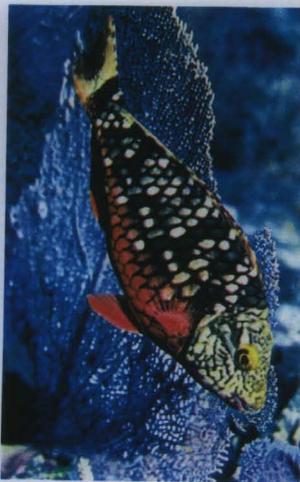


Parrotfish

An efficient recycling machine, the parrotfish turns coral and rock into fine sand in the process of grazing algae. Females and males often share a color pattern, but an occasional male attains larger size and more brilliant color and is called a terminal-phase male. The stoplight parrotfish (*Sparisoma viride*) below right, may be male or female, while its companion to the left is a terminal male of the same species, reaching about 20 inches. The terminal male redband parrotfish (*Sparisoma aurofrenatum*) left, is a smaller species, about ten inches in length.





and
is fish a
ht. Can
ack

swims
al, its
pes hide

Yellow-edged
Lyretail

Parrot Fish

7 Harleq
Filefish



NEW EDITION

The Living Reef

▲ WITH SPECIAL FISHWATCHER'S SUPPLEMENT

JERRY AND IDAZ GREENBERG



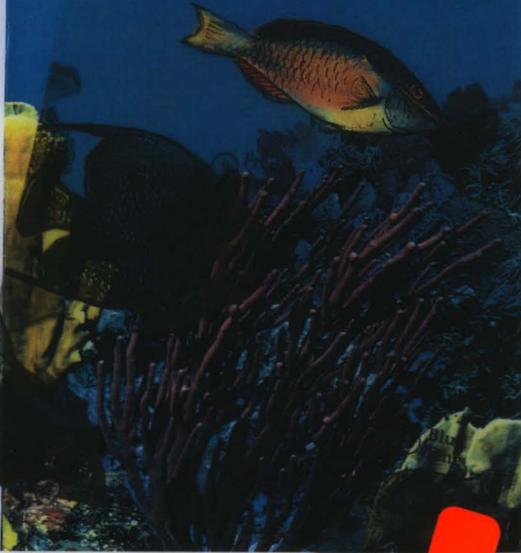


NEW EDITION

The Living Reef

▲ WITH SPECIAL FISHWATCHER'S SUPPLEMENT

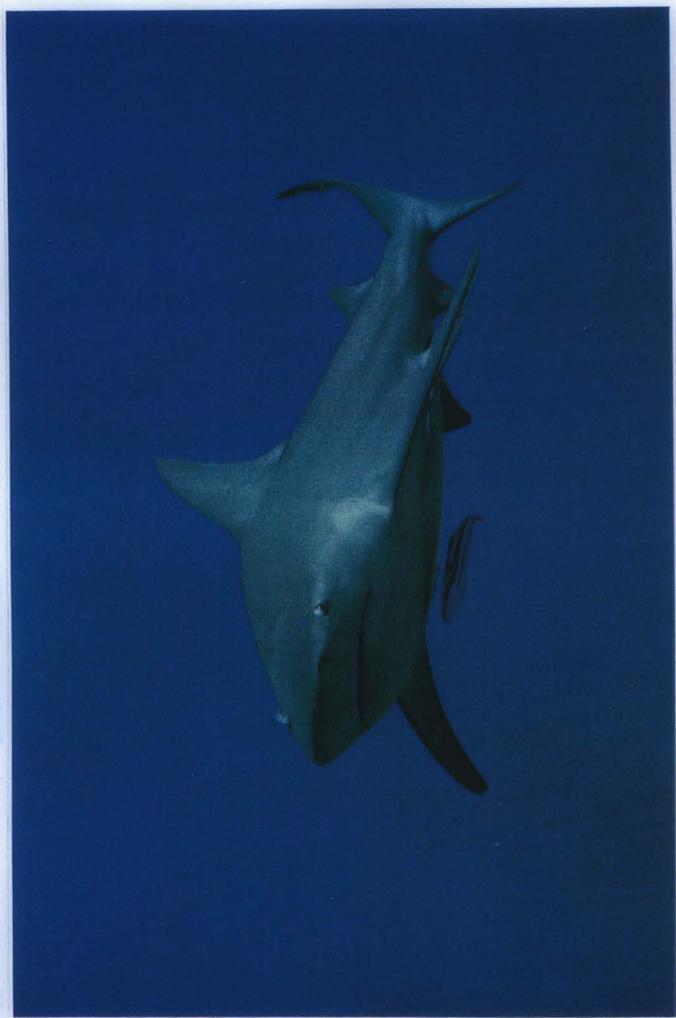
JERRY AND IDAZ GREENBERG



Parrotfish

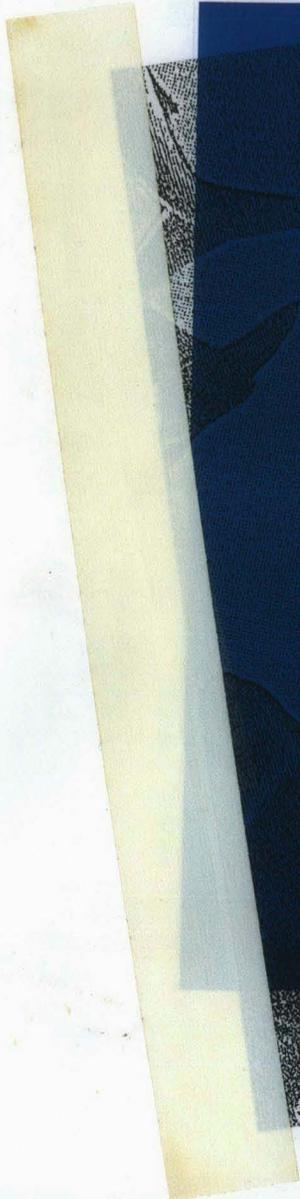
An efficient recycling machine, the parrotfish turns coral and rock into fine sand in the process of grazing algae. Females and males often share a color pattern, but an occasional male attains larger size and more brilliant color and is called a terminal-phase male. The stoplight parrotfish (*Sparisoma viride*) below right, may be male or female, while its companion to the left is a terminal male of the same species, reaching about 20 inches. The terminal male redband parrotfish (*Sparisoma aurofrenatum*) left, is a smaller species, about ten inches in length.





1961
10/10/61





February __, 1997

Suzanne Ross McDowell
Assistant Vice President
Legal Affairs, Publications
National Geographic Society
1145 17th Street, N.W.
Washington, D.C. 20036-4688

DRAFT

Dear Ms. McDowell:

This letter has two objectives. In Part I, we will take up again the matter of Educational Insights, Inc., which has been the subject of previous correspondence. In Part II, we will set forth our client's concerns as to other matters disputed by our client, Jerry Greenberg, with reference to the National Geographic Society ("the Society").

Part I

My most recent substantive communication with you regarding Educational Insights, Inc. was in a letter dated December 19, 1996. Having no response to that letter, I wrote to you again on January 17, 1997 to request a reply. To date, we have received no communication from your office. In the circumstances, we are electing to deal directly with the Society with respect to concerns that were voiced on behalf of our client in letters to Educational Insights, Inc. dated July 16, 1996 and October 11, 1996. Copies of those letters are enclosed as Attachment 1.

We believe that our client's copyrights have been infringed through the unauthorized copying, display, sale and/or preparation of derivative works, by the Society and by Educational Insights, of original works created by Jerry Greenberg. It appears from the Educational Insights materials, purchased in Florida last year, that the images our client is disputing were acquired by that company from the Society, complete with copyright notice asserted by the Society as to the disputed images (and others) in the Educational Insights products. It appears at present that Educational Insights may not initially have been aware of any infringement, but our correspondence with them put them on notice of copyright protection and any continued distribution or sale of the disputed materials thereafter could have implications for that company. In any event, Educational Insights has indicated to us that they will look to the Society for some form of indemnification based on a purported licensing arrangement with the Society. It seems appropriate, therefore, for us to take up our client's cause at this time with your office.

Suzanne Ross McDowell, Esq.
February __, 1997
page two

In your letter of November 18, 1996, you attempted to persuade us that no infringement of copyright has occurred in the circumstances here. You conceded that "there are similarities" with respect to the images but insisted that there are "significant differences" between the Society's illustrations and our client's photographs. Our view -- markedly different -- is that the Society's illustrations are at least substantially similar to the original works. We will discuss each illustration, as you did in that letter.

exhibit
overlays

Redband parrotfish. You stated that the angle of the fish is different from the photograph, but that is not correct. The angle of the fish is almost precisely the same, including bends in the body and the angle of the tail. The perspective from which our client's photograph was taken is also reflected in the copy. You stated that the shape of the fish is unavoidably the same, but we do not agree. Hundreds of photographs or illustrations of a Redband parrotfish may exist, but not one matches the positioning and the contours captured in Mr. Greenberg's photograph. The color differences you cite are minor and not legally relevant. The photograph was originally published in "The Living Reef" (copyright 1972 A-397524) and is currently published in "The Coral Reef" (copyright 1975 A-722127) by ~~the~~ Greenberg

same
specimens

(2) Divers. We categorically disagree with your depiction of differences between our client's photographs and the illustrations in your package. The comparisons speak for themselves, and we have no hesitation whatever in asserting substantial similarity. The flowing-hair diver was originally published in "The Living Reef" and was also published in a poster titled "Living Corals of the Tropical Atlantic" (copyright 1974 K-107129). The bent-knee diver was originally published by National Geographic Magazine in January 1962 (copyright 1962 B-960824). Copyright as to that photograph was assigned to Jerry Greenberg on December 18, 1985, and Mr. Greenberg renewed the copyright in 1989 (RE-478-546). The photograph is currently published in his pub
in "The Coral Reef."

(3) Stoplight parrotfish. The differences you cite are minimal. The similarities are substantial. Our client will continue to insist that his photograph was infringed. The photograph was originally published in "The Living Reef" and is currently published in "The Coral Reef." © 1975

© etc.

(4) Green moray. Your letter states that the photograph depicts a green moray eel but that the illustration shows a goldentail. Significantly, the Society's illustration labels the creature a "moray eel." Our client's research shows that the bright specks on a goldentail cover the entire body; those in your illustration do not. In its underwater life, a moray rarely presents much of its body out of its lair. The Greenberg photograph shows a moray emerging about halfway. A in a goldentail presents even less of its body in the open. Other similarities in the photograph and the copy are substantial. The moray photograph was originally published in "The Living Reef" and is currently published in "The Coral Reef."

present
simultaneous
pose.

JG file photograph P. 4

Suzanne Ross McDowell, Esq.
February __, 1997
page three

(5) Bull shark. Your November 18 letter ignored our discussion of a bull shark illustration in Educational Insights' "Creatures of the Open Ocean" (Code 3907). We provided to Educational Insights a comparative-overlay exhibit that shows a perfect match between the photograph and the illustration with the exception of the tail. The bull shark photograph was provided to the Society by Mr. Greenberg in 1963 with other materials pertaining to a photo essay on sharks and shark research. The essay was eventually published by the Society, but the bull shark photograph was not included, and the photograph was ~~not~~ returned to Mr. Greenberg. The bull shark photograph was first published by Mr. Greenberg in "Fish Men Fear: Shark" (copyright 1969 A-106-687), and subsequently in his poster titled "Shark!" (Copyright 1974 K-107-130). The photograph is currently published in "Sharks and Other Dangerous Sea Creatures" (copyright 1981 VA-70-254).

The illustration provided by the Society for Educational Insights' "Creatures of the Open Ocean" (Code 3907) was in fact based on Mr. Greenberg's photographs. In a letter to Mr. Greenberg, dated December 29, 1967, Bryan Hodgson stated that Mr. Greenberg's shark transparencies "were in the possession of Bill Bond, who used them as reference material for his painting in the SHARKS story." Our contention is that they were not used merely for reference purposes but were copied.

referred to but

Other sharks. Inadvertently not included in our correspondence with Educational Insights was discussion regarding three other shark images that are contained in the product identified as Code 3907. The bull shark is discussed above. Other unauthorized copies include the following. The great hammerhead shark, the oceanic whitetip shark, and the silky shark were copied without permission from photographs provided to the Society by Mr. Greenberg in 1961 for an article that was published in 1962.

JG file photograph of 8

Resolution of the dispute regarding the images in the Educational Insights material is set forth below, following Part II.

Part II

Mr. Greenberg, as you may be aware, has had a professional and business relationship with the Society over a period of some three decades. He has carefully documented that relationship. Many photographs were provided by him to the Society's magazine pursuant to contracts, according to the terms of each. Many other photographs were provided in good faith by Mr. Greenberg for the magazine's consideration, without the protection of a contract. Mr. Greenberg permitted the magazine, on a number of occasions, to retain "selects" or other materials that otherwise should have been returned to him. The relationship thus proceeded for a very long time on an ethical and a legal basis. In recent years, however, Mr. Greenberg discovered that the Society, without his permission, had published, or permitted the publication of, various materials

Suzanne Ross McDowell, Esq.

February __, 1997

page four

for which the Society had no copyright or contract rights, but for which Mr. Greenberg had exclusive rights.

A photograph of a sea fan, originally authorized by Mr. Greenberg for one-time use in the Society's magazine in July 1990, was improperly included in a color brochure promoting the 1996 Jason Project. The Society acknowledged the impropriety, with apologies, in a letter dated October 26, 1995, from Rock Wheeler. That infringement has not been resolved. In a letter to Mr. Greenberg dated October 26, 1995, Rock Wheeler admitted that the Society had violated Mr. Greenberg's copyright by using the photograph. "We realize the importance of copyright," Mr. Wheeler wrote, "and that we have committed a serious violation."

A separate unauthorized use appeared in the March/April 1994 issue of Traveler magazine, published by the Society. Displayed on page 70 of the issue was a photograph of a skin diver "swimming through a coral jungle," in the language of the caption. That photograph originally appeared in the Winter 1985/86 issue of Traveler, pursuant to a written agreement between Mr. Greenberg and the Society. That agreement, by its terms, limited the Society's rights to one-time publication. The 1994 publication was not authorized by the agreement. The Society eventually conceded that the use was unauthorized and paid Mr. Greenberg.

