DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No. 070801431–81370–02]

RIN 0648–AU92

Endangered and Threatened Species; Conservation of Threatened Elkhorn and Staghorn Corals

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

ACTION: Final rule.

SUMMARY: We, the National Marine Fisheries Service (NMFS), publish this final rule to apply all the prohibitions enumerated in section 9(a)(1) of the Endangered Species Act (ESA) to elkhorn (*Acropora palmata*) and staghorn (A. cervicornis) corals, with limited exceptions for two specified classes of activities that contribute to the conservation of the listed corals. We have determined that extending these prohibitions with two exceptions is necessary and advisable to provide for the conservation of the species.

DATES: The effective date of this rule is November 28, 2008.

ADDRESSES: NMFS, Southeast Regional Office, Protected Resources Division, 263 13th Ave. South, St. Petersburg, FL 33701–5505.

FOR FURTHER INFORMATION CONTACT: Jennifer Moore or Sarah Heberling, NMFS, Southeast Region, at the address above or at (727) 824–5312, or Marta Nammack, NMFS, Office of Protected Resources, at (301) 713–1401. Reference materials and supporting documents regarding this rule are available upon request or on the Internet at *http://sero.nmfs.noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

On May 9, 2006, we published a final rule listing elkhorn (*Acropora palmata*) and staghorn (A. cervicornis) corals as threatened under the ESA (71 FR 26852). The final listing rule describes the background of the listing actions for elkhorn and staghorn corals and provides a summary of our conclusions regarding the status of the listed corals. For additional background and a summary of Acropora spp. natural history and threats to the species, the reader is referred to the March 3, 2005, Atlantic *Acropora* Status Review report and final listing rule (available at *http://sero.nmfs.noaa.gov/pr/esa/acropora.htm*).

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 the Secretary 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 violation of section 9 or regulations issued under the ESA.

On December 16, 2007, we proposed protective regulations under section 4(d) of the ESA to apply all the prohibitions enumerated in section 9(a)(1)(A)-(F) of the ESA to these two coral species, with limited exceptions for two specified classes of activities that contribute to the conservation of the listed corals. In *Response:*to our request for public comments, we received written comments from 30 commenters.

Summary of Comments Received

Below we address the comments received pertaining to the proposed 4(d) rule for the Acroporid corals.

Comment 1: One commenter requested an extension of the comment period and public hearings to educate reef users about the 4(d) rule.

Response: We do not believe that extension of the comment period or additional hearings are necessary in order to finalize this rule. We provided a 60–day comment period on the proposed rule. In connection with the proposed listing of the species, we conducted public hearings during the comment period, during which we received comments on activities likely to result in take of the species. Further, after the final listing rule was published, we conducted public workshops to discuss issues that might be associated with a 4(d) rule or a critical habitat designation.

Comment 2: One commenter asked if the proposed prohibitions apply to only ''live'' coral or dead coral skeleton also.

Response: The ESA section 9(a)(1) prohibitions apply to any listed species of fish or wildlife. Section 3 of the ESA defines the term ''fish or wildlife'' to mean ''any member of the animal kingdom, including without limitation any mammal, fish, bird , amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or parts thereof.'' Therefore, the ESA section 9(a)(1) prohibitions extended through this rule apply to live coral and dead coral skeleton.

Comment 3: One commenter requested clarification on the use of the terms ''habitat'' and ''critical habitat'', including examples.

Response: In this rule, the term habitat is used broadly to describe the physical and biological environment in which the species occur. ''Habitat'' is used to further explain what may constitute ''harm'' under the definition of take. Activities that constitute harm may include significant habitat modification or degradation that actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns including breeding, spawning, rearing, migrating, feeding or sheltering (50 CFR 222.102). In this rule, the use of the term habitat is not the same as the narrower term ''critical habitat.'' Critical habitat is defined in section 3 of the ESA as: ''(i) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 1533 of this title, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 1533 of this title, upon a determination by the Secretary that such areas are essential for the conservation of the species.'' We proposed a critical habitat designation for elkhorn and staghorn corals on February 6, 2008 (73 FR 6895).

Comment 4: One commenter requested that we apply the prohibitions of this rule to fused-staghorn coral (A. prolifera), which is a hybrid of elkhorn and staghorn coral, given that it is listed in local guides and literature as a species or sub-species.

Response: In our final rule listing elkhorn and staghorn corals under the ESA (71 FR 26852), we determined that fused-staghorn coral did not warrant ESA-listing because it is a first-generation hybrid of elkhorn and staghorn corals. Thus, it is not possible to extend the section 9 prohibitions to fused-staghorn corals. In addition, while section 4(d) of the ESA gives us the authority to issue regulations necessary and advisable to provide for the conservation of threatened species, we did not identify any threats affecting elkhorn or staghorn corals to be associated with fused-staghorn coral or conservation needs of these species that are dependent upon regulating take of fused-staghorn coral. Therefore, we do not believe that specific 4(d) regulations applicable to fused-staghorn coral are warranted.

Comment 5: In the preamble to the proposed rule, we stated that the ESA section 9(a)(1) prohibitions are necessary and advisable for the conservation of the two species, specifically to address the lesser stressors included in the proposed rule that are amenable to management. One commenter suggested that we add to the list of lesser stressors: ''habitat degradation due to uncontrolled coastal development and ecosystem shifts due to overfishing.''

Response: In the Atlantic Acropora Status Review Document (BRT, 2005) and the Final Listing Determinations for Elkhorn Coral and Staghorn Coral (71 FR 26852; May 9, 2006), we categorized threats to elkhorn and staghorn corals as sources, stressors, or *Response:*. Sources were considered natural or anthropogenic processes that create stressful conditions for organisms (e.g., climate variability and change, coastal development). A stressor is the specific condition that causes stress to the organisms (e.g., elevated sea surface temperature or sediment runoff). The response of the organisms to that stressor is often in the form of altered physiological processes (e.g., bleaching, reduced fecundity or growth) or mortality. We determined that the following lesser stressors are contributing to the threatened status of the species: sedimentation, anthropogenic abrasion and breakage, competition, excessive nutrients, predation, contaminants, loss of genetic diversity, African dust, elevated carbon dioxide levels, and sponge boring. While coastal development and ecosystem shift due to overfishing are not listed as stressors in this rule, they are known to be sources of identified stressors. Sedimentation, anthropogenic abrasion and breakage, excessive nutrients, contaminants, and elevated carbon dioxide levels are all stressors whose source can be coastal construction and development. The stressor identified as competition is caused by macroalgae outcompeting the corals for space on the reef, the result of which is the ecosystem shift from coral-dominated reefs to macroalgae-dominated reefs. Macroalgae proliferation is caused by two factors: elevated nutrients and reduction of herbivores.

Comment 6: Two Federal agencies commented on the examples of activities that could result in a violation of the ESA under section 9, listed in the proposed rule at 71 FR 71,108 (December 16, 2007). One agency requested inclusion of language limiting the range of actionable offenses to those that are reasonably foreseeable. The second agency and a separate commenter listed examples of specific activities occurring or causing impacts in their managed areas and in Florida, respectively, that they believe meet several of the enumerated examples of violations.

Response: The list of activities that may violate the prohibitions for listed corals, which is not exhaustive, is intended to increase the public's awareness of the potential effects of this rule on proposed and ongoing activities within a species' range. The entity proposing or conducting an activity would have the information to determine if their specific activity may result in a violation. For Federal agencies, the interagency coordination requirements of section 7 of the ESA already apply without the implementation of this rule and provide additional procedural mechanisms to evaluate the effects of a particular action on listed species. Federal agencies must consult with NMFS if their actions 'may affect' listed corals. Further, upon the effective date of this rule, incidental take of the threatened corals that may result from a Federal action would be identified and may be authorized in a biological opinion through the section 7 consultation process, if the action is not likely to jeopardize a listed species' continued existence. Inclusion of a reasonably foreseeable standard for actions that constitute violations of the 4(d) prohibitions would be inappropriate as section 11 of the ESA establishes the applicable standards. In the context of section 7, our consultation regulations require us to evaluate all the direct and indirect effects of a proposed Federal action on listed species, and indirect effects are those that are reasonably certain to occur. 50 CFR § 402.02.

With regard to the comments identifying specific examples of activities that may constitute violations of the prohibitions, we reiterate that the fact that activities fall within one of the categories does not mean that a specific activity is a per se violation. Activities that do not result in take do not constitute violations.

Comment 7: One Federal agency expressed concern about monitoring and data collection requirements that may be imposed on them as a result of the rule, and the costs that could add to their activities.

Response: All Federal agencies are required to consult with NMFS under ESA section 7 if they approve, fund, or implement actions that may affect a listed species. This consultation requirement is not a result of the proposed 4(d) rule. As part of their consultation responsibilities, Federal agencies must make determinations about the effects of their actions on listed species based on the best scientific and commercial data available at the time the activity is being proposed. This information standard generally does not include a requirement for collection of new information. In addition, if a Federal agency's action will have adverse effects on listed species including these coral species, and a biological opinion is issued for the action, existing consultation regulations require the Federal agency to conduct monitoring to validate the assumptions and predictions in the opinion, and to ensure that the incidental take limit is not exceeded. Although take of these threatened corals was not prohibited by the listing, the monitoring requirement to ensure the continuing validity of a ''no jeopardy'' opinion became applicable as soon as the corals were listed.

