

ESA 4(d) REGULATIONS

FREQUENTLY ASKED QUESTIONS

WHY DID NOAA FISHERIES SERVICE ISSUE A 4(d) RULE FOR THREATENED CORALS?

Because elkhorn and staghorn corals are listed under the U.S. Endangered Species Act (ESA) as threatened, but not endangered, species, Section 9 of the ESA does not apply. Under Section 9 of the ESA, it is illegal to import, export, or take endangered species for any purpose, including commercial activity. The term “take” means to hurt, hunt, shoot, capture, trap, kill, collect, bother, harm, or pursue an ESA-listed species, or attempt any of these activities. To conserve both elkhorn and staghorn corals, NOAA Fisheries Service determined that applying the ESA Section 9 prohibitions is necessary. In order to apply the Section 9 prohibitions, a separate rule was issued. The rule is referred to as 4(d) rule because it is authorized by Section 4, subsection (d), of the ESA.

WHAT DOES THE 4(d) RULE DO?

The 4(d) rule applies all the ESA Section 9 prohibitions to elkhorn and staghorn corals. NOAA Fisheries Service believes that implementation of the 4(d) rule will minimize the possibility of a black market for these corals and will slow down the rate of decline in their populations. The 4(d) rule will also help reinforce existing State and territorial regulations and federal laws.

ARE THERE EXCEPTIONS TO THE 4(d) RULE?

The 4(d) rule has exceptions for some activities, namely scientific research and species enhancement, and restoration carried out by authorized personnel.

WHEN ARE SCIENTIFIC RESEARCH AND ENHANCEMENT ACTIVITIES EXCEPTED?

Research and enhancement activities can be conducted with permits authorized by one the following agencies: NOAA National Marine Sanctuary Program, National Parks Service, U.S. Fish and Wildlife Service, Florida Fish and Wildlife Service Commission, USVI Department of Planning and Natural Resources, and Puerto Rico Department of Natural and Environmental Resources. If the research activity is directed at either of the two listed corals, the scientist must carry a valid permit issued by one of these agencies at all times to enable him or her to import, export, or take these corals. A guide for scientific researchers is available to help determine which permit(s) may be needed.

WHEN ARE RESTORATION ACTIVITIES EXCEPTED?

Restoration activities are “the methods and processes used to provide aid to injured individuals.” Restoration activities directed at listed corals are not prohibited by the 4(d) rule when conducted by certain Federal, state, territorial, or local government agency personnel (or their designees) acting under existing legal authority. The 4(d) rule provides a table of all exempted government authorities and authorizing statutes. Persons claiming this exception must provide proof of authority upon request.

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

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

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Walt Jaap, W. Jaap, Michael Barnette, M. Barnette, NOAA, and Caroline Rogers



WHERE ARE THESE TWO CORALS FOUND?

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



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

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



WHO SHOULD BE CONTACTED FOR MORE INFORMATION?

NOAA Fisheries Service Southeast Region Protected Resources Division is the lead office in developing this rule and all subsequent management actions for these species. For more information, please contact:

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