

AUG 22 2018



U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Office for Coastal Management
Silver Spring Metro Center, Building 4
1305 East-West Highway
Silver Spring, Maryland 20910

Ms. Janice Castro
Director, Division of Coastal Resources Management
CNMI Bureau of Environmental and Coastal Quality
Caller Box 10007 | Saipan, MP 96950

Dear Ms. Castro,

Thank you for the Division of Coastal Resources Management's May 17, 2018,¹ request for approval of changes to the Commonwealth of the Northern Mariana Islands (CNMI) Coastal Management Program. You requested that the changes be approved as routine program changes (RPCs), pursuant to Coastal Zone Management Act (CZMA) regulations at 15 C.F.R. part 923, subpart H, and the National Oceanic and Atmospheric Administration's (NOAA's) Office for Coastal Management's *Program Change Guidance (July 1996)*.

The Commonwealth has requested the approval of: 1) changes to the list of federal actions subject to CZMA; 2) revisions to the Ch. 15-10 regulations; 3) incorporation of the Mitigation Hierarchy used in applying the Ch. 15-10 regulations; and 4) incorporation of the regulations for the CNMI Air Pollution Control Program.

PUBLIC AND FEDERAL AGENCY COMMENTS

The Office for Coastal Management received no comments on this RPC request. Prior to the submission, the CNMI CMP had extensive consultations with federal agencies implicated by the proposed revisions to the list of federal actions subject to CZMA review. As a result of these consultations, changes were made to the list of federal actions included with the CNMI's CMP submission package.

CHANGES APPROVED

The Office for Coastal Management approves the revised list of federal actions subject to CZMA review. The revisions add certain activities undertaken by the Department of Defense; Army Corps of Engineers; National Park Service, Federal Aviation Administration; Federal Highway Administration; and Federal Emergency Management Agency to CNMI's list for review under

¹ The submission package was received on May 30, 2018. In accordance with Section 306(e) of the CZMA, the decision due date was June 29, 2018. The review of this program change approval request was extended to August 22, 2018.

subpart C of the Federal Consistency regulations. In addition, certain forms of federal financial assistance provided by the Federal Aviation Administration, Federal Highway Administration, and Army Corps of Engineers have been added to the list for review under subpart F of the Federal Consistency regulations. Finally, one new form of license issued by the Federal Energy Regulatory Commission has been added for review under subpart D of the Federal Consistency regulations. See the approved list (attached).

Notwithstanding the lack of analysis or other documents provided for the CNMI Air Pollution Control Program regulations, under the Subsection 307(f) of the CZMA, state requirements established pursuant to the federal Clean Air Act are recognized as enforceable policies of state CMPs. The CNMI Air Pollution Control Program requirements at 2 CMC §§ 3121 and 3122 are recognized as such, and therefore, have been included in the Commonwealth's CMP.

Pursuant to 15 C.F.R. § 923.84(b)(4), CNMI must publish a public notice of the approved changes and copy the affected federal agencies of the approved list. Please also provide a copy of the notice to this office for our records.

CHANGES NOT APPROVED

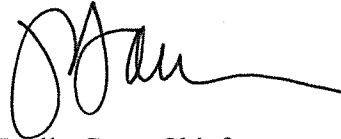
Due to a deficiency in meeting the 15 C.F.R. § 923.84(b)(2) public notice requirements for program changes, the revisions to the Ch. 15-10 regulations, and the proposed incorporation of the Mitigation Hierarchy used in applying the Ch. 15-10 regulations, must be re-noticed, and resubmitted for review and approval. Staff for the Office for Coastal Management are available to assist you in ensuring that the public notice requirements are understood.

Although the Office for Coastal Management has found that the submission of the Ch. 15-10 regulations did not fulfill the public notice requirements, the Office has reviewed and discussed the revisions with the CNMI CMP staff in regards to the CZMA enforceable policies within Ch. 15-10. Based on those discussions, the Office for Coastal Management believes that there is a mutual understanding of which policies are enforceable for CZMA review purposes. In resubmitting the Ch. 15-10 regulations, the submission should reflect that understanding by indicating those sections that contain standards to be used as enforceable policies for CZMA review purposes.

