs may differ among fisheries and geographical areas, it is necessary that NMFS work with the Council, U.S. Coast Guard, USFWS, U.S. Pacific islands marine resource agencies, and the fishing industry to evaluate the cost-effectiveness and feasibility of requiring VMS for western Pacific fisheries operating in and around coral reef ecosystems.

Comment 6: One commenter recommended that the final rule should contain measures to prevent the introduction of invasive species to NWRs and measures to eradicate invasive species and recover habitats, if they are accidentally introduced by fishing vessels.

Response: NMFS recognizes that invasive species pose a serious threat to remote Pacific island coral reef ecosystems such as the PRIA and also is aware that all vessels, including fishing vessels, can serve as carriers of invasive species. Given that fishing in the PRIA is minimal at this time and that the USFWS already has measures to mitigate invasive species introductions

by any person upon entry into NWRs, additional regulatory measure to prevent invasive species introductions by FMP-permitted vessels are not necessary at this time. Nonetheless, NMFS will work with the Council, USFWS, and other Federal and state marine resource agencies to develop comprehensive invasive species mitigation measures for all vessels transiting through the western Pacific region.

Comment 7: One commenter recommended that in addition to the fishermen reports, NMFS observers should be placed on federally-permitted fishing vessels to collect representative harvest data used to calculate fishery production yields.

Response: NMFS agrees and will consider implementing such a program. The NMFS Pacific Islands Region Observer Program is one of the primary means for collecting catch data from U.S. commercial fishing and processing vessels. The other programs are fishery-dependent data collected by other U.S. Pacific island marine resource management authorities. The mandatory placement of observers on fishing vessels must be considered in terms of safety issues and cost-effectiveness relative to the level of coverage and information required for analysis and management. For example, it would be inappropriate to place observers on small vessels (<10.67 m or 35 ft in length) due to safety concerns. As appropriate, NMFS will evaluate the need for observer coverage for vessels fishing for coral reef ecosystem resources and, in consultation with the Council, may consider implementing such a program in the future.

Comment 8: Several commenters said the CREFMP is inconsistent with the guidance provided by the Ecosystem Principles Advisory Panel (EPAP) on ecosystem-based fishery management because the CREFMP exempts species managed under other FMPs.

Response: NMFS disagrees. The CREFMP is the first ecosystem-based management plan for fisheries developed in the U.S. and incorporates many of the basic principles, goals, and policies for ecosystem-based management outlined by the EPAP. The CREFMP is a first step to fully integrating the EPAP guidance on ecosystem-based management for western Pacific FMPs and marks the initial phase for development of fishery ecosystem plans as recommended by EPAP. It is the goal of NMFS and the Council to incorporate ecosystem approaches into the regulatory structure of the current western Pacific

bottomfish, pelagic, precious coral, and crustacean FMPs.

Comment 9: Two commenters expressed concern over the Council's intent to designate 49 species of fish as bottomfish management unit species (BMUS).

Response: Although not an action under the CREFMP, the Council recommended that 49 species of fish be designated as BMUS. The basis for this recommendation is that fishery surveys and reports show that these 49 species are being harvested in the Guam and CNMI bottomfish fisheries. Also, since catch and effort data are presently being collected on these 49 species, it is appropriate to continue monitoring harvest of these species as BMUS under the bottomfish FMP.

Comment 10: One commenter stated that the use of the mixed stock exception would allow overfishing of individual species, contrary to the National Standard Guidelines under the Magnuson-Stevens Act. Overfishing of any species managed under the CREFMP should be specifically prohibited.

Response: The Magnuson-Stevens Act allows several stocks of fish which are harvested together to be managed as a unit. The National Standard Guidelines provide specific guidance to prevent overfishing of any fishery resource. However, the National Standard Guidelines also allows for a mixed stock fishery to continue even if overfishing of one stock in that fishery is occurring. Overfishing of one stock in a mixed stock fishery is allowed if three conditions specified in the guidelines are met: (1) The action will result in long-term net benefits to the Nation; (2) a similar level of benefits cannot be achieved by modifying fleet behavior, gear selection or configuration, or other technical characteristic so that no overfishing would occur; and (3) the action will not cause any species or evolutionarily significant unit thereof to require protection under the Endangered Species Act. The CREFMP establishes formats and methods for defining overfishing definitions, maximum sustainable yield (MSY) control rules and reference points for coral reef ecosystem management unit species. NMFS recognizes that there is incomplete or no information available to evaluate the stock status for virtually all of the coral reef ecosystem management unit species, however, the definitions of overfishing in the plan will be revised accordingly when new information indicates that catch-per-unit-effort (CPUE), as an index for abundance, is found to be deficient in reflecting true abundance.

Comment 11: One commenter stated that CPUE should not be used as the primary data source for determining allowable exploitation rates or biomass reference points such as minimum stock size threshold (MSST) and that methods for determining MSY, optimum yield, and MSST should be made more precautionary.

