

believe you voluntarily provided NHTSA with original information that led to the successful resolution of a covered action. Provide any information that you think may be relevant in light of the criteria for determining the amount of an award set forth in 49 U.S.C. 30172 and 49 CFR Part 513.

49 U.S.C. 30172(c) provides that in determining an award made under 49 U.S.C. 30172(b), the Secretary shall take into consideration: (i) if appropriate, whether a whistleblower reported or attempted to report the information internally to an applicable motor vehicle manufacturer, part supplier, or dealership; (ii) the significance of the original information provided by the whistleblower to the successful resolution of the covered action; (iii) the degree of assistance provided by the whistleblower and any legal representative of the whistleblower in the covered action; and (iv) such additional factors as the Secretary considers relevant.

Section G: Claimant's Declaration

This section must be completed and signed by the claimant.

Issued under authority delegated in 49 CFR 1.95 and 501.5.

Sophie Shulman,

Deputy Administrator.

[FR Doc. 2024-29268 Filed 12-16-24; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

[Docket No. 241112-0291; RTID 0648-XR126]

Endangered and Threatened Wildlife and Plants: Reclassification of Pillar Coral (*Dendrogyra cylindrus*) From Threatened to Endangered

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

ACTION: Final rule.

SUMMARY: NMFS is changing the status of pillar coral (*Dendrogyra cylindrus*) from threatened to endangered on the Federal List of Threatened and Endangered Species. We have considered the 5-year review of the status of *D. cylindrus*, expert reviewer comments, and public comments submitted on the proposed rule. Based on this information, we have determined that *D. cylindrus* is in danger of extinction throughout all or a significant portion of its range. Thus, we are changing the status of *D. cylindrus* from threatened to endangered under the Endangered Species Act (ESA) of 1973.

DATES: This final rule is effective on February 18, 2025.

ADDRESSES: Public comments that were submitted on the proposed rule to change the status of *D. cylindrus* are available at: <https://www.regulations.gov> identified by docket number NOAA-NMFS-2023-0002. A list of references cited in the final rule and other supporting materials are available at: <https://www.fisheries.noaa.gov/species/pillar-coral/conservation-management>, or by submitting a request to the National Marine Fisheries Service, Southeast Regional Office, Protected Resources Division, 263 13th Avenue South, St. Petersburg, Florida 33701.

FOR FURTHER INFORMATION CONTACT: Alison Moulding, 727-551-5607, alison.moulding@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

On September 10, 2014, we published a final rule listing *D. cylindrus*, along with 4 other Caribbean coral species and 15 Indo-Pacific coral species, as threatened under the ESA (79 FR 53851, September 10, 2014). In early 2021, we announced a 5-year review of 7 threatened Caribbean coral species, including *D. cylindrus* (86 FR 1091, January 7, 2021) to determine whether the listing classification of these species was still accurate. Based on the findings of the 5-year review (NMFS, 2022), we published a proposed rule to change the status of *D. cylindrus* from threatened to endangered (88 FR 59494, August 29, 2023). We solicited peer review of the scientific information contained in the proposed rule from three independent experts from the scientific community who have expertise in *D. cylindrus* biology, ecology, conservation, and

threats to the species, and we incorporated their comments prior to publication of the proposed rule. We requested comments on the proposed rule from the public during a 60-day comment period and held a virtual public hearing on September 26, 2023, at which we also accepted public comments.

In this final rule, we are reclassifying *D. cylindrus* from a threatened species to an endangered species under the ESA. We have determined that *D. cylindrus* is in danger of extinction throughout all or a significant portion of its range. This final determination is based on the information in the 5-year review, from expert peer reviewers, and from public comments, which together comprise the best scientific and commercial data available.

Listing Determinations Under the ESA

Section 3 of the ESA defines an endangered species as any species that is in danger of extinction throughout all or a significant portion of its range and a threatened species as one that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range (16 U.S.C. 1532(6) and (20)). Thus, an “endangered species” is one that is presently in danger of extinction. A “threatened species,” on the other hand, is not presently in danger of extinction but is likely to become so within the foreseeable future (*i.e.*, at a later time). So, the primary statutory difference between a threatened and endangered species is the timing of when a species is in danger of extinction, either presently (endangered) or not presently but within the foreseeable future (threatened).

The statute requires us to determine whether a species is threatened or endangered as a result of any of the factors listed in section 4(a)(1) of the ESA: (A) the present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. Changes to a listed species' status must be determined on the basis of these factors using solely the best scientific and commercial data available (16 U.S.C. 1533(c)(2)(B)). Implementing regulations in 50 CFR 424.11(b) reiterate the requirement that changes in a species' classifications must be based solely on the best available scientific and commercial information regarding a species' status.

Public Comments and Our Responses

Public comments were accepted by standard mail, email, during the public hearing, and through the Federal eRulemaking portal. We received 17 public comments on the proposed rule from individuals, government agencies, and conservation organizations. Of these, 14 comments were supportive of the proposed reclassification of *D. cylindrus*, 1 comment was against reclassification, and 2 comments were neutral and asked for clarification on the effects of the reclassification. Most of the supportive comments expressed general support for the proposed rule but did not include substantive content. Several comments presented general information on threats or information that was already considered in the proposed rule. We received 3 comments that provided documentation that reinforced the information on demographic factors and threats considered in the proposed rule, including population declines and susceptibility to climate-induced ocean warming, ocean acidification, nutrients, sedimentation, and disease. We also received 1 comment that is outside the scope of the proposed rule that stated that we need to provide support for the increased administrative burden on state and Federal agencies that results from listing and changing the status of species under the ESA, and that we need to increase the Federal funds designated for the management and recovery of ESA-listed species. All substantive public comments on the proposed rule to reclassify *D. cylindrus* as endangered are addressed in the following summary. We have categorized comments by topic, and,

where appropriate, we have combined similar comments from multiple people or groups and addressed them together.