Still another infringement appeared in a promotional piece, for the Society's magazine, that was published in September and October 1995. The infringing photograph, showing a scuba diver cruising among reefs and fans, first appeared by arrangement with Mr. Greenberg in the Society's magazine in 1967 with an article titled "World Beneath the Sea." The Society in due course also conceded that infringement, and Mr. Greenberg was compensated.

Mr. Greenberg has attempted on literally dozens of occasions through the years to guard against impermissible uses of his photographs and to recover photographs that the Society had no legal right to retain. The unauthorized uses described above -- there may have been others -- have convinced Mr. Greenberg that his materials are no longer safe from wrongful use so long as they remain in the Society's files. Significantly, in one of the episodes above, the Society reached back some 28 years to retrieve a photograph for use in 1995.

In at least one instance his request for the return of materials was adamantly refused. In a letter to Mr. Greenberg dated April 18, 1994, W. Allan Royce advised that the Society is entitled by contract to retain photographs created by Mr. Greenberg pursuant to assignments given to him by the Society's magazine. "None of this material," he wrote, "is going to be returned to you." We challenge the Society to demonstrate, through the written agreements to which Mr. Royce's letter referred, that the Society ever obtained any right to retain in its files any material provided by Mr. Greenberg, after the one-time publication to which he agreed, and for the article on which the assignment was based, had been satisfied. The one exception to that principle was an agreement between Mr. Greenberg and the Society in 1962, in which the magazine was permitted

Suzanne Ross McDowell, Esq.
February __, 1997
page five

to pull and to keep "selects," which we understand to be photographs not published but with ongoing potential for publication. It is a reasonable inference that the Society has hundreds of Mr. Greenberg's photographs in hard-copy files, on videodisc, or in other electronic storage and retrieval systems that may be in use. You will appreciate that each photograph submitted on assignment by Mr. Greenberg and actually used in a Society publication was accompanied by literally dozens of other photographs from which a final selection was made. Samples of the Society's photographic indexing in Mr. Greenberg's possession make it clear that materials created by him can be located in the Society's files.

Mr. Greenberg, for a period of years, allowed the Society to retain photographs by him that were never intended for publication. That era of good faith reliance on his part has passed. We believe that at least one of the unauthorized uses of his photographs described in this Part II, as well as those described in Part I, are actionable in the U. S. District Court for the Southern District of Florida.

Mr. Greenberg's objective is to resolve *all* of the matters set forth in this letter, completely and with finality. Enclosed is a settlement proposal -- containing two separate options -- that can accomplish that objective. If neither option is satisfactory to the Society, we will proceed with an action in federal court that may also include Educational Insights, Inc. because of its continued use of copies of the protected photographs. Although you have declined to respond to my last two communications, we will insist on a speedy resolution, one way or another. If we have not received written confirmation of acceptance by the Society of one of the two proposed options by the close of business on March 3, 1997, the options that are offered will be automatically and permanently withdrawn.

We have represented Mr. Greenberg on copyright matters for many years and have found him to be eminently reasonable in demands directed to infringing parties. That fact is reinforced by the infrequent occasions when it has been necessary to seek the assistance of a federal court, and on each such occasion the effort has been successful. We look forward to a response before the aforesaid date.

Very truly yours,

Norman Davis

Enclosures

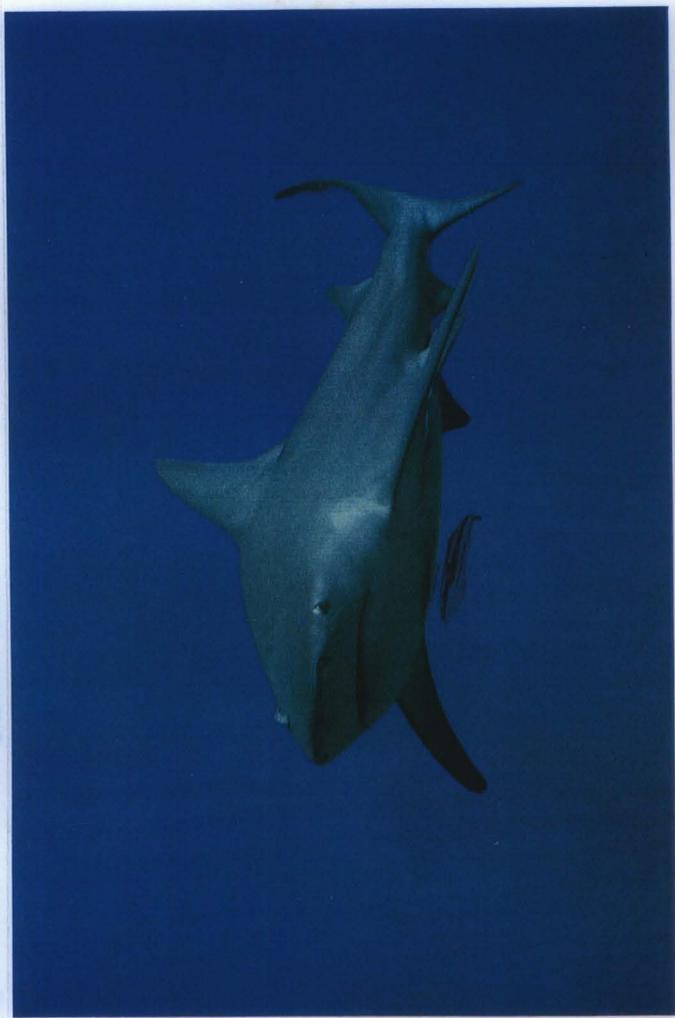
Option A

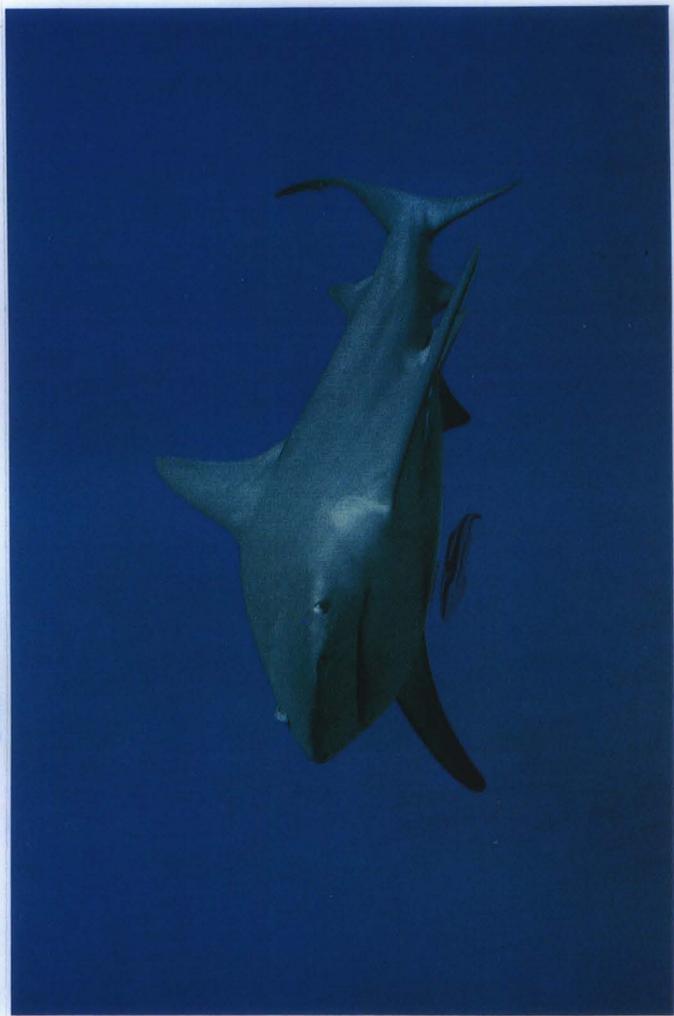
- (1) Educational Insights, Inc. must immediately and permanently cease and desist from any further use in any manner of the disputed images.
- (2) The Society must immediately and permanently cease and desist from any use in any manner, by itself or by others with its consent, of any original works of Jerry Greenberg, or copies thereof, that may be in the Society's possession or control.
- (3) Mr. Greenberg must be paid damages by the Society, for itself and for Educational Insights, Inc., in the amount of \$30,000, inclusive of legal expense incurred by him to date.
- (4) Copyright in the disputed images in the Educational Insights products must be assigned to Mr. Greenberg by the National Geographic Society on a form that we will provide. The assignment will not be effective as to any other images contained in those products.
- (5) [purging]

Option B

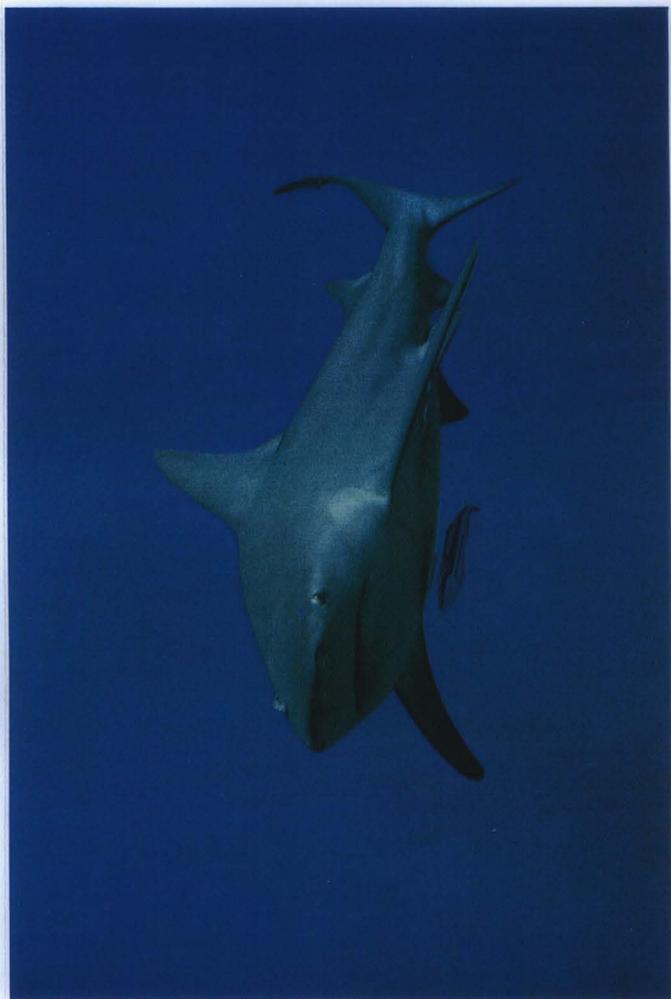
- (1) Mr. Greenberg must be paid damages by the Society, for itself and for Educational Insights, Inc., in the amount of \$20,000, inclusive of legal expense incurred by him to date.
- (2) Copyright in the disputed images in the Educational Insights products must be assigned to Mr. Greenberg by the National Geographic Society on a form that we will provide. The assignment will not be effective as to any other images contained in those products.
- (3) Educational Insights, Inc. and/or the National Geographic Society will enter into a license agreement that permits Educational Insights, Inc. to continue to utilize the disputed images only, and only in presently-existing products, for the remainder of 1997 and for all of 1998. The license fee for that period is \$8,000, whether or not the disputed images are utilized during the entire period. The licensee(s) will have the option of renewing the license on the same terms, for a license fee of \$4,000, for any succeeding year, provided that notice of renewal and the license fee are received by Mr. Greenberg no later than December 31 of the year of the expiring license. If the license is not renewed for any year, all rights of the licensee(s) will end at the expiration of an existing license, and Educational Insights, Inc. may not thereafter use any of the disputed images in any manner. We will prepare the license agreement.
- (4) Copyright in the disputed images in the Educational Insights products must be assigned to Mr. Greenberg by the National Geographic Society on a form that we will provide. The assignment will not be effective as to any other images contained in those products.