Response: NMFS agrees that ideally CPUE would not be used as the primary data source for determining allowable exploitation rates or biomass reference points. However, there is a paucity of information on life histories, spawning biomass, fishing mortality, natural mortality, and ecological relationships of coral reef ecosystem resources covered by the CREFMP. As such, standardized CPUE and effort data represent the best information available at this time and were used to establish limits and reference point values consistent with the National Standard Guidelines. NMFS agrees that additional work needs to be conducted on western Pacific coral reef ecosystem fishery resources to improve estimates of biological parameters for the purpose of determining allowable exploitation rates. The CREFMP identifies region-specific research needs necessary for improving the information base on coral reef ecosystems for management.

Comment 12: One commenter requested clarification on the intent of the Council to include in the list of coral reef ecosystem management unit species, all species of cephalopods, including those that do not inhabit the coral reef ecosystem (water column and substrate within waters less than 50 fathoms in total depth). The commenter noted that the CREFMP lists the entire Class Cephalopoda (squid/octopus), as Potentially Harvested Coral Reef Taxa (PHCRT) which apparently would require a special permit issued by NMFS for harvesting any and all species of cephalopods. The commenter also recommended that three species of pelagic cephalopods be excluded from the PHCRT as they do not meet the definition of coral reef ecosystem management unit species as defined in the proposed rule published in the **Federal Register** on September 24, 2002 (67 FR 59813).

Response: NMFS agrees that species that inhabit the pelagic ecosystem for their entire life history are not considered as coral reef ecosystem management unit species. The proposed rule, published in the **Federal Register** on September 24, 2002 (67 FR 59813), clarified that CREFMP management unit species are 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. NMFS believes this definition is consistent with the intent of the Council and provides adequate clarification for the purpose of permit and reporting requirements under the CREFMP. Therefore, pelagic species of cephalopods are not coral reef ecosystem management unit species. Similarly, species that inhabit deep demersal marine ecosystems do not meet the CREFMP management unit species definition, are not meant to be managed under the CREFMP and should also be excluded from the PHCRT. In developing the coral reef ecosystem management unit species list, in particular the PHCRT list, the Council recognized the challenge involved in listing literally thousands of coral reef ecosystem species, and thus, chose to rely on a more general taxonomic classification scheme for certain groups of organisms to ensure that all coral reef ecosystem species, including those not yet described by science, could be managed under the CREFMP. To aid fishermen, NMFS will be issuing compliance guides on the CREFMP, including the Currently Harvested Coral Reef Taxa (CHCRT) and PHCRT. Additionally, these guides will provide further clarification on permit requirements and permit issuance among other regulatory and procedural requirements. Beyond this, NMFS, in consultation with the Council, will address specific inquiries on permit requirements on a case-by-case basis.

Changes From the Proposed Rule

This final rule contains changes to the regulatory text from the proposed rule. Throughout subpart J, the words "PIAO Administrator" which means Pacific Islands Area Office Administrator, is deleted and replaced with the words "Regional Administrator."

In § 660.12, Definitions, the words "Currently Harvested Coral Reef Ecosystem MUS", and "Potentially Harvested Coral Reef Ecosystem MUS" are deleted and replaced by the words "Currently Harvested Coral Reef Taxa" and "Potentially Harvested Coral Reef Taxa." These terms, which describe the two categories of Coral Reef Ecosystem management unit species, are identical to the terms used in Table 1.2 and Table 1.3 of the CREFMP. This change is also made in § 660.602(a)(1)(ii); § 660.602(a)(2) and; § 660.602(a)(3)(ii).

In 50 CFR part 660, subpart J, § 660.601 (Relation to other laws), the word "Secretary of Commerce" is deleted and replaced by the "Secretary of the Interior", as the subject pertains to national wildlife refuges

administered by the Department of the Interior. Also, in this paragraph, immediately following the words "National Wildlife Refuge", text is added to state "unless specifically authorized by the U.S. Fish and Wildlife Service,". This new language clarifies that fishing authorized under subpart J is not allowed within the boundaries of a national wildlife refuge, unless specifically authorized by the U.S. Fish and Wildlife Service.

In § 660.602(a)(3)(i), Exemptions, the first sentence is deleted and replaced with the following: "Any person issued a permit to fish under the Bottomfish and Seamount Groundfish FMP, Pelagics FMP, Crustaceans FMP or Precious Corals FMP who incidentally catches coral reef ecosystem MUS while fishing for bottomfish management unit species, crustaceans management unit species, Pacific pelagic management unit species, precious coral, or seamount groundfish."

