

definition of “Southeast Regional Administrator”).

[64 FR 14073, Mar. 23, 1999, as amended at 64 FR 55438, Oct. 13, 1999; 66 FR 1603, Jan. 9, 2001; 66 FR 24288, May 14, 2001; 68 FR 8467, Feb. 21, 2003; 68 FR 51514, Aug. 27, 2003; 68 FR 54934, Sept. 19, 2003; 69 FR 31037, June 2, 2004]

EFFECTIVE DATE NOTE: At 64 FR 14073, Mar. 23, 1999, §223.207 was added. Paragraphs (a)(9)(ii) (A) and (B) contain information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 223.208 Corals.

(a) *Prohibitions.* (1) The prohibitions of section 9(a)(1) of the ESA (16 U.S.C. 1538(a)(1)) relating to endangered species apply to elkhorn (*Acropora palmata*) and staghorn (*A. cervicornis*) corals listed as threatened in §223.102(d), except as provided in §223.208(c).

(2) It is unlawful for any person subject to the jurisdiction of the United States to do any of the following:

(i) Fail to comply immediately, in the manner specified at §600.730 (b) through (d) of this title, with instructions and signals specified therein issued by an authorized officer, including instructions and signals to haul back a net for inspection;

(ii) Refuse to allow an authorized officer to board a vessel, or to enter an area where fish or wildlife may be found, for the purpose of conducting a boarding, search, inspection, seizure, investigation, or arrest in connection with enforcement of this section;

(iii) Destroy, stave, damage, or dispose of in any manner, fish or wildlife, gear, cargo, or any other matter after a communication or signal from an authorized officer, or upon the approach of such an officer or of an enforcement vessel or aircraft, before the officer has an opportunity to inspect same, or in contravention of directions from the officer;

(iv) Assault, resist, oppose, impede, intimidate, threaten, obstruct, delay, prevent, or interfere with an authorized officer in the conduct of any boarding, search, inspection, seizure, investigation, or arrest in connection with enforcement of this section;

(v) Interfere with, delay, or prevent by any means, the apprehension of another person, knowing that such person committed an act prohibited by this section;

(vi) Resist a lawful arrest for an act prohibited by this section;

(vii) Make a false statement, oral or written, to an authorized officer or to the agency concerning applicability of the exceptions enumerated in paragraph (c) of this section relating to elkhorn and staghorn corals;

(viii) Make a false statement, oral or written, to an authorized officer or to the agency concerning the fishing for, catching, taking, harvesting, landing, purchasing, selling, or transferring fish or wildlife, or concerning any other matter subject to investigation under this section by such officer, or required to be submitted under this part 223; or

(ix) Attempt to do, solicit another to do, or cause to be done, any of the foregoing.

(b) *Affirmative defense.* In connection with any action alleging a violation of this section, any person claiming the benefit of any exception, exemption, or permit under this section has the burden of proving that the exception, exemption, or permit is applicable, was granted, and was valid and in force at the time of the alleged violation, and that the person fully complied with the exception, exemption, or permit.

(c) *Exceptions.* Exceptions to the prohibitions of section 9(a)(1) of the ESA (16 U.S.C. 1538(a)(1)) applied in paragraph (a) of this section relating to elkhorn and staghorn corals are described in the following paragraphs (1) through (6):

(1) Permitted scientific research and enhancement. Any export or take of elkhorn or staghorn corals resulting from conducting scientific research or enhancement directed at elkhorn and staghorn corals is excepted from the prohibitions in ESA sections 9(a)(1)(A), (B) and (C) provided a valid research or enhancement permit has been obtained from one of the following Federal or state agencies: NOAA National Ocean Service National Marine Sanctuary Program, National Park Service, U.S. Fish and Wildlife Service, Florida Fish and Wildlife Conservation Commission, Puerto Rico Department of Natural

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and Environmental Resources, or the U.S. Virgin Islands Department of Planning and Natural Resources. The exportation or take must be in compliance with the applicable terms and conditions of the applicable research or enhancement permit, and the permit must be in the possession of the permittee while conducting the activity. Export of elkhorn or staghorn corals from the United States to conduct excepted research or enhancement activities requires a CITES export permit from the U.S. Fish and Wildlife Service in addition to the research permit for collection. Import of elkhorn or staghorn corals into the United States to conduct excepted research or enhancement activities must be in compliance with the provisions of section 9(c) of the ESA.

