

RECORD OF DECISION

**Fishery Management Plan for Coral Reef Ecosystems
of the Western Pacific Region and parallel amendments to the Fishery
Management Plan for Bottomfish & Seamount groundfish (Amendment 7),
Crustaceans (Amendment 11), Pelagics (Amendment 10), and Precious Corals
(Amendment 5) of the Western Pacific Region**

June 14, 2002

The National Marine Fisheries Service (NMFS) has prepared this Record of Decision (ROD) pursuant to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act (NEPA) (40 CFR Parts 1500 - 1508), and NOAA guidance (NOAA Administrative Order 216-6) implementing NEPA. Under 50 CFR 1505.2, each agency shall prepare a concise ROD. The record, which may be integrated into any other record prepared by the agency, shall:

(a) State what the decision was.

(b) Indicate all alternatives considered by the agency in reaching its decision, specifying the alternative or alternatives which were considered to be environmentally preferable. An agency may discuss preferences among alternatives based on relevant factors including economic and technical considerations and agency statutory missions. An agency shall identify and discuss all such factors including any essential considerations of national policy which were balanced by the agency in making its decision.

(c) State whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why they were not. A monitoring and enforcement program shall be adopted and summarized where applicable for any mitigation.

Background

The Western Pacific Fishery Management Council (Council) prepared the Coral Reef Ecosystems Fishery Management Plan and parallel amendments to the fishery management plans for Bottomfish & Seamount groundfish (Amendment 7), Crustaceans (Amendment 11), Pelagics (Amendment 10), and Precious corals (Amendment 5) of the Western Pacific Region (hereafter collectively referred to as "CREFMP"). The CREFMP is the Nation's first ecosystem-based management plan to govern the coral reef ecosystems and associated habitats in the U.S. exclusive economic zone (EEZ) around American Samoa, Guam, Hawaii, Commonwealth of the Northern Mariana Islands (CNMI) (seaward of 3 nm from the coastline)¹, and the mostly uninhabited, U.S. Pacific remote island areas (PRIA)² in

¹ Much of the EEZ around CNMI is truncated by adjacent EEZs of Guam and Japan.

² Kingman Reef, Jarvis Island, Howland Island, Baker Island and Wake Island, Johnston Atoll, Palmyra Atoll, and Midway Atoll (the latter physically located in the Northwestern Hawaiian Islands).

the central Pacific region.

The Council also prepared a Draft Environmental Statement which was made available to the public on January 12, 2001 (66 FR 2903). A Notice of Availability for the Final Environmental Impact Statement was published in the *Federal Register* on May 10, 2002 (67 FR 31801).

The CREFMP (Preferred Alternative): (1) Designates marine protected areas comprised of no-take and low-use areas in the EEZ around the NHI, PIA, and American Samoa's Rose Atoll. In the no-take MPAs, all harvesting of marine species is prohibited (except for scientific research); in low-use MPAs, only controlled harvest of marine species is allowed with a special permit. No-take MPAs would total 12 percent of the coral reefs in the region. (2) Establishes a permit requirement for directed harvest of all "potentially harvested coral reef taxa" (defined in the CREFMP) in the EEZ. (3) Establishes reporting requirements for holders of special permits. (4) Specifies the use of selective, non-destructive gears for harvesting management unit species. (5) Establishes a framework process to allow for future regulatory adjustments to the coral reef ecosystem management program. The CREFMP also establishes a formal process to allow the various fishery management plan teams, i.e., bottomfish and seamount groundfish, crustaceans, pelagics, and precious coral, to coordinate their discussion of relevant fishery issues with the coral reef ecosystem plan team; facilitates consistent State and territorial level management of coral reef resources; creates social, economic, and political incentives for sustainable use and disincentives for non-sustainable use of coral reef resources; and fosters education, public outreach, and "coral reef management diplomacy." The CREFMP designates maximum sustainable yield (MSY), MSY levels, and over fishing standards for all species in the management unit collectively. The plan divides the management unit into two groups: harvested coral reef taxa and non-targeted coral reef taxa; identifies essential fish habitat and prescribes measures to protect such habitat; describes fishing sectors; and addresses bycatch and other requirements of the Magnuson-Stevens Act.

Decision

NMFS has partially approved the Fishery Management Plan for Coral Reef Ecosystems of the Western Pacific Region, including Amendments to the Western Pacific Pelagics, Bottomfish & Seamount Groundfish, Precious Corals, and Crustaceans Fishery Management Plans.

