

uses the Trustees are using a Travel Cost Model and are employing the Benefits Transfer Method. To compensate for the lost and diminished human uses arising from the Incident, the Trustees intend to solicit project ideas from local, regional, State, and Federal managers of parks and other recreational areas, as well as from the general public. The Trustees will then select restoration actions using a value to cost approach, by which the cost of the restoration actions are scaled to the monetary value of lost and diminished human uses.

During the restoration planning phase, the Trustees will evaluate potential projects, determine the scale of restoration actions needed to make the environment and the public whole, and release a draft Damage Assessment and Restoration Plan for public review and comment. Based upon information in the Administrative Record and the foregoing determinations, the Trustees intend to proceed with restoration planning for this Incident.

#### Administrative Record

The Trustees have opened an Administrative Record ("Record") in compliance with 15 CFR 990.45. The Record will include documents considered by the Trustees during the preassessment, assessment, and restoration planning phases of the NRDA performed in connection with the Incident. The Record will be augmented with additional information over the course of the NRDA process. The Record is available at the following locations:

San Francisco Main Library, 100 Larkin Street (at Grove Street), Civic Center, San Francisco, CA 94102, (415) 557-4400.

The Library is open seven days a week. Please check its Web site for hours and directions: <http://sfpl.org/librarylocations/mainmain.htm> and at:

Water Resources Center Archives, 410 O'Brien Hall, University of California, Berkeley, CA 94720-1718, (510) 642-2666.

The Center is generally open Monday through Friday. However, please check its Web site for hours that may be different during academic vacations and for directions: <http://www.lib.berkeley.edu/WRCNinfo.htm#hours>.

The Index of the Administrative Record and selected documents may also be viewed at the following Web site(s): [http://www.dfg.ca.gov/osprispillnrda/nrda\\_cosco-busan.html](http://www.dfg.ca.gov/osprispillnrda/nrda_cosco-busan.html); <http://www.darrp.noaa.gov/southwest/coscolindex.html>; and <http://www.fws.gov/contaminants/Issues/OilSpill.cfm>.

[www.fws.gov/contaminants/Issues/OilSpill.cfm](http://www.fws.gov/contaminants/Issues/OilSpill.cfm).

Dated: January 11, 2010.

**David G. Westerholm,**

Director, Office of Response and Restoration, National Ocean Service, National Oceanic and Atmospheric Administration.

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**BILLING CODE 3S10-JE-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[Docket No. 0907081108-91430-02]

RIN 0648-XP68

#### Listing Endangered and Threatened Wildlife and Designating Critical Habitat; 12-month Determination on How to Proceed with a Petition to Revise Designated Critical Habitat for Elkhorn and Staghorn Corals

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

**ACTION:** Notice of 12-month determination.

**SUMMARY:** We, the National Marine Fisheries Service (NMFS), announce our 12-month determination on how to proceed with a petition to revise the critical habitat designation for elkhorn (*Acropora palmata*) and staghorn (*A. cervicornis*) corals pursuant to section 4(b)(3)(D)(ii) of the Endangered Species Act (ESA) of 1973, as amended. Elkhorn and staghorn corals are listed as threatened throughout their ranges and have designated critical habitat consisting of substrate of suitable quality and availability to support successful larval settlement and recruitment, and successful reattachment and recruitment of asexual fragments in water depths shallower than 30 meters in four areas in Florida, Puerto Rico, and the U.S. Virgin Islands. The petition seeks to extend the northern boundary of designated critical habitat in the Florida area to the Lake Worth Inlet, which is approximately 15.5 miles (25 km) north of the current boundary at Boynton Beach Inlet, based on the discovery of staghorn corals north of the existing critical habitat boundary. We have evaluated the available scientific information and have decided, based on the adequacy of the existing, recent designation to meet the corals' conservation needs, the relatively low benefit the requested revision would provide, the protections afforded to the species from the recent

ESA section 4(d) regulations, and our need to complete higher priority conservation activities for these and other coral species, to deny the petitioned action.

