

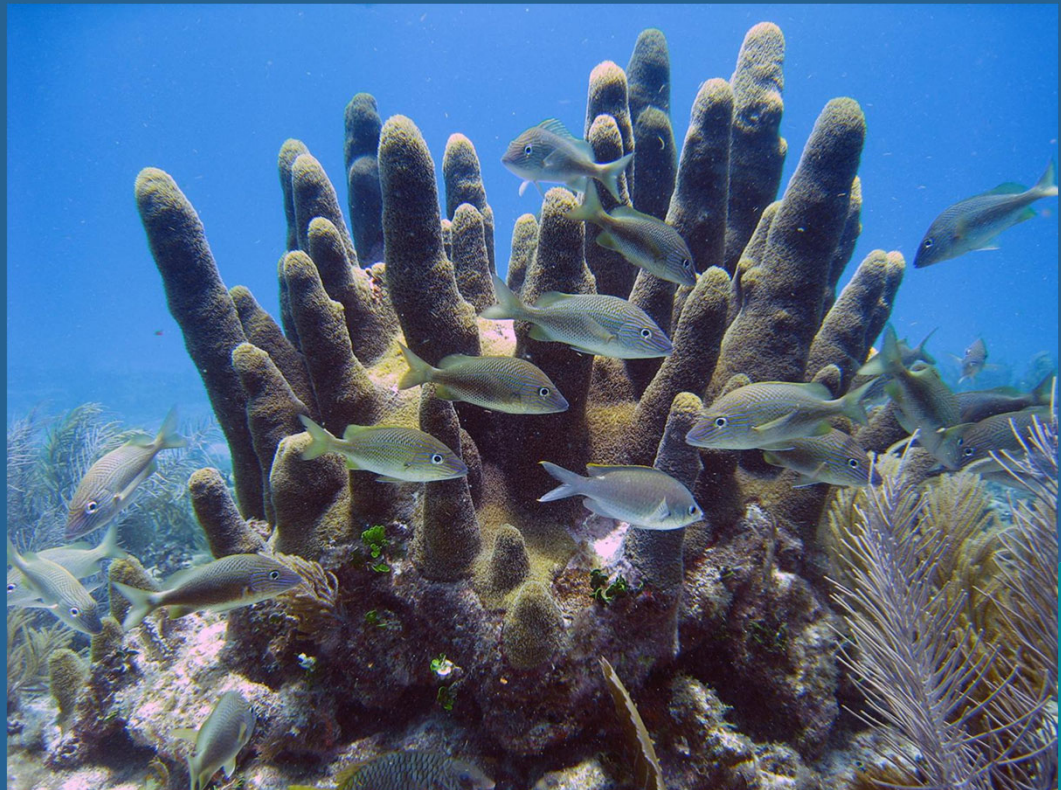


ESA Section 10(a)(1)(A) Permitting for Pillar Coral

**NOAA
FISHERIES**

**Office of Protected
Resources
Permits and
Conservation
Division**

**Southeast Region
Protected
Resources Division**



April 19, 2024

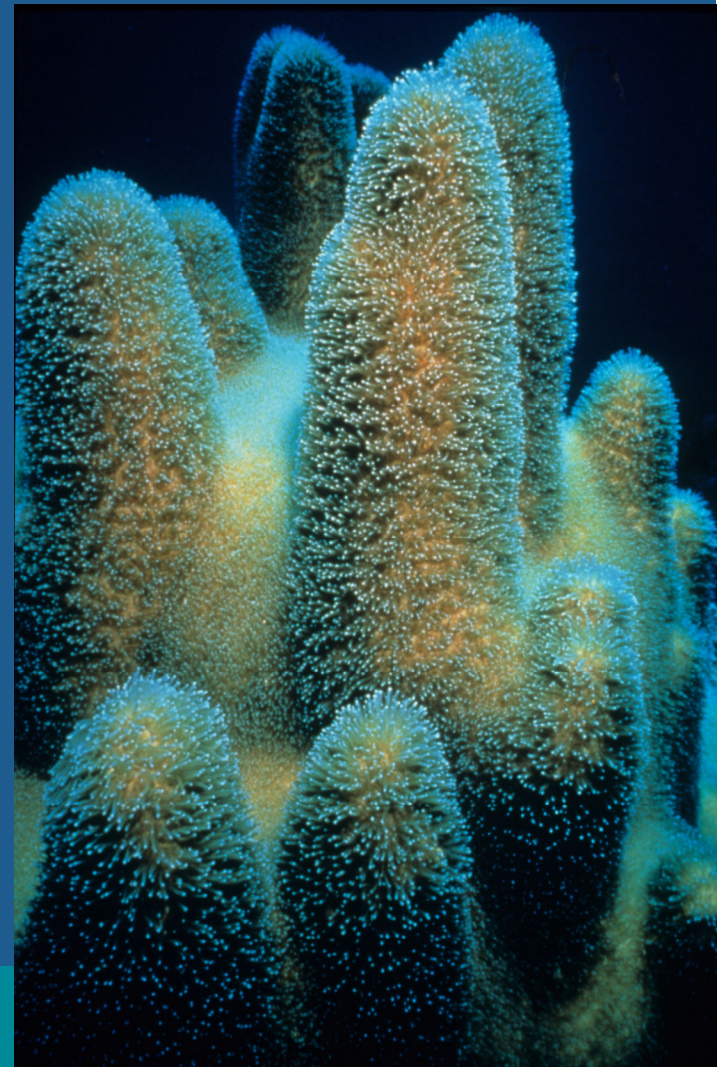
Overview

Proposed Rule & Prohibitions

Potential ESA Permitting

- ESA Section 10 Permits
- Permit Application Process
- Permit Components
- Resources

Questions





Pillar Coral Proposed Rule and ESA Prohibitions



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Pillar Coral ESA Proposed Rule

- NOAA Fisheries listed pillar coral as Threatened under the ESA in 2014.
- NOAA Fisheries completed a 5-year review in August 2022 under the ESA.
- In 2023, NOAA Fisheries published a proposed rule to change the status of pillar coral from Threatened to Endangered due to:
 - Declining abundance and distribution trend in Colombia and Florida, with severe losses in Florida
 - Stony coral tissue loss disease



Proposed Rule Timeline

August 29, 2023

Proposed rule issued to change the status of pillar coral to Endangered

October 30, 2023

60-day comment period closed

Expected by August 29, 2024

Final determination on whether to change the status of pillar coral under the ESA

- Final rule will specify when the change of status will go into effect (usually 30 days later), if up-listed
- If up-listed, permits would be required for prohibited activities once the rule takes effect.



What Happens if Pillar Coral is Listed as Endangered?

Activities that Would **Not** Likely Require a NMFS ESA permit

- Possession of coral and their progeny that are in captivity
- **Normal** care and husbandry of coral in captivity
- Non-commercial transport of legally obtained coral between captive locations
- Studies to improve husbandry practices that do not cause harm
- Observational surveys of coral in the wild that do not involve collections or manipulation of pillar corals
- Localized disease treatment in the wild by experienced persons using proven methods, if authorized under a state or territorial permit

Activities that **Would** Likely Require a NMFS ESA permit

- Collecting pillar coral colonies, fragments, tissue samples, and gametes, from the wild
- Harming captive corals through potential injurious research beyond normal husbandry practices
- Removing, relocating, or reattaching pillar coral in the wild
- Conducting research on wild pillar coral involving manipulation of the coral such as novel treatments or tissue sampling
- Releasing captive pillar corals in the wild such as outplantings for restoration
- Importing and exporting pillar coral, unless they were already in captivity prior to an up-listing



Overview ESA Section 10 Research and Enhancement Permitting



NOAA FISHERIES

Who We Are

NOAA

- NOAA Fisheries (aka National Marine Fisheries Service)
 - Office of Protected Resources (Silver Spring, MD)
 - Permits and Conservation Division (PR1)
 - **Directed Take Program:**
Permits for Directed Take, Import, and Export under ESA and MMPA