(5) [purging]











+

10/10

5 Bu

Spiny

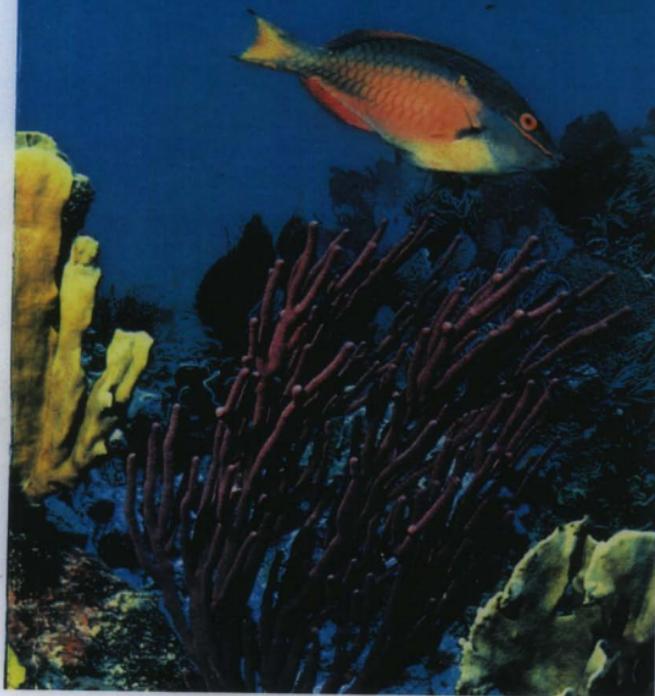


NEW EDITION

The Living Reef

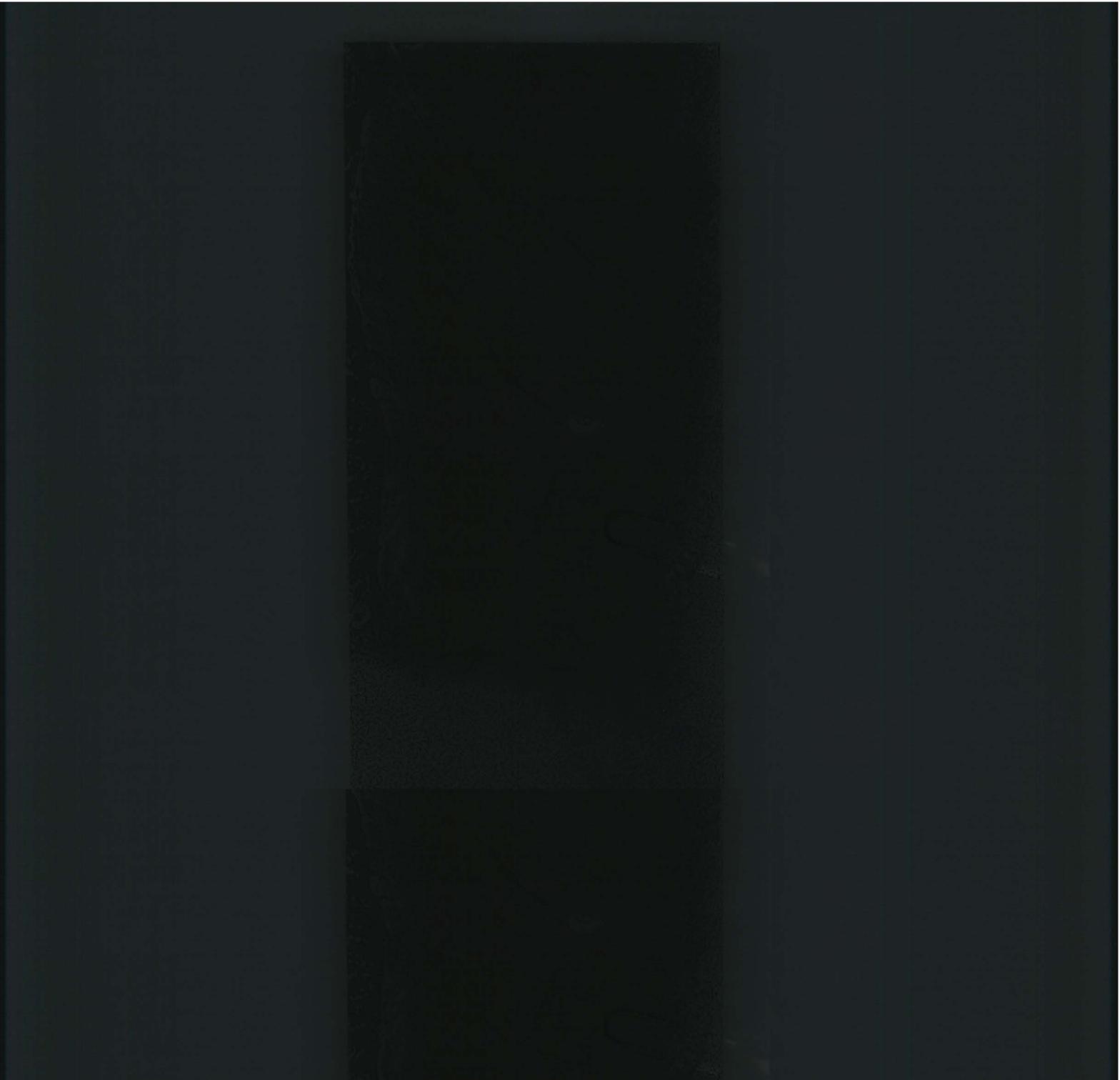
▲ WITH SPECIAL FISHWATCHER'S SUPPLEMENT

JERRY AND IDAZ GREENBERG





Moray Eel 6





far sight. Can
the black
its fin?

is fish swims
all coral. Its
side stripes hide
new

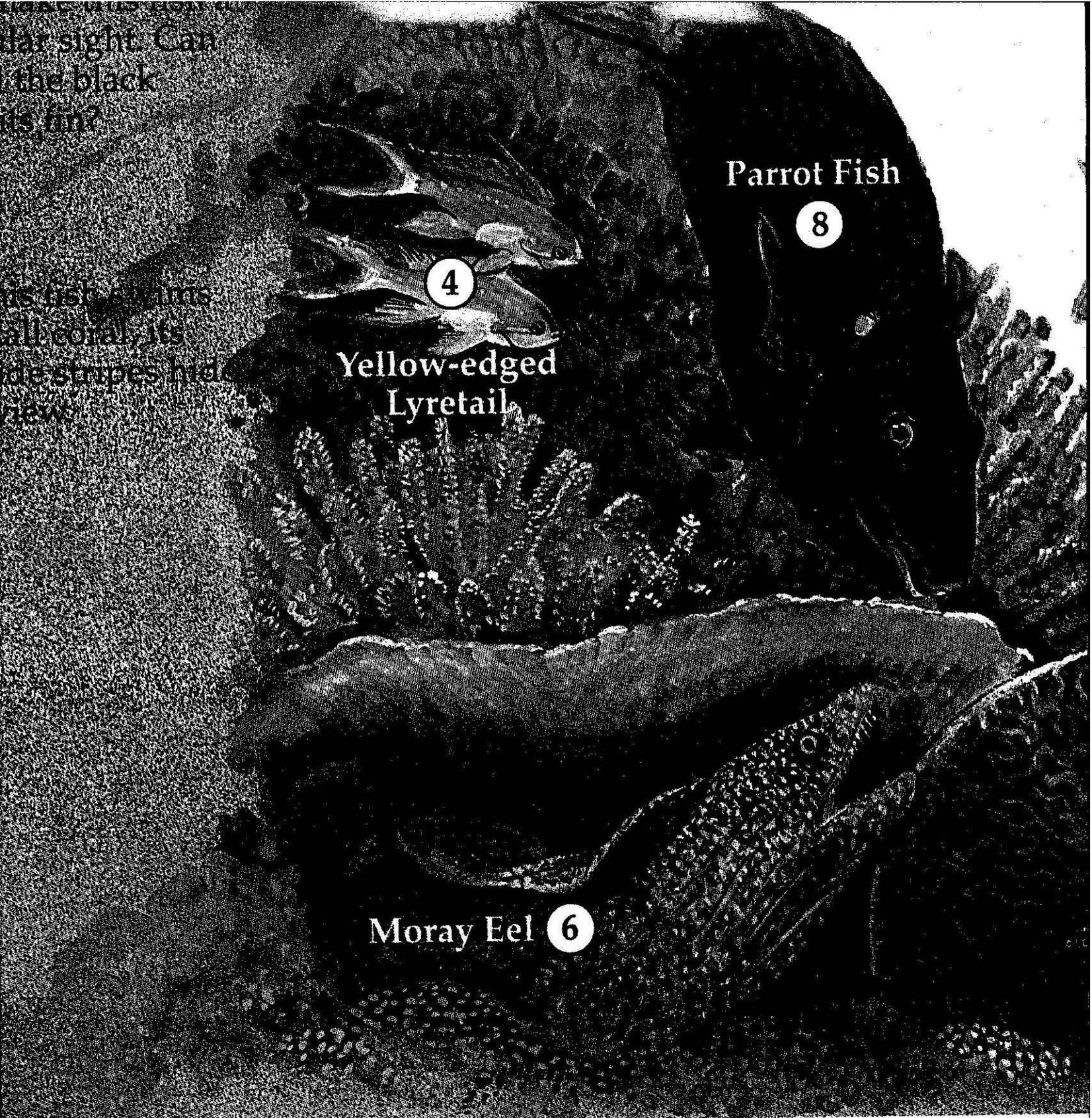
Parrot Fish

8

4

Yellow-edged
Lyretail

Moray Eel 6



purple, orange, and
yellow make this fish a
spectacular sight. Can
you find the black
spot on its fin?

When this fish swims
along tall coral, its
dark, wide stripes hide
it from view.



Parrot Fish

8

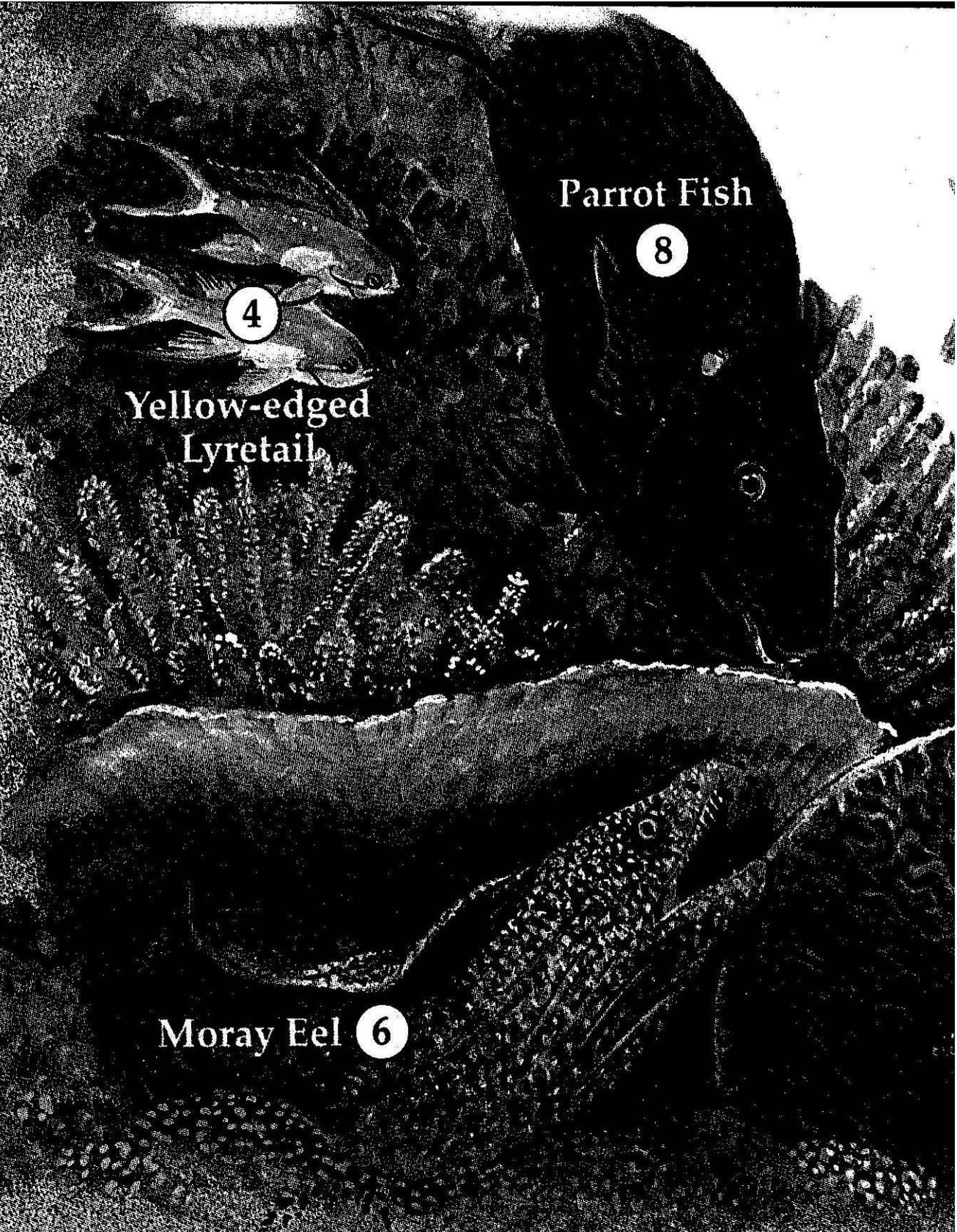
4

Yellow-edged
Lyretail

Moray Eel 6

lar sight. Can
the black
its for

his fish swims
all coral. Its
side stripes hide
new



Parrot Fish

8

4

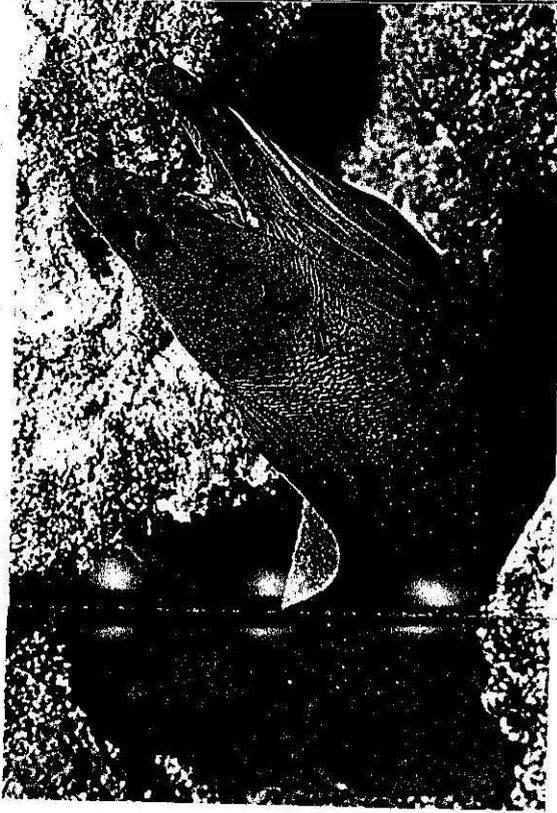
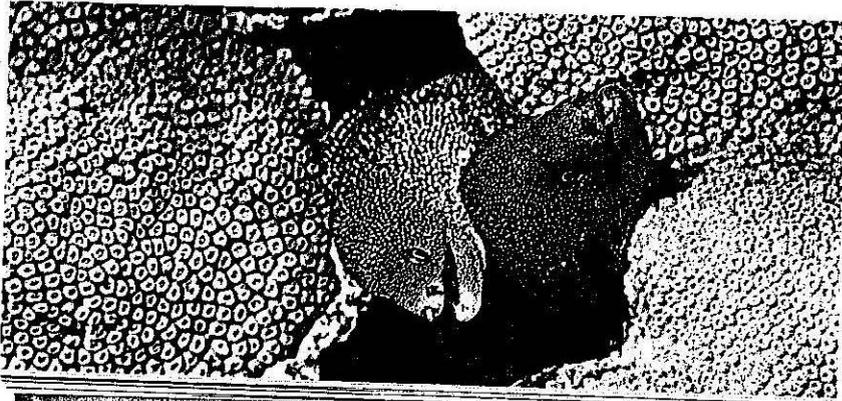
Yellow-edged
Lyretail

