



Eli D. Cabrera
Administrator

Commonwealth of the Northern Mariana Islands
OFFICE OF THE GOVERNOR
Bureau of Environmental and Coastal Quality
Division of Coastal Resources Management
P.O. Box 501304, Saipan, MP 96950
Tel: (670) 664-8300; Fax: (670) 664-8315
www.dcrm.gov.mp



Janice E. Castro
Director, DCRM

July 20, 2020

Rear Admiral J. J. Adametz
Department of the Navy
Commander, United States Pacific Fleet
250 Makalapa Drive
Pearl Harbor, HI 96860-3131

Re: Supplemental Information to Support the U.S. Navy's Consistency Determination for Military Training and Testing within the Coastal Zone of the Commonwealth of the Northern Mariana Islands (CNMI), 5090 Ser N46/0639 June 8, 2020

Hafa Adai Rear Admiral Adametz,

The Commonwealth of the Northern Mariana Islands' (CNMI) Division of Coastal Resources Management (DCRM) has reviewed the supplemental information to support the U.S. Department of the Navy's (Navy) consistency determination (CD) for military training and testing within the coastal zone of the CNMI submitted to our office on June 19, 2020. Previously, DCRM found the activities outlined in the December 2019 CD for the Marianas Islands Training and Testing (MITT) study area within the coastal zone of the CNMI to be inconsistent with the enforceable policies of the CNMI Coastal Management Program. Following discussions with the Navy and additional information received, the CNMI is issuing a conditional concurrence for the MITT activities within the coastal zone of the CNMI.

DCRM received the Navy's CD on December 17, 2019 for the proposed MITT activities within the CNMI coastal zone and DCRM was granted an extension for review until March 9, 2020. The CNMI replied on March 9, 2020 and found that the December 2019 MITT CD was inconsistent with the enforceable policies of the CNMI. Following this, the CNMI and Navy continued discussions to resolve differences and agreed upon a due date of July 20, 2020 for the CNMI to issue a decision. The CNMI has appreciated collaborating with the Navy throughout the course of the CZMA Section 307 federal consistency process, and the efforts the Navy has taken to communicate their stance on the MITT activities. Taking into account these discussions and supplemental information submitted to the CNMI, DCRM concurs with the Navy's determination based upon the conditions further outlined herein.

Enhanced Coordination with CNMI Resource Agencies & Adoption of Standard Operating Procedures for Timely and Meaningful Reviews:

The CNMI is concerned that data gaps, issues with timeliness and time-bound commitments associated with the MITT, as well as emerging supplemental activities not covered by the MITT,

hinder meaningful review to assess consistency with both federal and CNMI regulations. While it is understood that the Navy is not required to invest “excessive” resources to support development of science-based environmental analysis, the baseline data that has been repeatedly requested for our region would support data collection and assessments that the CNMI deems to be reasonable and necessary to support the analysis and conclusions presented in the MITT SEIS. We understand that the Navy is currently updating their Marine Mammal Protection Act authorization, as it will expire on August 3, 2020 and is currently consulting with NMFS under Section 7 of the ESA for potential effects of activities affecting ESA-listed coral species. The Navy is also addressing National Historic Preservation Act (NHPA) Section 106 consultations for the MITT Programmatic Agreement which is in its second extension that will expire in September 2020. While these consultations are separate processes from CZMA Section 307 and do not necessarily address data gaps identified in comments submitted on the 2019 Draft Supplemental, the 2015 Draft Environmental Impact Statement, or fulfill CZMA federal consistency requirements, when these federal consultation processes are approved, they are expected to substantially address these concerns. Such coordination, as well as the time-bound commitments to address data gaps or long outdated data in addition to the outlined avoidance, minimization, and mitigation measures here are expected to provide a reasonable basis for the analysis and conclusions the Navy has presented, as well as ensure consistency with the CNMI’s Coastal Management Program’s enforceable policies and other relevant local regulations.