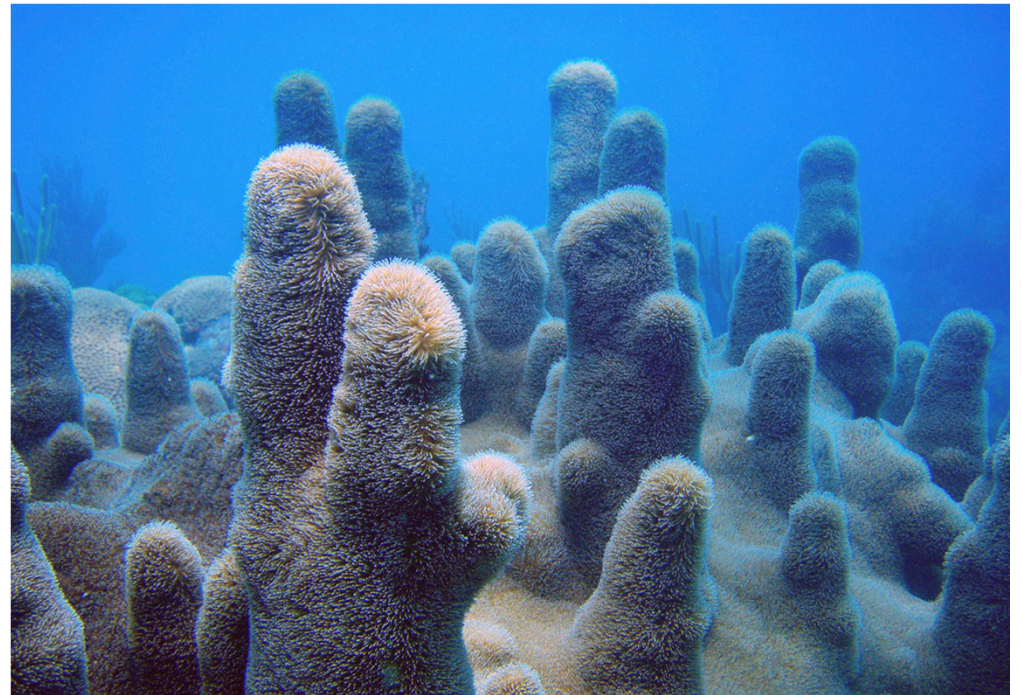


What is ESA “Take?”

Take: “to harass, **harm***, pursue, hunt, shoot, **wound, kill**, trap, capture, or **collect**, or to attempt to engage in any such conduct.”