Comment 8: One Federal agency asked whether and when ESA section 7 consultation would be required in connection with the categories of activities that have been excepted from the prohibitions through this rule.

Response: Though take of coral as a result of the activities excepted from the prohibitions through this rule will not constitute violations of section 9 of the ESA, the activities may nonetheless cause adverse effects to the corals that will require Federal agencies to consult with us under section 7 to ensure that

the effects will not rise to the level of jeopardizing the continued existence of the species. For example, collection of and research on elkhorn or staghorn corals under the auspices of one of the excepted research permitting programs will still constitute take of the species, though the take is not prohibited. If Federal agencies are permitting or conducting the research, they must continue to consult with NMFS to ensure their action is not jeopardizing the continued existence of the listed corals.

Comment 9: One commenter requested that NMFS ensure its 4(d) rule avoids unnecessarily duplicating existing laws and regulations, and discussed a number of state, Federal, and international laws providing protection to the corals from anthropogenic impacts.

Response: ESA section 4(d) instructs us to issue regulations that are necessary and advisable to provide for the conservation of the threatened corals. While we realize there are numerous existing regulations that protect corals in general, few protect elkhorn and staghorn corals specifically, and none protect these species for the specific purpose of achieving their recovery. Further, as part of the listing process, we conducted a thorough review of existing regulatory mechanisms and determined they were inadequate to protect elkhorn and staghorn corals, contributing to their threatened status. In this rulemaking, we determined, due to the species' population status and the threats affecting them, it is necessary and advisable to extend the ESA section 9 prohibitions to listed corals.

Comment 10: Several commenters identified specific federally-regulated activities occurring in Florida that they believe require profound changes in order to promote recovery of the threatened corals, such as open ocean outfalls and beach renourishment projects.

Response: We are currently reviewing Federal projects that may affect the listed corals through interagency consultation pursuant to ESA section 7. A Federal agency's responsibility to consult with us is triggered by the listing of a species and proposal of an action that may affect such species; therefore, we have been consulting on projects since the species were listed in May 2006. This rule allows us to issue an incidental take statement, with reasonable and prudent measures (RPMs) to reduce the impact of take, for projects that result in incidental take of the species. For projects that do not have a Federal nexus, an ESA section 10(a)(1)(B) permit may be obtained to receive authorization for incidental take. In that case, we would work with the applicant to develop a conservation plan to minimize the impacts to the species.

Comment 11: One commenter requested more discussion regarding the costs and benefits of our proposed project modifications for beach renourishment projects and more consideration of the coastal engineering literature. The commenter stated that many of the project modifications are similar to the conditions that would be imposed under State of Florida rules, but some (unidentified by the commenter) examples in the draft Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA) indicated we had a different understanding of physical coastal processes. The commenter also expressed concern about additional delays in permitting beach nourishment projects that may result from the rule.

Response: In the draft RIR/IRFA, we identified the following project modifications that may be applicable to beach renourishment projects to address adverse impacts to the threatened corals: Project relocation, coral relocation and monitoring, conditions monitoring, diver assisted anchoring or mooring buoy use, pipe collars or cable anchoring, sand bypassing, shoreline protection measures to reduce frequency of beach nourishment events, upland or artificial sources of sand, and sediment and turbidity control measures. In the draft report, we discuss how each project modification may reduce impacts to the species. The commenter did not indicate which particular project modifications indicated we had a different understanding of physical coastal processes, thus precluding a more specific *Response:*

The project modifications were identified as those already being implemented for beach renourishment projects as well as those described in the Report from the Southeast Florida Coral Reef Initiative Maritime Industry and Coastal Construction Impacts Workshop (TetraTech, 2007). The project modifications were also identified as the activities that may be necessary or appropriate to minimize the impact of incidental take on the two listed species of corals. It was not our intention that all project modifications identified for a particular category of activity be implemented for all individual projects. Rather, whether a particular project modification is imposed will depend on the specifics of the individual project. Further, project modifications, here likely imposed as RPMs through section 7 consultation, must be commensurate with the project for which they are imposed and cannot alter the basic design, location, scope, duration, and timing of the action and may only involve minor changes (50 CFR 402.14(i)(2)). Therefore, whether we impose a particular project modification will depend on whether that modification is necessary and appropriate in that instance and will take into consideration the physical coastal processes within the proposed action area. Lastly, as discussed in the RIR, consultation is already required if beach nourishment projects may affect the listed corals, and we do not expect that identification of RPMs will measurably increase the time required to complete consultation and delay project permitting.

Comment 12: One commenter expressed confusion on how maintenance dredging or deep water ports will be evaluated through ESA section 7 consultation. The commenter stated the economic impact data in the draft RIR/IRFA does not discuss many aspects of these ports' importance to the local economy and does not discuss the Port of Palm Beach at all. The commenter requested more information on the costs and benefits of NMFS' intentions.

Response: In the draft RIR/IRFA, we identified, and described in detail, several project modifications that may be applicable to maintenance dredging and disposal projects: Project relocation, conditions monitoring, GPS and DPV protocol, diver assisted anchoring or mooring buoy use, pipe collars or cable anchoring, and sediment and turbidity control measures. As we described in the draft RIR/IRFA, it is likely that neither species of coral would be present within the footprint of dredging projects in ports and navigation channels. It is possible that the species may be present within the dredge material disposal area or within the areas adjacent to the dredging area. In these instances it is possible that the species may be impacted by sediments or turbidity, vessel operations, or construction equipment. The identified project modifications would reduce the impact of take that may result from the project. Further, the identified project modifications are in most cases the same as those currently required by existing authorities.

We did not discuss the benefits to local economies of existing ports because we do not believe that there will be a change in the benefits the ports provide as a result of this rule. The imposition of project modifications must be reasonable and prudent for the particular project being proposed.

Therefore, it is not likely that the identified project modifications for maintenance dredging of an existing port would impact the operation of the port to the extent that it would reduce the benefits the port provides to local economies.

Comment 13: One state agency questioned the assertion that Florida's reefs provide protective value as storm surge barriers, and noted the absence of discussion about the considerable economic benefit of Florida's beaches and associated tourist recreation to the state's economy.

Response: Coastal nations and states, including the State of Florida, recognize the protection from storm surge and waves that offshore reefs provide to coastal communities and resources, including protection of beaches from erosion. The storm protection value may vary depending on the reefs and location, as the commenter indicates. We did not discuss the economic value of Florida's sand beaches because we do not believe that those values will be diminished by the proposed rule; specifically, we do not expect the proposed rule to interfere with beach renourishment projects to the extent that the values beaches provide will be impacted. As discussed above, if a beach renourishment project is expected to result in take of the listed corals, but will not jeopardize the corals' continued existence, modifications that may be required to minimize the impact of that take must be commensurate with the project and cannot alter the basic design, location, scope, duration, and timing of the project and may only involve minor changes.

Comment 14: One state agency commented that it regulates upland construction seaward of the Coastal Construction Control Line (CCL), which does not require any Federal agency permitting. The commenter asked if we were proposing a requirement for an Incidental Take Permit (ITP) for at least some of the activities. The commenter stated an ITP would add considerable time delay, especially in post-hurricane situations, and add to the agency's workload, but that we did not consider administrative cost to the agency or cost to any public or private entities.

Response: The commenter is correct that non-federal projects are not subject to section 7 consultation under the ESA, but may need an ESA Section 10(a)(1)(B) ITP if the activity results in the incidental take of listed species. When the state engages in an activity that does not require Federal funding or authorization, and that activity results in the incidental take of listed species, the state may apply for an ITP to request authorization for the take. However, if an activity occurs shoreward of the CCL and landward of the mean high water line (MHW) line, and has effects in the waters of the United States, such as discharges of sediments or other pollutants, a Federal permit may be required for that activity, potentially under the Clean Water Act or other statutes, depending on the location. Such permits would constitute a Federal agency action requiring a section 7 consultation on affected species listed under the ESA; incidental take of listed corals could be authorized through a biological opinion resulting from the consultation.

Comment 15: One state commenter discussed the range of actions being taken under state, local, and Federal laws to address wastewater and stormwater discharge impacts, particularly in the Florida Keys, and asked if or how the rule will affect implementation of their programs, if there is no conclusive evidence that such discharges are impacting offshore reefs.

Response: Programs that permit discharges to marine waters that result in incidental take of the listed corals will be impacted by the rule. Modifications to the program that minimize the impact of any incidental take of the listed corals may be appropriate, either through a section 10(a)(1)(B) ITP, or a section 7 consultation if the program is implementing the Federal Clean Water Act.

Comment 16: Two commenters expressed concern that reef users' fears about the rule's take prohibitions would effectively restrict access to and enjoyment of coral reefs through boating and recreational activities, and through commercial fishing.

Response: As stated previously, this rule does not prohibit any specific activity, only take of the species. Many existing regulations already prohibit injury or damage to coral reefs during the conduct of lawful activities such as boating and fishing. Therefore, by prohibiting take of elkhorn and staghorn corals, the rule does not present an undue burden on coral reef user groups.