This change is being made for three reasons. First, all persons issued a permit under the Bottomfish and Seamount Groundfish FMP, Pelagics FMP, Crustaceans FMP or Precious Corals FMP are already required to maintain accurate and complete records of catch, including any incidental catch of coral reef ecosystem MUS. Therefore, these persons will be exempted from the special permit requirement. Second, the word "targeting" is an ambiguous term and may not clearly convey the activity of fishing. Replacing this term with "fishing for", which is defined in 50 CFR 600.10, clearly conveys the intent or act of fishing. Third, the words "MUS listed under a separate FMP" is also ambiguous because it does not define to which MUS this exemption pertains. Replacing these words with four specific fishery management units as defined in 50 CFR 660.12 provides this clarity. Additionally, in the next sentence of this paragraph, the word "targeting" is again replaced with the words "fishing for" for the same reason previously explained above. Replacement of the word "targeting" with "fishing for" is also made in § 660.602(a)(3)(ii). Also in § 660.602(a)(3)(i) Exemptions, the second sentence beginning with, "It will be considered a rebuttable presumption * * *", is deleted in its entirety. The intent of the special permit requirement is to ensure that fisheries data is collected while fishing in any designated low-use MPA and while fishing for and retaining PHCRT. As clarified above, persons issued a permit under the Bottomfish and Seamount Groundfish FMP, Pacific Pelagic FMP, Crustacean FMP or Precious Coral FMP

are already required to maintain accurate and complete records of catch, including any incidental catch of coral reef ecosystem MUS. However, in determining whether a person is primarily fishing for coral reef ecosystem MUS or bottomfish management unit species, crustaceans management unit species, Pacific pelagic management unit species, precious coral, or seamount groundfish, the Council, as a general rule of thumb, considers that such person is fishing for 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. If, during processing of fisheries information, it is determined that such threshold has been exceeded by a Bottomfish and Seamount Groundfish FMP, Pelagics FMP, Crustaceans FMP or Precious Corals FMP permitted fisher, NMFS, the Coral Reef Ecosystem Plan Team, the relevant FMP Plan Team, and the affected local jurisdiction will, through a multi-agency and plan team coordination process, discuss and identify appropriate action for the Council to consider.

In § 660.602 (a)(3)(d), the entire paragraph beginning with "Low use MPAs special permits" until "specified in this section." is deleted and replaced with, "Special permit. The Regional Administrator shall issue a special permit in accordance with the criteria and procedures specified in this section." The original language contained in the preamble was redundant with the language stated in § 660.602(a)(1), § 660.602(a)(2) and § 660.602(a)(3) which describes the applicability of the special permit requirement.

In 50 CFR § 660.608(c), following "and 142 °E." the phrase "long., 16 °N. lat." is added. The inclusion of this phrase makes accurate the location of the line intersecting the outer boundary of the U.S. EEZ between CNMI and Guam regulatory area.

Classification

The Administrator, Pacific Islands Region, NMFS, determined that the final rule is consistent with the CREFMP, as partially approved on June 14, 2002, the national standards, other provisions of the Magnuson-Stevens Act, and other applicable laws.

The Council prepared a final environmental impact statement 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 implementing regulations (*i.e.*, selected alternative) is to prevent adverse impacts to the environment before they occur. This final rule is intended to maintain the sustainability of target and non-target coral reef ecosystem species; safeguard against substantial damage to the ocean and coastal habitats and/or essential fish habitat; 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 impact on target or non-target coral reef ecosystem species; promote biodiversity and ecosystem stability; and minimize, if not eliminate, negative social or economic impacts.

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

The Council prepared a FRFA describing the impact of the action on small entities. It incorporates the Initial Regulatory Flexibility Analysis (IRFA), the comments and responses to the proposed rule, and a summary of the analyses completed to support this action.

The following is a summary of the FRFA. The need for and objective of this final rule are stated in the summary and supplementary information sections of this notice and are not repeated here. None of the comments received on the proposed rule addressed the economic impacts of the rule.

Both large and small vessels affected by the final 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 FRFA, this rule would potentially affect 24 to 63 small 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 final rule. However, as a rough estimate, NMFS expects that approximately five special permit applications may 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 additional small entities (beyond those mentioned above) will be affected by the final rule, as most MPAs are far from inhabited areas and the majority of other fisheries operate outside of MPA waters utilizing gears that would continue to be allowed under this rule. However, small entities using fish or crab traps to target coral reef ecosystem management unit species throughout the coral reef ecosystem 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. These no-take MPAs are anticipated to have minimal impacts on small entities as sufficient fishing areas remain open to accommodate their displaced effort. This action has information collection requirements that are addressed elsewhere in this classification section.

Several alternatives to the measures in the final rule are examined in the FRFA. 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 preferred alternative with the following exceptions: It would not designate any no-take MPAs (low-use MPAs would be designated); it would not prohibit spearfishing at night with SCUBA/hookah gear for coral reef ecosystem management unit species; and it would not prohibit the harvesting of live rock or coral throughout the coral reef ecosystem regulatory area. This alternative was also rejected because it would not provide adequate 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 harvesting CHCRT and special permits for harvesting PHCRT in waters of the U.S. EEZ of the western Pacific region; prohibit spearfishing at night with SCUBA or a hookah and prohibit the take of live rock or coral. This alternative was rejected on the basis that

it would unnecessarily impede the sustainable use of coral reef ecosystem resources, while the preferred alternative would provide adequate conservation and protection for these resources. A copy of this analysis is available from the Council (*see ADDRESSES*).