**Harm is defined as:*

any act which actually **kills**
or injures



Species We Cover

Cetaceans

Pinnipeds

Sawfish

Sea Turtles

Sturgeon

Pillar Coral, if
up-listed

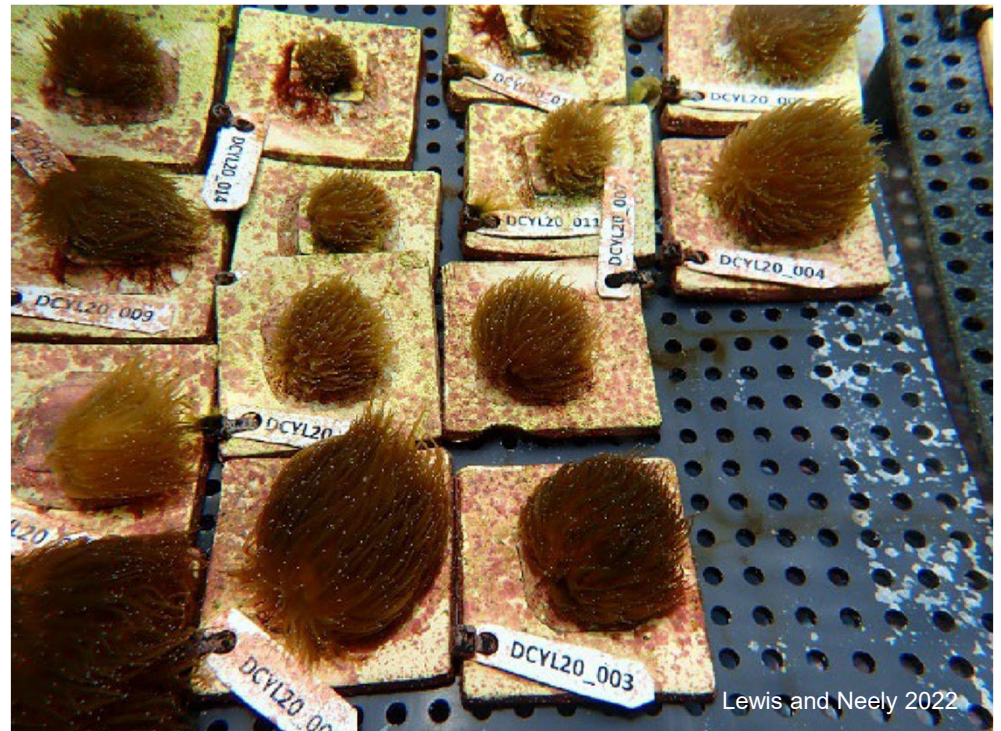


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ESA Permits for Directed Take, Import, or Export

Issued under ESA Section 10(a)(1)(A) for:

- Scientific Research
 - Wild or Captive
 - Live or Dead
- Enhancement
 - Restoration
 - Response