Comment 17: One commenter stated that the rule should include exceptions to the prohibitions for unintentional take that cannot be prevented, specifically for take caused by vessels loosed from moorings or grounded during hurricanes. The commenter also stated that rebuilding coastal communities after hurricanes should not be unreasonably delayed due to the need for consultation and potential permits.

Response: Section 11 of the ESA provides for assessing different types and severity of penalties for violating the ESA or its implementing regulations. Knowing violations of the statute or regulations may lead to higher penalties, and the specific facts of an individual violation, for example a take, would determine whether the violation is ''knowing''. We have conducted section 7 consultations for community and major infrastructure repair and rebuilding activities in the wake of previous hurricanes, and we expect that any similar future consultations required due to potential impacts on the listed corals can be accomplished without unduly delaying projects.

Comment 18: One commenter requested an exemption for a buffer area around the entrance channel and harbor to allow for shipping activities and facility maintenance at the Port of Key West.

Response: This rule does not prohibit any activity generally, and specifically does not prohibit shipping activities and facility maintenance of the Port of Key West. This rule does prohibit the take of elkhorn and staghorn corals. Therefore, any activity that may result in take of either species would need to be modified to avoid taking the species. If the activity cannot be modified to avoid take, incidental take that will not jeopardize the species' continued existence can be authorized through the ESA section 7 consultation process or section 10(a)(1)(B) permitting. Further, any maintenance of the port may require a permit from the U.S. Army Corps of Engineers, who would consult with us under ESA section 7 if the project may affect listed corals.

Comment 19: One Federal natural resource management agency asked whether they need to obtain an ESA section 10 permit for incidental take that may result from visitor use of their managed areas.

Response: No. ESA section 10(a)(1)(B) permits are required for incidental take that results from an otherwise legal activity conducted by anyone other than a Federal agency. Federal agencies must consult with NMFS on activities that they conduct, fund, or authorize to ensure their activities do not result in jeopardy pursuant to ESA section 7(a)(2). Once section 9 take prohibitions are extended to threatened species, section 7 consultation will provide authorization for incidental take that results from said activity. Therefore, the commenting agency does not need a section 10 permit, but should enter into ESA section 7 consultation on activities under their management plan that may

affect the listed corals to obtain authorization for incidental take.

Comment 20: Several comments were received regarding the exception for scientific research and enhancement activities conducted under six existing Federal, state, or territorial research permitting programs. Specifically, there was confusion and concern about the Puerto Rico Department of Natural and Environmental Resources' (DNER) permit program. The confusion regarded a perception that we were delegating our ESA section 10(a)(1)(A) permitting authority to DNER. Concerns were raised as to the efficiency and adequacy of DNER's permit program.

Response: The exception for scientific research and enhancement activities does not delegate ESA section 10(a)(1)(A) permitting authority to the six specific programs identified in this rule. Rather, the exception removes the requirement for an individual to obtain an ESA section 10(a)(1)(A) permit if they have a valid permit from one of the identified programs.

We evaluated the DNER's research permitting program criteria and found the program to provide for the conservation of the species and to have requirements commensurate with the ESA section 10(a)(1)(A) permit. The comments received did not provide specific information to warrant reconsidering our determination. Further, eliminating redundant permitting requirements where state and Federal permitting programs already exist and provide for the conservation of the species will improve administrative efficiency, reduce regulatory burdens on research and enhancement activities, and thereby facilitate collection of scientific information and advance the recovery of these species.

Comment 21: One commenter suggested that enforcement of the scientific research and enhancement exception for import and export may be difficult due to the number of agencies issuing import and export permits. The commenter suggested that one agency be designated to issue the import and export permits.

Response: Although six agencies were identified as having the authority to issue permits for which the scientific research and enhancement exception would apply, only one, the U.S. Fish and Wildlife Service (FWS), has the authority to issue export permits for elkhorn and staghorn corals, which are required under the Convention on International Trade of Endangered Species (CITES), because these species are included in Appendix II of the Convention. We acknowledge that our exception may have been confusing and we have clarified our intent in this final rule.

We also proposed that import of elkhorn and staghorn coral necessary to conduct scientific research and enhancement activities would be excepted from the section 9(a)(1)(A) import prohibition. However, section 9(c) of the ESA specifically addresses the importation of species listed under Appendix II of CITES. This section provides that species listed as threatened under the ESA that are also included in Appendix II of the Convention, may be imported into the United States provided that all applicable requirements of CITES have been satisfied and the importation is not made in the course of a commercial activity. Because elkhorn and staghorn corals are listed under Appendix II of CITES, compliance with section 9(c) is required for the import of elkhorn and staghorn corals into the United States. Thus, we are not providing an exception to the section 9(a)(1)(A) import prohibition through this rulemaking, and we have removed the word ''import'' from the exception for scientific research and enhancement. We have also added an explicit reference to the statutory exception to the import prohibition provided by section 9(c) of the ESA.

The exception to the ESA section 9(a)(1)(A) prohibition on export provided in this rule allows for the export of elkhorn or staghorn corals from the United States if the applicable CITES permit has been obtained from FWS, as long as the purpose of the export is for scientific research or enhancement. Proof of the purpose of the export will be a copy of the valid collection permit from the applicable agency. The application of the exception from the export prohibition for scientific research and enhancement is consistent with the commenter's intent, because only one agency, FWS, has the authority to issue the required CITES export permit.

Comment 22: One of the six natural resource management agencies identified in the exception for scientific research and enhancement questioned whether scientific research conducted by agency staff under the authority of the management plan alone would qualify as excepted research, or whether the agency would need to issue itself a scientific research permit.

Response: We evaluated the research permitting programs of each of the six identified agencies and found that they provide for the conservation of the listed corals. Therefore, if the natural resource management agency is conducting research within their jurisdiction, they would have to issue themselves a permit to ensure compliance with the criteria we evaluated, and to qualify for the research and enhancement exception in this rule.

Comment 23: One commenter expressed concern that the qualifier ''immediate'' in the definition of excepted restoration activities excludes certain activities that are regularly part of Acropora restoration, and suggested that we omit the term.

Response: We agree that the word ''immediate'' inappropriately narrows the intended scope of the exception for restoration activities. Our intent is to extend an exception for the range of activities that have the objective of rescuing injured elkhorn and staghorn specimens and restoring them in their reef habitats. To the extent that existing restoration authorities allow for activities to be conducted at some time after the discovery of the injury, the restoration exception will apply. Therefore, we are removing the word immediate from the definition of restoration activity in this rule.

Comment 24: One commenter questioned whether the restoration exception only applied to corals injured by vessel groundings.

Response: The rule does not limit the types of impacts resulting in injury to corals for which the restoration exception applies. The exception for restoration activities is available to specified Federal, state, or local natural resource agencies conducting the activities under their authorizing laws. Therefore, the limits on activities covered by the exception are the limits imposed by the existing laws identified in the rule.

Comment 25: One commenter suggested that non-governmental organizations should be allowed to engage in a broad spectrum of restoration activities. Further, the same commenter stated that the definition of activities that qualify for the restoration exception does not include coral nurseries.

Response: Non-governmental organizations can play an important role in coral conservation, including through restoration activities. These organizations may apply for and receive permits for scientific or enhancement purposes from NMFS, under the provisions of paragraph 223.208(c)(3) of this rule, and from the agencies identified in § 223.208(c)(1) of this rule. We did not propose providing a regulatory authorization for non-governmental entities to conduct restoration activities, since restoration activities require intergovernmental

coordination and highly qualified personnel. We do not believe it advisable to extend authorization to take listed species broadly to unidentified entities with unevaluated qualifications, although identified entities may become authorized through these permits.

In our proposed rule, and as amended in this rule, we defined restoration activity as ''the methods and processes used to provide aid to injured individuals.'' The establishment or maintenance of coral nurseries does not fit within this limited definition. We believe in many cases a coral nursery may qualify for the research and enhancement exceptions at 223.208(c)(1) or (c)(3). In addition, please see our *Response:*to the previous comment. Continued non-commercial holding and use of elkhorn or staghorn corals that were in captivity or a controlled environment on or before May 9, 2006, when the two species were listed as threatened under the ESA, would not be prohibited by this rule.

Comment 26: Two commenters suggested that we not limit the Puerto Rico statutes pertaining to marine managed areas in Table 1 to Tres Palmas de Rincon Marine Preserve. Another commenter requested that we add Florida Statute § 20.331 to the same table.

Response: Table 1 has been updated to include all of the Puerto Rico statutory provisions that authorize restoration activities in marine managed areas and to include the Florida statute that authorizes the Florida Fish and Wildlife Conservation Commission to conduct restoration activities.

Comment 27: Two commenters requested a permit or a ''grandfather clause'' with respect to aquarists who possess, trade, and sell the listed corals.