For the record, although the Navy’s December 2019 CD and June 2020 supplemental continue to state that several policies are “not applicable” due to the Navy’s stance that this project is not a “development,” the definition of “development” outlined in DCRM’s regulations in the Northern Mariana Islands Administrative Code (NMIAC) §15-10-020 includes numerous activities proposed under the MITT, including the change in the intensity of the use of land (NMIAC §15-10-020(z)(4)) and waters, the ecology related thereto, or the access thereto (NMIAC §15-10-020(z)(5)). That section also outlines “adverse impacts” which developments must avoid, minimize, or mitigate, which include alteration of chemical or physical properties of coastal or marine waters, accumulation of toxins which could potentially threaten the health or safety of humans or aquatic organisms, disruption of the ecological balance of coastal systems, interference with traditional fishing activities, or other development or activities which pose unreasonable risks to the health, safety, or welfare of the people of the Commonwealth or conflict with applicable federal or local laws intended to protect public health, safety, and welfare or ecological integrity of sensitive ecosystems (NMIAC §15-10-020(c)). As further detailed in discussion of the CRM Permit Process “[a]ll persons proposing any activity, project, or development requiring any CRM permit must apply for the necessary permit” (NMIAC §15-10-201). While the description of the applicability of these sections was not revised to reflect the need to analyze the standards applied for permit issuance (NMIAC §15-10-300 & 500 et seq) further, DCRM maintains that these enforceable policies are applicable to the proposed action and, during ongoing discussions, the Navy has acknowledged the need to consider and address permitting consistency considerations further. The conditions outlined here will memorialize and support that objective as well as provide a basis for this conditional concurrence.

As detailed further here, there are practicable, reasonable, and achievable procedural and substantive improvements that will result in enhanced consistency with enforceable policies for MITT activities. Improved coordination policies in particular will achieve both greater

consistency as well as reduce ongoing concerns about timing and communications protocols that have proven challenging since the 2015 MITT authorization. Federal consistency communications during that process highlighted the need for early information sharing to support timely review of activities as well as extensive environmental impact statements such as the MITT Supplemental EIS. Despite past assurances, these procedural issues remain a challenge to this federal consistency process and related environmental review processes and timelines. During recent dialogs regarding the consistency determination for the 2019-2020 Supplemental EIS, the Navy and CNMI have frequently discussed implementing a Standard Operating Procedure (SOP) to improve coordination of timelines for covered activities within the MITT range and future Department of Defense (DOD) activities. This would be intended to ensure sufficient time for the CNMI to provide meaningful review and respond to requests for consistency determinations and comments on future environmental impact statements. The Navy states that “[i]n many cases, standard operating procedures provide a benefit to environmental and cultural resources, some of which have high socioeconomic value in the Study Area” (p5-1 MITT 2020 Final Supplemental EIS/OEIS). The proposed SOP would efficiently address procedural issues to updating data gaps through sharing of information as it becomes available, as well as informing the CNMI about addendums to proposed activities that are not outlined in any of the MITT EISs/OEISs or CZMA CDs. This SOP would enhance current efforts between the liaison groups of the CNMI Commonwealth Bureau of Military Affairs (CBMA) and DOD Joint Region Marianas (JRM) through improving accountability, uniformity, and streamline communication for future projects.

Condition: To be more consistent over the duration of the MITT activities and emerging DOD activities in the CNMI coastal zone, to address reasonable collection and analysis of relevant data and standards to support assessment of impacts, and to uphold commitments to proposed mitigation measures that will be implemented to ensure consistency to the maximum extent practicable, the Navy will provide resources to support JRM to develop, finalize, and adopt an SOP in coordination with and reviewed by the CNMI before the end of 2020.

CNMI Public Law No. 3-47 Policy Elements 10, 13; & Division of Environmental Quality (DEQ) Water Quality Standards (WQS); Coastal Resources Management Rules and Regulations Permitting Standards (NMIAC §15-10-305(a, b, d, e, f) & § 15-10-505(d)), Definitions (NMIAC §15-10-020), and Permitting Thresholds (NMIAC §15-10-200):

