



**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 223**

**[Docket No. 0911231415-4999-04]**

**RIN 0648-XT12**

**Advanced Notice of Proposed Rulemaking and Request for Information for the Issuance of Protective Regulations under Section 4(d) of the Endangered Species Act for the Conservation of Threatened Corals**

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

**ACTION:** Advanced notice of proposed rulemaking; request for information.

**SUMMARY:** We, the National Marine Fisheries Service (NMFS), are considering proposing protective regulations to provide for the conservation of the 20 coral species recently listed as threatened under the Endangered Species Act (ESA). Fifteen of the listed species occur in the Indo-Pacific and five occur in the Caribbean. This advanced notice of proposed rulemaking (ANPR) is intended to alert other agencies and the public of our planning efforts and request public input that will assist in identifying actions and activities that may impact the status of these corals, as well as information on the existence and efficacy of on-going conservation activities. This information will help inform our evaluation of what, if any, protective regulations are necessary and advisable for the conservation of these species.

**DATES:** Responses to this request for information must be received by [Insert date 60 days after date of publication in the FEDERAL REGISTER].

**ADDRESSES:** You may submit comments, information, or data on this document, identified by NOAA-NMFS-2014-0158, by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking Portal [www.regulations.gov](http://www.regulations.gov). Go to [www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0158](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0158). Click the “Comment Now” icon, complete the required fields, and enter or attach your comments.
- Mail:
  - To submit written comments regarding the species listed in Table 1 below, contact the Pacific Islands Region: Lance Smith, Protected Resources Division, National Marine Fisheries Service, Pacific Islands Regional Office, NOAA Inouye Regional Center, 1845 Wasp Blvd., Building 176, Honolulu, HI 96818.
  - To submit written comments regarding the species listed in Table 2 below, contact the Southeast Region: Stephania Bolden, Protected Resources Division, National Marine Fisheries Service, Southeast Regional Office, 263 13<sup>th</sup> Avenue South, Saint Petersburg, FL, 33701.

**FOR FURTHER INFORMATION CONTACT:** Lance Smith, NMFS, Pacific Islands Regional Office, 808-725-5131; Kimberly Maison, NMFS, Pacific Islands Regional Office, 808-725-5143; Stephania Bolden, NMFS, Southeast Regional Office, 727-824-5312; or Marta Nammack, NMFS Office of Protected Resources, 301-427-8469.

## **SUPPLEMENTARY INFORMATION:**

### **Background**

On September 10, 2014, we published a final rule listing 20 species of coral as threatened under the ESA (79 FR 53851). The 15 Indo-Pacific species include *Acropora globiceps*,

Acropora jacquelineae, Acropora lokani, Acropora pharaonis, Acropora retusa, Acropora rudis, Acropora speciosa, Acropora tenella, Anacropora spinosa, Isopora crateriformis, Euphyllia paradivisa, Montipora australiensis, Porites napopora, Pavona diffluens, and Seriatopora aculeata. The five Caribbean species include Dendrogyra cylindrus, Orbicella annularis, Orbicella faveolata, Orbicella franksi, and Mycetophyllia ferox. The final listing rule describes the background of the listing actions for these 20 corals and provides a summary of our conclusions regarding the statuses of the listed corals. For additional background and a summary of natural history and threats to the species, the reader is referred to the Status Review Report, Supplemental Information Report, and Final Listing Rule (all three are available at [http://www.fpir.noaa.gov/PRD/prd\\_coral.html](http://www.fpir.noaa.gov/PRD/prd_coral.html)). At the time of listing we did not propose any protective regulations pursuant to section 4(d) of the ESA.

ESA section 9(a)(1) prohibitions are automatically applied to species listed as endangered but not to species listed as threatened. Section 4(d) of the ESA provides that, whenever a species is listed as threatened, the Secretary of Commerce (Secretary) shall issue such regulations as she deems necessary and advisable to provide for the conservation of the species. Such regulations may include any or all of the prohibitions in ESA section 9(a)(1) that apply automatically to species listed as endangered. Those section 9(a)(1) prohibitions make it unlawful, with limited specified exceptions, for any person subject to the jurisdiction of the United States to: “(A) import any such species into, or export any such species from the United States; (B) take any such species within the United States or the territorial sea of the United States; (C) take any such species upon the high seas; (D) possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any such species taken in violation of subparagraphs (B) and (C); (E) deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and

in the course of a commercial activity, any such species; (F) sell or offer for sale in interstate or foreign commerce any such species; or (G) violate any regulation pertaining to such species or to any threatened species of fish or wildlife listed pursuant to section 1533 of this title and promulgated by the Secretary pursuant to authority provided by this chapter.” Section 11 of the ESA provides for civil and criminal penalties for violations of section 9 or regulations issued under the ESA.

Whether section 9(a)(1) prohibitions or other regulations are necessary and advisable to provide for the conservation of species depends in large part upon the biological status of the species, the potential impacts of various activities on the species, and on factors such as the existence and efficacy of other conservation activities.