Demographics and Threats

Comment 1: Three commenters provided additional references (Jones *et al.*, 2021, Alvarez-Filip *et al.*, 2022) that addressed population decline of *D. cylindrus* from disease and were not included in the proposed rule or 5-year review (NMFS, 2022).

Response: We thank these commenters for the submission of additional data to inform the status of the species and this final rule. Jones *et al.* (2021) suggests that thermal stress in 2014 and 2015 exacerbated underlying disease and resulted in a disease outbreak that led to the extirpation of *D. cylindrus* in southeast Florida. Alvarez-Filip *et al.* (2022), reported that greater than 80 percent of *D. cylindrus* surveyed in Mexico suffered mortality or were infected by disease between 2018 and 2020. Population declines in Florida and Mexico and the threats of disease and ocean warming were considered in the proposed rule as factors leading to the extinction risk of *D. cylindrus*. The additional references are consistent with the information we considered in the proposed rule. Thus, these comments support our conclusions regarding the threats of ocean warming and disease and provide additional support for our conclusion that *D. cylindrus* meets the definition of an endangered species. These references were incorporated into the final rule.

Comment 2: We received several comments and references about the threat of climate change and its negative effects on corals that increase the extinction risk for *D. cylindrus*.

Response: We agree that the effects of climate change are contributing to the risk of extinction of *D. cylindrus*. In the original listing rule (79 FR 53851, September 10, 2014), we identified factors acting directly as stressors on *D. cylindrus* (e.g., elevated ocean temperature and sedimentation) as distinct from the sources responsible for those factors (e.g., climate change and land management practices) and evaluated the impact each threat has on the species' extinction risk. The susceptibility of *D. cylindrus* to ocean warming and ocean acidification was addressed in the 5-year review (NMFS, 2022) and in the proposed reclassification rule (88 FR 59494, August 29, 2023). The additional references are consistent with the information we considered in the proposed rule. Thus, these comments support our conclusions regarding the threats of ocean warming and ocean

acidification and provide additional support for our conclusion that *D. cylindrus* meets the definition of an endangered species. Because stressors stemming from climate change are already identified as threats contributing to the extinction risk for *D. cylindrus*, no changes were made to the final rule in response to these comments.

Comment 3: We received a comment that human activities such as coastal development, dredging, wastewater disposal, and shipping have contributed to the susceptibility of *D. cylindrus* to stony coral tissue loss disease (SCTLD).

Response: In the original listing rule (79 FR 53851, September 10, 2014), we identified factors acting directly as stressors on *D. cylindrus* (e.g., elevated ocean temperature and sedimentation) as distinct from the sources responsible for those factors (e.g., climate change and land management practices) and evaluated the impact each threat has on the species' extinction risk. Although causative factors of coral disease remain poorly understood, we agree that the presence of stressors such as sedimentation and nutrient enrichment from human activities like coastal development and wastewater disposal can increase the susceptibility of corals to disease. A diseased state results from a complex interplay of factors including the cause or agent (e.g., pathogen, environmental toxicant), the host, and the environment. The interaction of disease and other stressors was discussed in the original listing rule (79 FR 53851, September 10, 2014), and the susceptibility of *D. cylindrus* to disease, sedimentation, and nutrients was considered in the 5-year review (NMFS, 2022) and in the proposed reclassification rule (88 FR 59494, August 29, 2023). The public comments are consistent with the information we considered in the proposed rule. Thus, these comments support our conclusions regarding the threats of disease, nutrient enrichment, and sedimentation and provide additional support for our conclusion that *D. cylindrus* meets the definition of an endangered species.

Analyses

Comment 4: We received a comment that there is no benefit to changing the status of *D. cylindrus* to endangered since the ESA has no mechanism of protecting against the major threats of climate change and disease.

Response: Under section 4(b) of the ESA, we are required to base listing decisions solely on the best scientific and commercial data available after conducting a review of the status of the

species and after taking into account efforts to protect the species (16 U.S.C. 1533(b)(1)(A)). We may determine a species is threatened or endangered because of any of the following factors: (A) the present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. When making a listing or reclassification determination, we cannot consider impacts that may stem from the listing determination itself, and we cannot ignore threats for which there are no existing mitigation mechanisms (16 U.S.C. 1533(b), 50 CFR 424.11(b)). After considering the best scientific and commercial information available on status of the species and taking into account efforts being made to protect the species, we conclude that *D. cylindrus* is in danger of extinction and should be listed as endangered under the ESA.

Comment 5: We received a comment stating that there is a need for expanded and purposeful opportunities for states and territories with coral reefs in their jurisdiction to comment on, participate in, and lead efforts before the Federal government makes any decisions under the ESA, such as listing or reclassifying a species, and requesting that states and territories be consulted on which data are used as the best available science for informing decisions.