This action approves those portions of the CREFMP applicable to ocean waters off the main Hawaiian Islands, American Samoa, Guam, CNMI (seaward of 3 nm from the coastline), and Kingman Reef, Jarvis Island, Howland Island, Baker Island and Wake Island, Johnston Atoll, and Palmyra Atoll. NMFS disapproved those portions of the CREFMP that would have applied to ocean waters off the Northwestern Hawaiian Islands (NWHI) i.e., all waters of the U.S. EEZ around the NWHI west of 160°50' W. longitude. This action is a modification of the CREFMP's

Preferred Alternative in that the agency decision is to disapprove only the NWHI component of the plan, and approve the remaining portions of the CREFMP.

NMFS has taken this action (selecting a modified Preferred Alternative) because the CREFMP management program that the Council proposed for the NWHI appears to be in conflict with, or duplicates, the existing resource management regime in effect under Executive Order 13178 (December 2000) and Executive Order 13196 (January 2001). These Executive Orders together establish the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve (Reserve). The management of the NWHI fisheries and coral reef ecosystem resources within the Reserve is being conducted under the authority of National Marine Sanctuary Act with the collaboration of the Council, the Department of Commerce (National Oceanic and Atmospheric Administration), the Department of the Interior, and the State of Hawaii.

NMFS has approved CREFMP with respect to the U.S. Pacific island areas, except NWHI, to prevent increasing fishing pressure on coral reef ecosystem resources in these areas. At present, these resources are either unprotected or in need of additional safeguards.

Alternatives Considered:

1. No Action. No new MPAs would be established. Management measures under existing fisheries management plans will continue. These include but are limited to no longline fishing within 50 miles of all NWHI; prohibition on commercial lobster fishing within 0 - 10 fm around all NWHI and within 20 nm off Laysan Island, no bottom fishing around the Hancock Seamount (closure extended until 2004), and no harvesting of precious corals in the NWHI "Wespac" refugia.
2. Provide Minimal Additional Protection to Coral Reef Ecosystems. This alternative would establish low-use MPAs around the NWHI and PRIA, and prohibit anchoring of large vessels on the offshore southern banks in Guam. Under this alternative, permits would be required for any harvest of lesser understood species and for any directed harvest within low-use MPAs, and reporting requirements and gear restrictions would be imposed. However, no-take MPAs would not be established. These measures would also apply to all existing western Pacific fishery management plans (bottomfish and seamount groundfish, crustaceans, pelagics, and precious corals) via parallel amendments to those plans.
3. Provide Substantial Additional Protection to Coral Reef Ecosystems (Preferred Alternative). (Described above)
4. Provide Maximum Additional Protection to Coral Reef Ecosystems (environmentally preferred alternative). Under this alternative, larger (0 - 100 fm) no-take MPAs would be established in the EEZ waters of the western Pacific region. Because of the extent of the no-take MPAs, there would be no low-use MPAs; gear restrictions and MPA

vessel insurance coverage would be required throughout the region. These measures would also apply to all existing western Pacific fisheries management plans (bottomfish and seamount groundfish, crustaceans, pelagics, and precious corals) implemented by parallel amendments to those plans.

5. Selected Alternative (Variant on Alternative 3). This alternative governs the coral reef ecosystem fisheries and fishing activities in the U.S. exclusive economic zone (EEZ) around American Samoa, Guam, Hawaii (main Hawaiian Islands only), CNMI (seaward of 3 nm from the coastline), and the PRIA, not including Midway Atoll. Management measures under this alternative would: (1) Designate marine protected areas comprised of no-take and low-use areas in the EEZ around the PRIA (not including Midway Atoll) and American Samoa's Rose Atoll. In the no-take MPAs, all harvesting of marine species, including management unit species of existing fishery management plans, is prohibited (except for scientific research); in low-use MPAs, only controlled harvest of marine species is allowed with a special permit or permits issued under the authority of existing fishery management plans. (2) Establish a permit requirement for directed harvest of all "potentially harvested coral reef taxa" (defined in the CREFMP) in the EEZ. (3) Establish reporting requirements for holders of special permits. (4) Specify the use of selective, non-destructive gears for harvesting management unit species. (5) Establish a framework process to allow for future regulatory adjustments to the coral reef ecosystem management program. The FMP would also establish a formal process to allow the various fishery management plan teams, i.e., bottomfish and seamount groundfish, crustaceans, pelagics, and precious coral, to coordinate their discussion of relevant fishery issues with the coral reef ecosystem plan team; facilitate consistent State and territorial level management of coral reef resources; create social, economic, and political incentives for sustainable use and disincentives for non-sustainable use of coral reef resources; and foster education public outreach and "coral reef management diplomacy." The CREFMP designates maximum sustainable yield (MSY), MSY levels, and overfishing standards for all species in the management unit collectively. The plan divides the management unit into two groups: harvested coral reef taxa and non-targeted coral reef taxa; identifies essential fish habitat and prescribes measures to protect such habitat; describes fishing sectors; and addresses bycatch and other requirements of the Magnuson-Stevens Act.

