



**UNITED STATES DEPARTMENT OF COMMERCE**

National Oceanic and Atmospheric Administration

**NATIONAL MARINE FISHERIES SERVICE**

Southeast Regional Office

263 13th Avenue South

St. Petersburg, Florida 33701-5505

<http://sero.nmfs.noaa.gov>

October 24, 2014

F/SER47:JK/pw

(Sent via Electronic Mail)

Colonel Alan Dodd, Commander  
U.S. Army Corps of Engineers, Jacksonville District  
Miami Permits Section  
9900 Southwest 107<sup>th</sup> Avenue, Suite 203  
Miami, Florida 33176

Attention: Megan Clouser

Dear Colonel Dodd:

NOAA's National Marine Fisheries Service (NMFS) Habitat Conservation Division (HCD) reviewed public notice SAJ-2014-02338 for Regional General Permit (RGP) SAJ-112, dated September 24, 2014. The Jacksonville District proposes to issue this RGP to place subsurface structures for the sole purpose of propagating corals in waters of the United States in the State of Florida, the Commonwealth of Puerto Rico, and the Territory of the U.S. Virgin Islands (USVI). The RGP would also authorize the outplanting of corals and the maintenance and removal of structures. The initial determination by the Jacksonville District is the proposed loss of unvegetated bottom or sand and shell substrate designated Essential Fish Habitat (EFH) by the South Atlantic Fishery Management Council and Caribbean Fishery Management Council would not have a substantial adverse impact on EFH or federally managed fishery species. As the nation's federal trustee for the conservation and management of marine, estuarine, and anadromous fishery resources, the following comments and recommendations are offered pursuant to authorities of the Fish and Wildlife Coordination Act and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

*Essential Fish Habitat*

EFH commonly present within areas where coral propagation structures may be sited includes unvegetated bottoms, sand or shell substrate, seagrass, coral, coral reef, and live/hardbottom. The South Atlantic Fishery Management Council, Gulf of Mexico Fishery Management Council, or Caribbean Fishery Management Council has designated one or more of these habitats as EFH for coral, penaeid shrimp, red drum, spiny lobster, stone crab, queen conch, or fish within the snapper/grouper complex because these habitats provide foraging grounds or protection from predators, which make these habitats valuable nursery areas. Further, the South Atlantic and Gulf of Mexico Fishery Management Councils have designated seagrass, coral, and live/hardbottom as Habitat Areas of Particular Concern (HAPC) due to their ecological importance, rarity, susceptibility to human-induced degradation, or location in an environmentally stressed area. For similar reasons, specific geographic areas within Florida,



Puerto Rico and USVI also are designated an HAPC, including, but not limited to, Biscayne Bay National Park (FL), Card Sound (FL), Florida Keys National Marine Sanctuary (FL), seagrass beds of Culebra Island (PR), and Cane Bay (USVI).

#### *Impacts to Essential Fish Habitat*

While NMFS HCD believes the RGP could be implemented in a manner benefiting coral reef ecosystems, amended permit conditions and would be necessary to achieve this goal and to ensure impacts to seagrass, coral, coral reef, and hardbottom habitats are avoided. Impacts to EFH may result from the installation of structures, failure to properly anchor the structures, or the mishandling of coral colonies during collection, growout, and outplanting.

#### Overall recommendations

1. NMFS HCD recommends amending the purpose of the RGP *to allow placement of subsurface structures for coral propagation specifically for the purposes of scientific research, enhancement, and restoration*. This specificity more accurately reflects the purpose of the RGP.
2. NMFS HCD recommends limiting use of the RGP to NOAA offices, NOAA partners, and State, Territorial, and Commonwealth governments. This restriction would include agencies, institutions, or non-governmental agencies with NOAA funding or closely collaborating with NOAA on coral propagation activities (e.g., work described in Johnson et al. 2011; Lirman et al. 2010; Schopmeyer et al. 2012). While NMFS HCD does not want to delay coral propagation activities from moving forward, we do want to avoid usage of the RGP by inexperienced personnel conducting activities in a manner detrimental to NOAA-trust resources, including coral, natural reefs, and seagrass habitats.
3. A permit condition is needed to define the geographic scope for the RGP in Florida, Puerto Rico, and USVI. The apparent intent of the RGP in Florida is to limit the geographic scope to the Florida Keys and waters off southeast mainland Florida. Further, some waters off Puerto Rico and USVI may not be appropriate for coral nurseries due to user conflicts, unexploded ordinances, or other concerns.