Response: The ESA and the implementing regulations describe the process NMFS must use when listing species under the ESA (16 U.S.C. 1533; 50 CFR part 424). This process includes giving actual notice of the proposed listing regulation to the state agency in each state in which the species is believed to occur and to each county or equivalent jurisdiction in which the species is believed to occur and inviting them to comment on the proposal (16 U.S.C. 1533(b)(5)(A)(ii); 50 CFR 424.16(c)(1)(ii)). In accordance with this requirement, we notified the states, counties, and territories where *D. cylindrus* is known to occur when we published the proposed rule to reclassify *D. cylindrus* as endangered. We accepted comments by standard mail, email, during the public hearing on September 26, 2023, and through the Federal eRulemaking portal. This allowed those government agencies the opportunity to participate in the decision to reclassify *D. cylindrus* as endangered, including providing input on the best scientific and commercial

data available. We considered all relevant comments within the scope of this rulemaking received during the comment period when making this final determination to reclassify *D. cylindrus* from threatened to endangered.

We also note that we worked cooperatively with states and territories to obtain unpublished coral monitoring data to inform the 5-year review of ESA-listed Caribbean coral species. We considered the information in the 5-year review, including the population data obtained from the states and territories, when making the determination that *D. cylindrus* met the definition of an endangered species. By seeking unpublished monitoring data from states and territories, giving notice of the proposed listing regulation to states and territories in which the species occurs, and considering comments from states and territories, we provided opportunities for these groups to participate in the decision to change the status of *D. cylindrus* from threatened to endangered.

Comment 6: We received a comment that we should incorporate data from mesophotic reefs, which may serve as thermal refugia for shallow water species, into factors considered for listing and reclassifying species under the ESA.

Response: For the proposed rule to reclassify *D. cylindrus* to endangered, we evaluated the best scientific and commercial data available. As stated in the proposed rule, *D. cylindrus* inhabits most reef environments in depths between 1 and 25 meters (m) and is most common in reef environments in water depths between 5 and 15 m. We have found no evidence that *D. cylindrus* occurs at mesophotic depths (30–150 m), and the commenter did not provide any information to the contrary. Therefore, we did not consider the role of mesophotic reefs as a factor in the decision to change the status of *D. cylindrus* from threatened to endangered.

Effects of the Reclassification

Comment 7: We received a comment asking if exporting dead samples of *D. cylindrus* for scientific research would require an ESA section 10(a)(1)(A) permit if they were collected prior to reclassification.

Response: If samples of *D. cylindrus* (alive, dead, or preserved) were collected prior to reclassification, an ESA section 10(a)(1)(A) permit is not needed to import or export them; rather, NMFS can issue a Letter of Determination to authorize import and export, provided certain criteria are met. In addition, *D. cylindrus* is listed on

Appendix II of the Convention on International Trade in Endangered Species (CITES), and, therefore, a CITES export permit issued by the exporting country would be required. For more information on Letters of Determination, see <https://www.fisheries.noaa.gov/permit/letter-determination-protected-species-parts-and-products>. For more information on CITES, see <https://www.fws.gov/international-affairs/cites>.

Comment 8: We received a comment that it was unclear whether transport and transfer of captive *D. cylindrus* to another holding facility within the United States was a violation of the ESA section 9(a)(1) prohibitions and would require an ESA section 10(a)(1)(A) permit.

Response: Transportation of *D. cylindrus* or *D. cylindrus* parts within the United States is not a violation of the ESA section 9 prohibitions, provided that the corals were legally obtained and that the transport is not in the course of a commercial activity. Transfer of *D. cylindrus* between U.S. facilities is, therefore, allowable without the need for a NMFS ESA section 10(a)(1)(A) permit. Documentation of the transfer to a different holding facility should be maintained.

Comment 9: We received 2 comments that reclassification of *D. cylindrus* to endangered would have negative impacts on conservation efforts like restoration and rescue and cause delays, obstacles, and a greater administrative burden on restoration practitioners and state and territorial jurisdictions who would need to apply for an ESA section 10(a)(1)(A) permit. One of the commenters asked that NMFS minimize and streamline ESA section 10(a)(1)(A) permitting as much as possible to eliminate barriers to restoration and recovery. They recommended issuing a single permit to a state agency to authorize multiple practitioners to carry out restoration activities and developing a centralized database with online reporting that provides data access to all managing agencies.

Response: As explained in the response to Comment 4, listing and reclassification determinations must be made solely on the basis of the best available scientific and commercial information regarding a species' status and without reference to possible economic or other impacts of such determinations (16 U.S.C. 1533(b)(1)(A) and 50 CFR 424.11(b)). Thus, when making a listing or reclassification determination, we cannot consider whether the listing or reclassification will increase the administrative burden associated with applying for ESA permits for conservation activities.

NMFS is committed to making ESA section 10(a)(1)(A) permitting as clear and streamlined as possible within the bounds of the law. We will streamline the permitting process through several mechanisms, including issuing permits valid for up to 10 years, conducting programmatic consultation under section 7 of the ESA to eliminate the need for individual consultation on each permit application, and reprogramming the online application system, Authorizations and Permits for Protected Species (APPS) (see <https://apps.nmfs.noaa.gov>) to accept applications for *D. cylindrus*. ESA section 10 Permit Holders can submit annual reports of their permitted activities in APPS. While these currently are not publically accessible in APPS, copies of submitted reports may be requested from the NMFS Office of Protected Resources, Permits and Conservation Division under the Freedom of Information Act. We are further recommending that individuals and groups that are working on the same project, at the same institution, or under the same funding to consider applying together to work under a single permit. These options allow for less frequent and reduced numbers of permit applications and can reduce processing times.