Section 212 of the Small Business Regulatory Enforcement and 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 the rule or group of rules. Copies of this final rule and the guide may be obtained from the Pacific Islands Regional Office.

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). These collections were approved by OMB with the following control numbers and response times: Control Number 0648-0360 for marking fishing gear (2 minutes); 0648-0462 for an at-sea notification (3 minutes), for a logbook (30 minutes per day), and for transshipment reporting (15 minutes per day); and 0648-0463 for a permit application (2 hours) and a permit appeal (3 hours). These response time 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. Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to Alvin Katekaru, Pacific Islands Region, NMFS, 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814, and by e-mail to David_Rostker@omb.eop.gov, or faxed to (202) 395-7285.

Notwithstanding any other provisions of the law, no person is required to respond to, and no person shall be subject to penalty to comply with, a collection of information subject to the requirement of the PRA, unless that collection of information displays a currently valid OMB control number.

An informal consultation under the Endangered Species Act was concluded for the CREFMP on March 7, 2002. As a result of the informal consultation, the NMFS Regional Administrator determined that fishing activities conducted under this rule are not likely to affect adversely endangered or threatened species or critical habitat

under NMFS's jurisdiction. On May 22, 2002, the USFWS concurred with the determination of NMFS that the activities conducted under this rule are not likely to adversely affect listed species under USFWS's exclusive jurisdiction (*i.e.*, seabirds and terrestrial plants) and listed species shared with NMFS (*i.e.*, sea turtles).

This final rule is consistent with Executive Order 13089, which is intended to preserve and protect the biodiversity, health, and social and economic value of the U.S. coral reef ecosystems and the marine environment.

List of Subjects

50 CFR Part 600

Fisheries, Fishing.

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: February 17, 2004.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR parts 600 and 660 are amended as follows:

TABLE 1 TO § 600.502.—ADDRESSES

NMFS regional administrators	NMFS science and research directors	U.S. Coast Guard commanders
*	*	*
Administrator, Pacific Islands Region, National Marine Fisheries Service, NOAA, 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814.	Director, Pacific Islands Fisheries Science Center, National Marine Fisheries Service, NOAA, 2570 Dole Street, Honolulu, HI 96822.	Commander, Fourteenth Coast Guard District, 300 Ala Moana Blvd., Honolulu, HI 96850.

TABLE 2 TO § 600.502.—AREAS OF RESPONSIBILITY OF NMFS AND U.S. COAST GUARD OFFICES

Area of responsibility/fishery	National Marine Fisheries Service	U.S. Coast Guard
*	*	*
Pacific Ocean off Hawaii, American Samoa, Guam, Commonwealth of the Northern Mariana Islands, and U.S. Insular Possessions in the Central and Western Pacific.	Administrator, Pacific Islands Region	Commander, Fourteenth Coast Guard District.

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

■ 3. The authority citation for part 660 continues to read as follows:

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

■ 4. 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.

■ 5. Section 660.12 is amended by revising the introductory text and the

definitions for “Pacific pelagic management unit species” and “Regional Administrator”; and adding definitions for the “Commonwealth of the Northern Mariana Islands (CNMI)”, “CNMI offshore area”, “Coral reef ecosystem management unit species”, “Coral reef ecosystem regulatory area”, “Currently harvested coral reef taxa”, “Hookah breather”, “Live rock”, “Low use marine protected area”, “No-take MPA”, “Potentially harvested coral reef taxa(PHCRT)”, and “Special permit”, alphabetically 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.

PART 600—MAGNUSON-STEVENSON ACT PROVISIONS

■ 1. The authority citation for part 600 is revised to read as follows:

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

■ 2. In § 600.502, a new address is added at the end of Table 1 and the last row of Table 2 is revised to read as follows:

§ 600.502 Vessel reports.

* * * * *

CNMI offshore area means the portion of the U.S. EEZ around the CNMI extending seaward from a line drawn 3 nautical miles from the baseline around the CNMI from which the territorial sea is measured, to 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 unit species (Coral reef ecosystem MUS) means all of the Currently Harvested Coral Reef Taxa listed in Table 3 and Potentially Harvested Coral Reef Taxa listed Table 4 of this part and which spend the majority of their non-pelagic (post-settlement) life stages within waters less than or equal to 50 fathoms in total depth.

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 west of 160°50' W. long.

* * * * *

Currently harvested coral reef taxa (CHCRT) means coral reef associated species, families, or subfamilies, as described in Table 3 of this part, 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 from many of these species have been

analyzed by regional management agencies.

* * * * *

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 MPA means an area of the U.S. EEZ that is closed to fishing for or harvesting of management unit species, precious corals and seamount groundfish, as defined in this section.