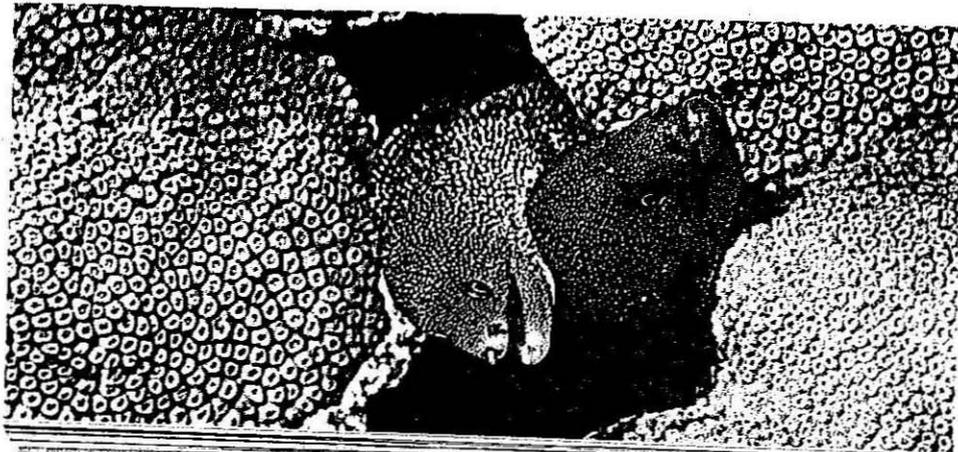
Moray Eel 6

534

Moray eels

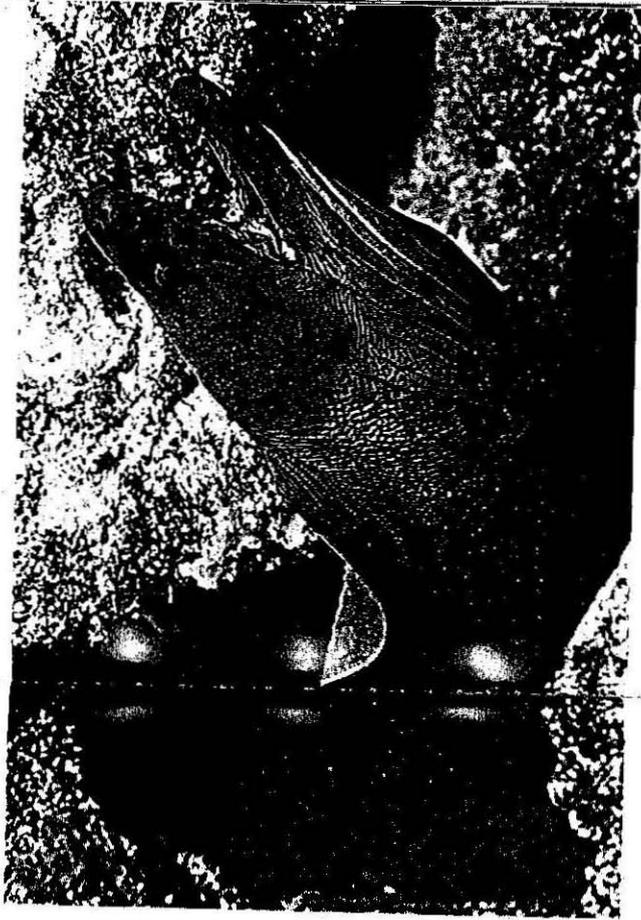
As beautiful and repulsive as the snakes they resemble, these fish are largely nocturnal and secretive by nature. They are harmless to man unless provoked, hiding in crevices and under coral ledges. The golden-tail moray (*Muraena milleri*) left, grows no more than two feet. The green moray (*Gymnothorax funabris*) jaw, has awesome teeth and is among the largest of eels, reaching a length of six feet and weight of 25 pounds.





Moray eels

As beautiful and repulsive as the snakes they resemble, these fish are largely nocturnal and secretive by nature. They are harmless to man unless provoked, hiding in crevices and under coral ledges. The goldenail moray (*Muraena milleri*) left, grows to no more than two feet. The green moray (*Gymnothorax funebris*) above, has awesome teeth and is among the largest of eels, reaching a length of six feet and weight of 25 pounds.

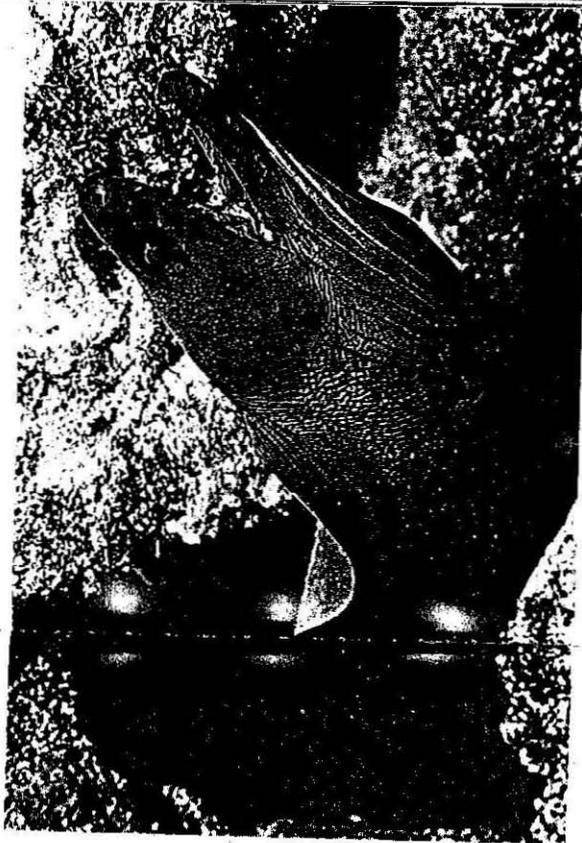
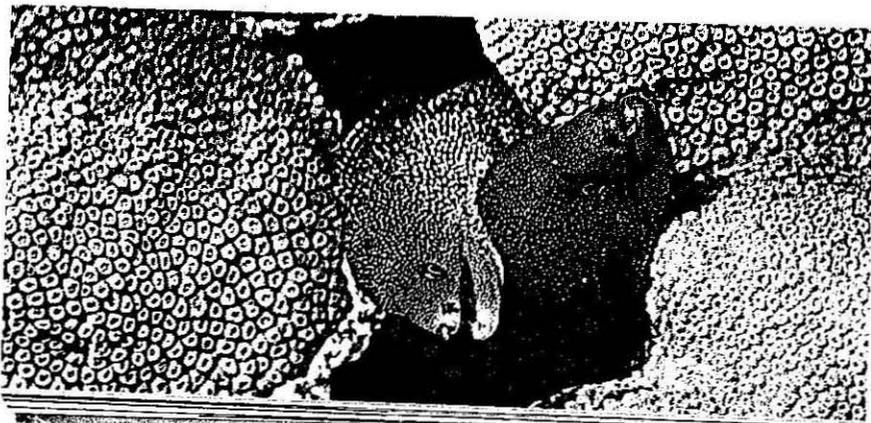


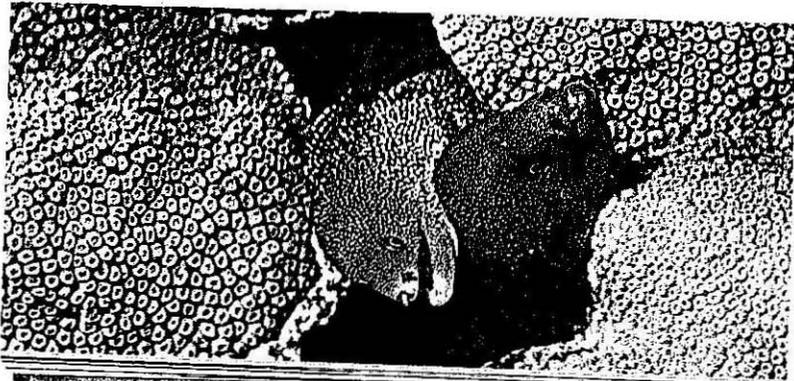
608

SS4

Moray eels

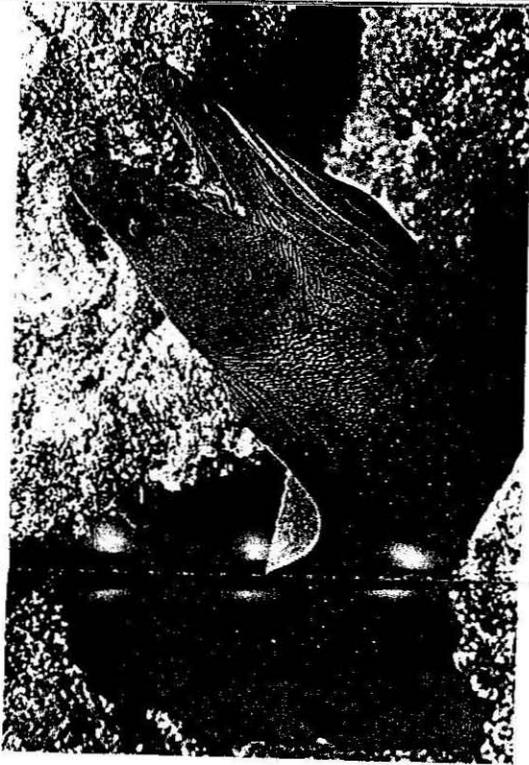
As beautiful and repulsive as the snakes they resemble, these fish are largely nocturnal and secretive by nature. They are harmless to man unless provoked, hiding in crevices and under coral ledges. The golden-tail moray (*Muraena millets*) left, grows to no more than two feet. The green moray (*Gymnothorax funebris*) below, has awesome teeth and is among the largest of eels, reaching a length of six feet and weight of 25 pounds.

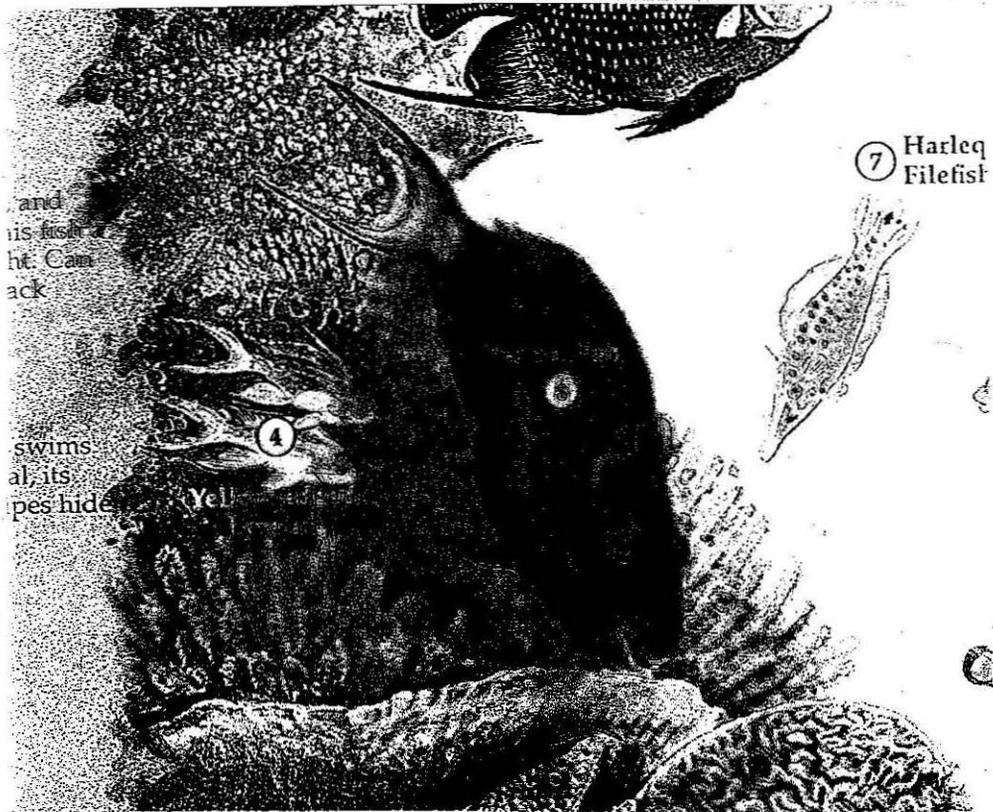
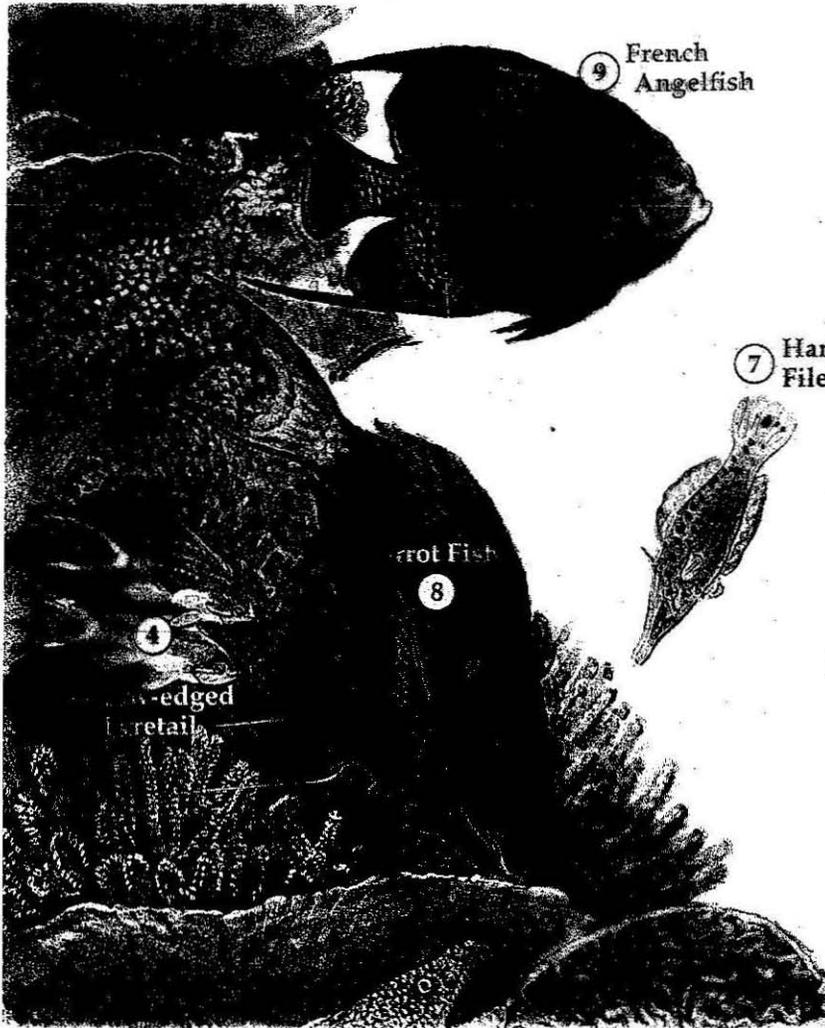