In anticipation of a final determination to reclassify *D. cylindrus* to endangered, we held webinars on April 16 and 19, 2024, to present information on the effects of a reclassification and the ESA section 10(a)(1)(A) permitting process. We announced the webinars to researchers and restoration practitioners known to work with *D. cylindrus* and agencies that issue research and restoration permits. We also announced these webinars on a coral listserv (*i.e.*, Coral List) to reach a broader audience. During the webinars, we included information on what activities would need an ESA permit should *D. cylindrus* be reclassified as endangered and how and when to submit an ESA permit application. We encouraged attendees to apply for an ESA permit before a final determination was made so that conservation activities could continue uninterrupted if a final rule went into effect. Additional permitting guidance can be found on our website at: <https://www.fisheries.noaa.gov/species/pillar-coral/conservation-management>.

Summary of Changes From the Proposed Listing Rule

We did not receive, nor did we find, data or references that presented substantial new information that would cause us to change our proposed listing

determination. We received several sources of new information (see Comment 1), which provided population data that supported the information considered in the 5-year review report (NMFS, 2022) and proposed rule. We also received additional information related to threats (*e.g.*, ocean warming, ocean acidification, disease, sedimentation, and nutrient enrichment) which was consistent with or reinforced information in the 5-year review and proposed rule (see Comments 2 and 3). Therefore, while the new information contributed to our overall understanding of population dynamics and threats, it did not alter the outcome of the extinction risk analysis nor our interpretation of risk factors across the range of the species. Therefore, in this rule, we are finalizing the change in the classification of *D. cylindrus* from a threatened species to an endangered species under the ESA.

In response to questions received about ESA permits, we have added additional information to the Effects of Listing section of this final rule to clarify that a Letter of Determination is needed for import or export of *D. cylindrus* or *D. cylindrus* parts in possession before the reclassification takes effect. In consultation with our ESA permitting division, we also provide further clarification in the Effects of Listing section with respect to prohibited and non-prohibited activities. These clarifications include rephrasing some of the descriptions to focus on the activity rather than the impact to the species, rearranging or splitting the activities in the list to differentiate prohibited activities that would need an ESA section 10(a)(1)(A) permit from non-prohibited activities, and adding more detail to describe the particular prohibited and non-prohibited activities.

Assessment of Species Status

In the proposed rule to reclassify *D. cylindrus* from threatened to endangered under the ESA, we outlined the rationale for our determination. Below, we summarize our evaluation and final determination. We relied on the best scientific and commercial data available including the information in the 5-year review and the public comments received. Please refer to the proposed rule for additional information (88 FR 59494, August 29, 2023).

Species Abundance, Trends, and Distribution

Dendrogyra cylindrus is a colonial coral that can form large pillars (up to 3 m) upon an encrusting base. It is a

gonochoric (*i.e.*, separate sexes), broadcast spawning coral species, but some hermaphroditic colonies have been observed (Kabay, 2016; Neely *et al.*, 2018; Neely *et al.*, 2020a; O'Neil *et al.*, 2021). Spawning observations have also suggested that eggs may be fertilized within female colonies prior to release (Marhaver *et al.*, 2015). It has a relatively low annual egg production and low sexual recruitment, with no reports of observed sexual recruitment in the wild. *Dendrogyra cylindrus* can also reproduce asexually through fragmentation and reattachment to the substrate.

Dendrogyra cylindrus is present in the western Atlantic and throughout the greater Caribbean. It is absent in the Flower Garden Banks National Marine Sanctuary in the Gulf of Mexico and from the southwest Gulf of Mexico. It inhabits most reef environments in water depths ranging from 1 to 25 m and is most common in reef environments in water depths between 5 and 15 m. It has a naturally uncommon to rare occurrence, appearing as scattered, isolated colonies. It is sometimes found in highly clonal aggregations, likely resulting from fragmentation events (Chan *et al.*, 2019).

Population trend information indicates the species has continued to decline since being listed in 2014. Surveys of *D. cylindrus* conducted in Colombia in 2012 show a reduced spatial extent, loss of colonies, and higher prevalence and amount of partial mortality 10 years after initial surveys (Bernal-Sotelo *et al.*, 2019). Multiple thermal bleaching events in 2014 and 2015 and ongoing and emerging disease events (SCTLD) since 2014 have caused near extirpation of *D. cylindrus* in Florida (Jones *et al.*, 2021; Lewis, 2018; Lewis *et al.*, 2017; Neely *et al.*, 2021a; Neely, 2024), and *D. cylindrus* is now considered functionally extinct (*i.e.*, the population is no longer viable and will not be able to sustain itself) along the Florida reef tract (Neely *et al.*, 2021a).

