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Janice E. Castro Director, DCRM

Eli D. Cabrera Administrator

March 9, 2020

Mr. John Van Name & Ms. Suzanne Smith Environmental Program Manager, United States Pacific Fleet Department of the Navy 250 Makalapa Drive Pearl Harbor, HI 96860-3131

Re: Consistency Determination for Military Training and Testing Within the Coastal Zone of the Commonwealth of the Northern Marianas Islands (CNMI)

Dear Mr. Van Name and Ms. Smith,

The Commonwealth of the Northern Mariana Islands' (CNMI) Division of Coastal Resources Management (DCRM) has reviewed the U.S. Department of the Navy's Federal Consistency Determination (CD) submitted and received by our office on December 17, 2019 for the proposed activities in the Marianas Islands Training and Testing (MITT) Study Area within the Coastal Zone of the CNMI.

After carefully reviewing this CD, and as outlined further herein, DCRM finds that the proposed MITT activities as reflected in Alternative 2 of the Draft Supplemental Environmental Impact Statement / Overseas Impact Statement (DSEIS/OEIS) are not consistent with the enforceable policies of the CNMI Coastal Management Program. Therefore, DCRM recommends the Department of the Navy revise its CD to address data gaps, including inconsistencies and lack of up-to-date data, as well as detail and include further mitigation of potential effects on the CNMI's coastal resources.

To support DCRM's CD response, comments from both divisions under the Bureau of Environmental and Coastal Quality (BECQ) as well as the public comments received during the extended public commenting period of 30 days are enclosed and incorporated by reference here. Comments raised concerns that DCRM shares regarding the lack of inclusion of land-based training activities in this CD as it appears from the draft Environmental Impact Statement (DEIS) that changes in land-based training are indeed proposed.

The government of the CNMI recognizes the important training needs of the U.S. Military and hopes to accommodate those needs in a manner that is consistent with the federally approved coastal management policies of the CNMI Coastal Management Program. We look forward to the opportunity to discuss our concerns and how consistency with the policies of the CNMI Coastal Management Program can be achieved to the greatest extent practicable.

As detailed further herein, DCRM finds that the current DEIS/OEIS MITT proposal is not consistent with the enforceable policies of the CNMI Coastal Management Program as the submitted information is not sufficient for a complete and adequate analysis. In fact, it is not entirely evident from current submissions what mitigation measures are being proposed for review. Although Section 930.37 of Federal Consistency regulations provide for use of a DEIS to support a consistency determination, "a Federal agency's federal consistency obligations under the Act are independent of those required under NEPA and are not necessarily fulfilled by the NEPA document." As such, references to mitigation measures or conservation recommendations that will be implemented as results from initiated Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA) consultations cannot be considered as part of this CD as they have not yet been completed.

In order for MITT activities to achieve consistency with CNMI's enforceable policies, it is essential that the Navy clearly outline existing conditions, rigorously assess effects, and detail what monitoring and mitigation efforts will be implemented. It is encouraged that critical data gaps including lack of baseline information relating to water quality, species diversity and abundance within the training areas including wildlife populations around Saipan, Farallon de Medinilla (FDM), Tinian, and Rota be addressed through additional studies designed if not implemented in coordination with CNMI and that resulting data be shared in a timely manner to support review. As outlined in the Consistency with Enforceable Policies section of this letter, additional information is needed on the following items in order to assess the consistency of the MITT with the CNMI enforceable policies:

NMIAC § 15-10

- Part 300 Standards for CRM Permit Issuance
 - § 15-10-301, General Standards for all CRM Permits

§ 15-10-305, Standards for DCRM Permit Issuance General Criteria

§ 15-10-315, Specific Criteria; Areas of Particular Concern; Lagoons and Reefs

§ 15-10-325, Specific Criteria; Areas of Particular Concern; Coral Reefs

§ 15-10-335, Specific Criteria; Areas of Particular Concern; Shorelines

§ 15-10-340, Specific Criteria; Areas of Particular Concern; Ports and Industrial Areas:

Provide substantial details as to why each of these Areas of Particular Concern (APC) will not be affected by the direct, indirect, or cumulative effects from the proposed activities including analysis of potential spillover impacts.

Part 500 - Standards for Determining Major Siting § 15-10-501, Determination of Major Siting § 15-10-505, Specific Criteria for Major Siting

Part 600 - CRM Permit Conditions

Provide substantial details as to why the Navy's Proposed Action does not meet the criteria for a Major Siting, and analysis regarding how the Proposed Action would

otherwise not have the potential to directly and significantly impact CNMI coastal resources with the potential for significant adverse effects ...

Division of Environmental Quality (DEQ) Water Quality Standards: Classification and Establishment of Water Use Areas and Specific Water Quality Criteria

Data has not been provided to confirm baseline water quality in areas of proposed activities or to substantiate statements that there are no reasonably foresecable effects. To achieve consistency please provide literature cited in the CD as well as any recent scientific studies which contain current and accurate scientific data and clear impacts criteria for direct and cumulative impacts incorporated into the CD analysis on water quality. If such data is lacking for activities in the study area, reasonable efforts to conduct such data collection and assessments to demonstrate that CNMI waters are kept "shall be free from toxic pollutants in concentrations that are lethal to, or that produce detrimental physiological responses in human, plant, or animal life" should be undertaken.

CNMI Public Law No. 3-47; Policy Elements 4, 10, 11, 12, 13, 15, 16, 17 & 21:

Provide a timeline, detailed analysis, and sufficient data for the discussion of mitigation measures outlined throughout these policy elements. To be consistent with enforceable policies of the CNMI, the Navy needs to specify monitoring and mitigation – including providing reasonable details regarding *how and when* impacts will be mitigated – and provide implementation timelines to ensure impacts of these activities are in fact being avoided, minimized, and mitigated to the greatest extent practicable.

Provide current detailed analysis and sufficient data for all applicable coastal resources, particularly coral and algae diversity, cover, and structural complexity; especially for ESA-listed corals in critical areas such as those listed in MITT Draft Supplemental EIS/OEIS Vol. 2 sites on Tinian (Unai Babui, Unai Dankulu, and Unai Chulu), and where training areas will overlap with nearshore habitats.

Provide current data or modeling that determines that emissions from the proposed activity will not lead to a violation of National Ambient Air Quality standards (NAAQS) in the coastal zones of Saipan, Tinian, and Rota. Please see attached BECQ comments for an in-depth description of these policy elements.

It is also critical that the Navy takes steps to provide meaningful analysis of data and standards of DCRM's enforceable policies. Details and analysis deficiencies noted in received comments that DCRM hopes the Navy can remedy include the following:

 Policy Element 4 – "Plan for and manage any use or activity with the potential for causing a direct and significant impact on coastal resources. Significant adverse impacts shall be mitigated to the extent practicable."

The Coastal Zone Management Act broadly defines the environment. Instead of considering impacts of increased activities to the people of the CNMI and the coastal

resources that comprise our home, the CD narrowly discusses potential impacts to marine mammals, coral, and fishes in water and does not reassess impacts of land-based activities on Saipan, Tinian, and Rota or FDM, stating that no changes in these activities are proposed. As previously mentioned, FDM activities appear to be significantly increasing, and mitigation measures proposed by DCRM to ensure consistency with land-based operations in the 2015 MITT do not appear to have been implemented regularly – particularly as they pertain to early coordination and data sharing with CNMI. It is unclear why the Navy states that mitigation measures are outside of the scope of this SEIS/OEIS (CD enclosure pg. 23), especially given the fact that the 2014 CD correspondence from DCRM noted that "[i]n order to comply with the enforceable polices of the CNMI, further measures are needed to protect the wildlife and habitats of the CNMI."