#### Request for clarification or re-wording on a permit condition

- The Proposal Section of the draft RGP (page 1) states outplanting the propagated corals [to natural or artificial reef] is within the scope of the authorization; however the RGP does not include any conditions related to outplanting. It is important to design outplanting activities to mimic historical or existing local densities and to ensure appropriate techniques are employed to avoid damage to existing habitats. Based on a teleconference with Jacksonville District staff on October 17, 2014, it is our understanding outplanting would only be regulated in cases where the activity may interfere with navigation. If the Jacksonville District intends to regulate outplanting, further coordination with NMFS HCD is needed.
- Special Condition 2 states permittees shall be required to obtain a “permit” from NMFS. During a teleconference on October 17, 2014, Jacksonville District staff indicated the reference to a NMFS permit was in error and would be deleted in the final version of RGP SAJ-112. Instead of deleting, NMFS HCD recommends this special condition be clarified to note harvest and relocation *in federal waters* would likely require an Exempted Fishing Permit from NMFS under the Magnuson-Stevens Act to authorize

broodstock harvest, fragmentation, relocation or outplanting activities. The special condition also should note for projects in state waters and federal waters coordination also is required under the Endangered Species Act and the EFH provisions of the Magnuson-Stevens Act. Accordingly, NMFS HCD recommends the following revised language:

*Prospective permittees shall be required to provide evidence the specific activities are covered under the Endangered Species Act and the EFH provisions of the Magnuson-Stevens Act. Evidence can be in the form of a NMFS Biological Opinion, a written statement of how the activities are allowable under a special 4(d) rule, or letter(s) or email(s) from the NMFS Southeast Regional Office, Protected Resources and Habitat Conservation Divisions (emphasis added). For activities occurring in the Exclusive Economic Zone (EEZ) adjacent to State, Commonwealth, or Territorial waters, prospective permittees may be required to obtain an Exempted Fishing Permit from the NMFS to authorize coral broodstock harvest, fragmentation, relocation and/or outplanting activities, or provide evidence that the specific such activities are covered under the Endangered Species Act through a Biological Opinion or special rule. NMFS Exempted Fishing Permit information can be obtained by contacting the NMFS, Southeast Regional Office, Sustainable Fisheries Division, 263 13th Avenue South, St. Petersburg, Florida 33701-5505.*

- Special Condition 3 refers to obtaining authorization from the State of Florida Department of Environmental Protection or a Water Management District. NMFS HCD notes additional authorization (e.g., Special Activity License) may be needed from the Florida Fish and Wildlife Conservation Commission (FWC), and NMFS HCD recommends listing FWC in this condition as well.
- Special Condition 7 requires a site evaluation report. While NMFS HCD has no recommended changes to subparts (a) and (d), we recommend replacing the second sentence, re-wording subparts (b) and (c), and adding subparts (e) and (f) as listed below:

*The report should contain site maps, a benthic evaluation, video of underwater surveys, proposed structure location, and anchoring methods. The report shall be submitted to the Corps and NMFS and shall demonstrate that the proposed site for the placement of the structures:*

*(b) will not impair or be a detriment to traditional fishing operations or other public access;*

*(c) avoids impacts that would reduce the quality or quantity of naturally occurring coral, coral reef, or hardbottom habitat and seagrass;*

*(e) identify if the activity is associated with a compensatory mitigation requirement;*

*(f) description of the applicant's experience with coral propagation/nursery structures and history of partnership with NOAA and local governments.*
- Special Condition 8 describes a maximum one-acre sized area would be allowed under the RGP. Based on feedback from the NMFS Restoration Center staff, which regularly works with NOAA partners and has expertise in coral propagation, a square-box-approach to evaluate the one acre minimum would not meet the needs of NOAA partners.

While NMFS HCD does not want to inadvertently encourage extensive nurseries, there are advantages to having distance between the structures to avoid entanglement with other structures and marine life, disease transfer, contact with natural habitats, and to facilitate research goals. NMFS HCD offers the suggested re-wording of this condition:

*A site in which the area of individual structures occupies more than one acre of sea floor or water column, or multiple adjacent or geographically proximate sites, which in aggregate have structures occupying more than one acre of sea floor or water column, will not be authorized under this RGP.*

- NMFS HCD recommends re-wording Special Condition 11:  
*Structures authorized by this permit, which have fallen into disrepair or are no longer in use, shall be replaced or removed within 30 days. Any damage caused to natural habitats resulting from structures shall be immediately reported to the Jacksonville District and NMFS. Structures dislodged or displaced by natural events such as storms may be reinstalled in the same location. For structure(s) being removed corals, must be outplanted or moved to another structure in the nursery prior to removal.*

#### *EFH Conservation Recommendations*

NMFS HCD concludes the placement of structures for coral propagation and the outplanting activities may adversely impact EFH. Section 305(b)(4)(A) of the Magnuson-Stevens Act requires NMFS HCD to provide EFH conservation recommendations when an activity is expected to adversely impact EFH. In consideration of this requirement, provides the following:

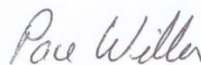
#### **EFH Conservation Recommendations**