Although quantitative population trend data are only available from Florida and Colombia, we assumed the species is in decline throughout most of its range based on the evidence from these regions (northern and southwestern portions of its range) and the more widespread evidence of severe disease impacts from SCTLD, which has spread from Florida to the eastern, western, and southern Caribbean (see <https://www.agrra.org/coral-disease-outbreak/> for a map of confirmed sightings of SCTLD in the greater Caribbean). *Dendrogyra cylindrus* is highly susceptible to SCTLD (Florida Coral Disease Response Research &

Epidemiology Team, 2018) and has been reported with high prevalence and confirmed or presumed mortality in multiple islands and countries across the Caribbean including the Bahamas (Dahlgren *et al.*, 2021), Mexico (Alvarez-Filip *et al.*, 2019; Alvarez-Filip *et al.*, 2022; Estrada-Saldivar *et al.*, 2021), and the U.S. Virgin Islands (Brandt *et al.*, 2021; Costa *et al.*, 2021). We assumed SCTLD will eventually reach all areas of the range of *D. cylindrus* based on its previous spread and the fact that it is waterborne (Aeby *et al.*, 2019).

Summary of Factors Affecting the Species

Dendrogyra cylindrus was listed as threatened in 2014 because of its susceptibility to and impacts from multiple threats, including ocean warming (ESA Factor E), disease (C), acidification (E), nutrient enrichment (A and E), sedimentation (A and E), trophic effects of fishing (A), and inadequate existing regulatory mechanisms to address global threats (D). As indicated in the proposed rule to reclassify *D. cylindrus* as endangered, these threats continue to contribute to the species' extinction risk. Several commenters provided additional information related to these threats, including ocean warming, ocean acidification, nutrient enrichment, sedimentation, and disease, which was consistent with the proposed rule and did not change our conclusions about any of these threats. Since its listing as threatened, *D. cylindrus* has declined in abundance and distribution in multiple locations with the most severe decline in the northern portions of its range. These declines are predominantly due to the effects of SCTLD, which emerged as a devastating and deadly new disease since the listing (Precht *et al.*, 2016). Though the occurrence of *D. cylindrus* has historically been uncommon to rare, the species has become even rarer as a result of SCTLD. Furthermore, no observed sexual recruitment has been reported in the wild, and we concluded that reductions in population size and local extirpations will further inhibit the species' ability to persist and replenish diminished populations through asexual and sexual reproduction.

Conservation Measures

We evaluated conservation measures used to protect *D. cylindrus*, including treatment of individual colonies for SCTLD (Miller *et al.*, 2020; Neely *et al.*, 2020b; Neely *et al.*, 2021c; O'Neil *et al.*, 2018; Shilling *et al.*, 2021; Walker *et al.*, 2021), ex situ banking (Kabay, 2016; Neely *et al.*, 2021b; Neely, 2024; O'Neil *et al.*, 2021), and propagation of *D.*

cylindrus for future restoration (Marhaver *et al.*, 2015; Neely, 2019; Neely *et al.*, 2020a; O'Neil *et al.*, 2021; Villalpando *et al.*, 2021). We concluded that the conservation actions would benefit the species but would not affect the status of *D. cylindrus* to the point at which listing as an endangered species is not warranted. Further, because current conservation actions do not directly address the root causes of threats such as disease, we concluded that they are insufficient to protect the species from the risk of extinction. See the proposed rule for additional discussion of conservation measures (88 FR 59497, August 29, 2023).

Final Listing Determination

We reviewed the best scientific and commercial information available on the status of *D. cylindrus*, threats to the species, and conservation measures. Based on consideration of this information and public comments, we determine that *D. cylindrus* meets the definition of an endangered species. We find that *D. cylindrus* is in danger of extinction throughout all or a significant portion of its range. *Dendrogyra cylindrus* is susceptible to multiple threats including ocean warming (ESA Factor E), disease (C), acidification (E), nutrient enrichment (A and E), sedimentation (A and E), trophic effects of fishing (A), and inadequate existing regulatory mechanisms to address global threats (D). In addition, the following characteristics contribute to its risk of extinction:

(1) It is geographically located in the highly disturbed Caribbean where localized human impacts are high and threats are predicted to increase. A range constrained to this particular geographic area that is likely to experience severe and increasing threats indicates that a high proportion of the population of this species is likely to be exposed to those threats;

(2) It has an uncommon to rare occurrence throughout its range, which heightens the potential effect of localized mortality events and leaves the species vulnerable to becoming of such low abundance that it may be at risk from depensatory processes, environmental stochasticity, or catastrophic events;

(3) Its low sexual recruitment limits its capacity for recovery from threat-induced mortality events throughout its range; and

(4) It has experienced population declines, primarily due to SCTLD, in multiple locations throughout its range, including severe declines in the northern portion of its range, which has

resulted in diminished distribution and local extirpation.

The combination of these characteristics indicates that *D. cylindrus* is in danger of extinction throughout its range and warrants listing as an endangered species due to factors A, C, D, and E.

Effects of Listing

Conservation measures provided for species listed as endangered or threatened under the ESA include recovery plans (16 U.S.C. 1553(f)), critical habitat designations, Federal agency consultation requirements (16 U.S.C. 1536), and prohibitions of certain acts under the ESA (16 U.S.C. 1538). Because *D. cylindrus* was previously listed as threatened, Federal agency consultation requirements are already in effect, and a recovery outline has been developed to guide recovery until a full recovery plan has been finalized. Critical habitat has also been designated for *D. cylindrus* (88 FR 54026, August 9, 2023).