Similarly, in this CD request like the 2014 submission, the basis for finding that the MITT is consistent to the maximum extent practicable has not been established. The Navy must show how its proposed actions are fully consistent by providing data, not speculative conclusions such as that potential effects to endangered species will be addressed through pending biological opinions. As also noted previously, the statement that the "Navy's Proposed Action provides special protection to coastal resources and mitigates adverse impacts" is inadequate to demonstrate consistency as the SEIS/OEIS does not actually commit to mitigation measures or timelines for implementation of mitigation, making these assurances rather hollow and unenforceable. If the Navy plans to rely on the suite of mitigation options discussed in the Draft SEIS/OEIS to demonstrate compliance with CNMI's enforceable policies including the requirement of mitigation of adverse impacts, meaningful and enforceable commitments and timelines for implementation of implementation should be developed as part of this CD correspondence.

 Policy Element 10 – "Maintain or improve coastal water quality through control of crosion, sedimentation, runoff, siltation, sewage and other discharges."

Assessment of this policy element and supporting regulations is inadequate and this analysis should be revised to support DCRM's review of this CD request.

Policy Elements 11 and 12 Impacts to cultural resources.

Although Section 106 consultations are ongoing to support the reissuance of the expired Programmatic Agreement, the analysis of impacts to cultural resources referenced in Section 3.11 of the draft SEIS/OEIS does not include sufficient data to make any determination regarding likely significant impacts to cultural resources within CNMI waters and on FDM. Absence of evidence is not evidence of absence and the DoD has an obligation to implement reasonable assessment of resources that are likely to be impacted by MITT activities. Lacking that data, there is therefore no basis for the Navy's conclusion that this proposed action is consistent with these policy elements. Data gaps should be remedied to ensure consistency with these policies and the CNMI's significant and compelling interest to protect and preserve our cultural resources.

 Policy Element 13 – "Require compliance with all local air and water quality laws and regulations and any applicable federal air and water quality standards."

Data must be provided to support the conclusory statements that air emissions will be minimal on Saipan and Rota and will be "intermittent and short term, resulting in minimal impact on the air quality of Tinian". Models are available to assess these activities for compliance with local and federal air quality standards and should be included for review in this submission. Comments regarding water quality standards are incorporated by reference here.

 Policy Elements 15 and 16 – Management of marine resources and consistency with other policies.

As noted in the response to Policy Element 4, the Navy's analysis of impacts to coastal resources is overly narrow and does not meaningfully address impacts to the human environment. This is especially true regarding impacts to the integrity of our reefs and wildlife habitat (Policy 15) and the management and development of our local subsistence, sport, and commercial fisheries (Policy 16). The draft SEIS/OEIS contains insufficient assessment of the potential impacts to these resources and the "analysis" under Policy Element 4 does not address potential impacts to human uses such as fishing and traditional access to important fishing areas. Thus, it is unclear how the Navy can conclude their proposed actions are consistent when analysis is completely lacking. An updated CD should address this gap, preferably through a revised SEIS that provides meaningful analysis of impacts to these important coastal resources,

 Policy Element 17 – "Protect all coastal resources, particularly sand, coral and fish from taking beyond sustainable levels and in the case of marine mammals and any species on the Commonwealth endangered species list, from any taking whatsoever."

The Navy explains that "the Proposed Action has the potential to take marine mammals and species on the Commonwealth endangered species list" and that "[a]ny take occurring as a result of the Proposed Action would be incidental to, and not the purpose of, the Navy's otherwise lawful training and testing activities" and notes that protective measures intended to avoid and minimize the "take" of endangered species will be updated as appropriate upon completion of the Section 7 consultation. As noted previously, past promises of mitigation and monitoring have not been executed, or, if they have been, have not been shared with the CNMI, therefore, it is encouraged that any monitoring and mitigation agreements that are the basis for a consistency determination include timebound deliverables so that consistency can be demonstrated.

 Policy Element 21 – "Encourage the preservation of traditional rights of public access to and along the shorelines consistent with the rights of private property owners."

Contrary to the Navy's statement that the "MITT Draft Supplemental EIS/OEIS does not propose any change to the public access normally allowed on federally leased lands including FDM, which would remain restricted for security and safety reasons" and that

the "MITT Draft Supplemental EIS/OEIS does not propose a change to the ocean areas currently used by both the Navy and the public", increases in the intensity and use of CNMI lands and waters is more likely than not to have significant impacts to public access of shorelines and traditional fishing areas. Already, three nautical miles (nm) surrounding the abundant fishery surrounding FDM is periodically restricted and this SEIS proposes to extend that "danger zone" to 12 nm and increase the frequency of restricted use in this area. These restrictions can have direct and significant impacts to boaters and the fishing community by increasing travel time and forcing seagoing vessels to travel well out of their traditional navigation routes. Similarly, periodic exercises on Tinian significantly restrict community access to forests and shorelines that have been traditionally used for subsistence and commercial activities. The frequency and timing of these restrictions should be discussed further with the CNMI in order to maximize access for users of these ocean resources while ensuring the Navy can meet its training objectives. Given that assessment of impacts and commitment to reasonable mitigation measures are lacking in the SEIS/OEIS, meaningful commitments should be articulated in supplemental analysis in a revised CD in order to ensure consistency with this enforceable policy.

Consistency with Enforceable Policies

The CNMI has determined the MITT is inconsistent with the enforceable policies of the CNMI Coastal Management Program in the following ways:

NMIAC § 15-10 Part 300 - Standards for CRM Permit Issuance § 15-10-301, General Standards for all CRM Permits § 15-10- 305, Standards for DCRM Permit Issuance General Criteria

As stated in the CD, "Not Applicable. The Navy's Proposed Action does not include applying for permits with the CNMI". However, if these sections are not applicable, further details explaining why these proposed actions do not apply should be outlined to frame discussion regarding their applicability to DCRMs enforceable policies.

NMIAC § 15-10 Part 300 - Standards for CRM Permit Issuance § 15-10-315, Specific Criteria; Areas of Particular Concern; Lagoons and Reefs § 15-10-325, Specific Criteria; Areas of Particular Concern; Coral Reefs § 15-10-335, Specific Criteria; Areas of Particular Concern; Shorelines § 15-10-340, Specific Criteria; Areas of Particular Concern; Ports and Industrial Areas

The information stated in the CD does not provide substantial details as to why these Areas of Particular Concern (APC) will not be affected by the direct, indirect, or cumulative effects from the proposed action. DCRM has previously commented on portions of the Draft Supplemental Environmental Impact Statement/Overseas Impact Statement (DSEIS/OEIS), requesting best available scientific data and clear impacts criteria for direct, indirect and cumulative impact analysis. The current data outlined in the CD does not support meaningful analysis of the impacts and possible mitigation of these impacts.

NMIAC § 15-10 Part 500 - Standards for Determining Major Siting § 15-10-501: Determination of Major Siting § 15-10-505: Specific Criteria for Major Sitings

NMIAC § 15-10 Part 600 - CRM Permit Conditions

As stated in the CD, "Not Applicable. The Navy's Proposed Action does not meet the criteria for a major siting." Under the CNMI's enforceable policies, a "major siting" is defined as "any proposed project which has the potential to directly and significantly impact coastal resources" including "proposed projects with potential for significant adverse effects on submerged lands,...reefs, wetlands, beaches and lakes...and endangered or threatened species or marine mammal habitats" (§15-10-020(uu)(4)). Consistency with major siting standards of §15-10-505 should be assessed, especially in terms of how training and testing activities will affect the broadly defined coastal environment including fish and wildlife habitat, cultural resources, and the natural integrity of CNMI water bodies and what mitigation responses will be implement to ensure impacts are avoided, minimized, and mitigated. Moreover, based on the lack of data, substantive details, and meaningful analysis in the CD regarding the impacts to these coastal resources, DCRM believes the proposed MITT activities are likely to have significant adverse effects on the CNMI's coastal resources. Meaningful analysis of data and standards of enforceable policies are necessary to support a review of proposed activities to ensure consistency and should be included in revised documentation to facilitate this effort.