Lewis and Neely 2022

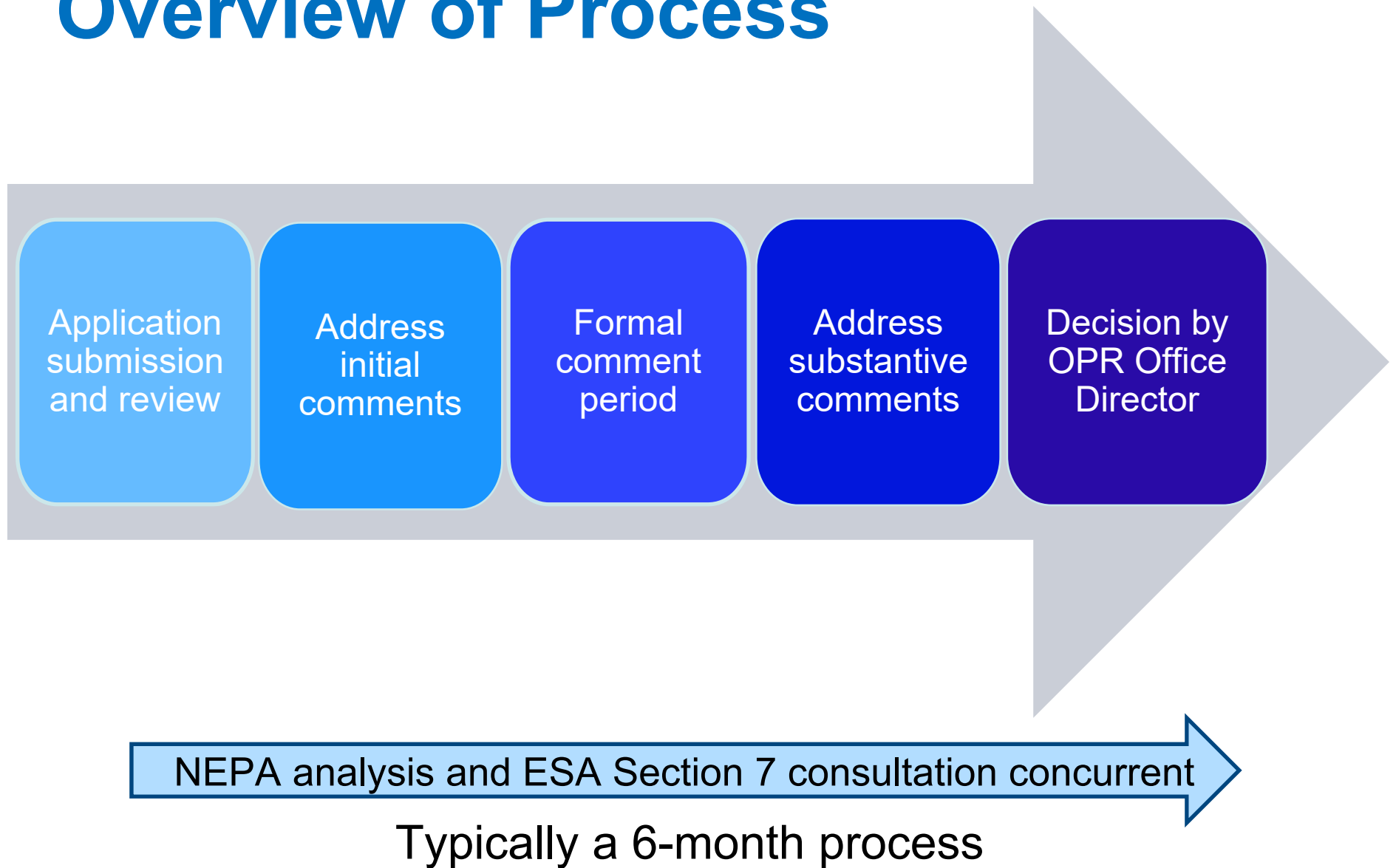


Permit Application Process



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Overview of Process



Application Instructions*

National Marine Fisheries Service

Endangered Species Scientific Research and Enhancement Permit Application (For Proposed Reclassification of Pillar Coral)

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*Requires OMB approval and public comment.

Available online:

<https://www.fisheries.noaa.gov/rules-regulations/pillar-coral-permitting-under-endangered-species-act>

Qualifications Forms for personnel



Application Instructions

- **Project Information:** Applicant, Season, Abstract, Duration
Duration up to **10 years**
- **Project Description:** Objectives to aid recovery, Methods
- **Project Supplemental Information:** Effects to coral, Coordination w/others, Resources, Tissue Disposition
- **Project Location:** Water bodies, Area map in the wild, Lab address
