

# Potential “4(d) Rule” for ESA Listed Corals in Pacific Islands Region

## OUTLINE

- ✓ ESA Listings, September 2014
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# ESA Listings, September 2014

- 15 Pacific species were listed, all as “threatened”
- Of the 15, 7 have been confirmed in U.S. waters:

Threatened Corals	Currently Confirmed in These U.S. Jurisdictions			
	Pacific Waters	Guam	Commonwealth of Northern Mariana Islands	Pacific Remote Island Areas
<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		

For more info on each species, see the NMFS Pacific Islands Region’s coral page [http://www.fpir.noaa.gov/PRD/prd\\_coral.html](http://www.fpir.noaa.gov/PRD/prd_coral.html)

- Section 7 consultation requirements begin immediately upon listing, meaning that federal agencies that propose actions must avoid jeopardizing the listed species – this is ensured through consultation w/ NMFS.
- But the other next steps that follow listing, such as critical habitat and 4(d), do not begin automatically.

# What is 4(d)?

- When species are listed as “endangered” under the ESA, it automatically becomes illegal to “take” the listed species, unless a permit is obtained.
- But when species are listed as “threatened”, there is no automatic prohibition against take. Rather, the federal gvt has the discretion to extend the prohibition against take under Section 4(d) of the ESA with a new “4(d) rule”, or not.
- Even though corals are now listed under the ESA, since they are listed as threatened and there is no 4(d) rule, take of listed corals is not illegal under the federal ESA (but likely illegal under other federal or non-federal laws).
- Section 4(d) provides flexibility for the federal gvt to implement threatened listings in the most effective way for conservation of the species. It is not assumed that new regulations are always most effective for conservation.

# What Are the Possible Coral 4(d) Outcomes?

- NMFS must determine whether implementing a new 4(d) rule is the most effective approach for conservation of the newly listed species. To help decide what 4(d) outcome is best, we are currently soliciting public comments thru 3/16.
- The possible outcomes include no 4(d) rule, but only if new protective regulations would not help conserve the listed species (e.g., ringed seals 2012, scalloped hammerheads 2014).
- Another possibility is a 4(d) rule that prohibits all take, unless a permit is obtained. Such 4(d) rules may or may not include exceptions:
  - If it includes exceptions, then the “excepted” actions don’t require a permit even though they cause take, because they benefit the species (e.g., Caribbean corals 2008).
  - If it doesn’t include exceptions, then all actions that cause take are prohibited, unless a permit is obtained.

# What Information is Needed?

- NMFS must determine whether and how to implement a new 4(d) rule for the listed corals or not, based on our determination of the most effective approach for conservation of the newly listed species.
  - No 4(d) rule is an option, but only if new protective regulations would not help conserve the listed species.
  - If 4(d) would be the most effective approach for conservation of the species, there are many different ways it could be done to maximize effectiveness.
- So NMFS needs information during the public comment period to help determine and support our decision about the most effective approach to 4(d) for the newly listed coral species.

# Examples of Helpful Information

- What would be some negative consequences for existing conservation activities if prohibitions are issued?
- What cultural activities may be affected by prohibitions on harming coral, and why?
- What are activities that you think **SHOULD** be addressed with regulations because they are causing a lot of harm to corals?
- What are the existing protections (laws, conservation programs, etc.) that already protect corals in your jurisdiction?
- If you think a 4(d) rule is not necessary, why would additional regulations not help to reduce the species risk of extinction globally?
- If you think a 4(d) rule is necessary, why **WOULD** additional regulations help to reduce the species risk of extinction globally?

# More Info

- For more information about the newly listed coral species, please see the NMFS Pacific Islands Region's coral page [http://www.fpir.noaa.gov/PRD/prd\\_coral.html](http://www.fpir.noaa.gov/PRD/prd_coral.html) or call or email us at the contact info below:
- For more information about the coral 4(d) rule that was done for Caribbean listed corals in 2008, please see the NMFS Southeast Region's coral page [http://sero.nmfs.noaa.gov/protected\\_resources/coral/](http://sero.nmfs.noaa.gov/protected_resources/coral/)
- For the coral 4(d) Advanced Notice of Proposed Rule-making (ANPR), and instructions on how to submit a comment letter, pls see either webpage above. The deadline for submitting comments is March 16, 2015.
- For more information about 4(d) in general, pls contact us:
  - Lance Smith, (808) 725-5131, [lance.smith@noaa.gov](mailto:lance.smith@noaa.gov)
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