As noted above, while it is understood that it is the Navy’s position that they will not apply for local permits, there is consensus that local permitting requirements should be considered in this review and consistency determination. As outlined in NMIAC §15-10-201, “activities” such as the extensive use of land and waters proposed under the MITT that trigger regulatory review are encouraged to engage in early coordination with DCRM and our partner agencies, a consideration which we are confident the SOP referenced above will ensure is addressed moving forward. Permit application contents that are required for local regulatory review outlined in NMIAC §15-10-206 should also be considered. These include descriptions of the existing environment of the proposed project site including vegetation, wildlife, land uses, soil, geology, topography, water quality, and historical and cultural resources (NMIAC §15-10-206(e)(3)) and description of the direct, indirect, and cumulative environmental and socio-economic effects, both positive and negative, which may result from the project (NMIAC §15-10-206(e)(5)), as

well as descriptions of how impacts have been avoided or minimized and how any unavoidable impacts will be mitigated (NMIAC §15-10-206(e)(6)). While these requirements parallel the federal requirements to support the “hard look” at impacts of a proposed action required by the National Environmental Policy Act (NEPA), CNMI has identified numerous areas where data gaps and biologically outdated information present analysis challenges.

While the Navy’s CD includes discussion of compliance with Policy Element 10 to “maintain or improve coastal water quality through control of erosion, sedimentation, runoff, siltation... and other discharges,” the analysis included in the December 2019 CD request states that the “Proposed Action does not involve any activities which would degrade CNMI coastal zone water quality from erosion, sedimentation, runoff, siltation, sewage and other discharges.” This statement ignores direct, indirect, and cumulative impacts including potential spillover effects from use of in-water explosives and lasers as well as the ongoing bombardment of Farallon De Medinilla (FDM). This concern, as well as the fact that there is no localized data to support the conclusion that MITT activities “would not exceed water quality standards established in [NMIAC] Chapter 65-130 Part 400 within water use areas established in Part 200” or the conclusion that “the Proposed Action is fully consistent with this enforceable policy” was raised during federal consistency discussions. Unfortunately, the supplemental information provided on July 19, 2020, still did not address concerns about compliance with anti-degradation water quality standards or resolve compliance concerns with permitting standards (NMIAC §15-10-300 & 500 et seq). Instead it continued to state that proposed activities “would not result in non-point source pollution ... [and] would not induce cumulative impacts that would significantly degrade the resources within the CNMI coastal zone” and only referenced studies from other jurisdictions. Due to our unique environmental conditions, lack of baseline data, and the limited review of contaminants of concern and water quality implications in the SEIS, these statements do not resolve this matter.

With that said, the CNMI remains concerned that the information stated in the Navy’s CD request will not adequately address DEQ WQS throughout the MITT range, specifically with respect to antidegradation implementation procedures and designation of Tier 3 outstanding national resource waters (ONRW) around FDM. Additionally, heavy metal and toxic accumulation in reef fish and marine sediments, as well as assessments of cumulative impacts of expended materials and likely spillover effects are not adequately addressed, in turn raising concerns with compliance with the CNMI’s constitutional right to a clean and healthful environment and enforceable policies that aim to ensure sustainable use of our coastal resources.

Condition: To be more consistent with Policy Elements 10 and 13, DEQ WQS, and CRM Rules and Regulations (NMIAC §15-10), the Navy must demonstrate compliance with antidegradation requirements and provide baseline water quality data in CNMI waters that DEQ has requested and EPA has recommended. This includes providing more thorough analyses and monitoring data for turbidity and suspended solids WQS resulting from military activities at FDM, as well as heavy metal and bio-accumulation of toxins in reef fish and marine sediments. The Navy is advised to consider coordination and collaboration with CNMI Bureau of Environmental and Coastal Quality (BECQ) DEQ for the collection and evaluation of water quality data. To further demonstrate compliance with these standards and address concerns raised by the CNMI regarding public health, safety, socio-economic, and environmental justice implications of

proposed and ongoing activities, the Navy is strongly advised to establish a water quality monitoring program for heavy metal and bio-accumulation of toxins in reef fish and marine sediments at areas in the CNMI in close temporal and geographic proximity to where recent testing has occurred to accurately reflect the conditions existing in the CNMI. The Navy is further advised to produce an expended materials assessment and report addressing possible direct, indirect, and cumulative impacts of expended materials to marine species and habitats of the CNMI.