DEQ Water Quality Standards: Classification and Establishment of Water Use Areas and Specific Water Quality Criteria

The information stated in the CD does not provide critical details to adequately address DEQ Water Quality Standards. The literature cited is not included in full detail in the CD, and it appears that DoD has collected no water quality sampling, monitoring, or analysis within the Marianas Islands Range Complex. Additionally, information cited from the previous MITT does not provide current and accurate scientific data and clear impacts criteria for direct and cumulative impacts related to water quality. To ensure consistency, it is recommended that the Navy develop and implement a monitoring plan to ensure water quality stays within CNMI standards. To provide baseline data necessary to substantiate the conclusion that activities have had and will continue to have "no effects" on water quality, it is strongly encouraged that the Navy take reasonable steps to provide additional data on bio-accumulation of toxins associated with ordinance in marine life and localized effects within the monitoring plan, including assessment of fish and filter-feeding invertebrates around Saipan, FDM, Tinian, and Rota.

CNMI Public Law No. 3-47; Policy Elements 4, 10, 11, 12, 13, 15, 16, 17 & 21:

The information stated in the CD does not provide substantial details and data to adequately address Policy Elements 4, 10, 11, 12, 13, 15, 16, 17 & 21. Currently the CD does not look at the combined impacts of the MITT with other military activities in the study area and therefore does not present adequate information on direct, indirect, or cumulative impacts. There is also limited information regarding the duration, temporal, and spatial context of proposed activities, and

whether activities will occur in separate or simultaneous locations and times – critical details when discussing the context and intensity and therefore the "significance" of a proposed action and its effects. DCRM holds that additional information regarding proposed activities and mitigation measures are needed in order to comply with the enforceable policies of the CNMI.

Review Standards for Federal Consistency

Under the Coastal Zone Management Act (CZMA) of 1972, 16 USC § § 1451-1465, § 1456(c)(1), and Federal Consistency regulations, 15 CFR § 930.30-930.46, l'ederal agency activities with reasonably foreseeable effects on the State's coastal zone must be consistent to the maximum extent practicable with the enforceable policies of the States' federally approved CZMA programs. Under 15 CFR §930.32(a)(1), the standard for "consistent to the maximum extent practicable" means fully consistent with the enforceable policies of the CNMI's management programs unless full consistency is prohibited by existing law applicable to the Federal agency. Thus, the Navy must show how existing law prohibits full consistency with the CNMI's Coastal Management Program. However, the Navy has not provided any description of any statutory provisions, legislative history, or other legal authority which limits the Navy's discretion to be fully consistent with the enforceable policies of CNMI's management program.

Furthermore, 15 CFR §930.32(a)(2) details that 16 USC § 1456(e), "construction with other laws", or "Section 307(e) of the Act does not relieve Federal agencies of the consistency requirements under the Act. The Act was intended to cause substantive changes in Federal agency decision making within the context of the discretionary powers residing in such agencies. Accordingly, whenever legally permissible, Federal agencies shall consider the enforceable policies of management programs as requirements to be adhered to in addition to existing Federal agency statutory mandates. If a Federal agency asserts that full consistency with the management program is prohibited, it shall clearly describe, in writing, to the State agency the statutory provisions, legislative history, or other legal authority which limits the Federal agency's discretion to be fully consistent with the enforceable policies of the management program" (emphasis added).

As such, if there are impediments to achieving consistency as outlined here, DCRM encourages the Navy to work with the CNMI through the Bureau of Military Affairs and our office to discuss and remedy these challenges. Lacking such restraints, CNMI encourages the Navy to provide the requisite details to demonstrate full consistency with all applicable DCRM enforceable policies including:

- · Full consistency with local permitting considerations;
- Application of CD analysis to all relevant enforceable policies;
- Reasonable collection and analysis of relevant data and standards to support assessment of impacts; and
- Time-bound commitments to proposed mitigation measures that will be implemented to
 ensure consistency to the maximum extent practicable.

In conclusion, insufficient information has been provided in this CD for DCRM to agree that the MITT activities are consistent with the CNMI's rules and regulations. Given these challenges, it would seem prudent that the Navy consider coordinating with the CNMI to address data gaps

further and submitting a revised Consistency Determination Request after an updated Final Supplemental EIS has been circulated and comments have been received and reviewed. The Coastal Zone Management Act does provide for flexibility in timelines to support robust review of impacts to coastal resources, and DCRM would welcome the opportunity to discuss a mutually agreeable timeline for revisions or resubmission of this determination request when a preferred alternative has been selected.

To achieve consistency with CNMI's enforceable policies, the Department of the Navy will need to modify its MITT proposal to provide reasonably sufficient details to support analysis as to why each of these sets of proposed actions will not cause significant direct, indirect, and/or cumulative effects including spillover impacts on the CNMI's coastal resources. Additionally, DCRM would welcome further clarification and discussion of specific mitigation measures and alternatives proposed by the Navy to support your timelines and ensure adverse impacts are being appropriately mitigated. The CNMI recognizes the critical mission and ongoing training needs of the U.S. Military and looks forward to discussing ways the MITT can become consistent with the CNMI's enforceable policies.

Please note the included comments from CNMI Bureau of Environmental and Coastal Quality, as well as public comments which are attached to this consistency determination. Should you have any questions or require further information, please contact (670) 664-8308 or fedcon@derm.gov.mp.

Sincerely, JANICE E. GASTRO

Director Division of Coastal Resources Management

Enclosures:	Comments from BECQ-DCRM
	Comments from BECQ-DEQ
	Comments from Kathy Yuknavage
	Comments from the CNMI Office of the Governor
cc:	Jeffrey L. Payne, Director, Office for Coastal Management, NOAA
	Ralph DLG. Torres, Governor, CNMI
	Arnold I. Palacios, Lieutenant Governor, CNMI
	Glenna SP Reyes, Special Assistant, Commonwealth Bureau of Military Affairs
	Eliceo D. Cabrera, Administrator, BECQ
	Kodep Ogumoro-Uludong, Director, Office of Planning and Development
	CRM Agency Board

CONSISTENCY DETERMINATION FOR COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

PUBLIC LAW NO. 3-47

Policy Element 4. Plan for and manage any use or activity with the potential for causing a direct and significant impact on coastal resources. Significant adverse impacts shall be mitigated to the extent practicable.

Policy Element 15. Manage ecologically significant resource areas for their contribution to marine productivity and value as wildlife habitats, and preserve the functions and integrity of reefs, marine meadows, salt ponds, mangroves and other significant natural areas.

Policy Element 17. Protect all coastal resources, particularly sand, coral and fish from taking beyond sustainable levels and in the case of marine mammals and any species on the Commonwealth endangered species list, from any taking whatsoever.

Comment:

In regards to Public Law No.3-47, Policy Elements 4, 15, and 17, the impact on coastal resources, specifically coral reefs, is not adequately addressed. Table 1 of the consistency document lists several activities that will occur in the Marianas littorals and Tinian, which will overlap fringing reefs. Section 3.8-11 of the MITT Draft Supplemental EIS/OEIS Vol. 2 lists beaches on Tinian (Unai Babui, Unai Dankulu, and Unai Chulu), where training areas will overlap nearshore habitats and states:

"However, the combined consequences of all physical disturbance and strike stressors could degrade habitat quality at some locations. As stated above, combat swimmers and Marines may be required to walk through nearshore areas and reefs during these activities, potentially causing damage to coral species. As stated in the 2015 MITT Final EIS/OEIS and above, these activities could cause injury or mortality to individuals, but impacts on marine invertebrate populations, including ESA-listed corals, are unlikely."

Since the distribution of ESA-listed corals in the Marianas has not been mapped out, the statement that impacts to marine invertebrate populations and ESA-listed corals is not supported. We do share many coral species with other Pacific reefs, however, the Marianas region is isolated in terms of genetic connectivity to the rest of Micronesia, where the majority of coral and fish larvae originate from Saipan and Tinian (Kendall & Poti, 2014; Maynard et al., 2015; Randall, 1995). Therefore, any physical disturbance through accidental damage on reef structure can impede recovery for the coral reefs of the CNMI that are still recovering from mass bleaching events, two category 5 typhoons, and multiple crown-of thorns outbreaks.

