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**FOR FURTHER INFORMATION CONTACT:** Ralph Cantral, Chief, National Policy and Evaluation Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 10th Floor, Silver Spring, Maryland 20910, (301) 713-3155, extension 118.

Federal Domestic Assistance Catalog 11.419; Coastal Zone Management Program Administration.

Dated: June 14, 2004.

**Alan Neuschatz,**

*Associate Assistant Administrator for Management, Ocean Services and Coastal Zone Management.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[Docket No. 040610181-4181-01; I.D. 060204C]

#### Listing Endangered and Threatened Wildlife and Plants and Designating Critical Habitat; 90-Day Finding on a Petition to List Elkhorn Coral, Staghorn Coral, and Fused-staghorn Coral

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

**ACTION:** Notice of petition finding; request for information.

**SUMMARY:** NMFS announces the 90-day finding for a petition to list elkhorn coral (*Acropora palmata*), staghorn coral (*A. cervicornis*), and fused-staghorn coral (*A. prolifera*) as endangered or threatened, and to designate critical habitat under the Endangered Species Act (ESA). NMFS finds that the petition presents substantial scientific information indicating the petitioned action may be warranted. NMFS will conduct a status review of the three acroporids to determine if the petitioned action is warranted. To ensure that the review is comprehensive, NMFS is soliciting information pertaining to these species and potential critical habitat from any interested party. NMFS also seeks suggestions from the public for peer reviewers to take part in the

peer review process for the forthcoming status review.

**DATES:** Information related to this petition finding must be received no later than August 23, 2004.

**ADDRESSES:** You may submit comments by any of the following methods:

- E-mail: [Acropora.Info@noaa.gov](mailto:Acropora.Info@noaa.gov). Include docket number in the subject line of the message.
- Fax: 727-570-5517, Attention Jennifer Moore.
- Mail: Information on paper, disk, or CD-ROM should be addressed to the Assistant Regional Administrator for Protected Resources, NMFS Southeast Regional Office, 9721 Executive Center Drive North, Suite 102, St. Petersburg, FL 33702.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Moore or Dr. Stephania Bolden, NMFS, Southeast Regional Office, (727) 570-5312, or Marta Nammack, NMFS, Office of Protected Resources, (301) 713-1401, ext. 180.

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 4(b)(3)(A) of the ESA (16 U.S.C. 1533(b)(3)(A)) requires NMFS to make a finding as to whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating the petitioned action may be warranted. NMFS' ESA implementing regulations define "substantial information" as the amount of information that would lead a reasonable person to believe the measure proposed in the petition may be warranted (50 CFR 424.14(b)(1)). In determining whether substantial information exists for a petition to list a species, NMFS takes into account several factors, including information submitted with, and referenced in, the petition and all other information readily available in NMFS' files. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition (16 U.S.C. 1533(b)(3)(A)), and the finding is to be published promptly in the **Federal Register**. If NMFS finds that a petition presents substantial information indicating that the requested action may be warranted, section 4(b)(3)(A) of the ESA requires the Secretary of Commerce (Secretary) to conduct a status review of the species. ESA section 4(b)(3)(B) requires the Secretary to make a finding as to whether or not the petitioned action is warranted within 1 year of the receipt of the petition. The Secretary has delegated the authority for these actions to the NOAA Assistant Administrator for Fisheries.

In 1991, NMFS identified elkhorn coral and staghorn coral as candidate species under the ESA, but removed them from the candidate species list in 1997 because the available information indicated decline in certain populations, but not throughout the species' range (62 FR 37560; July 14, 1997). Subsequently, in 1999, elkhorn coral and staghorn coral were added again to the candidate species list because of the availability of reliable information which met the criteria for inclusion at that time. Elkhorn coral and staghorn coral were transferred to the species of concern list when this list was established in 2004 (69 FR 19976; April 15, 2004).

#### Analysis of Petition

On March 4, 2004, NMFS received a petition from the Center for Biological Diversity requesting NMFS list three Caribbean acroporids (elkhorn coral, staghorn coral, and fused-staghorn coral) as endangered or threatened, and to designate critical habitat under the ESA. The petition contained a detailed description of each species, including the present legal status; taxonomy and physical appearance; ecological and economic importance; distribution; physical and biological characteristics of its habitat and ecosystem relationships; population status and trends; and factors contributing to the population's decline. The petition also discussed how the species would benefit from being listed under the ESA and cited references in support of the petition.

Under the ESA, a listing determination can address a species, subspecies, or a distinct population segment (DPS) of a vertebrate species (16 U.S.C. 1532 (16)). Because corals are invertebrates, they cannot be listed by DPSs. Therefore, the petition requested that NMFS list the three acroporid species throughout their entire range. These species are found in warm waters throughout the Gulf of Mexico, Caribbean Sea, and tropical portions of the Atlantic Ocean. All three acroporids are fast growing branching corals, found predominantly in shallow reefs from subtidal to 30 m depth.