- **Take Table:** Table of activities conducted on colonies, annually
- **Anticipated Effects to Environment:** Impacts to other species and environment, protected areas
- **Project Contacts:** Personnel: PI, CIs, Primary Contact



Personnel Roles

Applicant: A person, or organization with a **Responsible Party**
--Becomes the Permit Holder, if permit is issued

Principal Investigator (PI): Supervises activities; 1 PI per application

Co-Investigator (CI): Serves in the PI's absence; *optional*

--PI and CIs can each complete a Qualifications Form to demonstrate skills and experience; used for all future requests.

Primary Contact: Speaks on applicant's behalf when needed; *optional*

**Consider applying with collaborators together under 1 permit.

Submitting An Application

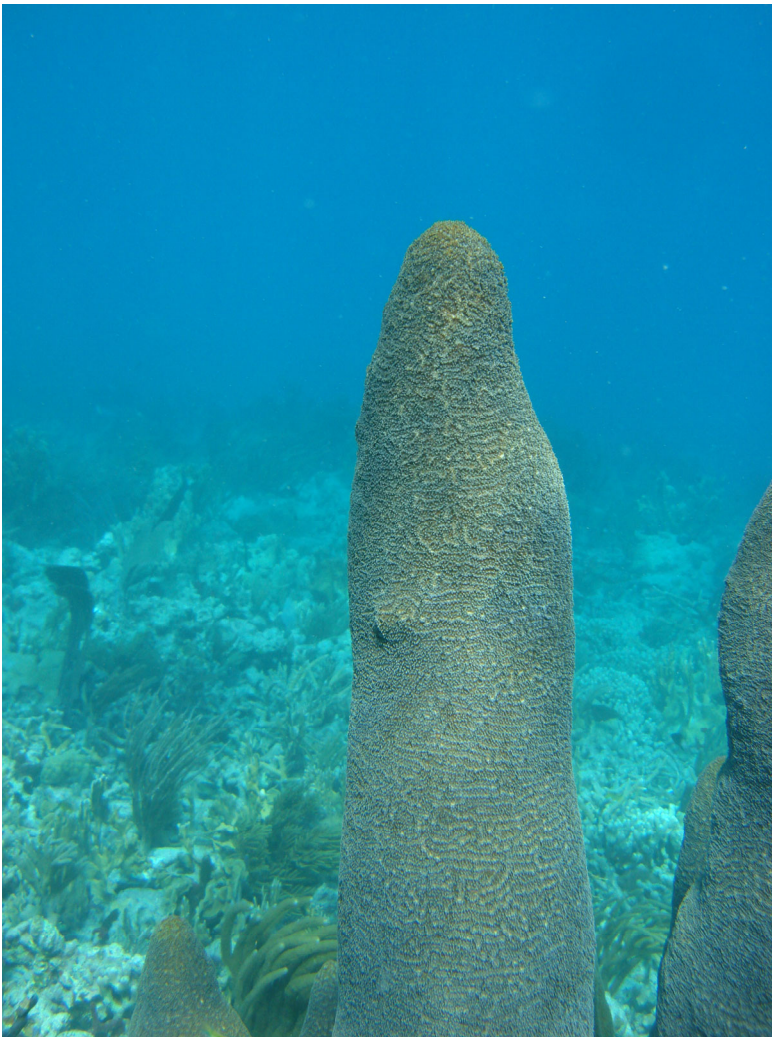
- **Apply by May 15, 2024**, *in the event that* pillar coral is up-listed *if* your activities would require a permit once a rule would take effect