(2) Restoration activities. Any agent or employee of governmental agencies listed in Table 1 may take listed elkhorn or staghorn corals without a permit, when acting in the course of conducting a restoration activity directed at elkhorn or staghorn coral which is authorized by an existing authority (see Table 1 to this section). Take of elkhorn or staghorn corals during such restoration activity is excepted from the prohibitions in ESA sections 9(a)(1)(B) and (C). An excepted restoration activity is defined as the methods and processes used to provide aid to injured individual elkhorn or staghorn coral.

(3) Section 10 scientific and enhancement permits. The Assistant Adminis-

trator may issue permits authorizing activities that would otherwise be prohibited under §223.208(a) for scientific purposes or to enhance the propagation or survival of elkhorn or staghorn corals, in accordance with and subject to the conditions of part 222, subpart C—General Permit Procedures.

(4) Section 10 incidental take permits. The Assistant Administrator may issue permits authorizing activities that would otherwise be prohibited under §223.208(a) in accordance with section 10(a)(1)(B) of the ESA (16 U.S.C. 1539(a)(1)(B)), and in accordance with, and subject to the conditions of part 222 of this chapter. Such permits may be issued for the incidental taking of elkhorn and staghorn corals.

(5) Section 7 Interagency consultation. Any incidental taking that is in compliance with the terms and conditions specified in a written statement provided under section 7(b)(4)(C) of the ESA (16 U.S.C. 1536(b)(4)(C)) shall not be considered a prohibited taking of elkhorn and staghorn corals pursuant to paragraph (o)(2) of section 7 of the ESA (16 U.S.C. 1536(o)(2)).

(6) Importation under the Convention on International Trade of Endangered Species. Any importation of elkhorn or staghorn corals in compliance with the provisions of section 9(c) of the ESA (16 U.S.C. 1538(c)) shall not be considered a violation of any provision of the ESA or any regulation issued pursuant to the ESA.

TABLE 1 TO §223.208—AGENCIES AND AUTHORIZING STATUTES WHOSE CORAL RESTORATION ACTIVITIES ARE EXCEPTED FROM CERTAIN PROHIBITIONS IN PARAGRAPH (a) OF THIS SECTION

FEDERAL:	
Agency/Person	Statute and Specific Provision(s)
NOAA, National Ocean Service (NOS)	National Marine Sanctuaries Act 16 U.S.C. 1431 <i>et seq.</i>
NOAA, NOS	Coral Reef Conservation Act 16 U.S.C. 6406
Commandant, U.S. Coast Guard (USCG), Authorized representatives of States or Indian Tribes.	"Oil Pollution Act" 33 U.S.C. 2702
Designated Federal, State or Indian tribal natural resources trustees, including NOAA, Department of Interior (DOI), Florida Department of Environmental Protection (FDEP), Puerto Rico Department of Natural and Environmental Resources (DNER), and U.S. Virgin Islands Department of Planning and Natural Resources (DPNR)	33 U.S.C. 2706

National Marine Fisheries Service/NOAA, Commerce

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TABLE 1 TO § 223.208—AGENCIES AND AUTHORIZING STATUTES WHOSE CORAL RESTORATION ACTIVITIES ARE EXCEPTED FROM CERTAIN PROHIBITIONS IN PARAGRAPH (a) OF THIS SECTION—Continued

FEDERAL:	
Agency/Person	Statute and Specific Provision(s)
Administrator, Environmental Protection Agency (EPA) or Commandant, USCG; Authorized representatives of States.	"Clean Water Act" 33 U.S.C. 1321
Designated Federal, State or Indian tribal natural resources trustees, including NOAA, DOI, FDEP, DNER, and DPNR.	
Administrator of the EPA; States or Indian Tribes in cooperative agreements with EPA; Heads of other Federal agencies where release is from vessel or facility solely under their control.	"Superfund Act" (CERCLA) 42 U.S.C. 9604
Administrator of the EPA	42 U.S.C. 9606
Designated Federal, State or Indian tribal natural resources trustees, including NOAA, DOI, FDEP, DNER, and DPNR	42 U.S.C. 9607
DOI, National Park Service (NPS)	Park System Resource Protection Act, 16 U.S.C. 19jj 16 U.S.C. 668dd–668ee (National Wildlife Refuge System)
DOI	National Wildlife Refuge System Administration Act, 16 U.S.C. 668
FLORIDA:	
The Board of Trustees of the Internal Improvement Trust Fund	State Lands; Board of Trustees to Administer FL Statute § 253.03 Duty of Board to Protect, etc. FL Statute. § 253.04 FDEP
Governor and Cabinet; FDEP	Land Acquisition for Conservation or Recreation; Conservation and Recreation Lands Trust Fund FL Statute § 259.032
FDEP	Pollutant Discharge Prevention and Removal; Liability for Damage to Natural Resources FL Statute § 376.121
FDEP	Land and Water Management; Coral Reef Restoration FL Statute § 390.0558
Florida Fish and Wildlife Conservation Commission	Fish and Wildlife Conservation Commission FL Statute § 20.331
U.S. VIRGIN ISLANDS:	
DPNR	DPNR; Powers and Duties of Department 3 V.I.C. § 401
DPNR	Conservation; Croix East End Marine Park Established; 12 V.I.C. § 98
PUERTO RICO:	
DNER	Conservation; Protection, Conservation and Management of Coral Reefs 12 L.P.R.A. §§ 241-241g <i>et seq.</i>
DNER	Conservation; Natural Patrimony Program 12 L.P.R.A. § 1225 <i>et seq.</i>
DNER	Conservation; Natural Resources; Declarations of Marine Reserves (and other protected areas) containing elkhorn and staghorn corals 12 L.P.R.A.; Subtitle 6A; Chapter 252; §§ 5011 <i>et seq.</i>