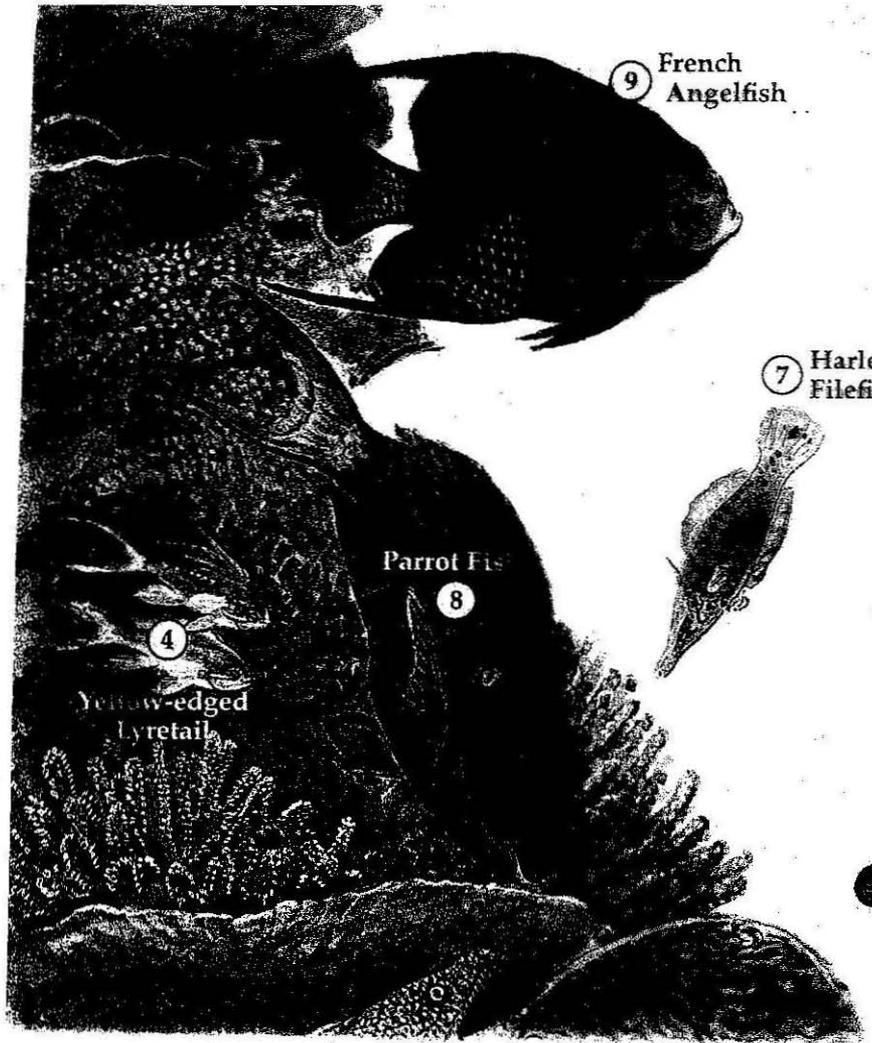


Moray eels

As beautiful and repulsive as the snakes they resemble, these eels are largely nocturnal and secretive by nature. They are harmless to man unless provoked, hiding in crevices and under coral ledges. The golden moray (*Muraena melanotis*) left, grows to no more than 60 feet; the green moray (*Gymnothorax funebris*) has awesome teeth and is among the largest of eels, reaching a length of six feet and weight of 25 pounds.





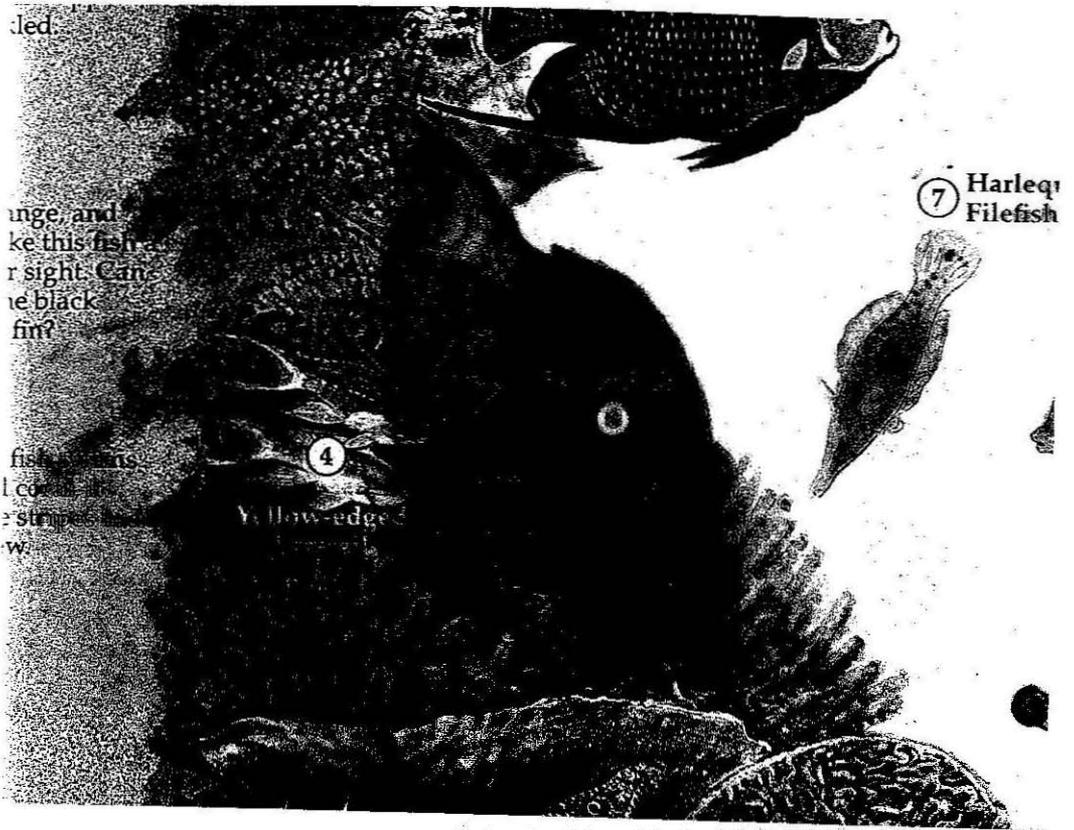


9 French Angelfish

7 Harlequin Filefish

8 Parrot Fish

4 Yellow-edged Lyretail



7 Harlequin Filefish

4 Yellow-edged Lyretail

led

unge, and
ke this fish a
r sight. Can
e black
fin?

fish swims
l coral
e stripes
w

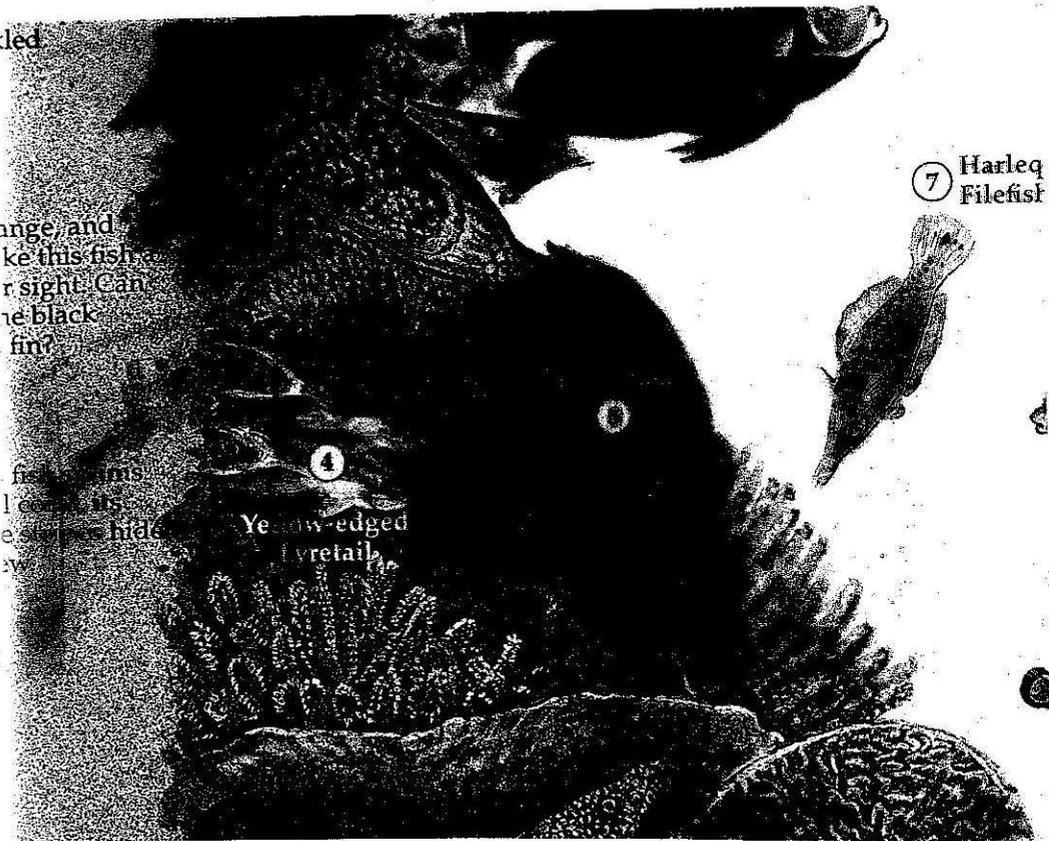
led

ange and
ke this fish
r sight. Can
ne black
fin?