**DATES:** The finding announced in this document was made on January 22, 2010.

**ADDRESSES:** Interested persons may obtain more information about critical habitat designated for elkhorn and staghorn corals online at the NMFS Southeast Regional Office website: <http://sero.nmfs.noaa.gov/pr/esa/acropora.htm>.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Moore by phone 727-824-5312, fax 727-824-5309, or e-mail [jennifer.moore@noaa.gov](mailto:jennifer.moore@noaa.gov); or Marta Nammack by phone 301-713-1401 or e-mail [marta.nammack@noaa.gov](mailto:marta.nammack@noaa.gov).

**SUPPLEMENTARY INFORMATION:** On January 6, 2009, NOAA received a petition from Palm Beach County Reef Rescue (the Petitioner) to revise the designated critical habitat of elkhorn (*Acropora palmata*) and staghorn (*A. cervicornis*) corals (PBCRR, 2009). On July 27, 2009, we issued a positive 90-day finding that the petition presented substantial scientific information indicating the revision may be warranted and initiated a 30-day information solicitation period (74 FR 36995). Section 4(a)(3)(A)(i) of the ESA (16 U.S.C. §§ 1533 *et seq.*) requires generally that critical habitat shall be initially designated at the time of listing a species as threatened or endangered. The ESA also provides that NMFS may revise critical habitat from time-to-time as appropriate (section 4(a)(3)(A)(ii)). For any petition to revise a designated critical habitat that presents substantial scientific and commercial information, section 4(b)(3)(D)(ii) of the ESA provides only that, "the Secretary shall determine how he intends to proceed with the requested revision, and shall promptly publish notice of such intention in the **Federal Register**." The statute says nothing more about options or considerations regarding the Secretary's 12-month determination. We have fully considered all information received in response to our 90-day finding and determined that the most appropriate action to take in response is to deny the petition.

#### Background

On November 26, 2008, we published a final rule designating critical habitat for elkhorn and staghorn corals (73 FR 72210). On January 6, 2009, we received a petition from Palm Beach County Reef Rescue (the Petitioner) to revise elkhorn and staghorn corals' critical habitat

designation (PBCRR, 2009). Currently, designated critical habitat consists of substrate of suitable quality and availability to support larval settlement and recruitment, and the reattachment and recruitment of asexual fragments in water depths shallower than 30 meters in four areas covering 2,959 square miles (7663 sq km) of the species' ranges in Florida, Puerto Rico, and the U.S. Virgin Islands (73 FR 72210; November 26, 2008). The Petitioner requests that we extend the northern boundary of the Florida area to the Lake Worth Inlet, approximately 15.5 miles (25 km) north of the current boundary at Boynton Beach Inlet. This extension would result in an expansion of the 1,329 square mile (3442 sq km) Florida area by approximately 45 square miles (116.5 sq km).

Section 4(b)(3)(D)(i) of the ESA requires us to make a 90-day finding as to whether a petition to revise critical habitat presents substantial scientific information indicating that the revision may be warranted. Our implementing regulations (50 CFR § 424.14) define "substantial information" as the amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted. Our regulations further provide that in making a 90-day finding on a petition to revise critical habitat, the "substantial information" determination is made based upon considering whether a petition contains: (i) information indicating that areas petitioned to be added to critical habitat contain physical and biological features essential to, and that may require special management to provide for, the conservation of the species; or (ii) information indicating that areas designated as critical habitat do not contain resources essential to, or do not require special management to provide for, the conservation of the species (50 CFR § 424.14(c)).

The petition contains information on the location of a few staghorn coral colonies north of Boynton Beach Inlet. During the process of designating the current critical habitat areas, available information conflicted as to whether staghorn coral was established this far north. The petition also includes information about the geology of the Florida Reef Tract, suggesting that the feature essential to elkhorn and staghorn corals on which the existing designation is based is present in the petitioned area north of Boynton Beach Inlet. That essential feature is substrate of suitable quality and availability to support larval settlement and recruitment, and reattachment and recruitment of asexual fragments. "Substrate of suitable quality

and availability" is defined in the designation as natural consolidated hard substrate or dead coral skeleton that is free from fleshy or turf macroalgae cover and sediment cover. The petition also contains information on the genetic diversity of staghorn coral. Finally, the Petitioner suggests that the waters of Palm Beach County represent a potential thermal refuge for staghorn coral. The petition does not discuss whether the hard substrate features in the petitioned area may require special management considerations or protections, but we judged it reasonable to assume the same management considerations and needs for protection applicable to the feature south of Boynton Beach Inlet would also apply to the feature within the petitioned area.