U.S. Fish and Wildlife Service (USFWS) Management Jurisdiction

The USFWS is concerned that the CREFMP would duplicate, if not undermine, USFWS' management authority over the nearshore resources in EEZ waters of nine national wildlife refuges in the western Pacific region. The refuges of concern are the Hawaiian Islands National Wildlife Refuge and the Midway Atoll National Wildlife Refuge located in the NWHI, as well as the Palmyra, Kingman, Johnston, Howland, Baker, and Jarvis National Wildlife Refuges in the PRIA, and the Rose Atoll National Wildlife Refuge in American Samoa. Staff members of

the USFWS expressed concern that the CREFMP would allow fishermen to harvest coral reef resources in refuge waters within the EEZ, whereas in fact refuge regulations generally prohibit all commercial fishing within refuge boundaries. This disparity in management programs would, according to USFWS, result in conflicting Federal management programs and confusion for commercial fishers who may mistakenly believe that commercial fishing is allowed in national wildlife refuges.

USFWS requested NMFS to make clear in the CREFMP's Record of Decision and regulations implementing the CREFMP that fishing within the affected national wildlife refuges is allowed only if specifically authorized by USFWS. NMFS has agreed to state in the preamble to the proposed rule that the CREFMP cannot, and does not, abolish or amend prohibitions or restrictions on fishing imposed under other Federal laws, such as the National Wildlife Refuge System Administration Act. Furthermore, regulatory language is proposed to be codified that would state these regulations do not allow fishing in a refuge unless specifically authorized by USFWS.

Endangered Species Act (ESA):

On March 7, 2002, an informal ESA section 7 consultation was concluded regarding the CREFMP. The NMFS Office of Protected Resources determined that the proposed action is not likely to adversely affect any endangered or threatened resources or critical habitat under NMFS's jurisdiction. Consultation with the USFWS with respect to listed species (i.e., seabirds and terrestrial plants) and listed species shared with NMFS (i.e., sea turtles under its jurisdiction) was concluded on May 22, 2002. On May 22, 2002, the USFWS concurred with NMFS's determination that general activities proposed in the CREFMP are not likely to adversely affect listed species.

Factors Considered in Making Decision:

The Council recommended some measures, such as MPAs, that would govern the fisheries and fishing activities in the same geographic area as the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve ("Reserve"). These measures, however, appear to conflict with certain conservation provisions contained in Executive Order 13178 (December 2000) and Executive Order 13196 (January 2001), which together established the Reserve. Section 7(b)(5) of E.O. 13178 generally prohibits the harvest of all living and nonliving marine resources throughout the Reserve. The Reserve extends seaward from the boundary of the State of Hawaii out to 50 nm around the NWHI (waters within the Midway Atoll and Hawaiian Islands National Wildlife Refuges are not included in the Reserve). Since, under the CREFMP, no-take and low-use MPAs proposed for the EEZ around the NWHI predominantly occur within the boundary of the Reserve, these MPAs appear to either conflict with, or even duplicate, the Reserve's resource management regime. Coral ecosystem resources are adequately protected and conserved under the Reserve. Promulgating additional regulations

would appear to contradict the measures that are already applicable in the Reserve; would almost certainly confuse the public; and at best would be unnecessary and redundant.

In the Notice of Availability of the CREFMP, NMFS announced that "the Secretary of Commerce is likely to partially disapprove those parts of the CREFMP that govern fishing in the NWHI." Furthermore, on March 7, 2002, NMFS disapproved certain portions of a proposed regulatory amendment, recommended by the Council, governing the NWHI precious coral fishery because of inconsistency with the provisions of E.O. 13178 and 13196 (67 FR 119, 41, March 18, 2002).

Summary of impacts under the selected alternative:

The Notice of Availability for the CREFMP Final Environmental Impact Statement (FEIS) (Volume II, October 2001) was published in the *Federal Register* on May 10, 2002, (67 FR 31801).