### **Statuses of the 20 Recently-Listed Corals**

We determined in the final listing rule that the 20 coral species are not currently in danger of extinction but are likely to become so within the foreseeable future. In the final listing rule we identified nine threats to the corals that posed either a current or future extinction risk (79 FR 53851; September 10, 2014) and further classified the threats by importance. Primary threats identified include ocean warming, disease, and ocean acidification. Threats of medium to low importance include trophic effects of fishing, sedimentation, nutrient enrichment, sea-level rise, predation, and collection and trade. See Tables 1 and 2 below for U.S. distributions of these 20 threatened coral species. For more details on the individual status reviews, threat susceptibilities, and listing determinations for each species, please see the final listing rule (79 FR 53851; September 10, 2014). We also determined Acropora palmata and Acropora cervicornis continue to warrant listing as threatened species; the ESA 4(d) rule (73 FR 64264; October 29, 2009) for those two species previously listed in 2006 remains effective.

## **Developing Protective Regulations**

We are now considering whether there are protective regulations that are necessary and advisable for the conservation of these 20 recently listed corals. We have flexibility under section 4(d) to tailor protective regulations based on the contributions of other existing conservation measures. The 4(d) regulations may prohibit, with respect to threatened species, some or all of the acts which section 9(a)(1) of the ESA prohibits with respect to endangered species. For those prohibitions we do apply, we may also provide exceptions for certain circumstances in which extending the take prohibitions is not necessary and advisable. For example, we can exempt from regulations activities that may take listed corals but ultimately provide an overall conservation benefit.

Seven of the 15 threatened Indo-Pacific coral species have been confirmed to occur within U.S. Pacific jurisdictional areas including Guam, the Commonwealth of the Northern Mariana Islands, the Pacific Remote Island areas, and American Samoa (See Table 1). This information may change as more surveys are conducted and better information becomes available. The remaining eight threatened Indo-Pacific coral species have not yet been reported or confirmed within U.S. jurisdiction and are currently considered to occur naturally as foreign species, entirely outside of U.S. jurisdiction; however, they may be observed within U.S. jurisdictions in future surveys, and several are commonly imported into the United States for the marine aquarium trade. All five threatened Caribbean corals occur within U.S. jurisdiction (See Table 2). One of the section 9(a)(1) prohibitions that may be applied pursuant to section 4(d) is the prohibition on the take of species on the high seas. We are therefore requesting information for all 20 newly listed threatened species, wherever they may occur, to help inform our determination of which take prohibitions may be necessary and advisable for their conservation.

**Table 1: U.S. Distribution of 15 Threatened Indo-Pacific Coral Species**

	Guam	Commonwealth of Northern Mariana Islands	Pacific Remote Island Areas	American Samoa
<i>Acropora globiceps</i>	X	X	X	X
<i>Acropora jacquelineae</i>				X
<i>Acropora lokani</i>				
<i>Acropora pharaonis</i>				
<i>Acropora retusa</i>	X	X	X	X
<i>Acropora rudis</i>				
<i>Acropora speciosa</i>			X	X
<i>Acropora tenella</i>				
<i>Anacropora spinosa</i>				
<i>Euphyllia paradivisa</i>				X
<i>Isopora crateriformis</i>				X
<i>Montipora australiensis</i>				
<i>Pavona diffluens</i>				
<i>Porites napopora</i>				
<i>Seriatopora aculeata</i>	X	X		

**Table 2: U.S. Distribution of Five newly-listed Caribbean Corals**

	Florida - Atlantic	Puerto Rico	U.S. Virgin Islands	Gulf of Mexico
<i>Mycetophyllia ferox</i>	X	X	X	
<i>Dendrogyra cylindrus</i>	X	X	X	
<i>Orbicella annularis</i>	X	X	X	X
<i>Orbicella faveolata</i>	X	X	X	X
<i>Orbicella franksi</i>	X	X	X	X

**Request for Information**

We are soliciting information from other agencies and the public that will help us determine what, if any, protective regulations are necessary and advisable for the conservation of these 20 newly listed coral species. This includes information that will help us understand and analyze impacts of various activities, the existence and efficacy of ongoing conservation activities, and prohibitions that are both necessary and advisable to reduce threats and amenable to management for the conservation of these 20 species. Specifically, we are soliciting information including the following: (1) current or planned activities within the range of these species and their possible impact on these species; (2) impacts within the species' ranges that fall within any of the nine major threat categories: ocean warming, disease, ocean acidification, sea-level rise, nutrient enrichment, sedimentation, predation, trophic effects of fishing, and collection and trade; (3) information on which of the section 9(a)(1) prohibitions on take are necessary and advisable for the conservation of these species, with associated justification; (4) specific activities that should be prohibited for the conservation of the 20 coral species, with associated justification; (5) specific activities that should be excepted from any prohibitions that may be applied because they either provide a conservation benefit or do not detract from the conservation of these species, with associated justification; (6) existing permitting programs that may already provide for the conservation of listed corals through their activity evaluation and permitting process, with associated justification; and (7) the economic costs and benefits likely to result from protective regulations (see **DATES** and **ADDRESSES**).

We will fully consider all relevant information received in our determination of what protective regulations are necessary and advisable for the conservation of the species.

## **References Cited**

A complete list of references is available at  
[http://www.fpir.noaa.gov/PRD/prd\\_coral.html](http://www.fpir.noaa.gov/PRD/prd_coral.html) and upon request (see ADDRESSES).

**Authority**

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.).

Dated: January 2, 2015.

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Eileen Sobeck,  
Assistant Administrator for Fisheries,  
National Marine Fisheries Service.

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