Based on the information in the petition and information readily available in our files at the time, and pursuant to criteria specified in 50 CFR section 424.14(c), we made a 90-day finding that the petition presents substantial scientific information indicating that the requested revision to designated critical habitat for elkhorn and staghorn corals may be warranted (74 FR 36995; July 27, 2009).

In response to our 90-day finding we received additional information on the presence of staghorn coral colonies within the general location identified in the petition. We also received a report verifying the presence of staghorn corals within the general vicinity reported by the petitioner, at about 8 miles (13 km) north of the current boundary of the Florida critical habitat area (Coastal Eco-Group, 2009). The report documented 51 colonies of staghorn coral, of which 21 were unattached fragments, comprising 2 percent cover of the surveyed reef. The report stated only seven percent of the colonies were larger than 9.8 in (25 cm), indicating relatively recent colonization of the reef by staghorn coral. There were no colonies less than 1.9 in (5 cm) in diameter, indicating no recent sexual reproduction. Reconnaissance of adjacent reefs reported only one additional staghorn colony approximately 1,000 ft (304 m) away from the main site. The report also provided a description of the geology of the area indicating that natural unconsolidated hard substrate may be present; however, it suggested this feature represented relatively low cover and availability for staghorn coral settlement on the reef due to the high abundance of octocorals. Additionally, very little staghorn rubble was observed, indicating the reef has not recently been dominated by staghorn corals. No information was presented suggesting

the elkhorn coral's range is further north than described in the existing critical habitat designation.

As indicated above, the ESA provides us with broad discretion respecting revision of designated critical habitat, allowing us to determine when revision is appropriate, and affording us wide latitude to determine how to respond to a petition to revise critical habitat designations. The few past petitions requesting revisions to critical habitat designations have been received for designations that were completed many years prior to the petition, and in most of those cases extensive new information highlighted the inadequacy of the existing designation to meet the species' conservation needs. In those instances we have accepted the petition and initiated revisions of critical habitat. Unlike those circumstances, we completed the existing critical habitat designation for the corals less than 2 months prior to receiving the current petition, the designation encompasses virtually all of the species' current and historical occupied ranges in the United States, and the designation protects all of the substrate essential feature in these ranges, which we determined was sufficiently abundant to provide for these species' conservation. As discussed below, the requested revision would provide at most a very small conservation benefit to one of these coral species.

On November 26, 2008, we designated critical habitat for staghorn and elkhorn corals throughout their occupied U.S. ranges (73 FR 72210). Because these species' historic ranges have not contracted, we determined that there were no unoccupied areas of critical habitat that might be essential to their conservation. Critical habitat is defined in relevant part as specific areas within the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of the ESA, and 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. We identified the key conservation objective for the critical habitat designation as facilitating increased incidence of successful sexual and asexual reproduction of the corals, and the essential feature to facilitate this objective as substrate of suitable quality and availability to support successful larval settlement and recruitment, and successful reattachment and recruitment of asexual fragments. The designation includes all the hard substrate that meets the definition of the essential

feature within the species' U.S. ranges, with the exception of some areas of hard substrate where these species have not been observed and where it was determined larvae and fragments were unlikely to settle or attach. Given these species' reduced abundances, and because the total surface area of the essential feature is far larger than the surface area currently occupied by the corals, we determined the current designation would maximize the potential for successful recruitment and population growth and is sufficient to provide for the conservation of these coral species. Section 7 consultations on the actions of Federal agencies that may affect the designated critical habitat will assist in ensuring the availability of the essential feature for the corals' colonization and population growth.

In addition to the existing critical habitat designation, the species are protected by the recent ESA section 4(d) regulations that, with few exceptions for research and restoration activities, extend all the ESA section 9 prohibitions to them (73 FR 64264; October 29, 2008). We determined that the section 4(d) regulations are necessary and advisable to provide for the conservation of the species. The section 4(d) regulations apply regardless of whether the species are within designated critical habitat. Thus, the newly discovered staghorn corals are protected even though they occur north of the existing critical habitat designation.