Response: Section 9(b) of the ESA, Species Held in Captivity or Controlled Environment, speaks specifically to this comment. As that section applies to these listed corals, we cannot prohibit, through this 4(d) rule, the holding or use of elkhorn or staghorn corals that were held in captivity or a controlled environment on May 9, 2006, ''[p]rovided that such holding and any subsequent holding or use of [the listed coral] was not in the course of a commercial activity.'' This section provides further that ''there shall be a rebuttable presumption that the fish or wildlife involved in such act is not entitled to the exemption contained in this subsection.'' In other words, the burden of proof would fall on the aquarist to demonstrate that any specimens were in captivity or a controlled environment on May 9, 2006, and that they are not being held or used in the course of a commercial activity. Because Congress clearly intended with this language that commercial activities involving listed species held in captivity at the time of listing not be allowed, we will not provide a ''grandfather clause'' for the commercial trade or sale of listed corals by aquarists. The continued non-commercial possession and transportation of these specimens would be allowed under this rule, consistent with ESA sections 9(a) and (b).

Comment 28: One commenter questioned whether the rule would require permitting to transfer possession of corals that were held in captivity at the time of listing to approved research institutions. The commenter also questioned what effect the rule's prohibition on the sale of listed corals would have on the recovery of expenses, if corals held in captivity at the time of listing are provided for research and restoration projects.

Response: Regarding the necessity to obtain a permit for the transfer of possession of the corals, please see the *Response:*to comment 19. The extension of the ESA section 9(a)(1)(E) prohibition will make it illegal to deliver, receive, carry, transport, or ship either species in interstate or foreign commerce and in the course of a commercial activity. Similarly, the extension of the ESA section 9(a)(1)(F) prohibition will make it illegal to sell, or offer for sale, either species in interstate or foreign commerce. The ESA defines ''commercial activity'' as ''all activities of industry and trade, including, but not limited to, the buying or selling of commodities and activities conducted for the purpose of facilitating such buying and selling '' The FWS has defined the clause ''industry or trade'' in the definition of commercial activity to mean ''the actual or intended transfer of wildlife or plants from one person to another person in the pursuit of gain or profit.'' 50 CFR 17.3(c). In *Humane Society of the United States* v. *Lujan*, 1992 U.S. Dist. LEXIS 16140 (D.D.C., Oct. 19, 1992), the court found FWS' interpretation to be a ''reasonable construction'' of the ambiguous definition of commercial activity in the statute. Though NMFS has not issued parallel regulatory definitions, we believe that FWS' interpretation provides for a reasonable application of the statutory prohibitions to elkhorn and staghorn corals. Thus, so long as the activity described in the comment is not conducted in the pursuit of gain or profit, and is otherwise consistent with all other applicable regulations, it is not prohibited.

Comment 29: One commenter expressed the opinion that Alternative 3 described in the Draft Environmental Assessment (EA), which included exceptions to the incidental take prohibition for activities conducted in accordance with approved resource management plans (RMP), is superior to the preferred alternative included in the proposed rule. The commenter suggested that the approval of such plans would reduce the time-lag and paperwork burden on the public and non-federal agencies that occur through ESA section 7 consultation or the application for an ESA section 10 permit.

Response: As described in the EA, the loss of our ability to monitor and minimize incidental take that would be inherent in Alternative 3 was judged to be a significant shortcoming of this alternative. In addition, the greater amounts of undocumented take we believed would have resulted under Alternative 3 would reduce the quality and quantity of goods and services that derive from these corals, and the income generated from direct and indirect use of the corals. Further, the time-lag and paperwork burden would not likely be reduced by adoption of the RMP alternative; we would be required to conduct an ESA section 7 consultation on our action of approving each RMP. Additionally, existing RMPs that we reviewed would all likely require modification in order to provide for conservation of the threatened corals.

Comment 30: Several commenters suggested that education and outreach will be key to the success of this rule. Further, they suggested that partnerships with stakeholders will enhance the effectiveness of the education and outreach effort in abating the threats to the species.

Response: We appreciate the suggestion to use education and outreach to enhance the effectiveness of this rule and welcome the opportunity to continue to work with stakeholders. We intend to implement this suggestion through our ongoing recovery planning and implementation efforts.

Comment 31: We received many helpful comments of an editorial nature. These comments noted inadvertent errors in the proposed rule and offered non-substantive but nonetheless clarifying changes to wording.

Response: We have incorporated these editorial-type comments in the final rule. As these comments do not result in substantive changes to this final rule, we have not detailed the changes made.

In addition to the specific comments detailed above relating to the proposed 4(d) rule, the following were also

received: (1) general support for the proposed rule; (2) peer-reviewed journal articles regarding water quality impacts on Florida reefs; and (3) a request that we establish blanket regulations that automatically extend the ESA section 9 prohibitions to all threatened species. After careful consideration, we conclude the additional information received, as summarized in this paragraph, was considered previously or did not pertain to the determination to issue protective regulations necessary and advisable for the conservation of elkhorn and staghorn corals.

Summary of Changes From the Proposed Protective Regulations

Based on the comments received, we have made three substantive changes to the proposed rule. As discussed in the *Response:*to comment 18 (above), we are removing the word ''immediate'' from the definition of restoration activity excepted from the prohibitions by this final rule. We have also corrected the list of statutes authorizing the Puerto Rico DNER and the Florida Fish and Wildlife Commission to conduct restoration of injured elkhorn or staghorn corals. Additionally, we have omitted the exception to the section 9(a)(1)(A) import prohibition provided in the proposed rule for scientific research and enhancement activities, because section 9(c) controls imports of species listed in CITES Appendix II, which includes elkhorn and staghorn corals. We do not detail minor changes of an editorial nature (see *Response:* to Comment 23, above).

Evaluation of Regulations Necessary and Advisable for the Conservation of Elkhorn and Staghorn Corals

Whether ESA section 9(a)(1) prohibitions or other regulations are necessary and advisable to provide for the conservation of a 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. The two acroporid coral species have survived for millions of years through cycles in ocean conditions and climate. However, as a part of the listing process, we concluded their abundances have been dramatically reduced to less than three percent of former population levels by disease, elevated sea surface temperature, and hurricanes. Additionally, given the extremely reduced population sizes of these species, we determined that the following lesser stressors contribute to the threatened status of the species: sedimentation, anthropogenic abrasion and breakage, competition, excessive nutrients, predation, contaminants, loss of genetic diversity, African dust, elevated carbon dioxide levels, and sponge boring. We concluded that, within the jurisdiction of the United States, existing regulations have abated the threat posed by collection of the two species; however, existing regulatory mechanisms are inadequate to abate the myriad other threats causing the species' threatened status. Although elkhorn and staghorn corals are not currently endangered, they are likely to become so within the foreseeable future because of a combination of four of the five factors listed in section 4(a)(1) of the ESA, and this status is not sufficiently ameliorated by state or foreign government efforts to protect the species. Therefore, we have determined it is necessary and advisable in most circumstances to apply the section 9 prohibitions to both these threatened coral species, in order to provide for their conservation.

Application of Section 9 Prohibitions to Listed Corals

As discussed above, the two coral species have declined to less than three percent of their former abundances and are currently impacted by myriad stressors that act simultaneously on the species throughout their ranges. We determined the major stressors (i.e., disease, elevated sea surface temperature, and hurricanes) to these species' persistence are severe, unpredictable, likely to increase in the foreseeable future, and, at current levels of knowledge, unmanageable. While the lesser stressors, enumerated above, have not been the primary causes of the species' decline, managing them will contribute to the conservation of the two species by slowing the rate of decline and reducing the synergistic effects of multiple stressors on the species. Therefore, we believe that the ESA section 9(a)(1) prohibitions are necessary and advisable for the conservation of threatened elkhorn and staghorn corals, specifically to address the lesser stressors that are amenable to management. We believe that the prohibitions are not necessary and advisable in specific circumstances, and we implement specific exceptions for exportation and take, which are more fully described in the next section. Below is our discussion of the section 9 prohibitions that we extend to the two listed corals.

Section 9(a)(1)(A) prohibits the importation and exportation of endangered species to or from the United States. We believe that it is necessary and advisable to extend this prohibition to elkhorn and staghorn corals. Existing laws prohibit and restrict extraction and trade of live elkhorn and staghorn corals. International agreement restricts international trade of both elkhorn and staghorn corals (CITES). Federal regulations prohibit harvest or possession of elkhorn or staghorn coral in Federal waters (e.g., regulations implementing the Caribbean and Gulf of Mexico and South Atlantic Coral Fisheries Management Plans at 50 CFR part 622), and the Lacey Act prohibits trade of illegally obtained specimens. Sale of coral extracted from any waters is illegal in the U.S.V.I, Puerto Rico, and Florida, except that the sale of live elkhorn and staghorn corals extracted from Florida waters (F.A.C. 68B–42.009(2)) or the Exclusive Economic Zone (EEZ) (50 CFR 622.41) is legal when these corals are products of aquaculture (e.g., the corals have settled and grown on live rock products). Thus, this rule prohibits an activity that is currently allowed under Florida law and the Federal Magnuson-Stevens Fishery Conservation and Management Act. Neither threatened coral species, however, is a product of commercial aquaculture anywhere within the United States, nor is there a directed market for either elkhorn or staghorn corals. More information on the specific Federal, state, and local laws and regulations concerning the import and export of corals is available in the Atlantic Acropora Status Review Document (BRT, 2005) and the RIR for this rule.