fish
l
e
y

Yellow-edged
Pyretail

7 Harlequin
Filefish

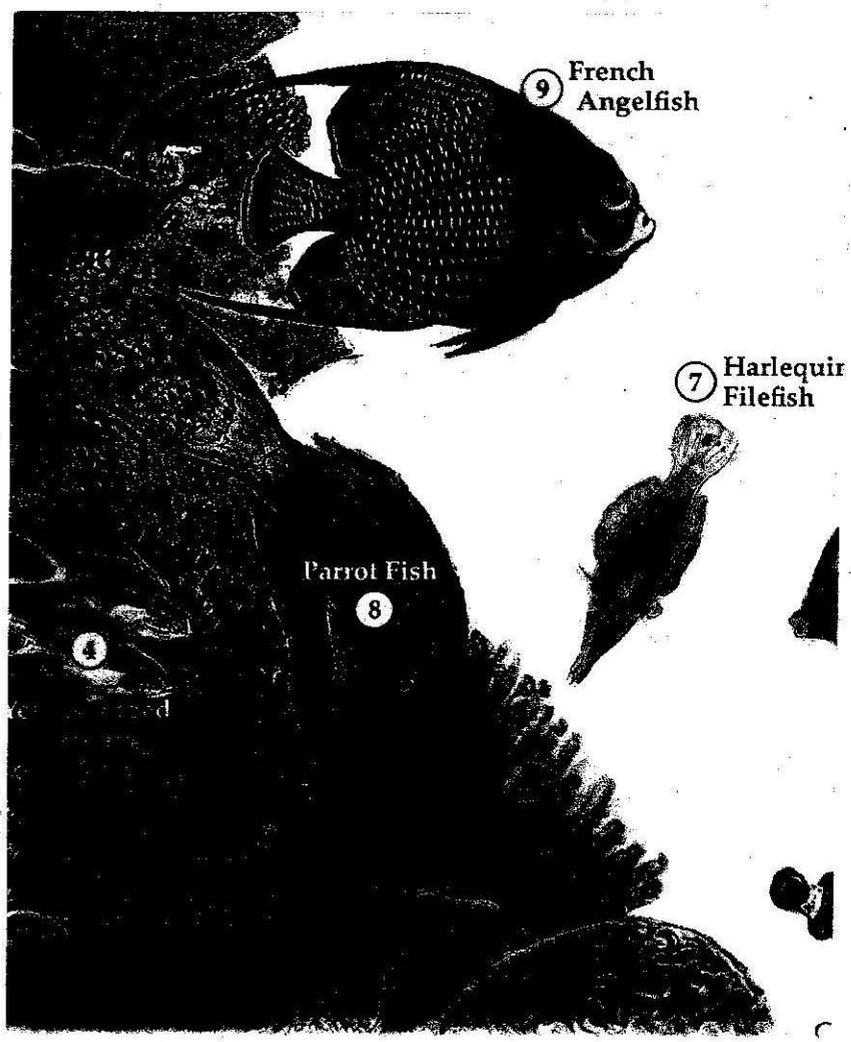


9 French
Angelfish

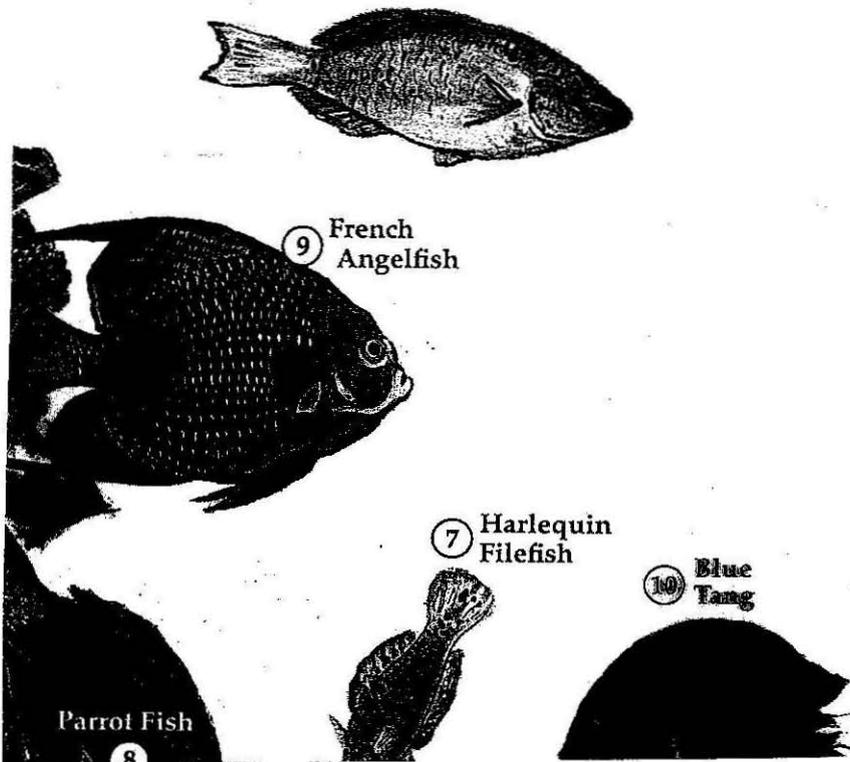
7 Harlequin
Filefish

Parrot Fish

8



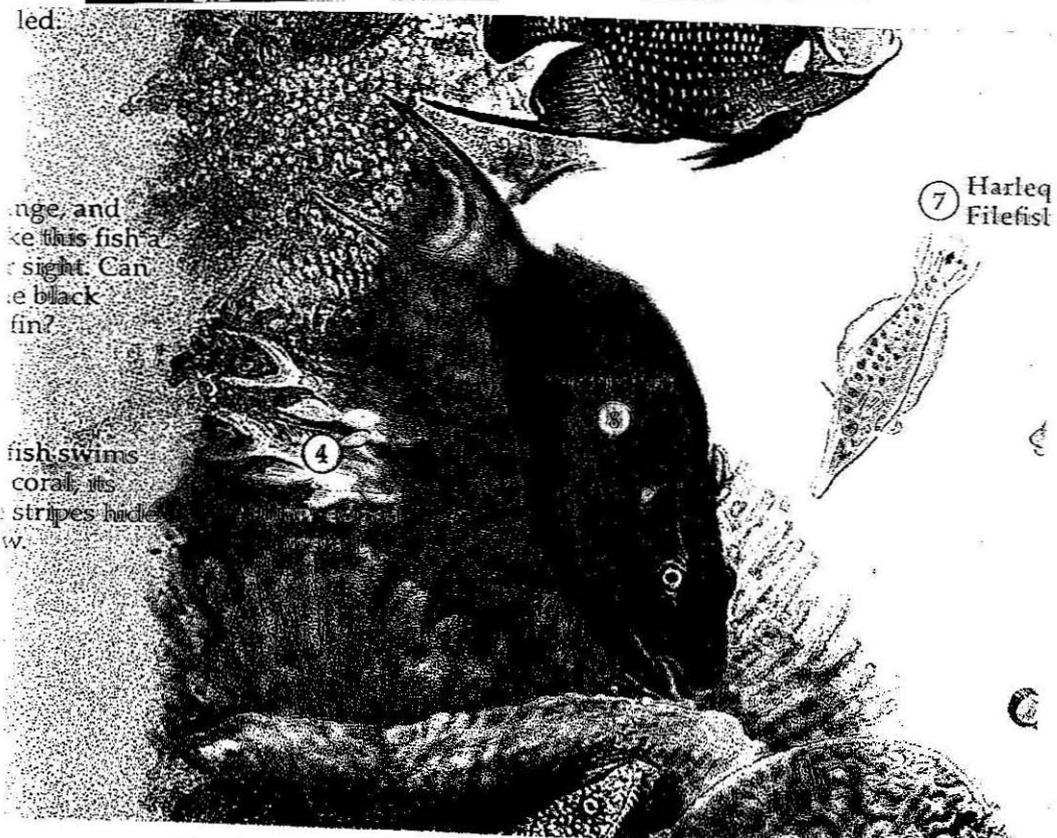
Watch the lighted cue to his picture, then press the picture.



led:

ange, and
ke this fish a
sight. Can
e black
fin?

fish swims
coral, its
stripes hide
w.



Parrotfish

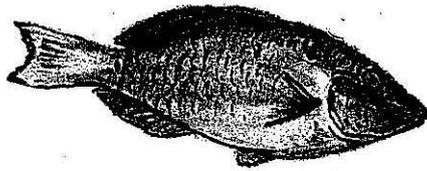
An efficient recycling machine, the parrotfish turns coral and rock into fine sand in the process of grazing algae. Females and males often share a color pattern, but an occasional male attains larger size and more brilliant color and is called a terminal-phase male. The stoplight parrotfish (*Sparisoma viride*) below right, may be male or female, while its companion to the left is a terminal male of the same species, reaching about 20 inches. The terminal male redband parrotfish (*Sparisoma aurofrenatum*) left, is a smaller species, about ten inches in length.



Parrotfish

An efficient recycling machine, the parrotfish turns coral and rock into fine sand in the process of grazing algae. Females and males often share a color pattern, but an occasional male attains larger size and more brilliant color and is called a terminal-phase male. The stoplight parrotfish (*Sparisoma viride*) below right, may be male or female, while its companion to the left is a terminal male of the same species, reaching about 20 inches. The terminal male redband parrotfish (*Sparisoma aurofrenatum*) left, is a smaller species, about ten inches in length.