The requested revision would encompass all the suitable substrate feature in an approximately 45 square mile (116.5 sq km) area based on extending the northern boundary of the Florida area approximately 15.5 miles (25 km). However, the new information on the potential northern expansion of staghorn coral's range has been confirmed at approximately 8 miles (13 km) north of Boynton Beach Inlet, or about half of the petitioned expansion. In addition, because the identified natural unconsolidated hard substrate feature is typically patchily distributed and does not uniformly cover the entire area, the actual area that would be available for settlement and recruitment in the petitioned area is likely much smaller, assuming that conditions within the entire area are conducive to coral settlement, recruitment, and survival everywhere the feature is present. The available information indicates the staghorn colonies are present on only one reef, approximately one mile (1.7 km) offshore in 57 ft (17.3 m) of water, and the substrate feature potentially available for future colonization by staghorn coral is present

only in low abundance. Further, given the available data about staghorn corals' historic range, we believe it is still a question of scientific debate whether the petitioned area represents a true northward expansion of the species' range, as opposed to a temporary opportunistic occupation of the area by broken, storm-transported fragments outside of their natural range. Similar to a few colonies of elkhorn coral recently discovered at Flower Garden Banks National Marine Sanctuary, the staghorn corals in the petitioned area require monitoring and evaluation to determine whether this is an actual range expansion at this point in geologic history. The existing designation includes all of the suitable substrate throughout both corals' ranges, with the exception of the substrate in the petitioned area. As we described in the existing designation, both species have precipitously declined in abundance and are sparsely distributed throughout their ranges. The essential substrate feature included in the existing designation is much more abundant than the corals, and we have determined there is sufficient substrate protected by the designation that is available for coral settlement, reattachment, recruitment, and population growth.

As noted above, we received the current petition to revise critical habitat less than 2 months after we finalized the existing designation. Designating critical habitat in accordance with the provisions of the ESA is a significant undertaking. The process of designating the current critical habitat for elkhorn and staghorn corals consumed significant personnel resources (i.e., 1.5 full-time employees) for the better part of a 2-year period. Were we to undertake a revision of the recently designated critical habitat, our limited resources would again be diverted from other work, which in turn would delay the completion of other priorities, yet would only realize a very small change (offering limited benefits) in the critical habitat area for one of the coral species. At this time, we believe that a greater conservation benefit for both species of coral, and the appropriate course of action, lie in the completion and implementation of a recovery plan that is currently under development, and that will address all threats inhibiting the conservation and recovery of these species throughout their ranges. We also note that we are currently working to implement our mandatory obligations under the statute regarding a recently received petition to list 83 species of corals as endangered or threatened, 8 of which co-occur in the Atlantic and

Caribbean Oceans with staghorn and elkhorn corals, and to designate critical habitat for these species.

#### Petition Determination

Based on the information above, pursuant to the provisions of the ESA respecting revision of critical habitat and petitions for revision, we have determined it is not timely and appropriate to revise the recently designated critical habitat for elkhorn and staghorn corals, and we therefore deny the petitioned action.

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

Dated: January 15, 2010.

**Samuel D. Rauch III,**

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

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## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

[Docket No.: 100111018-0020-01]

#### Meeting With Interested Public on Offsets in Defense Trade

**AGENCY:** Bureau of Industry and Security, Department of Commerce.

**ACTION:** Notice of open meeting.

**SUMMARY:** The Bureau of Industry and Security (BIS) publishes this notice to announce that the agency will hold a meeting on February 3, 2010 for organizations interested in learning about the changes in the reporting requirement for U.S. firms engaged in offsets in defense trade, pursuant to Title 15 of the Code of Federal Regulations, part 701, as provided under the rule BIS published in the **Federal Register** on December 23, 2009. U.S. Government officials will provide information at this meeting on the changes in the reporting requirements for offset agreements and transactions. This meeting is open to the public.

**DATES:** The meeting will be held on February 3, 2010, 1:30 p.m. e.s.t.

**ADDRESSES:** If you wish to attend the meeting, please provide your name and company or organizational affiliation to fax number (202) 482-5650, Attn: Offset Briefing, or call (202) 482-3755. If you are a foreign national wishing to attend the meeting, you are required to provide additional information for entry to the U.S. Department of Commerce facility. Please contact Ron DeMarines at (202) 482-3755 in advance of the meeting for more information on the entry requirements for foreign nationals. The