In addition, assessing species or population level impacts of marine invertebrate populations for shallow coral reefs provides an incomplete analysis on the environmental impacts for our region. Coral and algae diversity, cover, and structural complexity are also important indicators of reef ecosystem function and health. The CNMI has suffered severe coral mortality from back to back bleaching events in 2013, 2014, 2016, and 2017 (Heron et al., 2016; Reynolds et al., 2014). For example, Unai Babui in Tinian is designated as a training area in the MITT EIS, and is one of CRM's long-term marine monitoring sites since 2001. Since 2009, Unai Babui has had a steady decline in coral cover with a large increase in macroalgae cover, and loss in crustose coralline algae (CCA). CCA is extremely important in

strengthening reef structure and are resistant to ocean acidification (Nash et al., 2013; Nelson, 2009). Coral cover at Unai Babui is hovering at less than 10% and for Unai Dankulu at less than 15% in 2018. Maintaining coral cover above 10% is a critical threshold for sustaining reef function (Darling et al., 2019). The shallow water reefs around Tinian are already vulnerable from past storm and bleaching disturbances, and decline in coral cover is now at a critical threshold where further loss can severely reduce chances of recovery. In addition, any damage to reef structure, whether live or dead coral, will degrade habitat quality by accelerating reef breakage and loss of structural complexity, resulting in loss of habitat for diverse species, potential loss of storm protection, and accelerates erosion of the reef. Therefore, proposed listed actions in Table 1, for the Mariana littoral zone and Tinian are not sustainable and would further put CNMI's coastal resources at risk of further degradation.

References

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- Nelson, W. A. (2009). Calcified macroalgae critical to coastal ecosystems and vulnerable to change: A review. *Marine and Freshwater Research*, *60*(8), 787–801. https://doi.org/10.1071/MF08335
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COASTAL ZONE MANAGEMENT ACT – CONSISTENCY DETERMINATION FOR COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Public Law No. 3-47

Policy Element 13. Require compliance with all local air and water quality laws and regulations and any applicable federal air and water quality standards.

Page 24: Comments on Air Quality Impacts of the Proposed Action

- Air quality impacts of criteria and hazardous air pollutants from additional activities in the Proposed Action (i.e. Phase III) have not been quantified and included in the consistency determination, so the 2015 MITT Final EIS/OEIS is not representative of cumulative air emissions.
- Emissions of criteria and hazardous air pollutants that may affect the Rota and Saipan Coastal Zones have not been quantified, and no modeling has been done to determine if these emissions will lead to a violation of the National Ambient Air Quality Standards (NAAQS) and CNMI Ambient Air Quality Standards. There must be a basis for the claim that "air quality impacts attributable to the military training and testing activities" to the Saipan and Rota coastal zone "uses and resources would be minimal." No basis for this claim has been presented.
- Additional emissions of criteria and hazardous air pollutants from Phase III activities that
 may affect the coastal zone of Tinian have not been quantified. There must be a basis
 for the claim that "combined effects from air quality impacts attributable to the military
 training and testing activities to the Tinian coastal zone uses and resources would be
 minimal." No basis for this claim has been presented.
- There must be a basis for the claim that "the Proposed Action complies with all local air quality laws and regulation and any applicable federal air quality standards". No quantification of additional impacts from Phase III has been conducted and no modeling analysis has been submitted to ensure compliance with the NAAQS and CNMI Ambient Air Quality Standards.
- There must be a basis for the statement that "air emissions generated as a result of the Proposed Action would be minimal, intermittent, and short term. Thus, the Proposed Action would not have a significant impact on ambient air quality and is in compliance with local and federal air quality standards." No modeling analysis of the Proposed Action has been submitted to demonstrate that there would be no significant impact on the NAAQS or CNMI Ambient Air Quality Standards.

DESCRIPTION OF THE PROPOSED ACTION

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Navy states that, "These training and testing activities include the use of active sonar and explosives at sea in the MIRC (the Navy is not proposing to use explosives at sea within the CNMI coastal zone)."

The use of sonar and explosives at sea around the MIRC and the transit corridor between the MIRC and the Hawaii Range Complex is of concern due to potential impacts to Cetacea and other aquatic mammals and organisms. These waters and those of the Marianas Trench Monument are high quality waters of ecological significance that provide an important migration marine corridor and breeding ground for these species. The Department of the Navy states that these 'active sonar and explosives at sea' will not cause harm to these or other aquatic life, without citing specific data from peer reviewed or defensible research studies.

It should also be noted that these marine species are important not only to the CNMI tourist economy, but also to the international community where they are known to migrate to, and from.

The CNMI Water Quality Standards (WQS) antidegradation policy states that, "Tier 3: *High quality waters* which constitute an outstanding Commonwealth resource, such as waters of National Parks, marine sanctuaries, wildlife refuges and *waters of exceptional recreational or ecological significance shall be maintained and protected. Actions which would lower water quality in such waters are prohibited, with the exception of temporary degradation deemed necessary for the construction of important Park infrastructure, pollution control devices, and BMPs designed to improve water quality.".*

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The Navy states that for both the Islands of Tinian and Rota that, "Only those activities that are new and include the use of sonar are analyzed in this Consistency Determination. Other activities that include the use of sonar were previously analyzed in the 2014 Consistency Determination document, which determined the *Proposed Action was consistent to the maximum extent practicable with applicable enforceable policies.*"

Please define 'maximum extent practicable with applicable enforceable policies.'. Whose policies are these?

Provide evidence that no other alternatives could be used for tracking other than sonar in these waters given that recent studies have found sonar to have serious detrimental impacts on whales feeding modes and behavior. (2016. "Impacts of Sonar on Marine Mammals", SERDP ESTCP.; 2013. Goldbogen, et.al., "Blue whales respond to simulated mid-frequency military sonar": <u>https://doi.org/10.1098/rspb.2013.0657</u>; 2000. ECM Parsons, "Impacts of Navy sonar on whales and dolphins: Now beyond a smoking gun?" Env. Sci, and Policy, George Mason Univ. VA).

DEPARTMENT OF ENVIRONMENTAL QUALITY WATER QUALITY STANDARDS: CLASSIFICATION AND ESTABLISHMENT OF WATER USE AREAS AND SPECIFIC WATER QUALITY CRITERIA

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The Navy states that, "the majority of concerns regarding bioaccumulation are associated with urban coastal environments with specific point source and non-point source contributors of pollutants. *The studies concerning military sites suggest that metals exposed to seawater are of less concern because of decreased bioavailability.*"

There are still concerns regarding bioaccumulation of heavy metals and toxins from munition constituents associated with on-going live fire and bombing ranges.

Which studies are being discussed? None are cited to defend this claim. Please provide scientifically defensible research to support this statement.

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The Navy states that, "activities occurring beyond the CNMI coastal zone would not affect the land or water use, or natural resource of the coastal zone because (1) most of the explosives would be consumed during detonation; (2) the frequency of low-order detonations would be low, and therefore the frequency of releases of explosives would be low; (3) the amounts of explosives used would be small relative to the area within which they would be distributed; and (4) the constituents of explosives would be subject to physical, chemical, and biological processes that would render the materials harmless or otherwise disperse them to undetectable levels." This section sites the "2015 MITT Final EIS/OEIS as containing a detailed analysis of fate and transport of byproducts produced during military training and testing activities".

This citation from an EIS, produced five years ago is insufficient to substantiate the above claim. The findings from the MITT analysis that defends claims (1) - (4) should be described herein for new reviewers and to refresh those that took part in reviewing previous EIS and Federal Consistency Determinations. Specifically, to address potential pollution from "inert" munitions constituents, e.g., heavy metals, 2,4,6-Trinitrotoluene (TNT), Volatile Organic Compounds (VOC), Royal Demolition Explosive (RDX), other toxic propellants, and their by-products, and spills, and leaks of other pollutants from being transported and bound into the ocean floor's benthic habitats where a myriad of aquatic species live and breed.