In requesting approval of the Mitigation Hierarchy for incorporation into the federally-approved CNMI CMP, please provide a copy of the Hierarchy and state whether the Hierarchy is intended to be an enforceable policy for CZMA review purposes. If so, please include an accompanying analysis specifying the standards within the Hierarchy that will be used for determining the consistency of federal actions, and provide the mechanism for how those standards are applied under the laws of the Commonwealth.

Thank you for your cooperation in this review. Please contact Robbie Greene at (670) 234-0005, if you have any questions. For future correspondence regarding these program changes, please refer to the file number assigned to this action, CNMI-2018-1.

Sincerely,

A handwritten signature in black ink, appearing to read 'Joelle Gore', with a long horizontal flourish extending to the right.

Joelle Gore, Chief
Stewardship Division

Enclosure: List of Federal Actions Subject to CZMA Review

APPENDIX A

NORTHERN MARIANA ISLANDS' LISTED FEDERAL ACTIONS

I. FEDERAL ACTIVITIES

DEPT. OF DEFENSE

All Branches (Excluding U.S. Army
Corps of Engineers)

Operational plans, procedures, or facilities for the handling, storage, or cleanup of hazardous materials.
Location, design, or acquisition of new or expanded defense installations pursuant to 10 U.S.C. § 2802, as amended, regardless of the facility's active or reserve status, and including associated housing, transportation, or other facilities on properties.

Disposal or realignment of Defense property and/or disposal and reuse plans for military base closures pursuant to the Defense Authorization Amendments and Base Closure and Realignment Act.

Establishment or modification of impact, compatibility, security, or other restricted use zones pursuant to 10 U.S.C. § 2802, as amended, if the establishment or modification of such an area or zone will restrict existing or future public access.

Construction or expansion of buildings or erosion control structures; or the acquisition or disposal of land pursuant to 10 USC § 2661 et.seq. 10 U.S.C. § 2802, as amended, and/or 40 USC § 101, 10 U.S.C. § 2802, as amended.

Installation, removal, or maintenance of submarine cables.

Defense exercises and the establishment of resource management plans occurring in, over, or adjacent to non-federal lands and waters.

DEPT. OF HOMELAND SECURITY

Federal Emergency Management
Agency (FEMA)

Construction or reconstruction of permanent or semi-permanent housing under the Individuals and Households Program (IHP).

DEPT. OF THE INTERIOR

National Park Service (NPS)

Authorization to manage and general management including master plans of national parks.

DEPT. OF TRANSPORTATION

Federal Aviation Administration
(FAA)

Acquisition or disposal of land.

Location, design, construction, or disposal of airports or other air navigation facilities, including communications and radar facilities.

Federal Highway Administration
(FHWA)

Highway construction or modification.

II. FEDERAL LICENSES AND PERMITS

<u>Federal Agency</u>	<u>Permit Description</u>	<u>Citation</u>
DEPT. OF COMMERCE		
National Marine Fisheries Service (NMFS)	Take of marine mammals.	Marine Mammal Protection Act; 16 U.S.C. §§ 1361-1407
	Take of endangered species (marine species).	Endangered Species Act; 16 U.S.C. §§ 1538-1543
DEPT. OF DEFENSE		
U.S. Army Corps of Engineers (USACE)	Construction of dams or ditches across navigable waters.	River and Harbors Act of 1899 § 9; 33 U.S.C. § 401
	Construction or alteration of navigable waters.	<i>Id.</i> §10; 33 U.S.C. § 403
	Establishment of harbor lines.	<i>Id.</i> §§ 11, 33; U.S.C. §§ 404-405
	Temporary occupation of sea wall, bulkhead, jetty, dike, levee, wharf, pier or other work built by the U.S.	<i>Id.</i> § 14; 33 U.S.C. § 408
	Discharge of dredged spoil into waters of the U.S.	Federal Water Pollution Control Act of 1972 § 404; 33 U.S.C. § 1344
	Approval of plans for improvements made under Corps supervision at private expense.	River and Harbors Act of 1899; 33 U.S.C. § 565
	Transportation of dredged spoil for the purpose of dumping it in ocean waters.	Marine Protection, Research, and Sanctuaries Act of 1972 § 103; 33 U.S.C. § 1413
DEPT. OF ENERGY		
All Offices	Prohibition and construction orders.	Energy Supply and Environmental Coordination Act; 15 U.S.C. §§ 791-798
Federal Energy Regulatory Commission (FERC)	Licenses, renewals, or amendments to licenses for non-federal hydroelectric projects and primary transmission lines.	16 U.S.C. § 779
	Threshold: All projects that fall in or within 150 ft of a designated Area of Particular Concern (APC), result in permanent loss of APC resources, fall seaward of a line 150 ft inland of the high hazard (V/VE) floodplain, or when proposed project costs equal to or exceed \$1 million.	