Email to: nmfs.pr1.apps@noaa.gov

- Reviewed by 2 permit analysts
- Successful requests follow the instructions
- Comments sent to applicant within **30 days** if revisions are needed
- Incomplete requests may be returned after 60 days



Formal Application Reviews



- NMFS Southeast Region and Southeast Fisheries Science Center
- Sanctuaries, Office of Habitat Conservation (essential fish habitat), state partners, etc.
- Concurrent mandatory 30-day public comment period
- Respond to substantive comments within 2 weeks



Environmental Analyses

- Issuing a permit = major federal action
- Evaluated under the ESA and National Environmental Policy Act (NEPA)
- Biological, chemical, and physical environment including:
 - Pillar coral, critical habitat + other ESA-listed species
 - Other protected species, including USFWS species
 - Sanctuaries, wildlife refuges, National Parks, and other protected areas



Programmatic ESA Consultation

- ESA section 7 consultation required to issue a federal permit
- Determine whether the action is likely to jeopardize the continued existence of listed species or to result in the destruction or adverse modification of designated critical habitat
- Develop programmatic consultation on the proposed pillar coral permitting program

Novel or rare methods with uncertain or unknown impacts may require stand-alone consultation: ~1 year process



Programmatic Consultation Benefits

- Plan to cover most activities that would need a permit
- Streamlined ~6 month permit processing time
- Permitting more predictable, efficient
- Adaptive management: best available science, monitoring
- Effects analysis encompassing program activities as a whole (aggregate)
- **Increased recovery value**



ESA Permit Issuance Criteria

- The applicant **applied in good faith**
- **Will not** operate to **disadvantage** of such endangered species
- Is **consistent with** the purposes of the ESA, its policies, and species' recovery plan*
- Is **bona fide and necessary**, has a desirable scientific purpose



ESA Permit Issuance Criteria

- Cannot be done using **non-endangered species**
- Adequate **expertise, facilities, and resources**
- Considers **status of and effects on the population**
- Considers opinions or views of scientists and others

Enhancement:

Activity must enhance the propagation or survival of the species



Permit Decision

Recommend decision to the OPR Office Director

Administrative record supporting the decision includes:

- NEPA documentation
- ESA Section 7 Programmatic Biological Opinion
- Memoranda summarizing reviewer and public comments, compliance with federal laws, and a recommendation on issuance or denial
- Permit with terms and conditions, if decision to issue

*Emergency permits can be issued, if warranted, in certain cases





Permit Components



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Permit Components

- Annual take numbers by species
- Duration: Up to **10 years**
- General conditions for all permits
- Specific conditions to minimize impacts to species & habitat
- Coordination requirements



Coordination Requirements

To avoid duplication of efforts and repeated take or other adverse impacts from multiple permit holders:

- Permit holders must notify NMFS Southeast Regional Office 2 weeks in advance of field season and follow Regional recommendations, and
- Must coordinate with other permit holders (e.g., tissue sample or data sharing)



Permit Monitoring

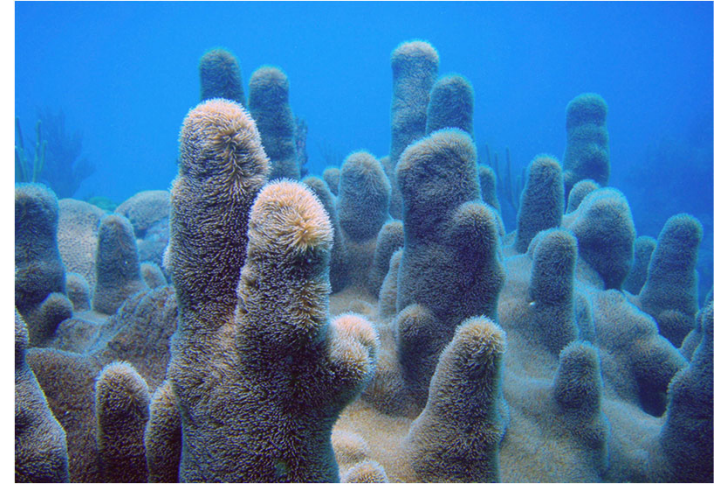
- Annual Reports: # takes used, impacts to species, summary of work completed and findings
- Incident Reports: Exceeding take limits, mortality
- Reviewed for permit and environmental compliance and impacts of authorized activities
- Publish results → available to scientific information community & managers
- Reports aid future permit requests and analyses



Permit Management

Making changes to a permit:

- Modifications
- Personnel authorizations
- Extending permit duration



May be requested only by the Permit Holder, Principal Investigator, or a designated Primary Contact

- See instructions for details on personnel roles

Permit Modifications

Major mods (30-day comment period)

- Location change (e.g., add a water body)
- Increase take numbers (i.e., colonies)
- Change methods that would increase risk to coral or the environment

Minor mods and authorizations

- Changes in personnel, objectives, duration, or methods with no increased risk





Resources



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Online database APPS: <https://apps.nmfs.noaa.gov/search>



Authorizations and Permits for Protected Species (APPS)



[Log On](#)

| |
|--|
| Home |
| Online Application Instructions (pdf) |
| Pre-Application Guide |
| Permit Types |
| Laws and Regulations |
| Species Lists |
| Search Database |
| Records Open for Public Comment |
| When To Apply |
| Contact Us |
| If you're having trouble or have questions, please email us at apps.feedback@noaa.gov. |
| Get Adobe Acrobat Reader |
| Last Updated: 2022-03-04 |

Search

You may only search the APPS database for permits and authorizations that may be applied for online. Please see the link on the left to view records open for public comment.

More data will be accessible as APPS is expanded. Please note that the APPS database may not be complete. For more information on this feature, see [Chapter 6 of the Help Document](#). If you have further questions, please contact the APPS Helpdesk.

Type of Output:

For information about the XML option, see the following: [XML Instructions](#) [Download](#)

Quick Search

Individual File Number:



Key word:

Who

Applicant/Holder:

What

Which records?

Permit/Authorization Type:

Locations to display:

Species:

Currently Selected: N/A

Endangered/threatened populations:

Currently Selected: N/A



Q & A

Do I have to apply now? It is in your best interest to apply now if you plan to conduct activities this Fall and Winter that would require a permit if the species is listed as endangered.

Who should apply? A permit can be issued to an entity or a person. Permits are not transferable to another party.

Consider collaborating and applying with others as one group that would work under one permit. Contact us if you would like to learn more about this option.

Can I use these instructions to apply for other coral species? No, only pillar coral. Work on other threatened coral species does not require an ESA permit. Note, other local/state permits also may be needed for pillar coral and other species.

Would NMFS permit pillar coral rescue? Yes, rescue and response activities would require a permit based on the proposed rule.

<https://www.fisheries.noaa.gov/rules-regulations/pillar-coral-permitting-under-endangered-species-act>



Questions?

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