§ 223.209

[73 FR 64276, Oct. 29, 2008]

§ 223.209 [Reserved]

§ 223.210 North American green sturgeon.

(a) *Prohibitions.* The prohibitions of section 9(a)(1)(A) through 9(a)(1)(G) of the ESA (16 U.S.C. 1538) relating to endangered species apply to the threatened Southern Distinct Population Segment (DPS) of North American green sturgeon listed in §223.102(c)(1).

(b) *Exceptions.* Exceptions to the take prohibitions described in section 9(a)(1)(B) and (C) of the ESA (16 U.S.C. 1538(a)(1)(B) and (C)) applied in paragraph (a) of this section to the threatened Southern DPS listed in section 223.102(c) are described in the following paragraphs (b)(1) through (b)(3).

(1) *Scientific Research and Monitoring Exceptions.* The prohibitions of paragraph (a) of this section relating to the threatened Southern DPS listed in §223.102(c)(1) do not apply to ongoing or future Federal, state, or private-sponsored scientific research or monitoring activities if:

(i) The scientific research or monitoring activity complies with required state reviews or permits;

(ii) The research or monitoring activity is directed at the Southern DPS and is not incidental to research or monitoring of another species;

(iii) Take of live mature adults in the lower Feather River from the confluence with the Sacramento River to the Oroville Dam (rkm 116), the lower Yuba River from the confluence with the Feather River to the Daguerre Dam (rkm 19), or Suisun, San Pablo, and San Francisco Bays or the Sacramento-San Joaquin Delta from the Golden Gate Bridge up into the Sacramento River to Keswick Dam (rkm 483) occurs from July 1 through March 1 so as to substantially increase the likelihood that uninterrupted upstream spawning migrations of adults will occur;

(iv) Take is non-lethal;

(v) Take involving the removal of any life stage of the Southern DPS from the wild does not exceed 60 minutes;

(vi) Take does not involve artificial spawning or enhancement activities;

(vii) A description of the study objectives and justification, a summary of the study design and methodology, estimates of the total non-lethal take of Southern DPS fish anticipated, estimates of incidental take of other ESA listed species anticipated and proof that those takes have been authorized by NMFS or the USFWS, identification of funding sources, and a point of contact is reported to the NMFS Southwest Regional Office in Long Beach at least 60 days prior to the start of the study, or by August 31, 2010 for ongoing studies;

(viii) Reports that include the total number of Southern DPS and any other ESA listed species taken, information that supports that take was non-lethal, and a summary of the project results is submitted to the NMFS Southwest Regional Office in Long Beach on a schedule to be determined by NMFS; and

(ix) Research or monitoring that involves action, permitting, or funding by a Federal agency still complies with the requirements of ESA section 7(a)(2) in order to ensure that the action will not jeopardize the continued existence of the threatened Southern DPS.

(2) *Enforcement Exception.* The prohibitions of paragraph (a) of this section relating to the threatened Southern DPS listed in §223.102(c)(1) do not apply to any employee of NMFS, when the employee, acting in the course of his or her official duties, takes the Southern DPS listed in §223.102(c)(1) without a permit, if such action is necessary for purposes of enforcing the ESA or its implementing regulations.

(3) *Emergency Fish Rescue and Salvage Exceptions.* The prohibitions of paragraph (a) of this section relating to the threatened Southern DPS listed in §223.102(c)(1) do not apply to emergency fish rescue and salvage activities that include aiding sick, injured, or stranded fish, disposing of dead fish, or salvaging dead fish for use in scientific studies, if:

(i) The activity complies with required state or other Federal reviews or permits;

(ii) The activity is conducted by an employee or designee of NMFS or the U.S. Fish and Wildlife Service (USFWS), any Federal land management agency, or California Department