As discussed in the status review document, prior to listing the two species as threatened under the ESA, we determined that there was no evidence of extraction of live specimens from Federal or state waters, nor evidence of trade of live specimens taken from foreign waters and imported into the United States for aquaria or other uses. Lack of extraction and trade of live specimens prior to the listing of these corals can be attributed mostly to existing laws and regulations. However, it is possible that the ESA listing might encourage a black market for the trade of these species, as evidenced by the trade of other threatened and endangered species (e.g., sturgeon eggs, elephant ivory). The increased public exposure to these rare corals due to the ESA listing may make the two species more desirable for aquaria or other uses. Therefore, to prevent this activity and to support existing regulations concerning the import and export of these corals, we find it necessary and advisable to extend the ESA section 9(a)(1)(A)

prohibition to elkhorn and staghorn corals in order to provide for the conservation of the two species.

Section 9(a)(1)(B) of the ESA prohibits the take of endangered species within the United States or the territorial sea of the United States, and section 9(a)(1)(C) of the ESA prohibits the take of endangered species upon the high seas for any person subject to the jurisdiction of the United States. Take means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Activities that constitute harm may include significant habitat modification or degradation that actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns including breeding, spawning, rearing, migrating, feeding, or sheltering (50 CFR 222.102). At the time of the drafting of the ESA, the high seas were defined as those waters not under any country's legal jurisdiction, and no country had yet designated an EEZ (i.e., 200 nautical miles (370.4 km)). Thus, ''take on the high seas'' is interpreted as take beyond any country's territorial seas. Based on available information, the territorial seas of countries within the range of the two threatened coral species end no more than 12 nautical miles NM (22.2 km) offshore (See, ''Table of claims to maritime jurisdiction'' as of December 29, 2006, at *http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/table__summary__of__claims.pdf).*

A range of private and public activities have the potential to result in take of the listed corals, including recreational and commercial activities. Take can result knowingly or otherwise, by direct and indirect impacts, intentionally or incidentally. Protecting listed corals from all direct forms of take, such as physical injury or killing, will help preserve the species' remaining populations and slow their rate of decline. Protecting listed corals from indirect forms of take, such as harm that results from habitat degradation, will likewise help preserve the species' populations and also decrease synergistic, negative effects from other stressors. We therefore propose to extend the ESA section 9(a)(1)(B) prohibition to elkhorn and staghorn corals to manage for these threats. There are likely few locations where elkhorn and staghorn corals occur farther than 12 NM (22.2 km) from land, because corals cannot typically survive in these depths. However, due to the dramatic decline in abundance and the myriad threats facing them, it is necessary and advisable for these species' conservation to protect the species from take everywhere they occur, including on the high seas, and thus we propose extending the ESA section 9(a)(1)(C) prohibition to the listed corals. Ensuring that take is prohibited everywhere the corals may be found will also avoid difficulty in enforcing these regulations based on claims about the origin of coral specimens.

Sections 9(a)(1)(D), (E), and (F) of the ESA prohibit, among other things, the possession, sale, and transport of endangered species that are taken illegally or that are entered into interstate or foreign commerce. For the same reasons discussed above regarding the prohibition pursuant to ESA section 9(a)(1)(A), it is necessary and advisable to extend these prohibitions to the two corals. The ESA listing of these two species may make them a desirable commodity and encourage a black market. Therefore, the extension of these prohibitions will discourage the development of a black market and reinforce existing regulations on commercial activities involving corals.

Lastly, we extend the section 9(a)(1)(G) prohibition against violating this and any other regulations we promulgate pertaining to these two corals.

Summary of Exceptions to Section 9 Prohibitions

The ESA allows for specific exceptions to the section 9 prohibitions through interagency consultation as prescribed by ESA section 7, a permit issued pursuant to section 10, or compliance with the requirements for imports of CITES-listed species pursuant to section 9(c). With the finalization of this rule, these exceptions apply.

Section 7 of the ESA requires all Federal agencies to consult with us if actions they fund, authorize, or carry out may affect threatened corals or any other species listed under the ESA. We consult on a broad range of activities conducted, funded, or authorized by Federal agencies. These activities include, but are not limited to, national water quality standards and discharge permits, coastal and nearshore construction, the dredge or discharge of fill material, navigation regulation, fishery regulation, and live-rock aquaculture. Incidental take of these two threatened corals that results from federally funded, authorized, or implemented activities for which section 7 consultations are completed, will not constitute violations of section 9 prohibitions against take, provided the activities are conducted in accord with all RPMs and terms and conditions contained in any biological opinion and incidental take statement.

Sections 10(a)(1)(A) and 10(a)(1)(B) of the ESA provide us with the authority to grant exceptions to the ESA's prohibitions. Section 10(a)(1)(A) scientific research and enhancement permits may authorize exceptions to any of the section 9 prohibitions and may be issued to Federal and non-Federal entities conducting research or conservation activities that involve a directed take of listed species. A directed take refers to the intentional take of listed species. Section 10(a)(1)(B) incidental take permits may be issued to non-Federal entities performing activities that may incidentally take listed species in the course of an otherwise lawful activity; these permits provide an exception to the section 9(a)(1)(B) prohibitions.

Section 9(c) of the ESA allows for the importation of species listed as threatened under the ESA that are also listed in Appendix II of CITES, provided that all the requirements of CITES have been satisfied and the import is not in the course of a commercial activity.

We determined that in certain circumstances described below, extending the ESA section 9(a)(1)(A), (B), and (C) prohibitions to elkhorn and staghorn corals is not necessary and advisable. We except these prohibitions for two classes of activities that provide for the conservation of listed corals. Under specified conditions, (1) scientific research and enhancement activities conducted under six specific existing Federal, state, or territorial research permitting programs are excepted from the section 9(a)(1)(A) export, and subsections (B) and (C) take prohibitions; and (2) restoration activities carried out by an authorized (under current laws) Federal, state, territorial, or local natural resource agency are excepted from the section 9(a)(1)(B) and (C) take prohibitions. These exceptions are described in more detail in the following sections. These classes of activities are not excepted from the Section 9(a)(1)(D) through (F) prohibitions because allowing commercial activities does not provide for the conservation of the two species. The 9(a)(1)(G) prohibition applies to these activities so that it is unlawful to violate this rule or subsequent rules that we may promulgate under the ESA and pertaining to the corals.

Exception to Prohibitions for Scientific Research and Enhancement Activities

This exception applies to both threatened corals covered by this rule. In carrying out their resource

management responsibilities, several Federal, state, and territorial natural resource management agencies permit scientific research and enhancement activities, including monitoring and other studies that are directed at, and occur within the geographic areas occupied by, the listed corals. Research or enhancement activities may involve collection of specimens from one location for study in another location, thus requiring an exception to the export, as well as the take, prohibitions. However, since elkhorn and staghorn corals are listed in Appendix II to CITES, a CITES export permit must be obtained from the FWS if such export is necessary to conduct the research or enhancement activities excepted from the prohibitions by this rule. Similarly, if excepted research or enhancement activities require importing elkhorn or staghorn corals into the United States from another country, a scientist must contact FWS to ensure that the importation can be conducted in accordance with section 9(c) of the ESA.

The following six agencies have permit programs that include corals, and we have evaluated these programs and found that they provide for the conservation of the listed corals: National Ocean Service (National Marine Sanctuary Program), National Park Service, FWS, Florida Fish and Wildlife Conservation Commission, Puerto Rico DNER, and the U.S.V.I. Department of Planning and Natural Resources (DPNR). We compared each of these programs' substantive and procedural requirements to ESA section 10(a)(1)(A) scientific research and enhancement permit regulations. Review of the permitting process used by each of the six specific programs identified above revealed that each of these permit programs allow research activities that yield sufficient data to support the research objectives while limiting, to the maximum extent practicable, the amount of resources collected or impacted. We determined that the programs are restrictive enough to provide important conservation benefits to the listed corals without the additional requirements of section 10(a)(1)(A) scientific research permits. Additionally, we reviewed examples of the types of acroporid research that have been permitted in the past by these agencies (e.g., gene flow, disease etiology) and concluded that the continuation and future permitting of these types of research will provide for the conservation of these species by improving our understanding of the status and risks facing these threatened corals and by providing critical information for assessing the effectiveness of current and future management practices. Each of these permit programs has application requirements similar to those of the ESA section 10 permitting program. Each requires detailed background information, justifications, and descriptions of expected impacts prior to approval for all proposed scientific research. Additionally, each of these permitting programs has data reporting requirements and the ability to apply stringent terms and conditions on issued permits. If research directed at elkhorn and staghorn coral is in compliance with one of the permit programs listed above, any exportation or take that occurs under such a permit would not constitute a violation of the prohibitions, and an ESA section 10(a)(1)(A) permit would not be required. A copy of the issued permit must be carried and available for inspection during the research or enhancement activity. Further, if export is necessary to conduct the research or enhancement activities excepted from the prohibitions by this rule, a CITES permit must be obtained and a copy of the applicable collection permit will provide proof of the purpose of the collection.