The petition asserts that the three acroporids warrant listing based on all five of the factors for listing specified in the ESA, 16 U.S.C. 1533(a)(1). According to the petition, of over 100 studies performed on the status of the three Acroporids throughout the Caribbean, virtually all documented rapid declines in coral cover with no significant recovery. The petition states the predominant causes of the decline in the 1980s and 1990s were coral

diseases, mass coral bleaching induced by rising sea surface temperatures, and hurricanes occurring with escalating frequency and severity. The petition alleges these threats continue to occur and are accompanied by coastal development, boat and diver damage, siltation, damaging fishing practices, predation, competition, pollution, global climate change resulting in elevated sea surface temperatures, and inadequacy of regulatory mechanisms. The petition concludes that because of the interrelated nature and synergistic effects of these threats, addressing each threat individually will not be sufficient to preserve these species.

#### Petition Finding

Based on the above information and the criteria specified in 50 CFR 424.14(b)(2), NMFS finds that the petition presents substantial scientific and commercial information indicating listing of the three acroporids may be warranted. Under section 4(b)(3)(A) of the ESA, this finding requires NMFS to commence a status review on the three species. NMFS is now initiating this review. These three species are now considered to be candidate species (69 FR 19976; April 15, 2004). Within 1 year of the receipt of the petition (March 4, 2005), NMFS must make a finding as to whether listing the elkhorn coral, staghorn coral, or fused-staghorn coral as endangered or threatened under the ESA is warranted, as required by section 4(b)(3)(B) of the ESA. If warranted, NMFS will publish a proposed rule and take public comment before developing and publishing a final rule.

#### Listing Factors and Basis for Determination

Under section 4(a)(1) of the ESA, a species shall be listed if it is determined to be threatened or endangered as a result of any one of the following factors: (1) Present or threatened destruction, modification, or curtailment of habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting its continued existence. Listing determinations are made solely on the basis of the best scientific and commercial data available, after conducting a review of the status of the species and taking into account efforts made by any state or foreign nation to protect such species.

#### Information Solicited

To ensure the status review is completed in a timely manner and

based on the best available scientific and commercial data, NMFS is soliciting information on whether the elkhorn coral, staghorn coral, or fused-staghorn coral are endangered or threatened based on the above listing factors. Specifically, NMFS is soliciting information in the following areas: (1) Historical and current distribution and abundance of these three acroporids throughout the Gulf of Mexico, tropical portions of the Atlantic Ocean, and the Caribbean Sea (specifically in the southern Bahamas), Nicaragua, Pedro Banks, northern Cuba, Virgin Gorda, Antigua, banks off Turks and Caicos, Saba Banks, Trinidad and Tobago, and eastern Caribbean; (2) historic and current condition; (3) population status and trends; (4) information on any current or planned activities that may adversely impact the three acroporids, especially related to the five listing factors identified above; and (5) ongoing efforts to protect the three acroporids and their habitat. NMFS requests that all information be accompanied by: (1) Supporting documentation such as maps, bibliographic references, or reprints of pertinent publications; and (2) the submitter's name, address, and any association, institution, or business that the person represents.

#### Critical Habitat

NMFS is also requesting information on areas that may qualify as critical habitat for the three acroporids. Areas that include the physical and biological features essential to the conservation of the species should be identified. Areas outside the present range should also be identified if such areas are essential to the conservation of the species. Essential features may include, but are not limited to: (1) space for individual growth and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for reproduction and development of offspring; and (5) habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distributions of the species (50 CFR 424.12(b)).

For areas potentially qualifying as critical habitat, NMFS requests information describing: (1) the activities that affect the essential features or that could be affected by the designation, and (2) the economic costs and benefits of management measures likely to result from the designation. NMFS is required to consider the probable economic and other impacts on proposed or ongoing activities in making a final critical habitat designation (50 CFR 424.19).

#### Peer Review

On July 1, 1994, NMFS, jointly with the U.S. Fish and Wildlife Service, published a series of policies regarding listings under the ESA, including a policy for peer review of scientific data (59 FR 34270). The intent of the peer review policy is to ensure listings are based on the best scientific and commercial data available. NMFS is soliciting the names of recognized experts in the field that could take part in the peer review process for this status review (see **ADDRESSES**). Independent peer reviewers will be selected from the academic and scientific community, tribal and other Native American groups, Federal and state agencies, the private sector, and public interest groups.

**Authority:** 16 U.S.C. 1531 *et seq.*

Dated: June 17, 2004.

**William T. Hogarth,**

*Assistant Administrator for Fisheries,  
National Marine Fisheries Service.*

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#### DEPARTMENT OF COMMERCE

##### National Oceanic and Atmospheric Administration

[I.D. 051704A]

##### Small Takes of Marine Mammals Incidental to Specified Activities; Marine Seismic Survey in the Gulf of Alaska, Northeastern Pacific Ocean

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

**ACTION:** Notice of receipt of application and proposed incidental take authorization; request for comments.

**SUMMARY:** NMFS has received an application from the Lamont-Doherty Earth Observatory (L-DEO), a part of Columbia University, for an Incidental Harassment Authorization (IHA) to take small numbers of marine mammals, by harassment, incidental to conducting oceanographic seismic surveys in the Gulf of Alaska (GOA). Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an authorization to L-DEO to incidentally take, by harassment, small numbers of several species of cetaceans and pinnipeds for a limited period of time within the next year.

**DATES:** Comments and information must be received no later than July 23, 2004.

**ADDRESSES:** Comments on the application should be addressed to P.