⑨ French Angelfish



⑦ Harlequin Filefish



⑩ Blue Tang

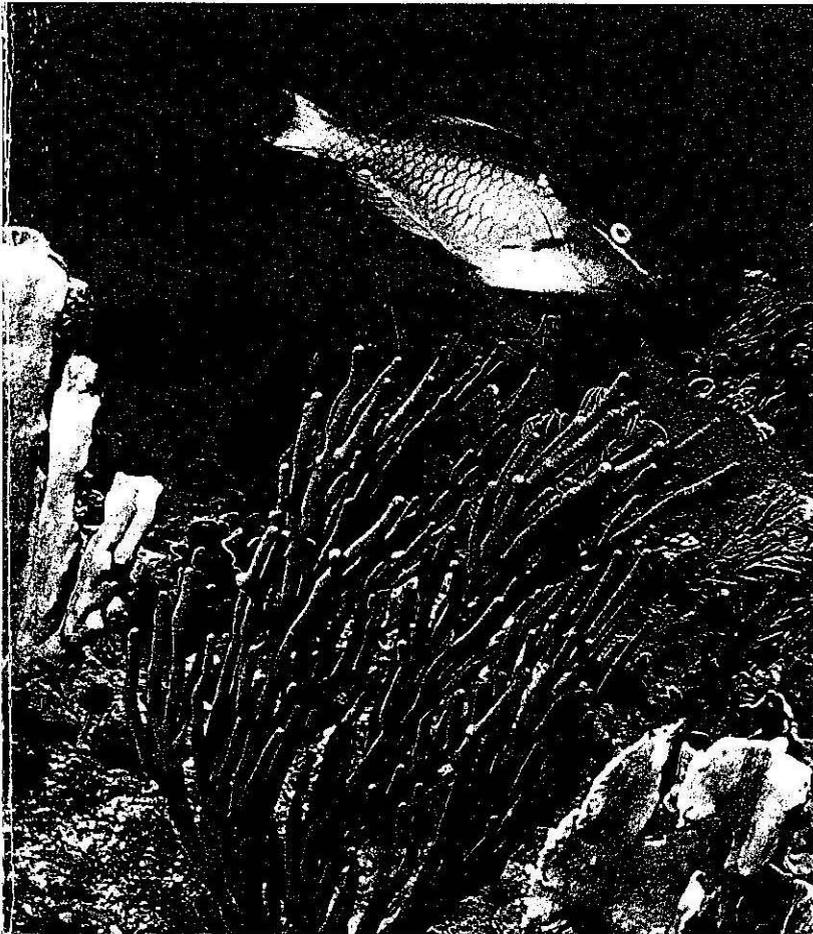


Butterfly Fish



The Living Reef

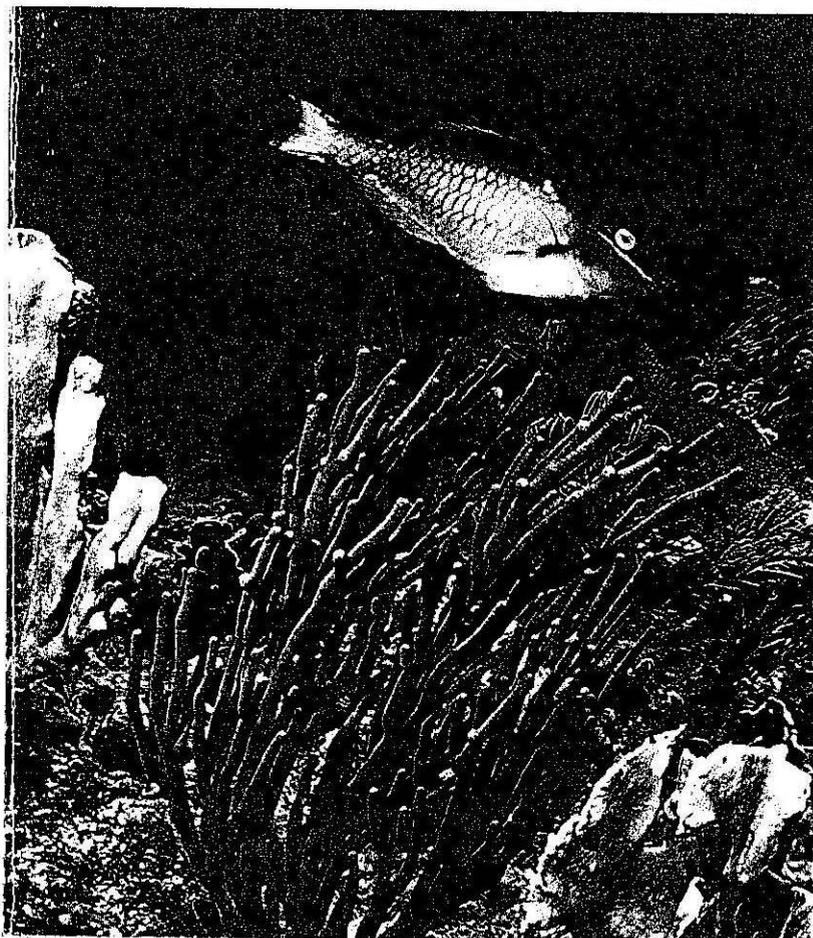
JERRY AND IDAZ GREENBERG



70¢

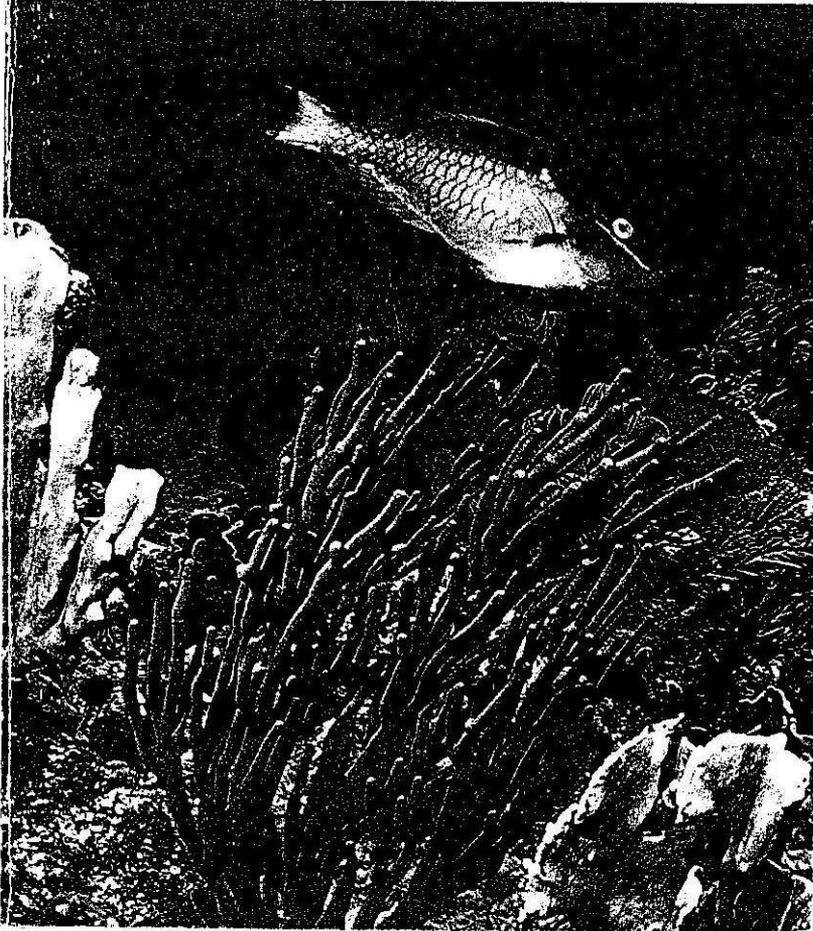
The Living Reef

JERRY AND IDAZ GREENBERG

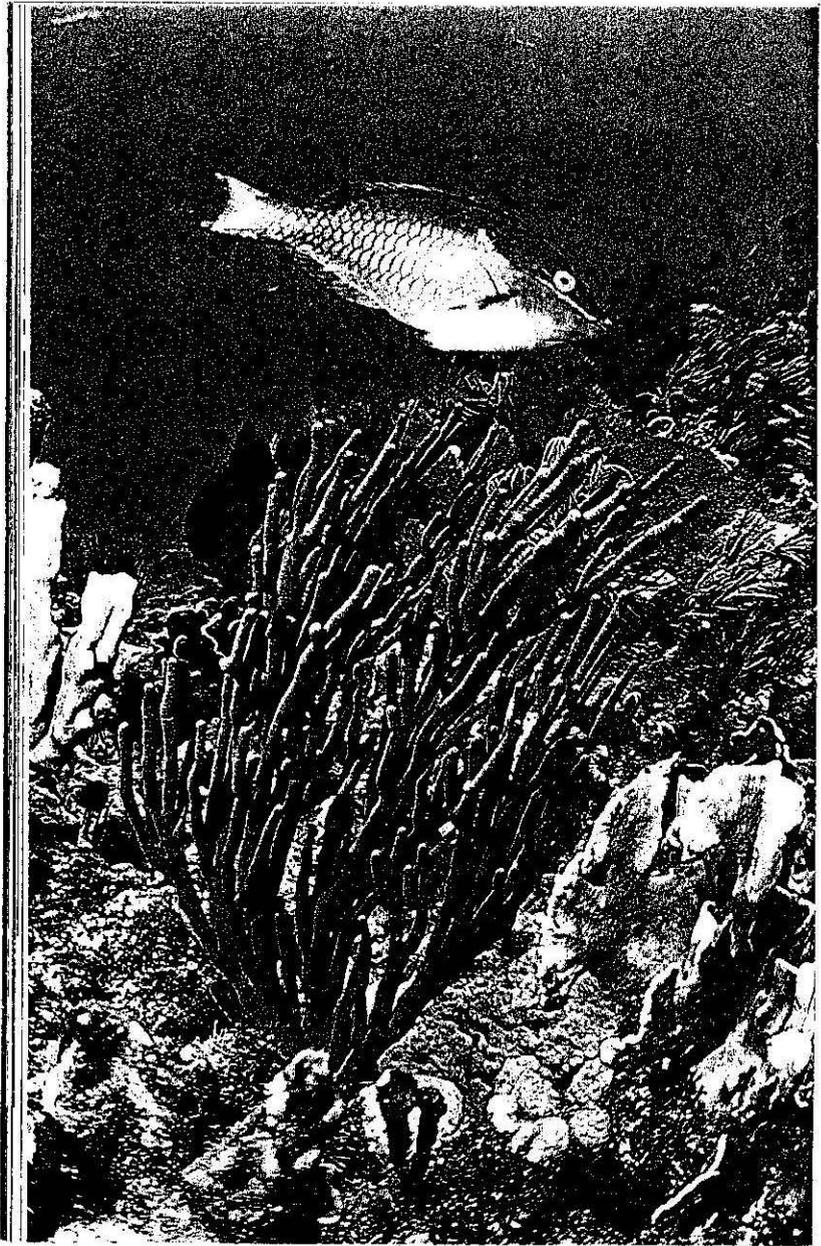


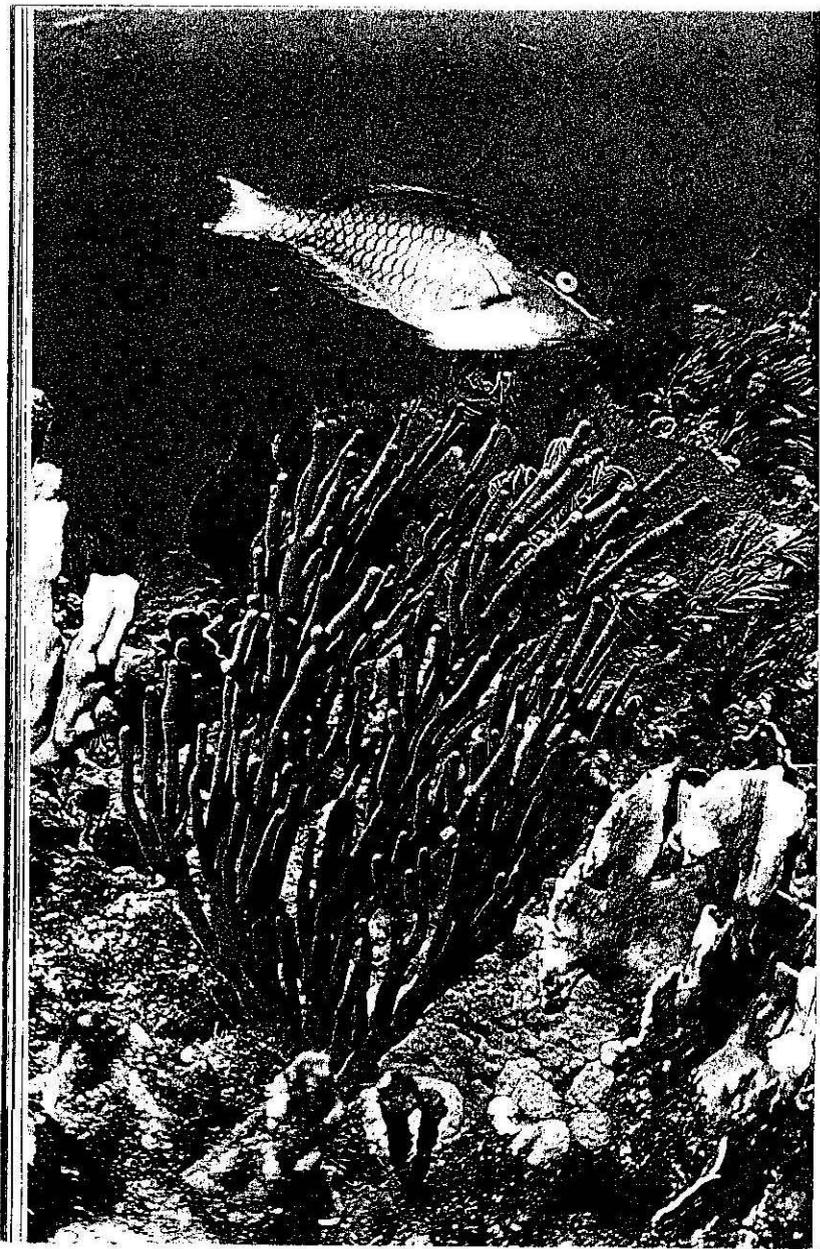
The Living Reef

JERRY AND IDAZ GREENBERG

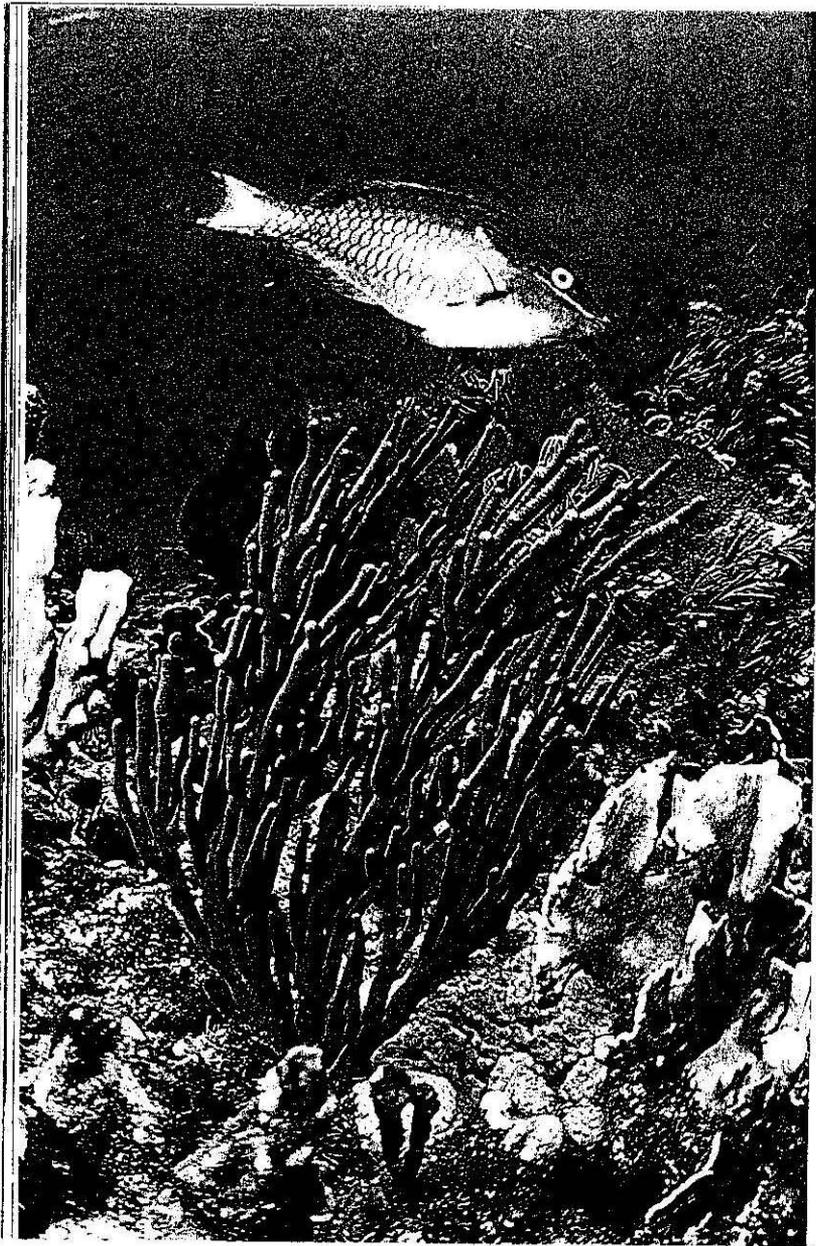


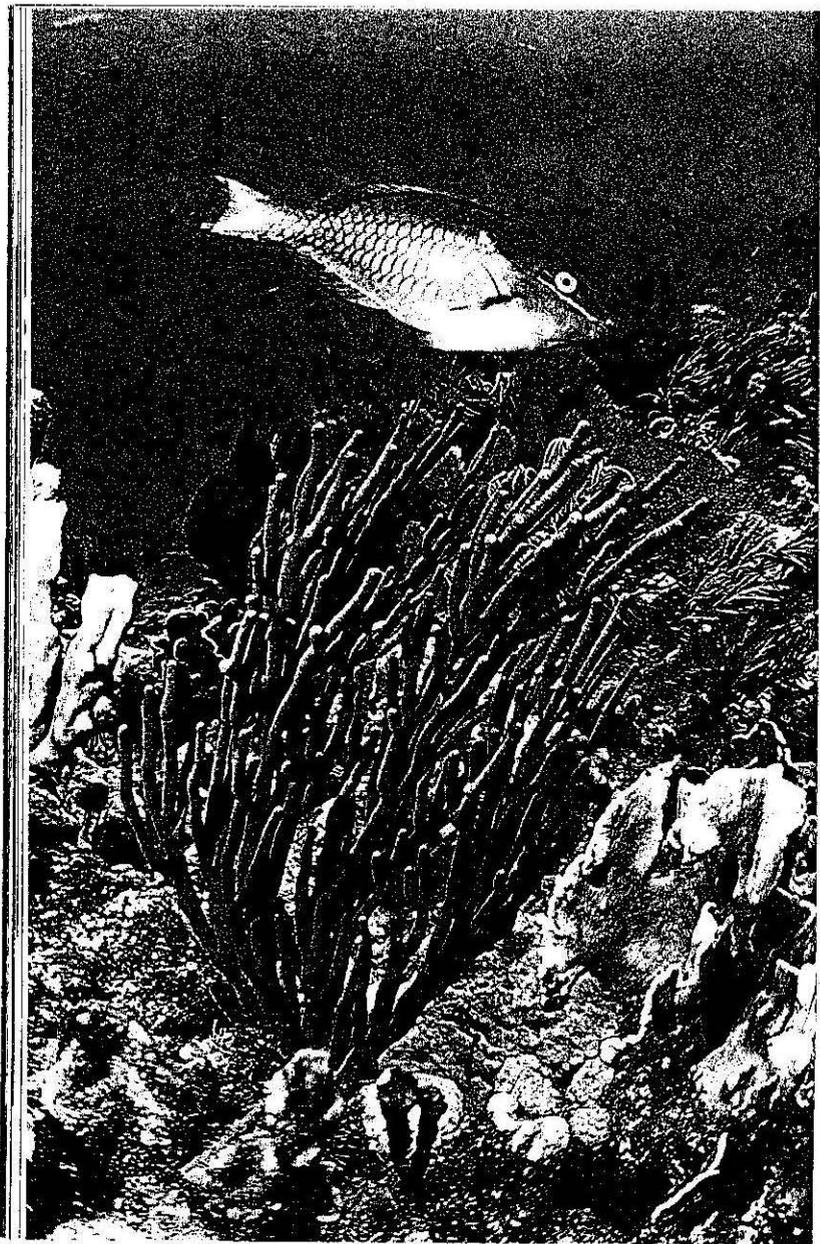