Given the first EIS was provided to the CNMI in 1997, it is disconcerting to see that the Navy has still not conducted studies to provide defensible evidence that explosives and other munitions and their constituents will NOT become bioavailable. The Navy has had over two decades to conduct meaningful research and yet nothing is provided herein, or cited directly.

Given the evidence of bioaccumulation of heavy metals in biota and invertebrates found at WWII dumps sites around the island of Saipan, substantiates our concern that further accumulation from ongoing exercises may result in cumulative impacts to aquatic organisms. Some of Gary Denton's studies (University of Guam, Water Environmental Research Institute) are cited herein:

Denton, G.R.W., et.al, (2016). *Impact of WWII dumpsites on Saipan (CNMI): heavy metal status of soils and sediments*, Environ Sci Pollut Res, DOI 10.1007/s11356-016-6603-7.

Denton, G.R.W., et.al, (2014). *Influence of Urban Runoff, Inappropriate Waste Disposal Practices and World War II on the Heavy Metal Status of Sediments in the Southern Half of Saipan Lagoon, Saipan, CNMI*. Mar. Pollut. Bull.

Denton, G.R.W., Starmer, J.A., Masga, R. (June 2013). *Environmental Impacts of FUDS and Brownfield Sties in Watershed on the Eastern Side of Saipan*, (CNMI). Phase 2: Impact on Aquatic Resources. *WERI Project Synopsis Report*.

Denton, G.R.W., Morrison, Bearden, Houk, Starmer, and Wood (2009). *Impact of a coastal dump in a tropical lagoon on trace metal concentrations in surrounding marine biota: A case study from Saipan, Commonwealth of the Northern Mariana Islands (CNMI)*. Marine Pollution Bulletin 25 (2009) 424-455.

Denton, G.R.W., Bearden, B.G., Houk, P., Starmer J.A. & Wood H.R. (2008). *Heavy Metals in Biotic representatives from the Intertidal Zone and Nearshore Waters of Tanapag Lagoon, Saipan, Commonwealth of the Northern Mariana Islands (CNMI).* WERI Technical Report No. 123: 50 pp.

The Navy also states, "Metals released into the marine environment are not expected to exceed water quality standards in the CNMI coastal zone because corrosion and biological processes (e.g., colonization by marine organisms) would reduce exposure of military expended materials to seawater, decreasing the rate of leaching. Further, **leached metals would bind to sediments and other organic matter, thereby localizing the concentration to the site of deposition**."

The fact that heavy metals and other munition constituents may not be found in seawater at levels that would exceed the CNMI WQS is because of their octanol/water coefficient. In other words, these constituents instead partition into sediment and other organics. Heavy metal contaminants in the benthic habitat would be bioavailable to the fish and shellfish which results in bioaccumulation. Therein lies the issue. These pollutants would continue to be a source of contamination that may cause harm to aquatic marine life, and subsequently the people of the CNMI that rely heavily on subsistence fishing as significant part of their diet.

It is also the intent of the US Clean Water Act to protect our waters designated uses, which includes the protection and propagation of fish, shellfish and wildlife, and to ensure that fish in these waters are safe for human consumption.

A sediment study conducted in 2008-2009, off Saipan's west coast by Denton et.al., of University of Guam Water Environmental Research Institute found mercury "spikes" accompanied by increased CU, FE, MN and Zn enrichment, "which suggest they were remnant artifacts of the US invasion of Saipan in 1944. Mercury fulminate, for example, was the primary explosive used in primers and detonators of artillery shells and percussion caps of bullets during WWII (US Navy, 1947)."

In addition, this page also states that, "Some expended plastics from military readiness activities are unavoidable because they are used in ordnance or targets. Targets, however, would typically be recovered following training and testing activities. *Chaff fibers are composed of nonreactive metals and glass, and would be dispersed by ocean currents as they float and slowly sink toward the bottom*. The fine, neutrally buoyant chaff streamers would act like particulates in the water, temporarily increasing the turbidity of the ocean's surface. The chaff fibers would quickly disperse, and turbidity readings would return to normal. Because activities would occur in areas outside of the CNMI coastal zone and the rapid settling and non-reactivity of materials not recovered after use, water quality standards in the CNMI coastal zone would not be exceeded."

However, the deposition of these nonrecoverable pollutants would contaminate the ocean bottom, benthic habitat, biota, and add to the growing volume of marine debris found in Pacific gyres, which have created the "Great Pacific Garbage Patch". The Department of the Navy is approaching these contaminants as being acceptable outcomes without explanation.

CNMI WQS stipulates that "all surface waters shall be free of substances attributable to domestic, industrial, or other controllable sources of pollutants and shall be capable of supporting desirable aquatic life and be suitable for recreation in and on the water." Waters are "subject to verification by monitoring as may be prescribed by the Administrator to assure freedom from any of the following conditions:(2) floating debris, oil, grease, scum, or other floating materials......(4) High temperatures; biocides; pathogenic organisms; toxic, corrosive, or other deleterious substances at levels or in combinations sufficient to be toxic or harmful to human health or aquatic life, of in amounts sufficient to interfere with any beneficial use of the water." Detrimental responses include significant alterations in water biota.

The presence of marine debris has been shown to be harmful to aquatic life in peer reviewed research papers from NOAA, US and European government agencies, and non-government agencies. The accumulation of military exercise contaminants in the habitat where fish and other aquatic life live, feed and breed are also of concern. The CNMI WQS states that, "all waters shall be free from toxic pollutants **in concentrations that are lethal to, or produce detrimental physiological responses in human**, *plant or animal life*."

With this in mind, we continue with our concerns with statements made in the following section:

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Adverse physiological responses in marine animals were marginally evaluated. To quote, "Acoustic Stressors. Pursuant to the MMPA, acoustic sources may result in Level A and Level B harassment of certain marine mammals. The analysis completed by the Navy predicts no mortalities and therefore the Navy is not requesting an incidental take under the MMPA for mortality. Pursuant to the ESA, sonar and other transducers, weapons noise, vessel noise, air guns, and aircraft may affect certain ESA-listed marine mammals. herein."

A similar stance was taken with other stressors discussed in this section. Only mortality is considered, not morbidity that may further weaken marine animals causing a cumulative affect leading to latent mortality from chronic exposure to these and other climate related stressors.

The CNMI has experienced two Super Typhoons in the last five (5) years, and increasing marine water temperatures. These climate related stressors alone have led to marine animal morbidity and death, and wide spread coral reef damage. Stressing marine plants and animals further with acoustic, explosive, physical disturbance from sonar, vessel strikes or near misses, entanglement and ingestion stressors, is indefensible, as morbidity furthers their vulnerability to an avoidable early death.

RALPH DLG. TORRES Governor



ARNOLD I. PALACIOS Lieutenant Governor

OFFICE OF THE GOVERNOR

February 7, 2020

Janice E. Castro Director Division of Coastal Resources Management P.O. Box 501304 Saipan, MP 96950

Re: Comment on Federal Consistency Determination Request for Military Training and Testing (MITT) Within the Coastal Zone of the Commonwealth of the Northern Mariana Islands

Dear Director Castro,

Thank you for this opportunity to comment on the Federal Consistency Determination (CD) request currently under consideration by the Bureau of Environmental and Coastal Quality's Division of Coastal Resources Management (DCRM), dated Dec. 19, 2019 and submitted to the Commonwealth of the Northern Mariana Islands (CNMI) Bureau of Military Affairs (BMA). As you know, ensuring consistency of significant federal actions with requirements put in place to protect our coastal resources is a policy matter of utmost importance to the CNMI. For the reasons outlined below, the 2019 CD submission is inadequate and in many aspects in disagreement with land management policies and mandates established by the CNMI Constitution and the Covenant, as well as key enforceable policies of the CNMI's Coastal Zone Management Program. As such, I encourage you to work with the Navy to ensure these concerns are addressed and that a sufficient CD request is submitted to you, with the Commonwealth Bureau of Military Affairs (CBMA) copied as is required, for your review and determination upon this proposal.