CNMI Public Law No. 3-47 Policy Element 4; Coastal Resources Management Rules and Regulations NMIAC §15-10-305(j); 1976 Covenant to Establish a CNMI in Political Union with the USA & 1983 Lease Agreement Made Pursuant to the Covenant:

The Navy's CD acknowledges the applicability of Policy Element 4 which aims to plan for and manage any use or activity with the potential for causing a direct and significant impact to coastal resources and which further requires that significant adverse effects shall be mitigated to the extent practicable. The CNMI is concerned that significant adverse impacts outlined in Policy Element 4 are not fully considered, especially with respect to how impacts of increased activities will affect the people of the CNMI and their coastal resources. Land-based activities on Saipan, Tinian, Rota and increasing activities on FDM are not sufficiently assessed. Mitigation and procedural measures proposed by DCRM to ensure consistency with land-based operations in the 2015 MITT do not appear to have been implemented regularly particularly pertaining to early coordination and data sharing with CNMI.

The CNMI is concerned with the potential direct, indirect, and cumulative impacts to FDM, especially concerning mass wasting. The CD states that, "[t]here are no land-based activities or construction associated with the Proposed Action assessed in the MITT SEIS/OEIS; therefore, there is no requirement for management measures for control of nonpoint source pollution" (p21). However, based on the Final 2020 EIS/SEIS, the amount of proposed activities on FDM will be increasing. Section 806(a) of the 1976 Covenant to Establish a CNMI in Political Union with the USA states that "[t]he United States will continue to recognize and respect the scarcity and special importance of land in the Northern Mariana Islands." Article 9(b) of the 1983 Lease Agreement which includes FDM states that, "Upon identification by [CNMI] of a project for use of a specific area ... the United States shall, to the extent practicable, remove all unexploded ordnance and exploded ordnance fragments from that area." While the Covenant and 1983 Lease Agreement were not discussed in the CD for MITT activities, local regulatory requirements mandate compliance with all other laws (see NMIAC §15-10-610(d)); as such conformity with CNMI's Covenant and Constitution should be considered. The conditions outlined herein would not only ensure consistency of proposed MITT activities, but would also support commitments to build trust, communication, and achieve mutually satisfactory outcomes between the DOD and the CNMI.

Condition: To be more consistent and ensure ongoing commitments to improved coordination are meaningfully achieved, the Navy is strongly advised to support JRM in developing, finalizing, and adopting an SOP for activities within the MITT Range detailing requirements for activities not covered by the MITT, including specified timelines for Federal Consistency, Section 106 coordination, and general environmental compliance recommendations before the

end of 2020. Given that a geological survey is required to ensure sustainable range management and would help to resolve concerns CNMI has continued to raise regarding “mass wasting” and potential direct, indirect, and cumulative impacts, this action would be more consistent if a geological assessment is conducted in concert with a land and cleanup valuation and related studies including baseline water quality analysis for heavy metals and munitions-related toxins from waters and sediments at and around FDM during the next scheduled range clearance activity which DCRM understands will be conducted in FY21 or FY22.

CNMI Public Law No. 3-47 Policy Element 11 &12:

As stated by the Navy in their supplemental CD request in June 2020, “[t]he Navy recognizes CNMI concerns regarding past surveys on FDM and is committed to conduct appropriate terrestrial and near shore surveys as determined to be necessary through the ongoing Section 106 consultation process” (p10). During discussions with the Navy, they reiterated their commitment to conducting relevant assessments that would address these policy elements. The Navy also states that, “[i]n addition, although separate from this action, the Navy is actively working on an updated Integrated Cultural Resources Management Plan (ICRMP). This document will further support cultural resources management activities and compliance procedures” (p10). Although the NHPA Section 106 consultation process is separate from CZMA federal consistency review, the CNMI is concerned that data for cultural resources within the CNMI eligible under the NHPA are outdated and there are many data gaps that need to be addressed for these specific policy elements. Given that Section 106 consultation is intended to be predicated based on cultural and historic resources that have already been identified, and because such identification is not included in the 2015 or 2020 MITT environmental impact statements, CNMI remains concerned that reliance on the ongoing Programmatic Agreement negotiations alone will not sufficiency ensure consistency. Continued coordination, including sharing of data and plans that include timebound commitments and deliverables would be beneficial to achieving consistency with these policy elements.