Exception to Prohibitions for Certain Restoration Activities

This exception applies to both threatened corals and would except certain Federal, state, and territorial agency personnel, or their designees as applicable, from the prohibitions on taking when they are performing specific restoration activities directed at the listed corals under an existing legal authority that provides for such restoration. For purposes of this exception, a ''restoration activity'' is the methods and processes used to provide aid to injured individual elkhorn or staghorn corals. For example, reattachment of colonies or fragments dislodged or broken by vessel groundings onto suitable hard substrates would be excepted from the prohibition when it is implemented under an existing legal authority. Thus, Florida Keys National Marine Sanctuary staff actions under the National Marine Sanctuaries Act's authority to undertake all necessary actions to prevent or minimize the destruction or loss of, or injury to, sanctuary resources (16 U.S.C. 1441 *et seq.*), would be excepted from the prohibitions when the restoration activity described in this prohibition is implemented for either of the two acroporid corals. Through this exception, we do not authorize any activities that are not currently authorized under an existing statute, rather we except these activities from the section 9(a)(1)(B) and (C) take prohibitions for the two listed corals. The activity that caused the injury is not excepted by this rule. Any person claiming this exception shall, upon request by a law enforcement agent, provide proof they are acting under the authority of the listed laws.

Several Federal, state, and territorial government agencies have authorization to engage in the specific type of restoration activities covered by this exception. We have included response removal, or remedial authority under several Federal statutes in this exception, because one or more of these authorities have been interpreted to include the type of natural resource restoration activity described above; for example, actions required to respond to a substantial threat of a discharge may dislodge or break coral fragments, and reattaching those fragments are legitimate response activities. The following table lists the authorizing statute, the specific provision, and specific agencies or offices authorized under existing statutes to implement the coral restoration activities defined in this exception.

FEDERAL:		
Agency/Person	Statute and Specific Provision(s)	Description of Authority
NOAA, National Ocean Service (NOS)	National Marine Sanctuaries Act 16 U.S.C. 1433	Authorized to conduct, among other things, all necessary actions to prevent or minimize actual or imminent risk of destruction or loss of, or injury to, Sanctuary resources.
NOAA NOS	Coral Reef Conservation Act, 16 U.S.C. 6406	Authorized to conduct activities to conserve coral reefs, including restoration.

FEDERAL:		
Agency/Person	Statute and Specific Provision(s)	Description of Authority
Commandant, U.S. Coast Guard (USCG), Authorized representatives of States or Indian Tribes.	″Oil Pollution Act″ 33 U.S.C. 2702	Authorized to conduct the removal of discharges of oil, including the prevention, minimization or mitigation of substantial threats of discharges.
Designated Federal, State or Indian tribal natural resources trustees, including NOAA, Department of Interior (DOI), Florida Department of Environmental Protection (FDEP), Puerto Rico DNER, and U.S. Virgin Islands DPNR.	33 U.S.C. 2706	Authorized to restore or rehabilitate trust natural resources injured, destroyed or lost as a result of discharges of oil, or substantial discharges of oil.
Administrator, Environmental Protection Agency (EPA) or Commandant, USCG; Authorized representatives of States.	″Clean Water Act″ 33 U.S.C. 1321	Authorized to conduct removal of and mitigation or prevention of substantial threats of discharges of oil or hazardous substances to certain waters; protection, rescue, and rehabilitation of, and minimization of risk of damage to, fish and wildlife resources harmed by, or that may be jeopardized by, discharges;
Designated Federal, State or Indian tribal natural resources trustees, including NOAA, DOI, FDEP, DNER, and DPNR.		Authorized to conduct restoration or rehabilitation of public trust natural resources damaged or destroyed as a result of discharges.
Administrator of the EPA; States or Indian Tribes in cooperative agreements with EPA; Heads of other federal agencies where release is from vessel or facility solely under their control.	″Superfund Act″ (CERCLA) 42 U.S.C. 9604	Authorized to conduct removal and other remedial action for releases or substantial threats of releases of hazardous substances into the environment.
Administrator of the EPA	42 U.S.C. 9606	Authorized to conduct abatement actions in response to imminent and substantial endangerment to the public health or welfare or the environment from actual or threatened releases of hazardous substances.
Designated Federal, State or Indian tribal natural resources trustees, including NOAA, DOI, FDEP, DNER, and DPNR	42 U.S.C. 9607	Authorized to conduct restoration and rehabilitation of natural resources injured, destroyed or lost as a result of actual or threatened releases of hazardous substances.
DOI, National Park Service (NPS)	Park System Resource Protection Act, 16 U.S.C. 19jj 16 U.S.C. 668dd-668ee (National Wildlife Refuge System)	Authorized to conduct all necessary actions to prevent or minimize actual or imminent risk of destruction, loss of, or injury to Park System resources, and to restore such resources.
DOI	National Wildlife Refuge System Administration Act, 16 U.S.C. 668	Authorized to administer refuges for the conservation of fish and wildlife within refuges.
FLORIDA:		
The Board of Trustees of the Internal Improvement Trust Fund	State Lands; Board of Trustees to Administer FL Statute § 253.03	Authorized, among other things, to administer, manage, conserve, and protect all lands owned by the State or any of its agencies, departments, boards or commissions.
	Duty of Board to Protect, etc. FL Statute. § 253.04 FDEP	Authorized to protect, conserve, and prevent damage to state-owned lands; FDEP authorized to assess civil penalties for damage to coral reefs in state waters.
Governor and Cabinet; FDEP	Land Acquisition for Conservation or Recreation; Conservation and Recreation Lands Trust Fund FL Statute § 259.032	Authorized to use monies in the Fund to, among other things, promote restoration activities, and manage lands acquired under this section to protect or restore their natural resource values.

FEDERAL:		
Agency/Person	Statute and Specific Provision(s)	Description of Authority
FDEP	Pollutant Discharge Prevention and Removal; Liability for Damage to Natural Resources FL Statute § 376.121	Authorized to recover the costs of restoration of state natural resources damages by pollution discharges, and to use funds recovered for, among other purposes, restoration of the damaged resources.
FDEP	Land and Water Management; Coral Reef Restoration FL Statute § 390.0558	Authorized to use monies in the Ecosystem Management and Restoration Trust Fund to restore or rehabilitate injured or destroyed coral reefs.
Florida Fish and Wildlife Conservation Commission	Fish and Wildlife Conservation Commission FL Statute § 20.331	Assigned, among other things, the powers, duties, responsibilities, and functions to develop restoration and management techniques for habitat and enhancement of plant and animal populations; and respond to and provide critical technical support for catastrophes including oil spills, ship groundings, major species die-offs, hazardous spills, and natural disasters.
U.S. VIRGIN ISLANDS:		
DPNR	DPNR; Powers and Duties of Department 3 V.I.C. § 401	Authorized to undertake programs and projects for, among other things, the conservation of natural resources of the U.S.V.I., for the restoration and preservation of the scenic beauty of the U.S.V.I., and for the conservation, maintenance and management of U.S.V.I. wildlife, the resources thereof, and its habitat.
DPNR	Conservation; Croix East End Marine Park Established; 12 V.I.C. § 98	Authorized to protect territorially significant marine resources, including coral reefs, in the St. Croix East End Marine Park.
PUERTO RICO:		
DNER	Conservation; Protection, Conservation and Management of Coral Reefs 12 L.P.R.A. §§ 241-241g *et seq.*	Authorized to, among other things, take all measures needed for the protection, conservation and management of coral reefs and coral communities throughout the territorial waters of the Commonwealth of Puerto Rico.
DNER	Conservation; Natural Patrimony Program 12 L.P.R.A. § 1227	Authorized to acquire, restore and manage lands, natural communities and habitats identified as, among other things, deserving preservation for their natural resource values.
DNER	Conservation; Tres Palmas de Rincon Marine Reserve 12 L.P.R.A. § 5063	Authorized to administer, rehabilitate and conserve the reserve.

Identification of Those Activities That Would Constitute a Violation of Section 9 of the ESA

On July 1, 1994, NMFS and FWS published a policy (59 FR 34272) that requires us to identify, to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the ESA. The intent of this policy is to increase public awareness of the effect of a listing on proposed and ongoing activities within a species' range. We must identify to the extent known, specific activities not considered likely to result in violations of section 9, as well as activities that will be considered likely to result in violations. We believe that, based on the available information, the following actions will not result in a violation of section 9:

1. Collection, handling, and possession of listed corals that are acquired lawfully through an ESA section 10(a)(1)(A) permit or through one of the exceptions in this rule; or

2. Activities that result in incidental take authorized by an incidental take statement issued through a biological opinion pursuant to section 7 or permitted through section 10(a)(1)(B) of the ESA.

Based on available information, we believe the following categories of activities are those most likely to result in a violation of the ESA section 9 prohibitions. We emphasize that whether a violation results from a particular activity is entirely dependent upon the facts and circumstances of each incident. The mere fact that an activity may fall within one of these *categories* does not mean that the specific *activity* will cause a violation; due to such factors as location and scope, specific actions may not result in direct or indirect adverse effects on the species. Further, an activity not listed may in fact result in a violation. However, the following types of activities are those that may be most

likely to violate the prohibitions in section 9, which are being extended to the listed corals through this rule:

1. Removing, damaging, poisoning, or contaminating elkhorn or staghorn corals.

2. Removing, poisoning, or contaminating plants, wildlife, or other biota required by listed corals for feeding, sheltering, or other essential behavioral patterns.

3. Harm to the species' habitat resulting in injury or death of the species, such as removing or altering substrate, vegetation, or other physical structures.