All of the prohibitions in section 9(a)(1) of the ESA automatically apply to fish and wildlife listed as endangered species. Section 9(a)(1) includes prohibitions on importing, exporting, engaging in foreign or interstate commerce, or "taking" of the species. "Take" is defined under the ESA as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or an attempt to engage in any such conduct" (16 U.S.C. 1532(19)). These prohibitions apply to all persons subject to the jurisdiction of the United States, including in the United States, its territorial sea, or on the high seas. Upon the effective date of this rule to reclassify *D. cylindrus* as endangered, section 9 of the ESA would expressly prohibit the following:

(1) Taking of *D. cylindrus* within the United States or its territorial sea, or upon the high seas;

(2) Possessing, selling, delivering, carrying, transporting, or shipping any *D. cylindrus* that was illegally taken;

(3) Delivering, receiving, carrying, transporting, or shipping in interstate or foreign commerce any *D. cylindrus* in the course of a commercial activity;

(4) Selling or offering *D. cylindrus* for sale in interstate or foreign commerce; or

(5) Importing *D. cylindrus* into, or exporting *D. cylindrus* from, the United States.

On July 1, 1994, NMFS and the U.S. Fish and Wildlife Service (FWS) published a policy statement (59 FR 34272) that requires the agencies to identify, to the extent known 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. Based on available information, we conclude the following categories of activities are likely to meet the ESA's definition of "take" and, therefore, 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. Further, an activity not listed may in fact result in a violation. Activities that are likely to result in a violation of section 9 prohibitions include, but are not limited to, the following:

(1) Collection of *D. cylindrus*, including colonies, fragments, tissue samples, and gametes, from the wild;

(2) Research outside the bounds of normal animal husbandry that results in harm (e.g., injuring or killing) to captive *D. cylindrus*;

(3) Removing, relocating, or reattaching *D. cylindrus* in the wild;

(4) Damaging, poisoning, contaminating, or killing *D. cylindrus*;

(5) Scientific research activities on wild *D. cylindrus* involving the manipulation of the coral or its environment;

(6) Release of captive *D. cylindrus* into the wild. Release of a captive coral could have the potential to injure or kill the coral or to affect wild populations of *D. cylindrus* through introduction of disease;

(7) Habitat alternation, such as removal of substrate or alteration of water quality, resulting in injury or death of *D. cylindrus*;

(8) Discharging pollutants (e.g., toxic chemicals, radioactive matter, carcinogens, mutagens, teratogens) or organic nutrient-laden water, including sewage water, into *D. cylindrus* habitat to an extent that harms or kills *D. cylindrus*;

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

fragment reattachment or larval settlement; and

(10) Activities that modify water chemistry in *D. cylindrus* habitat to an extent that disrupts or prevents the reproduction, development, or normal physiology of *D. cylindrus*.

Some categories of activities are unlikely to constitute a violation of the section 9 prohibitions. Again, 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 not cause a violation. We consider the following activities to be ones that are unlikely to violate the ESA section 9 prohibitions:

(1) Taking of wild *D. cylindrus*, including collection of colonies, fragments, tissue samples, and gametes, authorized by an ESA section 10(a)(1)(A) permit issued by NMFS for the purposes of scientific research or the enhancement of propagation or survival of the species and carried out in accordance with the terms and conditions of the permit;

(2) Incidental taking of *D. cylindrus* resulting from federally authorized, funded, or conducted projects for which consultation under section 7 of the ESA has been completed and when the project is conducted in accordance with any terms and conditions set forth by NMFS in an incidental take statement in a biological opinion pursuant to section 7 of the ESA;

(3) Import or export of *D. cylindrus* or *D. cylindrus* parts authorized by a CITES permit and an ESA section 10(a)(1)(A) permit (or Letter of Determination for *D. cylindrus* or *D. cylindrus* parts in possession before the reclassification takes effect) issued by NMFS;

(4) Continued possession of *D. cylindrus* parts or live *D. cylindrus* that were in captivity at the time of up-listing to an endangered species, including any progeny produced from captive corals after the rule is finalized, so long as the prohibitions of ESA section 9(a)(1) are not violated. Corals are considered to be in captivity if they are maintained in a controlled environment or under human care in ocean-based coral nurseries. Individuals or organizations should be able to provide evidence that *D. cylindrus* or *D. cylindrus* parts were in captivity prior to its listing as an endangered species. We suggest such individuals or organizations submit information to us on the *D. cylindrus* in their possession (e.g., type, number, size, source, date of

acquisition), to establish their claim of possession (see **FOR FURTHER INFORMATION CONTACT**);

(5) Providing normal care for captive *D. cylindrus*. Captive corals are still protected under the ESA and may not be killed or injured or otherwise harmed and must receive proper care. Normal husbandry care of captive corals includes handling, cleaning, maintaining water quality within an acceptable range, extracting tissue samples for the purposes of diagnosis of condition or genetics, treating or preventing spread of maladies such as disease or parasites using established methods proven to be effective, propagating corals by sexual or asexual means (i.e., fragmenting larger coral colonies into smaller colonies to increase the number of corals, maintain corals of manageable size, or accelerate their growth rate) within the bounds of normal husbandry practices, attaching to artificial surfaces, and removing dead skeleton. Scientific studies that are intended to improve the husbandry practices of caring for captive *D. cylindrus*, where there is a reasonable expectation that they would not cause harm to *D. cylindrus* (e.g., trialing new food supplements, comparing different lighting systems, testing different attachment substrates), would not require an ESA permit;