Procedural Issues

- Streamlined submission supports local review. The Navy's inclusion of the CBMA in their CD request is appreciated, however, the process outlined in 16 U.S.C. § 1456(c)(1)(C) and reflected on the DCRM website and federal consistency guidance does clearly state that these requests should be provided to the "relevant State agency designated under section 1455(d)(6)" and therefore CDs should be addressed to the DCRM Director. As outlined in Executive Order 2019-09, CBMA is a clearing house and coordinating entity that functions as a custodian to support Department of Defense (DoD) related activities in the Commonwealth, and the Special Assistant acts as a liaison between DoD and CNMI Agencies. As such we believe that a proper CD submission would be addressed to the DCRM Director who reviews such determinations, in care of the CBMA Special Assistant. The CBMA Special Assistant has concurred with this assessment in discussions regarding this submission. We hope that a revised CD might be provided to your office to address the substantive deficiencies outlined here and ensure timely processing, as well as to support meaningful public notice and comment and participation opportunities moving forward.
- References to obscure supporting documents complicates local review. Documents referenced in CD should be included in the request itself. Although your DCRM staff have helpfully provided additional background information, the CD from DCRM on record for the MITT was dated January 20, 2015, we do not have a copy of the Navy's original documents. These materials are necessary to support meaningful review of this request, which relies heavily on this past correspondence. Therefore, it is

requested that DoD provide this document and any other referenced supporting documents as links or digital files in a properly submitted CD request in advance of DCRM's final determination on this contention proposal.

Insufficient information is included in the Draft SEIS to support review at this time. Data relied on in the SEIS is insufficient to assess likely impacts to coastal resources and as such, this CD request is not ripe for review. We encourage DCRM to request that the Navy treat the December 2019 as a draft and properly submit a revised CD request to you, the Director of the CNMI's Coastal Zone Program with the coordinating office of the BMA copied upon release of the updated draft or final SEIS. Where data gaps exist in terms of impacts to limited access, water quality, impacts to cetaceans and other marine life especially during spawning events, and mass wasting at FDM are not properly addressed, we hope DCRM can work with the Navy through this process to provide time bound conditions for execution of compliant activities as well as data sharing and coordination with local resource management agencies in CNMI.

Substantive Issues

- Impacts to all CNMI lands and waters should be assessed for consistency. Impacts to all CNMI land and coastal waters should be assessed for consistency with DCRM enforceable policies. The 2019 CD incorrectly excludes land-based activities proposed on FDM and Tinian from analysis based on the fact that "federally controlled lands are excluded from the coastal zone" (2019 CD, pg. 4). While CNMI does not dispute that the federal government has an interest in these lands, these lands have been "made available to the Government of the United States by lease to enable it to carry out its defense responsibilities" and thus remain Commonwealth property which will revert to CNMI control when the leases terms expire (CNMI Covenant, Section 802, emphasis added). It is unclear on what basis the Navy states that these lands are not subject to federal consistency review, which should also include consideration of potential spillover effects to all CNMI-owned submerged lands and waters.
- Details regarding activities and impacts are insufficient for review. It is unclear from the description
 provided on page 2 of the 2019 CD what proposed activities would be occurring within three (3)
 nautical miles of the CNMI's shorelines. Thus, insufficient information has been provided to CNMI for
 DCRM to assess and determine whether the proposed MITT activities are consistent with applicable
 regulations as detailed further in discussion of application of specific enforceable policies below.
- CD does not address direct, indirect, and cumulative impacts to lands and waters of the CNMI. The CD incorrectly states that there are "no changes in land-based training proposal" (2019 CD, pg. 2). Assessment of activities in the 2019 Draft MITT Supplemental Environmental Impact Statement indicates that "[a]lternative 1 reflects a level of training and testing activities to be conducted at sea and on FDM, with adjustments from the 2015 MITT Final EIS/OEIS that account for changes in the types and tempo of activities necessary to meet current and future military readiness requirements beyond 2020" and "Alternative 2 includes the same type of training and testing activities that would occur under Alternative 1. Alternative 2 also considers an increase in tempo of some training and testing activities, including additional Fleet exercises and associated unit-level activities, should unanticipated emergent world events require increased readiness levels" (2019 MITT Draft SEIS, Volume 1, pg. ES-5, emphasis added). In reviewing the "Summary of Impacts" table in the Draft Supplemental EIS/OEIS, additional details are provided indicating that:
 - Under Alternative 1, "more aircraft would fly over and land on FDM and more ordnance would be used on FDM. The total increase, in terms of net explosive weight (NEW) under Alternative 1 would be less than 1 percent compared to ordnance use on FDM described in the 2015 MITT Final EIS/OEIS" and, "the number of training and testing activities under Alternative 2 would increase

CNMI Office of the Governor | Juan A. Sablan Memorial Building | Capitol Hill, Saipan Caller Box 10007 | Saipan, MP 96950 | Telephone: (670) 237-2200 | Facsimile: (670) 664-2211 | www.gov.mp over what is proposed for Alternative 1. However, this increase would be a slight change and would not appreciably change the potential for impacts over what is analyzed for Alternative 1" (Draft SEIS, pg. ES-18, emphasis added). The basis for this statement is unclear, as Table 3.0-19 of the DEIS, Annual Number of Munitions Used on Farallon de Medinilla shows greater than 1 percent increases in use explosive missiles (85 missiles authorized in 2015 Final EIS, 115 proposed under Alternatives 1 and 2), explosive grenades and mortars (600 authorized in 2015 Final EIS, 1,000 proposed under Alternatives 1 and 2), as well as increases in use of small-caliber rounds and medium caliber projectiles (see DEIS pg, 3-28). It also appears that annual in-water and in-air explosives munitions detailed in Tables 3.0-7 and 3.0-8 of the DEIS (pg. 3-22 - 23) will include increasing use of "E8", "E9", and "E10" explosives. It is unclear what portion of these munitions are proposed for testing activities in areas around FDM or in proximity to other CNMI lands and territorial waters, however, it appears that the proposed change is rather substantial for some explosive categories (e.g. bombs with net explosive weight between 60 - 500 pounds). The DEIS notes that "[a]s described in the 2015 MITT Final EIS/OEIS, physical disturbance and strike stressors can result from the Navy's proposed use of aircraft and aerial targets, vessels, in-water devices, military expended materials, seafloor devices, and, on the island of FDM, ground disturbance and wildfires" (DEIS, pg. 3-25). It is suggested that the actual proposed changes and likely impacts of these changes be meaningfully discussed in the updated DEIS and corresponding revised CD to ensure consistency with enforceable policies in sea and on land.

As currently submitted, the proposed action is not consistent with DCRM Enforceable Policies. Under the Coastal Zone Management Act (CZMA) of 1972, 16 USC § § 1451-1465, § 1456(c)(1), and Federal Consistency regulations, 15 CFR § § 930.30-930.46, Federal agency activities with reasonably foreseeable effects on the State's coastal zone must be consistent to the maximum extent practicable with the enforceable policies of the States' federally approved CZMA programs. Under 15 CFR §930.32(a)(1), the standard for "consistent to the maximum extent practicable" means fully consistent with the enforceable policies of the CNMI's management programs unless full consistency is prohibited by existing law applicable to the Federal agency. Thus, the Navy must show how existing law prohibits full consistency with the CNMI's Coastal Management Program. However, the Navy has not provided any description of any statutory provisions, legislative history, or other legal authority which limits the Navy's discretion to be fully consistent with the enforceable policies of CNMI's management program. Furthermore, 15 CFR §930.32(a)(2) details that 16 USC § 1456(e), "construction with other laws", or "Section 307(e) of the Act does not relieve Federal agencies of the consistency requirements under the Act. The Act was intended to cause substantive changes in Federal agency decision making within the context of the discretionary powers residing in such agencies. Accordingly, whenever legally permissible, Federal agencies shall consider the enforceable policies of management programs as requirements to be adhered to in addition to existing Federal agency statutory mandates. If a Federal agency asserts that full consistency with the management program is prohibited, it shall clearly describe, in writing, to the State agency the statutory provisions, legislative history, or other legal authority which limits the Federal agency's discretion to be fully consistent with the enforceable policies of the management program" (emphasis added). Accordingly, for the reasons cited below, the proposed MITT is not fully consistent with enforceable policies of the CNMI's approved CZMA program:

Full consistency with local permitting required. The 2019 CD incorrectly states that General Provisions (15-10-020, 15-10-025) and Standards for CRM Permit Issuance (15-10-301, 305, 315, 320, 325, 335, 340, 345), Major Siting Standards (15-10-501, 505), and CRM Permit Conditions (15-10-610) and numerous policy elements of Public Law 3-47 do not apply. If the Navy feels that certain sections do not apply, details should be provided to further frame discussion regarding the applicability and extent of the enforceable policies for the CNMI's CZMP. That being said, these provisions have been applied to CD review and should continue to be applied to ensure consistency with CNMI's enforceable policies. Concerns regarding specific subsections are outlined further

CNMI Office of the Governor | Juan A. Sablan Memorial Building | Capitol Hill, Saipan Caller Box 10007 | Saipan, MP 96950 | Telephone: (670) 237-2200 | Facsimile: (670) 664-2211 | www.gov.mp Ralph DLG. Torres | CNMI Office of the Governor below. However, it is a misconstruction of the intent and letter of the CZMA to state that mandatory conditions and management standards of the CZMA are not applicable. Rather, proposed activities must comply with substantive local permitting requirements as they are incorporated through the DCRM Coastal Management Program. Given the extensive mitigation that should be implemented to address impacts of proposed increases in the activities outlined in Table 1 of the 2019 CD, the Navy should anticipate coordinating with local regulatory agencies to implement required clean up activities. Obtaining local permits, although it may not be required for all potential survey, clearing, and clean-up activities, would demonstrate the Navy's commitment to complying with local requirements and coordinating with our local agencies. This is a best practice that other federal agencies engage in and we encourage you to ask the Navy and other DoD branches to extend this courtesy to our regulatory and resource management partners. At minimum, the 2015 Federal Consistency Determination from DCRM conditioned coordination with local authorities which, to this day, has been insufficient and in some cases as resulted in avoidable losses of or damage to important CNMI assets that DoD has yet to remedy.

- Application of CD analysis to all relevant enforceable policies is necessary. Similar to the concerns raised in the Oct. 2014 DCRM response to the Sept. 2014 CD request, it appears that numerous elements of the currently proposed revised and expanded MITT are not consistent with DCRM's enforceable policies. These include:
 - Assessment of impacts for compliance with general standards (15-10-305), Areas of Particular Concern (15-10-315, 325, 335, 340) and specific criteria for major sitings (15-10-505).

As stated in the Office of the Governor's comments on the MITT DEIS, there has been insufficient analysis of direct, indirect, and cumulative impacts of MITT activities. This analysis should include all reasonably foreseeable and related activities including but not limited to activities described in the Guam and CNMI Military Relocation FEIS/OEIS, Divert Activities and Exercises, the MITT expansion, and upcoming CNMI Joint Military Training DEIS/OEIS. If implemented these activities will undoubtedly have cumulative effects on CNMI's coastal resources. Thus far, insufficient information has been provided in supporting documents and in this CD request for CNMI assess consistency with this provision. As outlined in 15-10-305, criteria for development, which is defined to include activities relevant to the MITT "discharge or disposal of ... any gaseous, liquid, solid, or thermal waste" (15-10-020(z)(2): a "change in the density or intensity of use of land" (15-10-020(z)(4)): a "change in the intensity of use of water, the ecology related thereto, or the access thereto" (15-10-020(z)(5)); or the "removal of a significant amount of vegetation, whether native or non-native" (15-10-020(z)(7)), development criteria must include consideration of cumulative impacts, compatibility, alternatives, conservation, compliance with local and Federal laws, consistency with the CNMI's Constitutional right to a clean and healthful environment, effects on existing public services, adequate public access, setbacks, management measures for control of nonpoint source pollution, and buffers for environmentally sensitive areas (15-10-305). If the Navy feels that consistency with these standards is not legally permissible, they should detail their rationale for this position in their CD request - otherwise the applicable regulations appear to direct that these policies be considered and adhered to. Reasonably foreseeable impacts to Areas of Particular Concern should also be assessed for consistency, especially in terms of potential direct and spillover effects to lagoon and reefs (15-10-315), coral reefs (15-10-325), shorelines (15-10-335) and ports (15-10-345), categories which the CD summarily said were not applicable due to unnecessarily narrow interpretation of these areas and their management standards. Similarly, "major siting" is defined as "any proposed project which has the potential to directly and significantly impact coastal resources" which includes "[p]roposed projects with potential for significant adverse effects on submerged lands, groundwater recharge areas.

CNMI Office of the Governor | Juan A. Sablan Memorial Building | Capitol Hill, Saipan Caller Box 10007 | Saipan, MP 96950 | Telephone: (670) 237-2200 | Facsimile: (670) 664-2211 | www.gov.mp cultural areas, historic or archeological sites and properties, designated conservation and pristine areas, or uninhabited islands, sparsely populated islands, mangroves, reefs, wetlands, beaches and lakes, areas of scientific interest, recreational areas, limestone, volcanic and cocos forest, and endangered or threatened species or marine mammal habitats" (15-10-020(uu)(4)). Given that this project clearly qualifies as a major siting, consistency with major siting standards of 15-10-505 should also be assessed.

- Meaningful analysis of data and standards of enforceable policies is necessary. In addition to lacking analysis noted above, as outlined herein, the CD analysis is currently inadequate in terms of assessment of impacts and analysis and application of enforceable policies in regards to discussion on water quality, Public Law 3-47 Policy Elements 4, 10, 11, 12, 13, 15, 16, 17, and 21.
 - Assessment of impacts to water quality. The CD states that "military readiness activities that generate stressors to water quality do not occur in the water use areas; rather, they occur outside of the CNMI coastal zone, and are analyzed in the context of their potential to induce reasonably foreseeable effects into Class "AA" or Class "A" water use areas." It goes on to restate conclusory statements that no effects are anticipated from explosives and explosive byproducts (Section 3.1.3.1), metals (Section 3.1.3.2), and other materials (Section 3.1.3.4) based on the analysis that activities would "occur in areas outside of the CNMI coastal zone" and in "rapid settling and non-reactivity of materials not recovered after use". Data has not been provided to confirm baseline water quality in areas of proposed activities or to substantiate these statements. This is especially disconcerting in regards to turbidity and total suspended solids where health and habitat protective standards aim to ensure that "[e]oncentrations of suspended matter at any point shall not be increased from ambient conditions at any time, and should not exceed 5 mg/l except when due to natural conditions" (for TSS) and "[t]urbidity at any point, as measured by NTU, shall not exceed 0.5 NTU over ambient conditions except when due to natural conditions." Additionally, the standard for all CNMI waters is that they "shall be free from toxic pollutants in concentrations that are lethal to, or that produce detrimental physiological responses in human, plant, or animal life. Detrimental responses include, but are not limited to: decreased growth rate and decreased reproductive success of resident or indicator species; or significant alterations in population, community ecology, or receiving water biota." Insufficient data has been provided to demonstrate that proposed increasing uses of weapons that will deposit explosives and explosive byproducts, metals, and other materials into CNMI waters will not violate this standard.
 - Policy Element 4 "Plan for and manage any use or activity with the potential for causing a . direct and significant impact on coastal resources. Significant adverse impacts shall be mitigated to the extent practicable." The Coastal Zone Management Act broadly defines the environment. Instead of considering impacts of increased activities to the people of the CNMI and the coastal resources that comprise our home, the CD narrowly discusses potential impacts to marine mammals, coral, and fishes in water and does not reassess impacts of land-based activities on Saipan, Tinian, and Rota or FDM, stating that no changes in these activities are proposed. As previously mentioned, FDM activities appear to be significantly increasing, and mitigation measures proposed by DCRM to ensure consistency with land-based operations in the 2015 MITT do not appear to have been implemented regularly - particularly as they pertain to early coordination and data sharing with CNMI. It is unclear why the Navy states that mitigation measures are outside of the scope of this SEIS/OEIS (CD enclosure pg. 23), especially given the fact that the 2014 CD correspondence from DCRM noted that "[i]n order to comply with the enforceable polices of the CNMI, further measures are needed to protect the wildlife and habitats of the CNMI". Similarly, in this CD request like the 2014 submission, the basis for finding that the MITT is consistent to the maximum extent practicable has not