PHOTOGRAPH BY JERRY GREENBERG

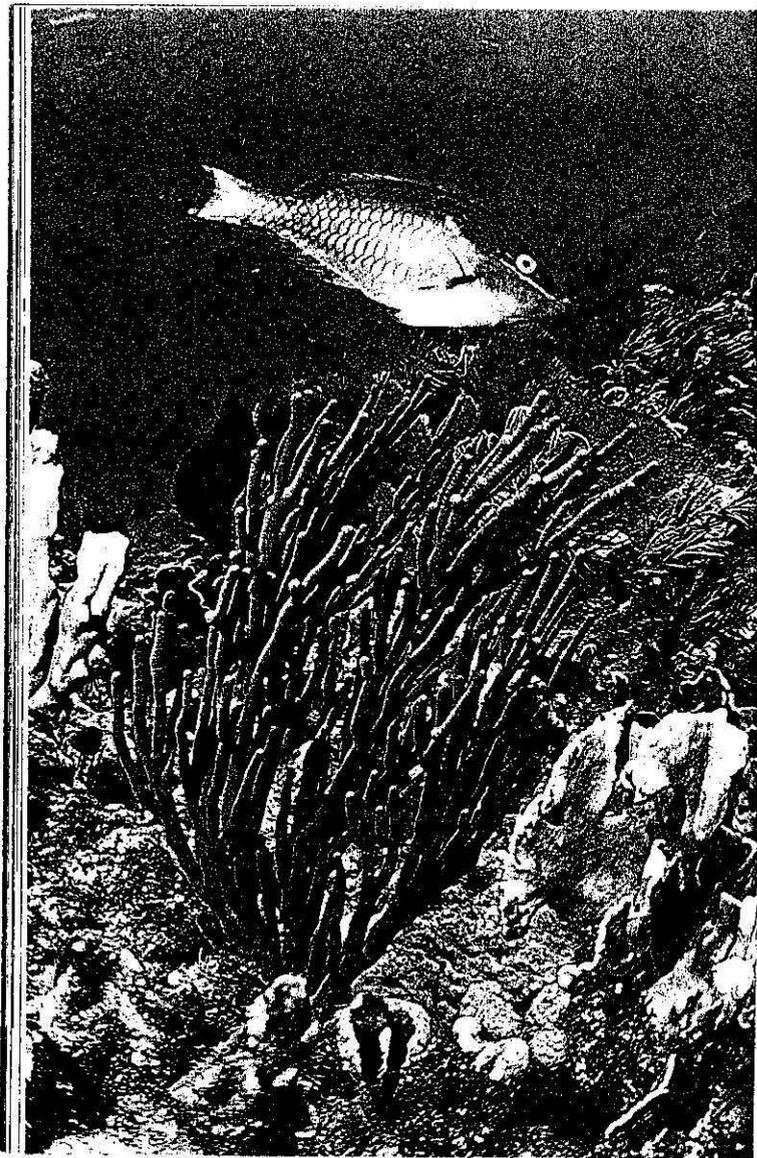




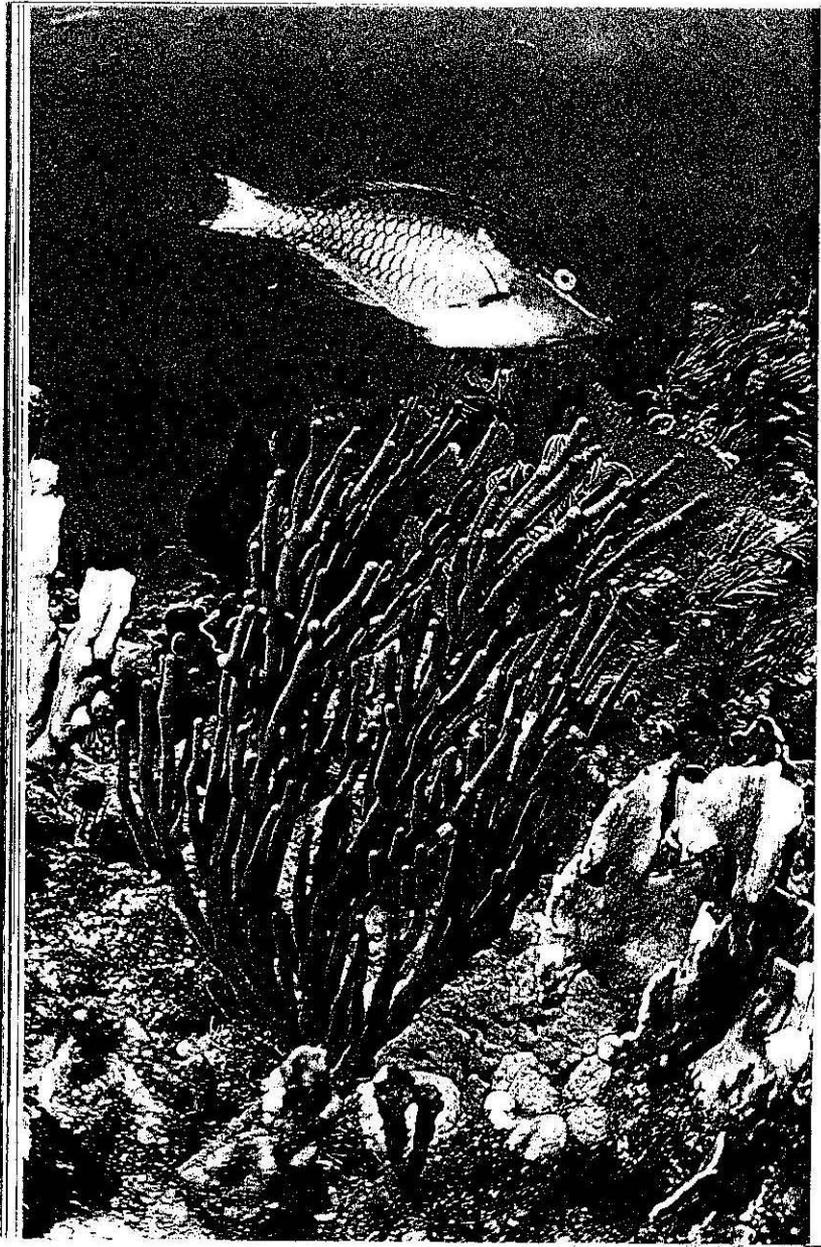








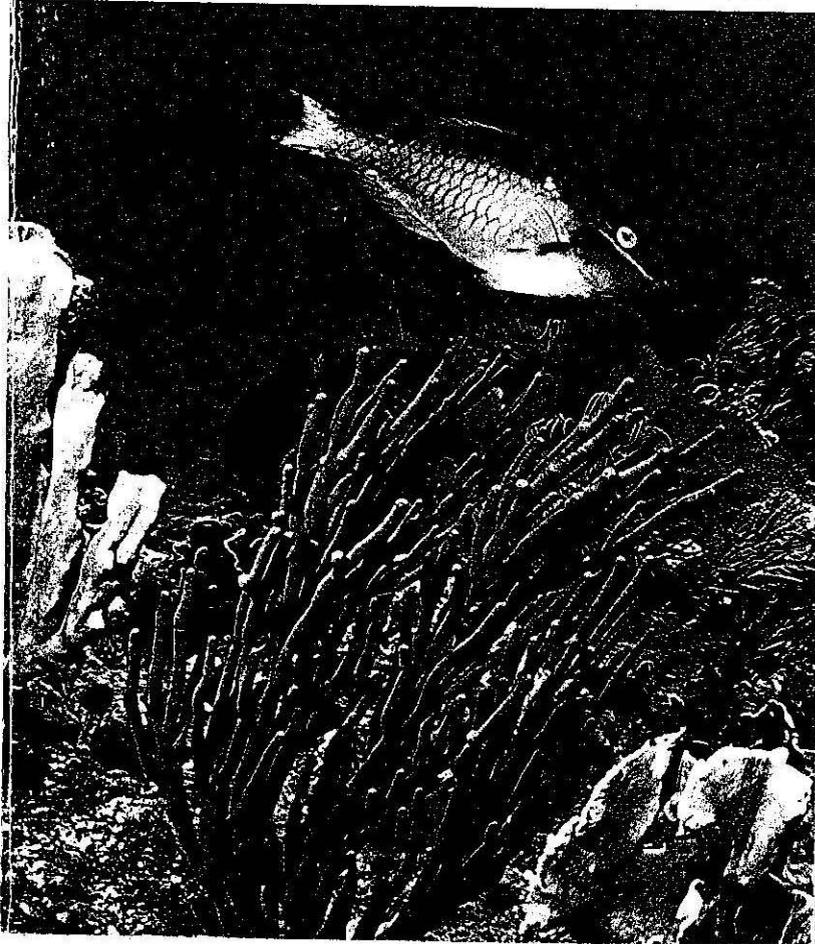
65



709

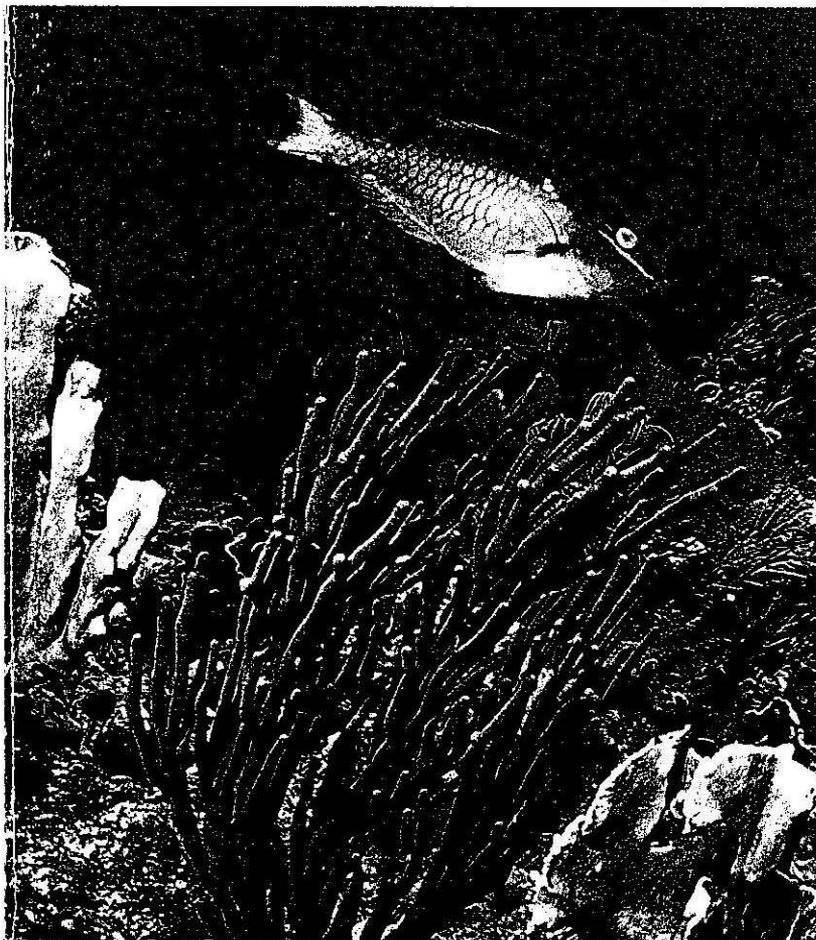
The Living Reef

JERRY AND IDAZ GREENBERG



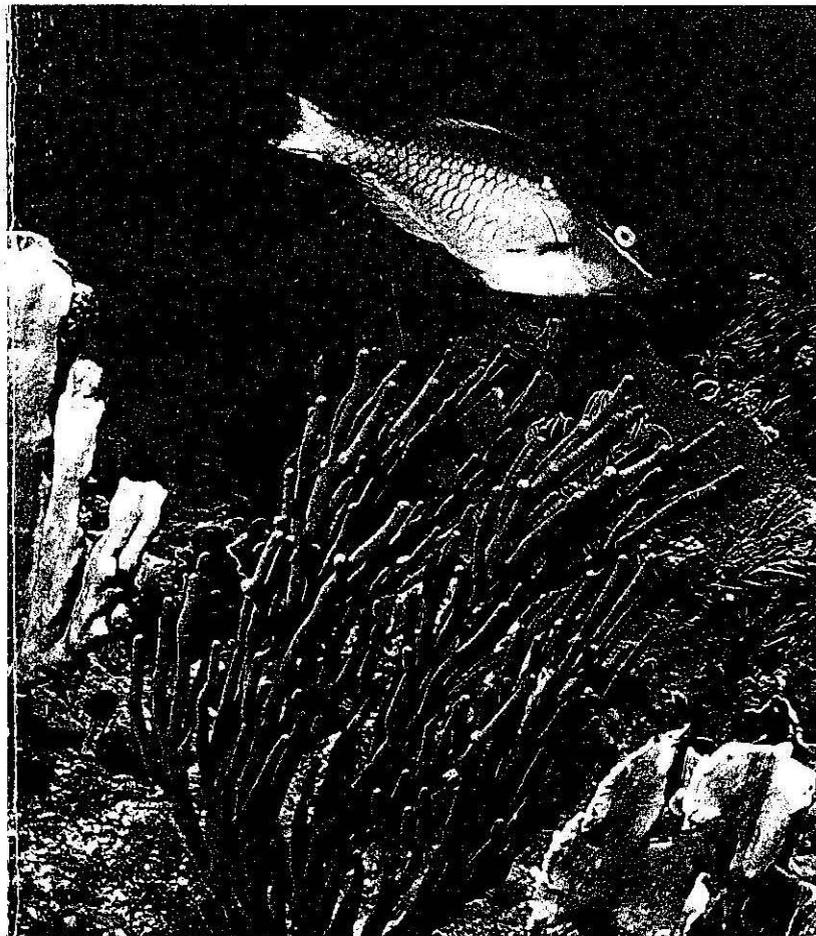
The Living Reef

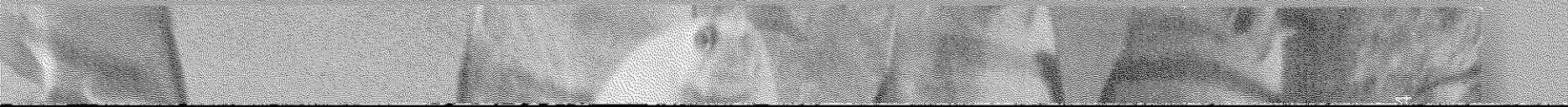
JERRY AND IDAZ GREENBERG



The Living Reef

JERRY AND IDAZ GREENBERG





inch
what they
Allanetta
ed silverside
swimming
diver.

