

PROPOSED ESA 4(d) REGULATIONS FOR THREATENED ELKHORN & STAGHORN CORALS FREQUENTLY ASKED QUESTIONS

WHY IS NOAA FISHERIES SERVICE PROPOSING A 4(d) RULE FOR THREATENED CORALS?

Because these two corals are listed as threatened, the prohibited acts of the Endangered Species Act (ESA) do not automatically apply, as they would if these coral species were listed as endangered. These prohibitions are enumerated in section 9 of the ESA and include prohibitions on import, export, take, and all commercial activities involving listed species. The term “take” is defined in the ESA as “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.” Thus, to provide for the conservation of threatened coral species, NOAA Fisheries Service determined that all of the ESA section 9 prohibitions, in most circumstances, are necessary and advisable to provide for the conservation of both species. NOAA Fisheries Service must propose regulations - known as a 4(d) rule - to implement these prohibitions for threatened species. The proposed rule is based on the status of the species and on information collected from the public during the May 2006 *Acropora* Conservation Workshops.

WHAT WOULD THE PROPOSED 4(d) RULE DO?

The proposed 4(d) rule would apply all of the ESA section 9 prohibitions, in most circumstances, to activities that would impact or involve these two coral species, but would not apply the ESA section 9 prohibitions on import, export, and take to specified categories of activities that contribute to the conservation of the threatened corals. NOAA Fisheries Service anticipates that implementation of the proposed 4(d) rule will discourage the development of a black market by regulating trade of listed corals; slow the rate of decline and reduce synergistic effects by managing for lesser stressors (i.e., direct and indirect take); and reinforce and support existing federal, state, and territorial regulations for the protection of corals in general.

DOES THE PROPOSED 4(d) RULE INCLUDE EXCEPTIONS TO THE ESA SECTION 9 PROHIBITIONS?

The proposed 4(d) rule includes exceptions to the ESA section 9 prohibitions on import, export, and take for certain activities that provide for the conservation of listed corals. Under specified conditions these excepted activities are: (1) Scientific research & enhancement activities conducted under seven specific existing Federal, state, or territorial research permitting programs; and (2) Restoration activities carried out by an authorized (under current laws) Federal, state, territorial, or local natural resource agency.

UNDER WHAT CIRCUMSTANCES ARE SCIENTIFIC RESEARCH AND ENHANCEMENT ACTIVITIES EXCEPTED?

Several Federal, state, and territorial natural resource management agencies permit scientific research and enhancement activities that are directed at listed corals. The research and enhancement activities conducted under permits issued by the following entities are excepted from the ESA section 9 prohibitions on import, export, and take: NOS National Marine Sanctuary Program, National Park Service, U.S. Fish & Wildlife Service (including CITES permits - for research purposes only), Florida Fish & Wildlife Conservation Commission, Puerto Rico Department of Natural & Environmental Resources, and U.S.V.I. Department of Planning & Natural Resources. If research activities directed at listed corals are in compliance with the permit issued by one of these entities, then any import, export, or take that occurs under such a permit would not result in a violation of the ESA prohibitions, and an ESA section 10 research permit is not required. The permit must be carried and available for inspection while conducting the permitted activity.

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UNDER WHAT CIRCUMSTANCES ARE RESTORATION ACTIVITIES EXCEPTED?

The proposed 4(d) rule defines “restoration activities” as “the methods and processes used to provide immediate aid to injured individuals.” Under this exception, certain Federal, state, territorial, and local government agency personnel, or their designees, are excepted from the prohibitions on take when they are performing a restoration activity directed at listed corals under existing legal authority that provides for the implementation of such restoration. The activity that caused the injury is not excepted by the proposed 4(d) rule. Any person claiming this exception must provide proof they are acting under the authority of the listed laws upon request. The proposed 4(d) rule includes a table of all exempted government entities and the authorizing statutes.

WHAT TYPES OF ACTIONS WOULD CONSTITUTE A VIOLATION OF THE PROHIBITIONS EXTENDED BY THE 4(d) RULE?

The proposed 4(d) rule extends all of the ESA section 9 prohibitions to threatened corals. This includes prohibitions on import, export, take, and all commercial activities involving listed species. For corals, collection and other activities that will result in mortality and harm are examples of “take” of the species. These activities include, but are not limited to: anchoring, grounding a vessel, or dragging any other gear on the species; removing or altering the species’ habitat; and discharging any pollutant or contaminant that will harm the species. NOAA Fisheries Service wishes to emphasize that whether injury or harm to elkhorn or staghorn coral results from a particular activity is entirely dependent upon the facts and circumstances of each case. The public is encouraged to contact NOAA Fisheries Service for assistance in determining whether circumstances at a particular location, involving these activities or any others, might constitute a violation of this proposed rule if finalized.

WHERE ARE THESE TWO CORALS FOUND?

Threatened elkhorn and staghorn corals are found typically in shallow water reefs (less than 100 feet) with a lot of wave action throughout the Bahamas, Florida, and the Caribbean. Within U.S. waters, these two corals are found as far north as Palm Beach County, Florida and throughout the Florida Keys, Puerto Rico, and the U.S. Virgin Islands.

WHAT SHOULD I DO IF I INJURE ONE OF THESE CORALS?

If you injure either of these threatened coral species, stop whatever activity caused the damage. Leave the injured coral in place where you found it. Do not keep any coral in your possession. Although there are no reporting requirements of this proposed rule, feel free to contact NOAA Fisheries Service. If you provide the location, restoration efforts by professionals may be possible.

WHO SHOULD BE CONTACTED FOR MORE INFORMATION?

The Southeast Region Protected Resources Division is the lead in developing the rules and all subsequent management actions for these species. For more information, please contact:

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