* * * * *

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>Alapias pelagicus</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>
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	<i>family Bramidae</i>
Other tuna relatives	<i>Auxis spp., Scomber spp.; Allothunus spp.</i>

Potentially harvested coral reef taxa (PHCRT) means coral reef associated species, families, or subfamilies, as listed in Table 4 of this part, 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). Coral reef ecosystem management unit species that are not listed as management unit species, precious corals, seamount groundfish, as defined in this section, or listed as CHCRT in Table 3 of this part.

* * * * *

Regional Administrator means Director, Pacific Islands Region, NMFS (see Table 1 of § 600.502 for address).

* * * * *

Special permit means a permit issued to allow fishing for coral reef ecosystem

management unit species in low-use MPAs or to fish for any PHCRT.

* * * * *

■ 6. 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 Pacific Island Region Federal fisheries permit application form may be obtained from the Pacific Island Region Office (PIRO) 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 Regional Administrator may issue a special permit in accordance with § 660.601(d)(3).

(f) * * *

(2) PIRO 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.

* * * * *

■ 7. 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 660.602 must maintain on board the vessel an accurate and complete record of catch, effort and other data on report forms provided by the Regional 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 Regional 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 Regional Administrator within 30 days of each landing of MUS.

(b) *Transshipment logbooks.* Any person subject to the requirements of § 660.21(c) or § 660.602(a)(2) must maintain on board the vessel an accurate and complete NMFS transshipment logbook containing report forms provided by the Regional 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 Regional 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 Regional 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 of this chapter of this chapter

(g) *State reporting.* Any person who has a permit under § 660.21, 660.61, or 660.601 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.

■ 8. 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 management unit species, crustacean management unit species, Pacific pelagic management unit species, precious coral, seamount groundfish or coral reef ecosystem MUS.

■ 8a. 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 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]

■ 9. 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 the management regimes of different Federal agencies with shared management responsibilities of fishery resources within the Coral reef ecosystem regulatory area, fishing authorized under this subpart is not allowed within the boundary of a National Wildlife Refuge unless specifically authorized by the USFWS, regardless of whether that refuge was established by action of the President or the Secretary of the Interior.

§ 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 Taxa in the coral reef ecosystem regulatory area; or

(iii) Coral reef ecosystem MUS in the coral reef ecosystem 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 coral reef ecosystem regulatory area to land or transship PHCRT, 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 issued a permit to fish under the Bottomfish and Seamount Groundfish FMP, Pelagics FMP, Crustaceans FMP or Precious Corals FMP who incidentally catches coral reef ecosystem MUS while fishing for bottomfish management unit species, crustaceans management unit species, Pacific pelagic management unit species, precious coral, or seamount groundfish.

(ii) Any person fishing for CHCRT outside of an MPA, who does not retain any incidentally caught PHCRT; 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) *Special permit.* The Regional Administrator shall issue a special permit 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 Regional 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 Regional 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 Regional 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 Regional Administrator will consult with the Council through its 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 Regional 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 Regional Administrator to the Council for the rejection.

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

(v) Within 30 working days after the consultation in paragraph (d)(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 Regional 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 § 600.602 of this chapter;

(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 Regional 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 Regional 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 coral reef ecosystem 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 coral reef ecosystem 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** notice, 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. The Council's 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. long., 16° N. lat.

§ 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 coral reef fisheries of the western Pacific region. 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 Regional Administrator after considering the views of its advisory bodies.

■ 10. In part 660, Tables 3 and 4 are added to read as follows:

TABLE 3 TO PART 660.—CURRENTLY HARVESTED CORAL REEF TAXA

Family name	Common name (scientific name)
Acanthuridae (Surgeonfishes)	Orange-spot surgeonfish (<i>Acanthurus olivaceus</i>) Yellowfin surgeonfish (<i>Acanthurus xanthopterus</i>) Convict tang (<i>Acanthurus triostegus</i>) Eye-striped surgeonfish (<i>Acanthurus dussumieri</i>) Blue-lined surgeon (<i>Acanthurus nigroris</i>) Whitebar surgeonfish (<i>Acanthurus leucopareius</i>) Blue-banded surgeonfish (<i>Acanthurus lineatus</i>) Blackstreak surgeonfish (<i>Acanthurus nigricauda</i>) Whitecheek surgeonfish (<i>Acanthurus nigricans</i>) White-spotted surgeonfish (<i>Acanthurus guttatus</i>) Ringtail surgeonfish (<i>Acanthurus blochii</i>) Brown surgeonfish (<i>Acanthurus nigrofuscus</i>)