**DEPT. OF THE
INTERIOR**

Fish and Wildlife Service (FWS)	Take of endangered species (terrestrial species).	Endangered Species Act; 16 U.S.C. §§ 1531-1543
National Park Service (NPS)	Construction of visitor centers on NPS managed land.	16 U.S.C. § 3
	Construction of electric and communication lines across NPS managed land.	16 U.S.C. § 5

**DEPT. OF
TRANSPORTATION**

Federal Aviation Administration (FAA)	Approval of airport development project applications.	49 U.S.C. § 171(b)
U.S. Coast Guard	Permits for private aids to navigation.	14 U.S.C. § 83
	Permits for construction or modification of bridges or causeways in navigable waters.	33 U.S.C. §§ 401, 491, 625
	Authorization for handling of flammable or combustible liquids by bulk in U.S. ports.	46 U.S.C. § 391(a)
	Deepwater port permits.	Deepwater Ports Act of 1974; 33 U.S.C. § 1501

**ENVIRONMENTAL
PROTECTION
AGENCY**

Permits for underground injection.	State Drinking Water Act § 1421(c)(1); 42 U.S.C. § 300(h)
Permit to operate underground injection wells in designated areas.	Resources Recovery and Conservation Act of 1976; 42 U.S.C. § 3257
Approvals under preservation of significant deterioration (PSD) regulations.	Clean Air Act of 1976 § 110; 42 U.S.C. § 7410
New sources construction/operation permits.	<i>Id.</i> § 111; 42 U.S.C. § 7411
Approvals under National Emission Standards for Hazardous Air Pollutants (NESHAPS) Regulations.	<i>Id.</i> § 112; 42 U.S.C. § 7412
NPDES permits for federal installations.	Federal Water Pollution Control Act of 1972 §§ 401-402; 33 U.S.C. §§ 1341-1342
NPDES permits for discharges into the contiguous zone and ocean	<i>Id.</i> § 402-403; 33 U.S.C. §§ 1342-1343
Sludge runoff permits.	<i>Id.</i> § 405; 33 U.S.C. § 1345

III. FEDERAL FINANCIAL ASSISTANCE

Assistance Description

Threshold

Highway Planning and Construction (20.205)

All land acquisition or projects that fall in or within 150 feet of a designated Area of Particular Concern (APC), result in permanent loss of APC resources, fall seaward of a line 150 feet inland of the high hazard (V/VE) floodplain, or when assistance is equal to or exceeds \$1 million.

Exemption: Activities required to provide disaster or emergency relief in response to a proclamation issued by the Office of the Governor provided that activities do not include in-water work or result in the permanent loss of APC resources.

Beach Erosion Control Projects (12.101)

All land acquisition or projects that fall in or within 150 feet of a designated Area of Particular Concern (APC), result in permanent loss of APC resources, fall seaward of a line 150 feet inland of the high hazard (V/VE) floodplain, or when assistance is equal to or exceeds \$1 million.

Airport Improvement Program (20.106)

All land acquisition or projects that fall in or within 150 feet of a designated Area of Particular Concern (APC), result in permanent loss of APC resources, fall seaward of a line 150 feet inland of the high hazard (V/VE) floodplain, or when assistance is equal to or exceeds \$1 million.