1. Revise the purpose of the RGP *to allow placement of subsurface structures for the purposes of coral propagation specifically for purposes of scientific research, enhancement, and restoration.*
2. Include a Special Condition to limit use of the RGP to NOAA offices, NOAA partners, and the State, Territorial, and Commonwealth governments. This would include agencies, institutions, or non-governmental agencies with funding from NOAA or working in close collaboration with NOAA on coral propagation activities.
3. Include a Special Condition to limit the geographic scope of the RGP in Florida, Puerto Rico, and USVI.
4. Clarify in the RGP that coral colony collections and outplanting activities are only regulated by the Jacksonville District when they may interfere with navigation.
5. Condition the permit to require all coral propagation or nursery structure installation outplanting activities authorized under SAJ-112 proposed require early coordination with NOAA National Marine Fisheries Service, located in the West Palm Beach Office located at 400 North Congress Avenue, Suite 120, West Palm Beach, Florida 33401 and NMFS Protected Resources Division, 263 13th Avenue South, St. Petersburg, Florida 33701-5505. The site evaluation checklist (appended to this letter) and site evaluation report must be provided prior to beginning work.

Section 305(b)(4)(B) of the Magnuson-Stevens Act and implementing regulation at 50 CFR Section 600.920(k) require the Jacksonville District to provide a written response to this letter within 30 days of its receipt. If it is not possible to provide a substantive response within 30 days, in accordance with the “findings” with the Jacksonville District, an interim response should be provided to NMFS. A detailed response then must be provided prior to final approval of the action. The detailed response must include a description of measures proposed by the Jacksonville District to avoid, mitigate, or offset the adverse impacts of the activity. If the response is inconsistent with the EFH conservation recommendations, the Jacksonville District must provide a substantive discussion justifying the reasons for not following the recommendations.

NMFS HCD appreciates the opportunity to provide these comments. Please direct related questions to the attention of Ms. Jocelyn Karazsia at our Palm Beach Office, 400 N Congress Ave, Suite 120, West Palm Beach, Florida 33401, at 561-249-1925, or at [Jocelyn.Karazsia@noaa.gov](mailto:Jocelyn.Karazsia@noaa.gov).

Sincerely,



/ for

Virginia M. Fay  
Assistant Regional Administrator  
Habitat Conservation Division

Enclosure 1: NMFS HCD Site Evaluation Report Checklist for SAJ-112

cc:

COE, [Megan.Clouser@usace.army.mil](mailto:Megan.Clouser@usace.army.mil)  
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## Literature Cited:

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Lirman, D., T. Thyberg, J. Herlan, C. Hill, C. Young-Lahiff, S. Schopmeyer, B. Huntington, R. Santos, and C. Drury. 2010. Propagation of the threatened staghorn coral *Acropora cervicornis*: methods to minimize the impacts of fragment collection and maximize production. *Coral Reefs* 29:729–735

Schopmeyer, S., D. Lirman, E. Bartels, J. Byrne, D.S. Gilliam, J. Hunt, M.E. Johnson, E.A. Larson, K. Maxwell, K. Nedimyer, and C. Walter. 2012. In situ coral nurseries serve as genetic repositories for coral reef restoration after an extreme cold-water event. *Restoration Ecology* 20:696–703

## **NMFS HCD Site Evaluation Report Checklist for SAJ-112**

### Project Identification

- Applicant name and contact information (phone/email)
- Project name
- Describe the applicant's experience with coral propagation/nursery structures and outplanting

### Project Location

- Latitude and Longitude of site boundaries (format should be in decimal degrees to five places)

### Project Site Description

- Describe how the project would be sited to avoid impacts to seagrass and natural coral, coral reef, and hardbottom habitats

\*Note: It is recommended the applicant seek pre-application technical assistance from NMFS HCD prior to performing surveys to ensure the information collected is of sufficient quality for NMFS to determine the activity will not adversely affect coral, coral reef, hardbottom, or seagrass habitats.

### Project Description

- Describe the type, number, and sizes of structures to be installed at the propagation/nursery site
- Describe the habitat type and location of where outplanting corals will occur and the attachment methods
- Describe the species for propagation and the type of propagation planned (active vs passive)
- Describe how the structures will be secured to the seafloor
- Will the nursery propagation and outplanting provide compensatory mitigation for another project? If yes, please identify the projects

### Impact assessment

- Will the nursery and outplanting result in impacts to coral, coral reef, hardbottom, or seagrass habitats?

### Project Site Management

- Describe how the nursery structures and outplants will be routinely maintained and following storms or similar natural events. Descriptions should also include coral reattachment methods

### Monitoring

- Provide a plan to monitor coral outplants

### Annual Reporting to NMFS

- Number and type of structures utilized
- Number and species of corals propagated
- Locations of outplanting sites and the species and size classes
- Identify adaptive management measures implemented for the maintenance and monitoring of structures and outplanting methods
- Annual reports shall be provided electronically to [nmfs.ser.monitoringreportshc@noaa.gov](mailto:nmfs.ser.monitoringreportshc@noaa.gov)