TABLE 3 TO PART 660.—CURRENTLY HARVESTED CORAL REEF TAXA—Continued

Family name	Common name (scientific name)
	Elongate surgeonfish (<i>Acanthurus mata</i>)
	Mimic surgeonfish (<i>Acanthurus pyroferus</i>)
	Yellow-eyed surgeonfish (<i>Ctenochaetus strigosus</i>)
	Striped bristletooth (<i>Ctenochaetus striatus</i>)
	Twospot bristletooth (<i>Ctenochaetus binotatus</i>)
	Bluespine unicornfish (<i>Naso unicornus</i>)
	Orangespine unicornfish (<i>Naso lituratus</i>)
	Humpnose unicornfish (<i>Naso tuberosus</i>)
	Black tongue unicornfish (<i>Naso hexacanthus</i>)
	Bignose unicornfish (<i>Naso vlamingii</i>)
	Whitemargin unicornfish (<i>Naso annulatus</i>)
	Spotted unicornfish (<i>Naso brevirostris</i>)
	Humpback unicornfish (<i>Naso brachycentron</i>)
	Barred unicornfish (<i>Naso thynnoides</i>)
	Gray unicornfish (<i>Naso caesius</i>)
Balistidae (Triggerfishes)	Titan triggerfish (<i>Balistoides viridescens</i>)
	Clown triggerfish (<i>Balistoides conspicillum</i>)
	Orangestriped triggerfish (<i>Balistapus undulatus</i>)
	Pinktail triggerfish (<i>Melichthys vidua</i>)
	Black triggerfish (<i>Melichthys niger</i>)
	Blue Triggerfish (<i>Pseudobalistes fucus fucus</i>)
	Picassofish (<i>Rhinecanthus aculeatus</i>)
	Wedge Picassofish (<i>Balistoides rectangulus</i>)
	Bridled triggerfish (<i>Sufflamen fraenatus</i>)
Carangidae (Jacks)	Bigeye scad (<i>Selar crumenophthalmus</i>)
	Mackerel scad (<i>Decapterus macarellus</i>)
Carcharhinidae (Sharks)	Grey reef shark (<i>Carcharhinus amblyrhynchos</i>)
	Silvertip shark (<i>Carcharhinus albimarginatus</i>)
	Galapagos shark (<i>Carcharhinus galapagensis</i>)
	Blacktip reef shark (<i>Carcharhinus melanopterus</i>)
	Whitetip reef shark (<i>Triaenodon obesus</i>)
Holocentridae (Soldierfish/Squirrelfish)	Bigscale soldierfish (<i>Myripristis berndti</i>)
	Bronze soldierfish (<i>Myripristis adusta</i>)
	Blotcheye soldierfish (<i>Myripristis murdjan</i>)
	Brick soldierfish (<i>Myripristis amaena</i>)
	Scarlet soldierfish (<i>Myripristis pralinia</i>)
	Violet soldierfish (<i>Myripristis violacea</i>)
	Whitetip soldierfish (<i>Myripristis vittata</i>)
	Yellowfin soldierfish (<i>Myripristis chryseres</i>)
	Pearly soldierfish (<i>Myripristis kuntzei</i>)
	Double tooth squirrel fish (<i>Myripristis hexagona</i>)
	Tailspot squirrelfish (<i>Sargocentron caudimaculatum</i>)
	Blackspot squirrelfish (<i>Sargocentron melanospilos</i>)
	File-lined squirrelfish (<i>Sargocentron microstoma</i>)
	Pink squirrelfish (<i>Sargocentron tieroides</i>)
	Crown squirrelfish (<i>Sargocentron diadema</i>)
	Peppered squirrelfish (<i>Sargocentron punctatissimum</i>)
	Blue-lined squirrelfish (<i>Sargocentron tiere</i>)
	Hawaiian squirrelfish (<i>Sargocentron xantherythrum</i>)
	Squirrelfish (<i>Sargocentron furcatum</i>)
	Saber or Long jaw squirrelfish (<i>Sargocentron spiniferum</i>)
	Spotfin squirrelfish (<i>Neoniphon</i> spp.)
Kuhliidae (Flag-tails)	Hawaiian flag-tail (<i>Kuhlia sandvicensis</i>)
	Barred flag-tail (<i>Kuhlia mugil</i>)
Kyphosidae Rudderfish	Rudderfish (<i>Kyphosus biggibus</i>)
	Rudderfish (<i>Kyphosus cinerascens</i>)
	Rudderfish (<i>Kyphosus vaigiensis</i>)
Labridae (Wrasses)	Saddleback hogfish (<i>Bodianus bilunulatus</i>)
	Napoleon wrasse (<i>Cheilinus undulatus</i>)
	Triple-tail wrasse (<i>Cheilinus trilobatus</i>)
	Floral wrasse (<i>Cheilinus chlorourus</i>)
	Harlequin tuskfish (<i>Cheilinus fasciatus</i>)
	Ring-tailed wrasse (<i>Oxycheilinus unifasciatus</i>)
	Bandcheek wrasse (<i>Oxycheilinus diagrammus</i>)
	Arenatus wrasse (<i>Oxycheilinus arenatus</i>)
	Razor wrasse (<i>Xyrichtys pavo</i>)
	Whitepatch wrasse (<i>Xyrichtes aneimensis</i>)
	Cigar wrasse (<i>Cheilio inermis</i>)
	Blackeye thicklip (<i>Hemigymnus melapterus</i>)
	Barred thicklip (<i>Hemigymnus fasciatus</i>)
	Three-spot wrasse (<i>Halichoeres trimaculatus</i>)
	Checkerboard wrasse (<i>Halichoeres hortulanus</i>)