4. Altering water flow or currents to an extent that impairs spawning, feeding, or other essential behavioral patterns of listed corals.

5. Discharging pollutants, such as oil, toxic chemicals, radioactivity, carcinogens, mutagens, teratogens, or organic nutrient-laden water, including sewage water, into listed corals' habitat to an extent that harms or kills listed corals.

6. Releasing non-indigenous or artificially propagated species into listed corals' habitat or locations from where they may access the habitat of listed corals.

7. Activities conducted in shallow water coral reef areas, including boating, anchoring, fishing, recreational SCUBA diving, and snorkeling, that result in abrasion of or breakage to the listed corals.

8. Interstate and foreign commerce dealing in listed corals, and importing or exporting listed corals other than for permitted scientific research or enhancement.

9. Shoreline and riparian disturbances (whether in the riverine, estuarine, marine, or floodplain environment) that may harm or kill listed corals, for instance by disrupting or preventing the reproduction, settlement, reattachment, development, or normal physiology of listed corals. Such disturbances could include land development, run-off, dredging, and disposal activities that result in direct deposition of sediment on corals, shading, or covering of substrate for fragment reattachment or larval settlement.

10. Activities that modify water chemistry in coral habitat to an extent that disrupts or prevents the reproduction, development, or normal physiology of listed corals.

11. Local activities that result in elevated water temperatures in coral habitat that cause bleaching or other degradation of physiological function of listed corals. For example, in our economic analysis of this rule, we identified discharges of cooling water effluent from power plants as an activity that may result in elevated sea surface temperature.

This list provides examples of the types of activities that could have a high risk of causing a violation, but it is by no means exhaustive. It is intended to help people avoid violating the ESA and to encourage efforts to recover the threatened corals addressed in this rule.

Persons or entities concluding that their activity is likely to violate the ESA are encouraged to immediately adjust that activity to avoid violations and to seek authorization under: (a) an ESA section 10(a)(1)(B) incidental take permit; (b) an ESA section 10(a)(1)(A) research and enhancement permit; or (c) an ESA section 7 consultation. The public is encouraged to contact us (see **FOR FURTHER INFORMATION CONTACT**) for assistance in determining whether circumstances at a particular location, involving these activities or any others, might constitute a violation of this rule.

In making a determination that it is not necessary and advisable to impose ESA section 9 take prohibitions on certain activities, we recognize that new information may require a reevaluation of that conclusion. For any of the exceptions from the prohibitions described in this rule, we will evaluate periodically the activity's effect on the conservation of listed corals. If we determine that it becomes necessary and advisable for the conservation of the species, we will impose take prohibitions, through appropriate rulemaking, on the activities previously excepted.

Final Determination

Based on the status of the species and the threats affecting them, we believe that the ESA section 9(a)(1) prohibitions are necessary and advisable for the conservation of threatened elkhorn and staghorn corals. We believe that the prohibitions are not necessary and advisable in specific circumstances, and we are providing two exceptions for scientific research and enhancement and restoration activities, when conducted by specified entities under specified legal authorities.

Classification

We determined that this action is consistent to the maximum extent practicable with the enforceable policies of the approved coastal management programs of Florida, Puerto Rico, and U.S.V.I. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. We did not receive *Response:* from Puerto Rico or the U.S.V.I; Florida found the regulation consistent with its approved coastal management programs.

This rule has been determined not to be significant under Executive Order (E.O.) 12866.

We prepared a final regulatory flexibility analysis (FRFA), pursuant to section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), that describes the economic impact this rule would have on small entities. A description of the need for, and objectives of, the action is included in the preamble of this rule. Small entities may be affected if a project they seek to implement requires ESA section 7 consultation and may adversely affect the listed coral species, requiring RPMs, which are minor changes to the project to lessen impacts on the corals. We did not identify any private activity that would involve incidental take that would require an ESA section 10(a)(1)(B) incidental take permit because the activities and take would be covered by a section 7 consultation and incidental take statement. Reporting requirements of the rule would be associated with implementation of the required section 7 RPMs. No record keeping requirements are implemented specifically by this rulemaking. No existing Federal rules or laws duplicate or conflict with this rule. Existing Federal rules and laws overlap the rule only to the extent that they provide for the protection of natural resources or corals in general. Public comments concerning the economic impacts of the rule are addressed earlier in the preamble and did not result in any changes to the regulatory flexibility analysis. A summary of the impacts analysis follows.

In the FRFA, we found that, given existing Federal, state, or local laws that in some form or another prohibit take, possession, or sale of, and/or damage to, corals, few private activities that are now legal would have to be altered or abandoned. Puerto Rico and U.S.V.I. law prohibit the take and sale of elkhorn and staghorn corals. Florida law (F.A.C. 68B–42.009(2)) and Federal regulations (50 CFR 622.41) prohibit take of these corals, with an exception provided for corals that attach to rock placed by aquaculture operations (i.e., live rock) that have appropriate permits. There is no historical evidence of any live rock operations selling live rock with these species attached in the past 10 years of observations reported by live rock producers. Existing regulations allow sales of dead elkhorn or staghorn coral skeletons with proof that the specimens were not taken illegally. There is anecdotal evidence that Florida shell shops have sold dead specimens of

these species. There is also no historical evidence of international trade of either of these species.

It is anticipated that, on average, approximately 44 non-Federal grantees or permittees, or their contractors, could be affected annually with the implementation of this rule. Historically, the projects undertaken by these entities have involved pipeline installation and maintenance, mooring construction and maintenance, dock/pier construction and repair, marina construction, bridge repair and construction, new dredging, maintenance dredging, National Pollutant Discharge Elimination System (NPDES)/water quality standards, cable installation, beach renourishment, shoreline stabilization, reef ball construction and installation, and port construction. Our database does not track whether applicants have been small entities or any particulars that would allow us to make such a determination, so it is impossible to determine the number of future grantees, permittees, or contractors that may be small entities. There is no indication that affected project applicants or their contractors would be limited to, nor disproportionately comprised of, small entities.

The rule will not result in an increase in the number of ESA section 7 consultations; rather, any additional costs would result from the identification and implementation of RPMs to minimize the effects of the action on the listed species. Based on our experience with section 7 consultations for other species, incremental administrative costs of identifying RPMs will be negligible, compared to the analytical requirements and associated costs already required by the duty to consult to ensure the action does not jeopardize listed species. Hence, we have assumed there will be no administrative costs of consultation associated with this rule. Though we have characterized the costs in the RIR/FRFA associated with individual types of RPMs for the projected future activities, no total cost of this rule can be identified because the lack of specific information on the design and location of projected future projects limits our ability to forecast the exact type and amount of modifications required. However, the majority of the RPMs that NMFS would likely specify for these actions are currently required by other regulatory agencies. In addition, current ESA regulations require that RPMs cannot alter the basic design, location, scope, duration, and timing of an action and may only involve minor changes.

We considered four alternatives for extending section 9(a)(1) prohibitions to threatened corals. These included a preferred alternative (i.e., this rule), a no action alternative, and two additional alternatives. The no action alternative was not selected because it did not meet the conservation objectives of the section 4(d) of the ESA. The remaining two alternatives (Alternatives B and C) were not selected because they (1) were judged to have less conservation value for the corals, and (2) could result in smaller annual incomes generated by small businesses that rely on resident and visitor use of coral reefs. Alternative B, in addition to the exceptions from the ESA section 9 prohibitions for conservation research and restoration included in the preferred alternative, would except incidental take from the take prohibitions where such take results from activities managed under a NMFS-approved management plan. Persons engaged in activities covered by an approved management plan would not be required to obtain an ESA section 10 incidental take permit. This alternative would be expected to have the same costs of implementing section 7 RPMs as the preferred alternative. However, this alternative was predicted to result in increased take of these species, and thus smaller annual incomes generated from small businesses, such as those in the tourism sector, that rely on resident and visitor use of coral reefs. Alternative C would eliminate the exception for research and restoration activities and require Federal, State, territorial, and local governments or their designees to acquire an ESA section 10 permit for restoration activities directed at listed corals, even when emergency actions are warranted to save either listed coral as a result of a natural or technological disaster or other event that has injured these corals. This alternative is also expected to have the same costs of implementing section 7 RPMs as the preferred alternative. Similar to Alternative B, the resulting increase in mortality of these corals could reduce revenues received from small businesses that benefit from resident and tourist use of coral reefs.

This action does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

This rule is consistent with E.O. 13089, which is intended to preserve and protect the biodiversity, health, heritage, and social and economic value of U.S. coral reef ecosystems and the marine environment.

List of Subjects in 50 CFR Part 223

Endangered and threatened species, Exports, Imports, Transportation.

Dated: October 22, 2008.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 223 is amended as follows:

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

■ 1. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531 1543; subpart B, § 223.201 202 also issued under 16 U.S.C. 1361 *et seq.*; 16 U.S.C. 5503(d) for § 223.206(d)(9).

■ 2. In subpart B of part 223, add § 223.208 to read as follows:

§ 223.208 Corals.

(a) *Prohibitions.* (1) The prohibitions of section 9(a)(1) of the ESA (16 U.S.C. 1538(a)(1)) relating to endangered species apply to elkhorn (*Acropora palmata*) and staghorn (*A. cervicornis*) corals listed as threatened in § 223.102(d), except as provided in § 223.208(c).