(6) Interstate and intrastate transportation of legally obtained captive *D. cylindrus* and *D. cylindrus* parts provided it is not in the course of a commercial activity. If captive corals or *D. cylindrus* parts are to be moved to a different holding location, records documenting transfer of corals should be maintained;

(7) Stabilization of loose or unattached *D. cylindrus*, including fragments, in the wild by experienced individuals and as authorized by an ESA section 10(a)(1)(A) permit issued by NMFS;

(8) Relocation of wild *D. cylindrus* from one site to another under the authorization of an ESA section 10(a)(1)(A) permit issued by NMFS;

(9) Use of captive *D. cylindrus* for scientific studies under the authorization of an ESA Section 10(a)(1)(A) permit issued by NMFS. Scientific studies that have the potential to injure or harm captive *D. cylindrus* (e.g., altered temperature outside of ideal range, exposure to contaminants, potentially harmful chemicals, or disease, introduction of coral predators) require an ESA section 10(a)(1)(A) permit;

(10) Research activities that involve collection or manipulation of *D. cylindrus* in the wild under the

authorization of an ESA section 10(a)(1)(A) permit;

(11) Observational studies on *D. cylindrus* in the wild that do not involve collection or manipulation of *D. cylindrus* such as benthic surveys, photographs, and videos;

(12) Release of captive *D. cylindrus* into the wild, as authorized by an ESA section 10(a)(1)(A) permit issued by NMFS; and

(13) Treatment of wild *D. cylindrus* for disease by experienced individuals using non-experimental methods proven to be effective and as authorized by state and territorial permits.

Information Quality Act and Peer Review

In December 2004, the Office of Management and Budget (OMB) issued a Final Information Quality Bulletin for Peer Review establishing minimum peer review standards, a transparent process for public disclosure of peer review planning, and opportunities for public participation. The OMB Peer Review Bulletin (the Bulletin), implemented under the Information Quality Act (Pub. L. 106–554), is intended to enhance the quality and credibility of the Federal Government’s scientific information and applies to influential or highly influential scientific information disseminated on or after June 16, 2005. To satisfy our requirements under the Bulletin, the proposed rule was subject to peer review. A peer review plan was posted on the NOAA peer review agenda and can be found at: <https://www.noaa.gov/information-technology/endangered-species-act-proposed-rule-for-pillar-coral-dendrogyra-cylindrus-id432>. Our synthesis and assessment of scientific information supporting the proposed action was peer reviewed via individual letters soliciting the expert opinions of three qualified specialists selected from the academic and scientific community. The charge to the peer reviewers and the peer review report have been placed in the administrative record and posted on the agency’s peer review agenda. In meeting the OMB Peer Review Bulletin requirements, we have also satisfied the requirements of the 1994 joint U.S. Fish and Wildlife Service/NMFS peer review policy (59 FR 34270; July 1, 1994).

References

A complete list of the references used in this rule is available online (see www.fisheries.noaa.gov/species/pillar-coral#conservation-management) and upon request (see **FOR FURTHER INFORMATION CONTACT**).

Classification

National Environmental Policy Act

The 1982 amendments to the ESA, in section 4(b)(1)(A), restrict the information that may be considered when assessing species for listing. Based on this limitation of criteria for a listing decision and the opinion in *Pacific Legal Foundation v. Andrus*, 675 F. 2d 825 (6th Cir. 1981), NMFS has concluded that ESA listing actions are not subject to the environmental assessment requirements of the National Environmental Policy Act (NEPA).

Regulatory Flexibility Act

As noted in the Conference Report on the 1982 amendments to the ESA, economic impacts cannot be considered when assessing the status of a species. Therefore, the economic analysis requirements of the Regulatory Flexibility Act are not applicable to the listing process.

Executive Order 12866

This final rule is exempt from review under Executive Order 12866.

Paperwork Reduction Act

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

Executive Order 13132

In accordance with Executive Order 13132, agencies are required to take into account any federalism impacts of regulations under development. This Executive order includes specific consultation directives for situations where a regulation will preempt state law or impose substantial direct compliance costs on state and local governments (unless required by statute). Neither of those circumstances is applicable to this final listing determination. In keeping with the intent of the Administration and Congress to provide continuing and meaningful dialogue on issues of mutual state and Federal interest, the proposed rule was provided to the relevant agencies in each state in which the subject species occurs, and these agencies were invited to comment. Their comments were addressed with other comments in the Public Comments and Our Responses section.

Executive Order 12898

Executive Order 12898 requires that Federal actions address environmental justice in the decision-making process. In particular, the environmental effects of the actions should not have a disproportionately high and adverse

effect on the health or environment of minority and low-income populations. The purpose of this rule is to update the classification of a coral species that is already protected under the ESA. This rule will serve to continue the protection and conservation of this coral species and is expected to promote a healthy ecosystem. Therefore, this rule is not expected to have a disproportionately high or adverse effect on the health or the environment of minority populations or low-income populations.

List of Subjects

50 CFR Part 223

Endangered and threatened species, Exports, Imports, Transportation.

50 CFR Part 224

Administrative practice and procedure, Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Dated: November 12, 2024.

Samuel D. Rauch, III,

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

For the reason set out in the preamble, we amend 50 CFR parts 223 and 224 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).

§ 223.102 [Amended]

■ 2. In § 223.102, amend the table in paragraph (e), under the subheading “Corals,” by removing the entry for “Coral, pillar.”

PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES

■ 3. The authority citation of part 224 continues to read as follows:

Authority: 16 U.S.C. 1531–1543 and 16 U.S.C. 1361 *et seq.*

■ 4. In § 224.101, amend the table in paragraph (h), under the subheading “Corals,” by adding an entry for “Coral, pillar” in alphabetical order by common name to read as follows:

§ 224.101 Enumeration of endangered marine and anadromous species.

* * * * *

(h) * * *

| Species ¹ | | Description of listed entity | Citation(s) for listing determination(s) | Critical habitat | ESA rules |
|----------------------|-----------------------------|------------------------------|--|------------------|-----------|
| Common name | Scientific name | | | | |
| * | * | * | * | * | * |
| Corals | | | | | |
| * | * | * | * | * | * |
| Coral, pillar | <i>Dendrogyra cylindrus</i> | Entire species | [INSERT FEDERAL REGISTER CITATION], December 17, 2024. | 226.230 | NA |

¹ Species includes taxonomic species, subspecies, distinct population segments (DPSs) (for a policy statement, see 61 FR 4722, February 7, 1996), and evolutionarily significant units (ESUs) (for a policy statement, see 56 FR 58612, November 20, 1991).

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[FR Doc. 2024-29082 Filed 12-16-24; 8:45 am]
 BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 241209-0318]

RIN 0648-BM26

Confidentiality of Information

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

ACTION: Final rule.

SUMMARY: NMFS is issuing this final rule to revise existing regulations pertaining to confidentiality of information requirements under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act or MSA). This rule updates the regulations consistent with the 2006 Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (MSRA) and 1996 Sustainable Fisheries Act (SFA) and amendments to the High Seas Driftnet Fishing Moratorium Protection Act (FMPA) under the 2015 Illegal, Unreported and Unregulated Fishing Enforcement Act (IUU Fishing Act). The final rule provides other revisions to address issues that concern NMFS’ internal control procedures (ICPs) for management of MSA confidentiality of information.

DATES: Effective January 16, 2025.

ADDRESSES: A plain language summary of this rule is available at: <https://www.regulations.gov/docket/NOAA-HQ-2023-0146>.

Electronic Access: Information relevant to this proposed rule, which includes a final regulatory impact review and a Regulatory Flexibility Act

certification, is accessible via the internet at: <https://www.regulations.gov/docket/NOAA-HQ-2023-0146/>.

FOR FURTHER INFORMATION CONTACT: Karl Moline, 301-427-8225, or at NMFS, Operations, Management, & Information Division F/ST3, Ste. 12300, 1315 East West Highway, Silver Spring, MD 20910.

SUPPLEMENTARY INFORMATION: Section 402(b) of the MSA provides that “any information submitted to the Secretary, a State fishery management agency, or a marine fisheries commission by any person in compliance with the requirements of this Act,” 16 U.S.C. 1881a(b)(1), and “[a]ny observer information,” *id.* 1881a(b)(2), “shall be confidential and shall not be disclosed” except pursuant to certain exceptions. Section 402(b)(3) requires that the Secretary “shall, by regulation, prescribe such procedures as may be necessary to preserve the confidentiality of information submitted in compliance with any requirement or regulation under [the MSA],” but the Secretary may release confidential information “in any aggregate or summary form which does not directly or indirectly disclose the identity or business of any person who submits such information.” *Id.* 1881a(b)(3). NMFS regulations implementing MSA section 402(b) are at 50 CFR part 600, subpart E, and there are confidentiality related definitions and references at 50 CFR 600.10 and 600.130. NMFS published a proposed rule in the **Federal Register** on March 11, 2024 (89 FR 17358). Comments were invited and accepted through April 25, 2024. NMFS received 36 individual comments, including 1 letter that contained 5,040 signatures. NMFS responses are addressed in the Response to Comments section below. After considering public comments submitted for the proposed rule, NMFS is implementing the final rule with some changes.

Background

The agency last revised the confidentiality regulations in February 1998 (63 FR 7075, February 12, 1998). A number of statutory changes have been enacted since 1998, and this rule provides important updates and clarifications to the confidentiality regulations to reflect those statutory changes. The 2006 MSRA (Pub. L. 109-479) made three major changes to the confidentiality provisions at MSA section 402(b). First, the MSRA added a provision specifying that observer information (defined at 16 U.S.C. 1802(32)) shall be confidential and shall not be disclosed except pursuant to specified exceptions. 16 U.S.C. 1881a(b)(2). One such exception at MSA section 402(b)(1)(F) authorizes release of confidential information based on written authorization from the person submitting such information. *Id.* 1881a(b)(1)(F). The proposed rule distinguished between observer information that is collected onboard a vessel for scientific and management purposes and information collected for administration of the observer program and allowed a vessel permit holder to execute a written authorization only for the first category of information. See 89 FR 17358, 17364 (March 11, 2024) (explaining basis for proposed rule approach, which retains current agency practice).

Second, the MSRA added a new exception that authorizes the Secretary to disclose confidential information when such information is required to be submitted to the Secretary for any determination under a limited access program (LAP). 16 U.S.C. 1881a(b)(1)(G). The proposed rule included a definition of “determination” and defines “limited access program” consistent with how “catch share” is defined under NOAA’s Catch Share Policy (available at http://www.nmfs.noaa.gov/sfa/management/catch_shares/about/documents/noaa_cs_policy.pdf). The proposed rule explained that the exception could