

Federal Requirements Related to Coral Farming and Restoration Activities



NOAA
FISHERIES

Southeast Region

corals

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Federal Requirements: Coral Farming

- Federal permit from U.S. Army Corps of Engineers (USACE) required for structures (semi-permanent or permanent) including anchors, buoys, pilings, cement blocks, artificial reefs, etc.
- Projects receiving federal funds require that funding agency consult with the National Marine Fisheries Service (NMFS) under Section 7 of the Endangered Species Act (ESA) as the **lead** agency
- Projects without federal funds require that USACE consult with NMFS under Section 7 of the ESA as the lead agency (permit issuer)
- Currently, a DNER permit is granted for the use of coral species (including elkhorn and staghorn corals) but, should coral species be listed as endangered, a NMFS permit will be necessary
 - Note that other federal permit and consultation requirements for any structures **will not change** regardless of listing

Federal Requirements: Coral Farming

- Section 7 ESA consultation requirements for projects receiving federal funding and/or requiring federal permits are with:
 - U.S. Fish and Wildlife Service (USFWS): consultation will consider operation of vessels in areas containing manatees, disturbance to manatee habitat, and potentially to sea turtles and critical habitat if access to sites involves sea turtle nesting beaches
 - NMFS: consultation will consider operation of vessels in areas containing ESA-listed marine mammals (other than manatees), sea turtles, and corals; and disturbance to sea turtle and/or coral habitat including critical habitat

Reminder: these consultation requirements do not change regardless of whether corals are listed as threatened or endangered

Federal Requirements: Restoration

- For emergency response with a federal lead (U.S. Coast Guard), the federal lead is responsible for emergency ESA Section 7 consultation with USFWS and NMFS and coordination of any avoidance and minimization with responsible party as part of consultation
- Other emergency restoration activities **at this time** must be operating under 4(d) rule for elkhorn and staghorn coral exemption or have DNER authorization

Note: Emergency restoration may be part of the emergency response for a larger event. Other emergency restoration activities may require DNER authorization. If the activity is federally funded or undertaken by federal agencies, consultation with NMFS and USFWS is required – this is also true for non-emergency restoration activities.

Federal Requirements: Coral Transplant

- As for coral farms, all projects receiving federal funding, requiring federal permits or authorizations, or being performed by federal agencies, require ESA Section 7 consultations with NMFS and USFWS on the part of the lead federal agency
- A USACE permit is required for some restoration activities, including those that involve the placement of structures such as artificial reefs
- Currently, a DNER permit is granted for the use of coral species (including elkhorn and staghorn corals) but, should coral species be listed as endangered, a NMFS permit will be necessary
 - **Note:** the receipt of this permit does not negate the need to comply with other federal permit and consultation requirements, though these may be covered through the Section 10 permit and consultation for the project

NOAA Proposed Corals under ESA

Southeast Region Proposed Endangered

Staghorn coral	<i>Acropora cervicornis</i> *
Elkhorn coral	<i>Acropora palmata</i> *
Pillar coral	<i>Dendrogyra cylindrus</i>
Lobed star coral	<i>Montastraea annularis</i>
Mountainous star coral	<i>Montastraea faveolata</i>
Knobby star coral	<i>Montastraea franksi</i>
Rough cactus coral	<i>Mycetophyllia ferox</i>

Southeast Region Proposed Threatened

Lamarck's sheet coral	<i>Agaricia lamarcki</i>
Elliptical star coral	<i>Dichocoenia stokesii</i>

**Species currently listed as threatened and not included in the petition.*

Proposed listing rule published December 7, 2012; public comment period closed April 6, 2013; final rule anticipated December 2013 and effective date is to be determined.

What happens if a species is listed as “endangered”?

Endangered species are automatically afforded protections under Section 9 of the Endangered Species Act (ESA). For endangered animals, including any parts or products, the ESA prohibits:

- **Import or export** from the U.S.
- **Take** in the U.S., or the territorial sea of the U.S.
- Take upon the high seas
- Possession, sale, deliver, carry, transport, or ship, by any means, such species **taken illegally**
- Deliver, receive, carry, transport, or ship interstate or foreign **commerce**, by any means in the course of commercial activity, such species taken illegally
- **Sell or offer for sale** in interstate or foreign commerce

Where take is harass, harm (kill or injure), pursue, wound, kill, collect, etc.

What happens if a species is listed as “threatened”?

*Threatened species are afforded fewer protections under the ESA than species listed as endangered. The Section 9 prohibitions **do not automatically** apply to threatened species listed by NOAA Fisheries, unless they are established in a **separate 4(d) rule**. Activities that involve species listed as threatened can continue as usual after a listing unless a 4(d) rule prohibits those acts.*

What does the listing mean?

- Scientific research and enhancement activities involving take, import, or export of coral species that are listed as **endangered** would require an ESA Section 10(a)(1)(A) permit.
 - These activities include collection (including sampling and swabbing); experimenting in the wild or in captivity; restoration (including out planting, reattachment, and stabilization); importing parts or samples to the U.S.; exporting parts or samples out of the U.S.
- Species that are listed as **threatened** would not require a permit from NMFS at this time, but a 4(d) rule could be created for these species.

What about nurseries, grow-out facilities, aquariums, zoos, and corals in captivity?

- Maintenance and asexual propagation of endangered corals in a nursery would **not** require a permit
- Additional activities such as experiments, transfer, or outplanting will require a permit
- Import or export may be authorized under a permit only for research or enhancement purposes
- For corals currently being maintained, demonstrating that the animals were in captivity before the final listing decision is your responsibility. Please contact the NMFS Permits Division at 301-427-8401 for information on this process.

When should I for apply for a NMFS permit?

- If you are currently using elkhorn or staghorn corals or one of the coral species proposed for listing as endangered, you should apply for a NMFS permit as soon as possible to minimize gaps in ongoing research and restoration activities
 - **Note:** the online permit application system has not yet been updated to include corals
- Typically, permits take about a year to process
- For this reason, consider collaboration for the submission of permit requests for similar activities under a single permit or submitting separate permit requests at the same time or close together in time so they can be processed in a batch

What can I do if I am collaborating with other researchers?

- There may be **advantages** for researchers conducting related work to apply for a single permit
- One person must be designated on the permit as the **Responsible Party**, an official who has the legal authority to bind the collaborating parties, organization, institution, or agency that is ultimately responsible for all activities and individuals operating under the permit.
- One researcher listed as the **Principal Investigator** (PI), and additional researchers listed as **Co-investigators** (CIs). The PI and CIs must be individuals who are qualified to supervise and conduct the activities.
- A Section 10(a)(1)(A) permit does **not** cover issues such as data ownership, publication rights, etc. Separate agreements between the PI and CIs are encouraged to cover these questions.

Contact Information

ESA Section 7 Requirements: <http://sero.nmfs.noaa.gov/pr/section7.htm>

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Permits: <http://www.nmfs.noaa.gov/pr/permits/corals.htm>

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QUESTIONS?



NOAA FISHERIES

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