CNMI Office of the Governor | Juan A. Sablan Memorial Building | Capitol Hill, Saipan Caller Box 10007 | Saipan, MP 96950 | Telephone: (670) 237-2200 | Facsimile: (670) 664-2211 | www.gov.mp been established. The Navy must show how its proposed actions are fully consistent by providing data, not speculative conclusions such as that potential effects to endangered species will be addressed through pending biological opinions. As also noted previously, the statement that the "Navy's Proposed Action provides special protection to coastal resources and mitigates adverse impacts" is inadequate to demonstrate consistency as the SEIS/OEIS does not actually commit to mitigation measures or timelines for implementation of mitigation, making these assurances rather hollow and unenforceable. If the Navy plans to rely on the suite of mitigation options discussed in the Draft SEIS/OEIS to demonstrate compliance with CNMI's enforceable policies including the requirement of mitigation of adverse impacts, meaningful and enforceable commitments and timelines for implementation should be developed as part of this CD correspondence.

- Policy Element 10 "Maintain or improve coastal water quality through control of erosion, sedimentation, runoff, siltation, sewage and other discharges." It is unclear how the Navy is able to state that proposed activities will not result in siltation, runoff, and other discharges given the use of munitions on land at FDM and in the CNMI's coastal waters. Assessment of this policy element and supporting regulations is inadequate and this analysis should be revised to support DCRM's review of this CD request.
- Policy Elements 11 and 12 Impacts to cultural resources. Although Section 106 consultations are ongoing to support the reissuance of the expired Programmatic Agreement, the analysis of impacts to cultural resources referenced in Section 3.11 of the draft SEIS/OEIS does not include sufficient data to make any determination regarding likely significant impacts to cultural resources within CNMI waters and on FDM. Absence of evidence is not evidence of absence and the DoD has an obligation to implement reasonable assessment of resources that are likely to be impacted by MITT activities. Lacking that data, there is therefore no basis for the Navy's conclusion that this proposed action is consistent with these policy elements. Data gaps should be remedied to ensure consistency with these policies and the CNMI's significant and compelling interest to protect and preserve our cultural resources.
- Policy Element 13 "Require compliance with all local air and water quality laws and regulations and any applicable federal air and water quality standards." Data must be provided to support the conclusory statements that air emissions will be minimal on Saipan and Rota and will be "intermittent and short term, resulting in minimal impact on the air quality of Tinian". Models are available to assess these activities for compliance with local and federal air quality standards and should be included for review in this submission. Comments regarding water quality standards are incorporated by reference here.
- Policy Elements 15 and 16 Management of marine resources and consistency with other policies. As noted in the response to Policy Element 4, the Navy's analysis of impacts to coastal resources is overly narrow and does not meaningfully address impacts to the human environment. This is especially true regarding impacts to the integrity of our reefs and wildlife habitat (Policy 15) and the management and development of our local subsistence, sport, and commercial fisheries (Policy 16). The draft SEIS/OEIS contains insufficient assessment of the potential impacts to these resources and the "analysis" under Policy Element 4 does not address potential impacts to human uses such as fishing and traditional access to important fishing areas. Thus, it is unclear how the Navy can conclude their proposed actions are consistent when analysis is completely lacking. An updated CD should address this gap, preferably through a revised SEIS that provides meaningful analysis of impacts to these important coastal resources.

- Policy Element 17 "Protect all coastal resources, particularly sand, coral and fish from taking beyond sustainable levels and in the case of marine mammals and any species on the Commonwealth endangered species list, from any taking whatsoever." The Navy explains that "the Proposed Action has the potential to take marine mammals and species on the Commonwealth endangered species list" and that "[a]ny take occurring as a result of the Proposed Action would be incidental to, and not the purpose of, the Navy's otherwise lawful training and testing activities" and notes that protective measures intended to avoid and minimize the "take" of endangered species will be updated as appropriate upon completion of the Section 7 consultation. As noted previously, past promises of mitigation and monitoring have not been executed, or, if they have been, have not been shared with the CNMI, therefore, it is encouraged that any monitoring and mitigation agreements that are the basis for a consistency determination include timebound deliverables so that consistency can be demonstrated.
- Policy Element 21 "Encourage the preservation of traditional rights of public access to and along the shorelines consistent with the rights of private property owners." Contrary to the Navy's statement that the "MITT Draft Supplemental EIS/OEIS does not propose any change to the public access normally allowed on federally leased lands including FDM, which would remain restricted for security and safety reasons" and that the "MITT Draft Supplemental EIS/OEIS does not propose a change to the ocean areas currently used by both the Navy and the public", increases in the intensity and use of CNMI lands and waters is more likely than not to have significant impacts to public access of shorelines and traditional fishing areas. Already, three nautical miles (nm) surrounding the abundant fishery surrounding FDM is periodically restricted and this SEIS proposes to extend that "danger zone" to 12 nm and increase the frequency of restricted use in this area. These restrictions can have direct and significant impacts to boaters and the fishing community by increasing travel time and forcing seagoing vessels to travel well out of their traditional navigation routes. Similarly, periodic exercises on Tinian significantly restrict community access to forests and shorelines that have been traditionally used for subsistence and commercial activities. The frequency and timing of these restrictions should be discussed further with the CNMI in order to maximize access for users of these ocean resources while ensuring the Navy can meet its training objectives. Given that assessment of impacts and commitment to reasonable mitigation measures are lacking in the SEIS/OEIS, meaningful commitments should be articulated in supplemental analysis in a revised CD in order to ensure consistency with this enforceable policy.
- Enforceable commitments to proposed offsets and mitigations needed. DCRM's October 2014 response to the September, 2014 CD (letter 5090 Ser N465/0926) outlines numerous mitigation measures that the Navy would need to implement to ensure consistency with CNMI enforceable policies. These include collection of baseline data on impacts to essential fish habitat areas, assessment of impacts to endangered bird, marine mammals, and sea turtle populations, water quality monitoring to ensure water quality stays within CNMI standards, and suggests addressing mass wasting concerns at Farallon de Medinilla as well as the removal of Rota for any activities. It does not appear these data gaps were ever addressed, or, if they were, that data was never shared with the CNMI. Additionally, in recent MITT discussions CNMI was informed that the Navy is unable to commit to mitigation actions or timelines due to lack of advance appropriations for these activities. The result of this procedural issue is ongoing activities with insufficient mitigation measures. Avoidance and minimization of impacts should be the first step in the scoping process, and mitigation actions that are agreed to should be implemented in a timely manner. As it stands, it appears that the majority of mitigation measures outlined in the 2014 CD correspondence have still not been implemented. Without these measures, the 2015-2020 MITT activities do not reflect good faith efforts to comply with conditions from the last CD process, let alone establish a record

of performance that can be relied upon as a basis for ongoing and significantly expanded activities on land and at sea. Direct, indirect, and cumulative impacts must be meaningfully assessed in order to be avoided, minimized, and then actually mitigated. We believe an updated CD and revised draft SEIS will be necessary to address the substantial data gaps identified here and that time bound commitments for key mitigation measures will be needed to support substantive compliance with the federal consistency review process.

For the reasons outlined herein, our office encourages DCRM to work with the Navy to resolve the procedural and substantive concerns raised by the December 2019 CD. We strongly encourage a supplemental submission be considered when data gaps identified in the draft SEIS are resolved.

Thank you for your consideration of these concerns and your ongoing support of this process.

Sincerely,

GILBERT J. BIRNBRICH

Legal Counsel – Office of the Governor