



DEPARTMENT OF THE NAVY

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IN REPLY REFER TO:
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Ser N465/0910
July 22, 2020

Ms. Janice E. Castro
Director
Division of Coastal Resources Management
Bureau of Environmental and Coastal Quality
P.O. Box 501304
Saipan, MP 96950

Hafa Adai Ms. Castro:

SUBJECT: CONSISTENCY DETERMINATION FOR MILITARY TRAINING AND TESTING
WITHIN THE COASTAL ZONE OF THE COMMONWEALTH OF THE NORTHERN
MARIANA ISLANDS

The Navy has reviewed the Commonwealth of the Northern Mariana Islands (CNMI) Division of Coastal Resources Management's (DCRM) letter of July 20, 2020, which builds on your March 9, 2020 letter and outlines your office's conditional concurrence, providing DCRM's additional comments and conditions upon which concurrence would be based.

We recognize you have a heavy workload and are operating with limited staff and sincerely thank you for providing your response so expeditiously. The Navy greatly appreciates the time your staff has taken to review our consistency determination and for meeting with Navy representatives from May through July. We have considered all of DCRM's concerns and recommendations from this letter as well as your original response letter, and reviewed the underlying law and regulations, along with CNMI's Coastal Zone Management Program (CMP) and enforceable policies. In light of our extensive review, the Navy maintains its conclusion in our Consistency Determination submitted on December 10, 2019 that the Proposed Action as outlined in the Mariana Island Training and Testing (MITT) Supplemental Environmental Impact Statement/Overseas EIS (SEIS/OEIS) is consistent to the maximum extent practicable with CNMI's enforceable policies under the standard described in 15 Code of Federal Regulations (C.F.R.), Section 930.32.

I would like to note that while the Proposed Action is fully consistent with most of CNMI's enforceable policies applicable to our activities, the Navy and DCRM have mutual interest in improving accountability, uniformity and streamlining communications. The six conditions described in your recent letter can be summarized as follows:

- Developing Standard Operating Procedures;
- Ensuring the Navy adheres to anti-degradation requirements;
- Conducting geological surveys for Farallon De Medinilla (FDM);
- Conducting resource surveys and updating the current Integrated Cultural Resources Management Plan in coordination with CNMI agencies;

- Implementing enhanced avoidance and mitigation measures for Navy activities at Chalan Kanoa and Marpi Reefs; and
- Reconsidering the current access restrictions around FDM.

Your letter also contained additional requests for surveys, data sharing, and increased frequency of Integrated Resource Management Plan (INRMP) meetings. The Navy is committed to continue working closely with DCRM and other CNMI regulatory agencies to address concerns underlying these requests, and implement and monitor reasonable mitigation measures, data sharing, and improved coordination with CNMI DCRM through an enduring process. To this end, the Navy will commit to:

- Develop draft Standard Operating Procedures within six months of the MITT SEIS/OEIS Record of Decision;
- Develop a baseline of FDM geophysical conditions and monitor over time;
- Conduct cultural surveys at FDM (as determined necessary and practicable during Section 106 consultation);
- Reconsider the 3 nm restriction at FDM (access to fishing waters) and communicate findings to the CNMI DCRM;
- Improve communication, collaboration, and data sharing with CNMI;
- Work with the CNMI DCRM to develop increased understanding and agreement on analytical data needs and methods in support of Cumulative Impact Analysis in future NEPA analyses; and
- Investigate if CNMI resource agencies can either independently conduct or collaboratively participate in studies at and around FDM and other Navy properties, and communicate findings to the CNMI DCRM.

The Navy believes we have adequately addressed the potential impacts from munitions constituents on human health and the environment at FDM; however, to address concerns expressed in comments from the local community and others, the Navy will perform a supplemental review of reef fish and nearshore sediment to further assess potential pathways for this important receptor.

Finally, I also note that your letters of March 9 and July 20 both reference Policy Element 17, under CNMI Public Law No. 3-47, which is the only enforceable policy element with which the Navy is unable to be fully consistent. Policy Element 17 states, "*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's Proposed Action includes the use of sonar and explosives that have the potential to take corals, sea turtles, and marine mammals. The Proposed Action stems from the Navy's Title 10 United States Code (U.S.C.) Section 8062 statutory requirement to maintain, train, and equip combat-ready military forces capable of winning wars, deterring aggression, and maintaining freedom of the seas. The respective missions are achieved in part by conducting training and testing within the MITT Study Area in accordance with established Navy military readiness requirements. Training and testing with sonar and explosives in the MITT Study Area are integral to the Navy's ability to meet its statutory obligations, and consequently, the Navy maintains that these activities are consistent to the maximum extent practicable with Policy Element 17. In recognizing a potential for effects from sonar and explosive use in the marine environment, the


Navy is committed to employing practicable geographic and procedural mitigations. Further, any take occurring as a result of Navy's proposed activities would be incidental to, and not the purpose of, Navy's otherwise lawful training and testing activities.

The Navy is completing the regulatory process with the National Marine Fisheries Service (NMFS) to ensure the Proposed Action would not jeopardize the population and future of Endangered Species Act (ESA) listed species or adversely impact their viability as a coastal zone resource. The potential impacts on ESA-listed species from the Navy's training and testing activities have been thoroughly analyzed by Navy biologists and rigorously scrutinized by experts from both NMFS and the U.S. Fish and Wildlife Service. Likewise, the Navy is completing the regulatory process with NMFS to seek authorization under the Marine Mammal Protection Act (MMPA) for incidental take that could result from the Proposed Action. The Proposed Action also includes an extensive suite of protective measures designed to specifically help the Navy avoid or minimize any impacts on protected species. These measures will be updated upon completion of the NMFS' ESA Section 7 consultation and MMPA Authorization. Overall, the Navy's compliance with the ESA will ensure that the activities proposed in the MITT SEIS/OEIS are consistent with the objectives of the CNMI Coastal Management Plan (CMP) while allowing the Navy to carry out its statutory mission to train and test naval forces to be prepared for combat at sea.

Based on the above, it is the Navy's determination that proposed military readiness activities in the MITT Study Area are consistent with Policy Element 17 of the CNMI CMP to the maximum extent practicable. As noted in your July 20 letter, under 15 CFR Section 930.4(b), your conditional concurrence shall be treated as an objection. Therefore, in accordance with 15 CFR Section 930.43(e), the Navy is providing notification of its intent to proceed with the Proposed Action over DCRM's objection to the Navy's consistency determination. The Navy will continue to work with you regarding the concerns noted in your July 20 letter.

The Navy views its relationship with the CNMI as essential to meeting its national security mandate and is committed to continuing our professional relationship through continued collaboration with the CNMI DCRM. Should you have any questions, please do not hesitate to contact me at (808) 472-1000 or john.adametz@navy.mil.

Sincerely,


J.J. ADAMETZ
Rear Admiral, U.S. Navy
Fleet Civil Engineer

Copy to:

CJRM

OPNAV N45

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