TABLE 3 TO PART 660.—CURRENTLY HARVESTED CORAL REEF TAXA—Continued

Family name	Common name (scientific name)
	Weedy surge wrasse (<i>Halichoeres margaritaceus</i>)
	Goldstripe wrasse (<i>Halichoeres zeylonicus</i>)
	Surge wrasse (<i>Thalassoma purpuraceum</i>)
	Red ribbon wrasse (<i>Thalassoma quinquevittatum</i>)
	Sunset wrasse (<i>Thalassoma lutescens</i>)
	Longface wrasse (<i>Hologymnosus doliatus</i>)
	Rockmover wrasse (<i>Novaculichthys taeniourus</i>)
Mullidae (Goatfishes)	Yellow goatfish (<i>Mulloidichthys spp.</i>)
	Orange goatfish (<i>Mulloidichthys pfeugeri</i>)
	Yellowfin goatfish (<i>Mulloidichthys vanicolensis</i>)
	Yellowstripe goatfish (<i>Mulloidichthys flaviolineatus</i>)
	Banded goatfish (<i>Parupeneus spp.</i>)
	Dash-dot goatfish (<i>Parupeneus barberinus</i>)
	Doublebar goatfish (<i>Parupeneus bifasciatus</i>)
	Redspot goatfish (<i>Parupeneus heptacanthus</i>)
	White-lined goatfish (<i>Parupeneus ciliatus</i>)
	Yellowsaddle goatfish (<i>Parupeneus cyclostomas</i>)
	Side-spot goatfish (<i>Parupeneus pleurostigma</i>)
	Indian goatfish (<i>Parupeneus indicus</i>)
	Multi-barred goatfish (<i>Parupeneus multifasciatus</i>)
Mugilidae (Mulletts)	Bantail goatfish (<i>Upeneus arge</i>)
	Stripped mullet (<i>Mugil cephalus</i>)
	Engel's mullet (<i>Moolgarda engeli</i>)
	False mullet (<i>Neomyxus leuciscus</i>)
	Fringelip mullet (<i>Crenimugil crenilabis</i>)
Muraenidae (Moray eels)	Yellowmargin moray eel (<i>Gymnothorax flavimarginatus</i>)
	Giant moray eel (<i>Gymnothorax javanicus</i>)
	Undulated moray eel (<i>Gymnothorax undulatus</i>)
Octopodidae	Octopus (<i>Octopus cyanea</i> ; <i>Octopus ornatus</i>)
Polynemidae	Threadfin (<i>Polydactylus sexfilis</i>)
Pricanthidae (Bigeye)	Glasseye (<i>Heteropriacanthus cruentatus</i>)
	Bigeye (<i>Priacanthus hamrur</i>)
Scaridae (Parrotfishes)	Humphead parrotfish (<i>Bulbometapon muracatum</i>)
	Parrotfish (<i>Scarus spp.</i>)
	Pacific longnose parrotfish (<i>Hipposcarus longiceps</i>)
	Stareye parrotfish (<i>Catolomus carolinus</i>)
Scombridae	Dogtooth tuna (<i>Gymnosarda unicolor</i>)
Siganidae (Rabbitfish)	Forktail rabbitfish (<i>Siganus aregentus</i>)
	Golden rabbitfish (<i>Siganus guttatus</i>)
	Gold-spot rabbitfish (<i>Siganus punctatissimus</i>)
	Randall's rabbitfish (<i>Siganus randalli</i>)
	Scribbled rabbitfish (<i>Siganus spinus</i>)
	Vermiculate rabbitfish (<i>Siganus vermiculatus</i>)
Sphyrinae (Barracuda)	Heller's barracuda (<i>Sphyræna helleri</i>)
	Great Barracuda (<i>Sphyræna barracuda</i>)
Turbinidae (turban shells/green snails)	Green snails (<i>Turbo spp.</i>)
Aquarium Taxa/Species	Acanthuridae
	Yellow tang (<i>Zebrasoma flavescens</i>)
	Yellow-eyed surgeon fish (<i>Ctenochaetus strigosus</i>)
	Achilles tang (<i>Acanthurus achilles</i>)
	Muraenidae
	Dragon eel (<i>Enchelycore pardalis</i>)
	Zanclidae
	Morrish idol (<i>Zanclus cornutus</i>)
	Pomacanthidae
	Angelfish (<i>Centropyge shepardi</i> , <i>Centropyge flavissimus</i>)
	Cirrhitidae
	Flame hawkfish (<i>Neocirrhitis armatus</i>)
	Chaetodontidae
	Butterflyfish (<i>Chaetodon auriga</i> , <i>Chaetodon lunula</i> , <i>Chaetodon melannotus</i> , <i>Chaetodon ephippium</i>)
	Pomacentridae
	Damselfish (<i>Chromis viridis</i> , <i>Dascyllus aruanus</i> , <i>Dascyllus trimaculatus</i>)
	Sabellidae
	Featherduster worm