The FEIS analyzes the impacts of the coral reef ecosystem management alternatives in the CREFMP. It also evaluates the environmental impact of the parallel amendments to the existing bottomfish and seamount groundfish, crustaceans, pelagics, and precious corals fishery management plans. This ROD incorporates by reference the analyses and conclusions of the FEIS. The impacts of the Selected Alternative, based substantially on the FEIS, are presented below:

Environmental Impacts:

- Because there is currently low fishing effort for coral reef management unit taxa in remote areas of the EEZ, there are essentially no immediate impacts of implementing the Selected Alternative in these EEZ remote areas, except for low levels of recreational and subsistence fishing at Johnston, Wake, and Palmyra.
- For less remote areas, the Selected Alternative would provide additional conservation benefits than the *status quo* because gear types would be regulated, commercial harvest of live rock and corals would be prohibited, and resource removals would be monitored. If monitoring indicates that resource conditions warrant additional conservation action, these can more quickly be brought about through the framework process of the CREFMP.
- Compared with the no action, the Selected Alternative would reduce the potential for overfishing of reef resources in the future by implementing the selected options for setting aside marine protected areas, establishing permit and reporting requirements for monitoring, and gear restrictions. Spawning adults of the more valuable food fishes would be better protected by prohibiting spearfishing with SCUBA gear at night in the PRIA.
- Compared with no action, the Selected Alternative would provide for improved habitat protection and reduced discarding. Only specified

gears would be allowed; unattended nets would be specifically prohibited for these reasons. In no-take MPAs, the deployments of any fishing gear would be prohibited under this alternative. This prohibition also applies to management unit species that are regulated under existing bottomfish/seamount groundfish, crustaceans, pelagics, and precious coral fishery management plans, as amended. The option to prohibit harvest of coral and live rock under the Selected Alternative would be expected to result in habitat conservation. The CREFMP requires consultations for federal activities to minimize effects from fishing and non-fishing activities on essential fish habitat.

- Compared to no action, the Selected Alternative could slow the introduction of exotic species by imposing conditions on the passage of all domestic fishing vessels through the MPAs.
- The Selected Alternative to set aside no-take MPAs would be expected to result in positive impacts for conserving reef ecosystems and marine diversity. No-take MPAs may conserve a large reservoir of spawning biomass and genetic material for multi-resource coral reef resources, including endemic and rare species.
- The MPAs proposed under the Selected Alternative may reduce impacts of fishing on protected species. For example, the existing marine protected area surrounding the Johnston Atoll National Wildlife Refuge national wildlife refuge would be expanded. Vessel groundings, which pose some of the most serious human threats to these protected species habitats, would be expected to be reduced under minimum and maximum provisions for MPA designations and permit and vessel passage controls.

Social and Economic Impacts:

- The Selected Alternative does not restrict collection of coral reef resources for customary and traditional indigenous uses in the EEZ around the main inhabited islands and provides incentives through preferential access to indigenous-use sub-zones of MPAs, which could be implemented through framework action.
- The Selected Alternative would mitigate most of the potential impacts on existing fisheries, but existing fishing effort could be displaced or become more costly to conduct around some of the Palmyra, Johnston, and Wake Islands.
- The Selected Alternative for no-take MPAs would deter future development of most PRIA as sportfishing destinations.
- The Selected Alternative will not affect the NWHI commercial bottomfish, crustacean, and precious coral fisheries.
- Technically complex and customized permits to be issued under the Selected Alternative would result in a nominal increase cost to

administration and enforcement activities.

Alternative 4 (Provide Maximum Additional Protection to Coral Reef Ecosystems) was considered to be the environmentally preferred alternative because it would establish larger no-take MPAs in the EEZ waters of the western Pacific region, no creation of low-use MPAs, permits would be required for all harvest of management unit species, provide broad application of gear restrictions, and require MPA vessel insurance coverage throughout the region. These measures would also apply to all existing western Pacific fisheries management plans (bottomfish and seamount groundfish, crustaceans, pelagics, and precious corals) via parallel amendments to those plans. This alternative was rejected due to its potential to unnecessarily restrict fishing effort, such as no traditional spearfishing of any coral reef ecosystem food fish. Also, this alternative, which would establish MPAs in the NWHI, would conflict or duplicate the management program of the Coral Reef Ecosystem Reserve established by Executive Orders 13178 and 13196.

Overall, the Selected Alternative will not significantly affect the quality of the human environment or result in environmental harm; therefore, no mitigation measures are needed.

Rebecca Kent

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ja William T. Hogarth, Ph.D.
NOAA Assistant Administrator
for Fisheries

Date