Condition: To be more consistent with Policy Elements 11 & 12, the Navy will conduct surveys of cultural resources on FDM and in submerged waters within the MITT Range as soon as practicable and no later than the next scheduled range clearance activities planned for FY21 or FY22. As the CNMI Historic Preservation Office (HPO) is the federally approved agency, these efforts should be coordinated closely with the State Historic Preservation Officer (SHPO) to ensure collaboration with the CNMI. As noted previously, the CNMI further invites the Navy to work with our resource management agencies to identify opportunities to conduct additional research, data collection, and analysis as part of this effort. The Navy is also strongly advised to update the outdated ICRMP in coordination with CNMI agencies such as CNMI-HPO, Office of Planning and Development (OPD), BECQ, and CBMA. To further support survey and data sharing needs and the Section 106 process, the MITT and annual activities would be more consistent upon development and implementation of the aforementioned SOP detailing requirements for activities not covered by the MITT including specified timelines for Federal Consistency and Section 106 coordination and general environmental compliance recommendations within the upcoming fiscal year.

CNMI Public Law No. 3-47 Policy Element 15, 16, 17. Coastal Resources Management Rules and Regulations NMIAC §15-10-505(c):

The CNMI remains concerned that activities throughout the MITT range will impact ecologically significant resource areas and their contributions to marine productivity and value as wildlife habitats (Policy Element 15), affect management of the development of local subsistence, sport, and commercial fisheries (Policy Element 16), and hinder protection of all coastal resources 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” (Policy Element 17). In their supplemental CD analysis from June, 2020, the Navy states that “Policy Element 17 is the only enforceable policy that the Navy is not fully consistent. The Navy’s Proposed Action includes the use of sonar and explosives, which have the potential to take marine mammals and CNMI listed endangered species” (p13). DCRM Regulations require that projects in the coastal zone shall not adversely impact fragile fish and wildlife habitats. Based upon data outlined in the MITT, as well as recent peer reviewed studies from our region which were not well addressed in MITT analysis, there are significant correlations between active sonar use and whale beaching, and Chalan Kanoa and Marpi Reefs have been identified as breeding ground and habitat for whales. The Navy has also acknowledged data gaps in regards to beaked whales and sea turtles, as well as ESA-listed giant manta rays, sharks, and corals within the MITT Range.

Condition: To be more consistent with these policy elements and regulations, the Navy is strongly advised to implement enhanced avoidance and mitigation measures including limiting the use of active sonar, explosives, and lasers within the proposed Chalan Kanoa and Marpi Humpback Whale mitigation areas as well as within the 0-3nm of the CNMI’s coastal waters. Navy representatives have indicated that use of lasers and explosives are not currently proposed within CNMI’s coastal waters, and, to ensure consistency with the above referenced enforceable policies it would be prudent to include active sonar use in these geographically restricted areas as well until such a time that current species assessments can be reviewed and impacts meaningfully assessed. To reduce the likelihood of significant spillover effects to species and the ecosystems and services their presence supports, expanded avoidance and minimization measures including updated Lookout training to include sharks and rays, efforts to reduce activities at night and in high sea states, and reporting that includes documentation of observed responses of listed species should be implemented across proposed training and testing activities.

To further achieve co-management objectives, the CNMI requests that species abundance and distribution surveys be coordinated and conducted with local resource managers, and that management needs be addressed through more frequent INRMP meeting inclusive of DCRM and other CNMI resource agencies. Moreover, to further support facilitation and sharing of this data and support adaptive management efforts necessary to ensure sustained range use while achieving species and environmental management objectives, the MITT activities would be more consistent upon development of the aforementioned SOP detailing requirements for data sharing and timelines of these surveys. As discussed at length since the 2019 MITT publication, the CNMI looks forward to the creation of a dedicated online regional resources portal that will collect and share updates about ongoing management efforts the Navy and its partners are

undertaking and support improved coordination and resource management outcomes moving forward.