(2) It is unlawful for any person subject to the jurisdiction of the United States to do any of the following:

(i) Fail to comply immediately, in the manner specified at § 600.730 (b) through (d) of this title, with instructions and signals specified therein issued by an authorized officer, including instructions and signals to haul back a net for inspection;

(ii) Refuse to allow an authorized officer to board a vessel, or to enter an area where fish or wildlife may be found, for the purpose of conducting a boarding, search, inspection, seizure, investigation, or arrest in connection with enforcement of this section;

(iii) Destroy, stave, damage, or dispose of in any manner, fish or wildlife, gear, cargo, or any other matter after a communication or signal from an authorized officer, or upon the approach of such an officer or of an enforcement vessel or aircraft, before the officer has an opportunity to inspect same, or in contravention of directions from the officer;

(iv) Assault, resist, oppose, impede, intimidate, threaten, obstruct, delay, prevent, or interfere with an authorized officer in the conduct of any boarding, search, inspection, seizure, investigation, or arrest in connection with enforcement of this section;

(v) Interfere with, delay, or prevent by any means, the apprehension of another

person, knowing that such person committed an act prohibited by this section;

(vi) Resist a lawful arrest for an act prohibited by this section;

(vii) Make a false statement, oral or written, to an authorized officer or to the agency concerning applicability of the exceptions enumerated in paragraph (c) of this section relating to elkhorn and staghorn corals;

(viii) Make a false statement, oral or written, to an authorized officer or to the agency concerning the fishing for, catching, taking, harvesting, landing, purchasing, selling, or transferring fish or wildlife, or concerning any other matter subject to investigation under this section by such officer, or required to be submitted under this part 223; or

(ix) Attempt to do, solicit another to do, or cause to be done, any of the foregoing.

(b) *Affirmative defense.* In connection with any action alleging a violation of this section, any person claiming the benefit of any exception, exemption, or permit under this section has the burden of proving that the exception, exemption, or permit is applicable, was granted, and was valid and in force at the time of the alleged violation, and that the person fully complied with the exception, exemption, or permit.

(c) *Exceptions.* Exceptions to the prohibitions of section 9(a)(1) of the ESA (16 U.S.C. 1538(a)(1)) applied in paragraph (a) of this section relating to elkhorn and staghorn corals are described in the following paragraphs (1) through (6):

(1) Permitted scientific research and enhancement. Any export or take of elkhorn or staghorn corals resulting from conducting scientific research or enhancement directed at elkhorn and staghorn corals is excepted from the prohibitions in ESA sections 9(a)(1)(A), (B) and (C) provided a valid research or enhancement permit has been obtained from one of the following Federal or state agencies: NOAA National Ocean Service National Marine Sanctuary Program, National Park Service, U.S. Fish and Wildlife Service, Florida Fish and Wildlife Conservation Commission, Puerto Rico Department of Natural and Environmental Resources, or the U.S. Virgin Islands Department of Planning and Natural Resources. The exportation or take must be in compliance with the applicable terms and conditions of the applicable research or enhancement permit, and the permit must be in the possession of the permittee while conducting the activity. Export of elkhorn or staghorn corals from the United States to conduct excepted research or enhancement activities requires a CITES export permit from the U.S. Fish and Wildlife Service in addition to the research permit for collection. Import of elkhorn or staghorn corals into the United States to conduct excepted research or enhancement activities must be in compliance with the provisions of section 9(c) of the ESA.

(2) Restoration activities. Any agent or employee of governmental agencies listed in Table 1 may take listed elkhorn or staghorn corals without a permit, when acting in the course of conducting a restoration activity directed at elkhorn or staghorn coral which is authorized by an existing authority (see Table 1 to this section). Take of elkhorn or staghorn corals during such restoration activity is excepted from the prohibitions in ESA sections 9(a)(1)(B) and (C). An excepted restoration activity is defined as the methods and processes used to provide aid to injured individual elkhorn or staghorn coral.

(3) Section 10 scientific and enhancement permits. The Assistant Administrator may issue permits authorizing activities that would otherwise be prohibited under § 223.208(a) for scientific purposes or to enhance the propagation or survival of elkhorn or staghorn corals, in accordance with and subject to the conditions of part 222, subpart C-General Permit Procedures.

(4) Section 10 incidental take permits. The Assistant Administrator may issue permits authorizing activities that would otherwise be prohibited under § 223.208(a) in accordance with section 10(a)(1)(B) of the ESA (16 U.S.C. 1539(a)(1)(B)), and in accordance with, and subject to the conditions of part 222 of this chapter. Such permits may be issued for the incidental taking of elkhorn and staghorn corals.

(5) Section 7 Interagency consultation. Any incidental taking that is in compliance with the terms and conditions specified in a written statement provided under section 7(b)(4)(C) of the ESA (16 U.S.C. 1536(b)(4)(C)) shall not be considered a prohibited taking of elkhorn and staghorn corals pursuant to paragraph (o)(2) of section 7 of the ESA (16 U.S.C. 1536(o)(2)).

(6) Importation under the Convention on International Trade of Endangered Species. Any importation of elkhorn or staghorn corals in compliance with the provisions of section 9(c) of the ESA (16 U.S.C. 1538(c)) shall not be considered a violation of any provision of the ESA or any regulation issued pursuant to the ESA.

TABLE 1 TO §223.208. AGENCIES AND AUTHORIZING STATUTES WHOSE CORAL RESTORATION ACTIVITIES ARE EXCEPTED FROM CERTAIN PROHIBITIONS IN PARAGRAPH (a) OF THIS SECTION.

FEDERAL:	
Agency/Person	Statute and Specific Provision(s)
NOAA, National Ocean Service (NOS)	National Marine Sanctuaries Act 16 U.S.C. 1431 *et seq.*
NOAA, NOS	Coral Reef Conservation Act 16 U.S.C. 6406
Commandant, U.S. Coast Guard (USCG), Authorized representatives of States or Indian Tribes.	″Oil Pollution Act″ 33 U.S.C. 2702
Designated Federal, State or Indian tribal natural resources trustees, including NOAA, Department of Interior (DOI), Florida Department of Environmental Protection (FDEP), Puerto Rico Department of Natural and Environmental Resources (DNER), and U.S. Virgin Islands Department of Planning and Natural Resources (DPNR)	33 U.S.C. 2706
Administrator, Environmental Protection Agency (EPA) or Commandant, USCG; Authorized representatives of States.	″Clean Water Act″ 33 U.S.C. 1321
Designated Federal, State or Indian tribal natural resources trustees, including NOAA, DOI, FDEP, DNER, and DPNR.	
Administrator of the EPA; States or Indian Tribes in cooperative agreements with EPA; Heads of other Federal agencies where release is from vessel or facility solely under their control.	″Superfund Act″ (CERCLA) 42 U.S.C. 9604
Administrator of the EPA	42 U.S.C. 9606
Designated Federal, State or Indian tribal natural resources trustees, including NOAA, DOI, FDEP, DNER, and DPNR	42 U.S.C. 9607
DOI, National Park Service (NPS)	Park System Resource Protection Act, 16 U.S.C. 19jj 16 U.S.C. 668dd–668ee (National Wildlife Refuge System)
DOI	National Wildlife Refuge System Administration Act, 16 U.S.C. 668
FLORIDA:	
The Board of Trustees of the Internal Improvement Trust Fund	State Lands; Board of Trustees to Administer FL Statute § 253.03 Duty of Board to Protect, etc. FL Statute. § 253.04 FDEP
Governor and Cabinet; FDEP	Land Acquisition for Conservation or Recreation; Conservation and Recreation Lands Trust Fund FL Statute § 259.032
FDEP	Pollutant Discharge Prevention and Removal; Liability for Damage to Natural Resources FL Statute § 376.121
FDEP	Land and Water Management; Coral Reef Restoration FL Statute § 390.0558
Florida Fish and Wildlife Conservation Commission	Fish and Wildlife Conservation Commission FL Statute § 20.331

TABLE 1 TO §223.208. AGENCIES AND AUTHORIZING STATUTES WHOSE CORAL RESTORATION ACTIVITIES ARE EXCEPTED FROM CERTAIN PROHIBITIONS IN PARAGRAPH (a) OF THIS SECTION.—Continued

FEDERAL:	
Agency/Person	Statute and Specific Provision(s)
U.S. VIRGIN ISLANDS:	
DPNR	DPNR; Powers and Duties of Department 3 V.I.C. § 401
DPNR	Conservation; Croix East End Marine Park Established; 12 V.I.C. § 98
PUERTO RICO:	
DNER	Conservation; Protection, Conservation and Management of Coral Reefs 12 L.P.R.A. §§ 241-241g *et seq.*
DNER	Conservation; Natural Patrimony Program 12 L.P.R.A. § 1225 *et seq.*
DNER	Conservation; Natural Resources; Declarations of Marine Reserves (and other protected areas) containing elkhorn and staghorn corals 12 L.P.R.A.; Subtitle 6A; Chapter 252; §§ 5011 *et seq.*

[FR Doc. E8–25820 Filed 10–28–08; 8:45 am]

BILLING CODE 3510–22–S