TABLE 4 TO PART 660.—POTENTIALLY HARVESTED CORAL REEF TAXA

Labridae spp. (wrasses) (Those species not listed in Table 3)	Ephippidae (batfish)
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TABLE 4 TO PART 660.—POTENTIALLY HARVESTED CORAL REEF TAXA—Continued

Carcharhinidae spp. Sphyrnidae spp. (Those species not listed in Table 3).	Monodactylidae (monos)
Dasyatidae, Myliobatidae, Mobulidae (rays)	Haemulidae (sweetlips)
Serranidae spp. (groupers) (Those species not listed in Table 3 or are not bottomfish management unit species).	Echineidae (remoras)
Carangidae (jacks/trevallies) (Those species not listed in Table 3 or are not bottomfish management unit species).	Malacanthidae (tilefish)
Holocentridae spp. (soldierfish/squirrelfish) (Those species not listed in Table 3).	Acanthoclinidae (spiny basslets)
Mullidae spp. (goatfish) (Those species not listed in Table 3)	Pseudochromidae (dottybacks)
Acanthuridae spp. (surgeonfish/unicornfish) (Those species not listed in Table 3).	Plesiopidae (prettyfins)
Lethrinidae spp. (emperor fish) (Those species not listed in Table 3 or are not bottomfish management unit species).	Tetrarogidae (waspsfish)
Chlopsidae, Congridae, Moringuidae, Ophichthidae (eels) Muraenidae (morays eels) (Those species not listed in Table 3).	Caracanthidae (coral crouchers)
Apogonidae (cardinalfish)	Grammistidae (soapfish)
Zanclidae spp. (moorish idols) (Those species not listed in Table 3)	<i>Aulostomus chinensis</i> (trumpetfish)
Chaetodontidae spp. (butterflyfish) (Those species not listed in Table 3)	<i>Fistularia commersoni</i> (coronetfish)
Pomacanthidae spp. (angelfish) (Those species not listed in Table 3) ...	Anomalopidae (flashlightfish)
Pomacentridae spp. (damselfish) (Those species not listed in Table 3)	Clupeidae (herrings)
Scorpaenidae (scorpionfish)	Engraulidae (anchovies)
Blenniidae (blennies)	Gobiidae (gobies)
Sphyrnidae spp. (barracudas) (Those species not listed in Table 3) ..	Lutjanidae (snappers) (Those species that are not listed in Table 3 or are not bottomfish management unit species)
Pinguipedidae (sandperches)	Ballistidae/Monocanthidae spp. (Those species not listed in Table 3)
<i>Gymnosarda unicolor</i>	Siganidae spp. (rabbit fish) (Those species not listed in Table 3)
Bothidae/Soleidae/Pleuronectidae (flounder/sole)	Kyphosidae spp. (rudderfish) (Those species not listed in Table 3)
Ostraciidae (trunkfish)	Caesionidae (fusiliers)
Tetrodontidae/Diodontidae (puffer/porcupinefish)	Cirrhitidae (hawkfish) (Those species not listed in Table 3)
Stony corals	Antennariidae (frogfishes)
Heliopora (blue corals)	Syngnathidae (pipefishes/seahorses)
Tubipora (organpipe corals)	Echinoderms (e.g., sea cucumbers, sea urchins)
Azooxanthellates (ahermatypic corals)	Mollusca (Those species not listed in Table 3)
Fungiidae (mushroom corals)	Sea Snails (gastropods) (Those species not listed in Table 3)
Small and large polyp corals	<i>Trochus</i> spp.
Millepora (firecorals)	Opisthobranchs (sea slugs)
Soft corals and Gorgonians	<i>Pinctada margaritifera</i> (black lipped pearl oyster)
Actinaria (anemones)	Tridacnidae (giant clams)
Zoanthinaria (soft zoanthid corals)	Other Bivalves (other clams)
Sponges (Porifera)	Cephalopods
Hydrozoans	Crustaceans (Lobsters, Shrimps/mantis shrimps, true crabs and hermit crabs (not listed as crustacean management unit species))
Bryozoans	Stylasteridae (lace corals)
Tunicates (sea squirts)	Solanderidae (hydroid corals)
	Annelids (segmented worms) (Those species not listed in Table 3)
	Algae (seaweeds)
	Live rock

All other coral reef ecosystem management unit species that are marine plants, invertebrates, and fishes that are not listed in Table 3 or are not bottomfish management unit species, crustacean management unit species, Pacific pelagic management unit species, precious coral or sea-mount groundfish.