CNMI Public Law No. 3-47 Policy Element 8, 16, 21; Coastal Resources Management Rules and Regulations (NMIAC §15-10-305(g, h), §15-10-505(d)):

The CNMI is concerned that there are still several data gaps and missing critical pieces of information that hinder meaningful review and consistency with regards to DCRM's enforceable policies on public services and public access. In its supplemental assessment dated June 2020, the Navy stated that "[t]he Proposed Action has no effect on existing public services within the CNMI coastal zone" (p20). Effects of increased travel times for vessels transiting past FDM have not been meaningfully assessed. CNMI remains concerned that short notice of FDM activities may cause small boats to have to travel further from their traditional course. This could result in economic impacts to subsistence fishers and transiting community members as well as put pressure on existing first responder services and may further reduce economic development opportunities (air travel, cruise ships, traditional voyages, fishing derbies). The Navy has continued to prohibit access to FDM within 3 nautical miles from shore for safety reasons due to the potential presence of unexploded ordnance, however this assessment does not detail proposed changes in the current danger zone during activities or provide opportunities for research or access to the abundant fisheries surrounding FDM when the range is not in use, which CNMI has requested be explained further.

Condition: To be more consistent, the Navy is strongly advised to coordinate publications of notices of training activities with CNMI Commonwealth Ports Authority (CPA), Department of Public Safety (DPS)-Boating Safety, as well as Homeland Security Emergency Management (HSEM)/Emergency Operations Center (EOC), and CBMA as early as possible and should plan to avoid training and testing at FDM and surrounding waters during regularly held fishing derby events. Additionally, if the Navy provided information regarding why the danger zone increase is being proposed, and outlined how CNMI agencies could meet relevant requirements to allow for access for research purposes at FDM, this would not only improve consistency with public access and transportation elements but also enhance collaboration between the Navy and the CNMI. Protocols for how to streamline this process could be outlined in the SOP. These requirements could entail what trainings and certifications are needed and potentially support BECQ/DLNR in obtaining those credentials. Given the importance of the FDM reef fishery, this proposed action would be even more consistent if some access were permitted inside of the 0-3nm for fisherfolk when the range is not in use. The Navy is encouraged to provide the requested information regarding access restrictions as soon as possible and before the close of 2020 to support the inclusion of these considerations into ongoing resource management discussions.

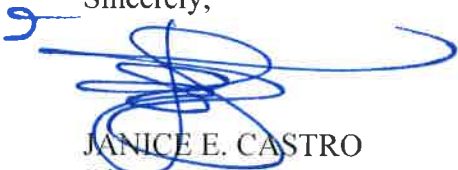
The CNMI has further requested that Integrated Resource Management Plan (INRMP) meetings be scheduled at least quarterly (rather than semi-annual as is currently the case) and DCRM requests to be included in these planning dialogs to ensure consideration of and consistency with enforceable policies. It is further suggested that the Navy work closely with our resource managers through the INRMP and other planning processes to improve fisheries management efforts through programs and projects including but not limited to fish health monitoring,

moorings for prepositioned ships outside of Saipan, and additional "no use" areas in essential fish habitat throughout the rest of the MITT Range.

Since the timeframe to resolve differences extended beyond the 90-day period as outlined in 15 CFR §930.43(d), the CNMI appreciates the opportunity for more extensive review beyond required coordination period as noted in 15 CFR §930.36(b)(2). Pursuant to 15 CFR § 930.4, a conditional concurrence automatically becomes an objection if the conditions are not satisfied. If the requirements in 15 CFR §930.4(a), (1) through (3) are not met, then all parties shall treat this conditional concurrence letter as an objection pursuant to 15 CFR Part 930, subpart C. This CZMA conditional concurrence does not represent an endorsement of the project nor does it convey approval with any other regulations administered by any agency of the CNMI. However, through this process, DCRM is optimistic that the MITT activities will be implemented in a manner that ensures consistency with our enforceable policies that support our shared goals to ensure sustainable resource management in our region.

The CNMI appreciates the additional information provided by the Navy in its June 19, 2020 letter and follow-up conversations thereafter. Upon meeting and continued compliance with the above conditions, DCRM considers the MITT 2020 Supplemental EIS proposal for expanded and ongoing training and testing within the coastal zone of the CNMI to be consistent with the Coastal Management Program's enforceable policies. Should you have any questions or require further information, please contact (670) 664-8318 or fedcon@derm.gov.mp.

Sincerely,



JANICE E. CASTRO

Director

Division of Coastal Resources Management

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
Jonathan I. Arriola, DEQ Director, BECQ
Kodep Ogumoro-Uludong, Director, Office of Planning and Development
CRM Agency Board