



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](http://www.dcrm.gov.mp)



Richard V. Salas  
Director, DCRM

March 6, 2022

Ref No: PLN22-013

Kimberly Damon-Randall  
Director  
Office of Protected Resources  
National Marine Fisheries Service  
1315 East-West Highway  
Silver Spring, Maryland 20910

**RE: Objection to Negative Determination for Proposed Guidelines for Safely Deterring Marine Mammals, Carried Out in Accordance with the Marine Mammal Protection Act**

Dear Director Damon-Randall,

The Commonwealth of the Northern Mariana Islands (CNMI) Division of Coastal Resources Management (DCRM) has reviewed the Coastal Zone Management Act (CZMA) National Marine Fisheries Service's (NMFS) national negative determination (ND) received on December 21, 2021 concluding that "the proposed Guidelines for Safely Deterring Marine Mammals under the authority of the Marine Mammal Protection Act (MMPA) for deterring marine mammals under NOAA Fisheries' jurisdiction will have no effects on any state Coastal Zone Management Program." DCRM requested a fifteen-day extension for review, and NMFS agreed to the extension deadline of March 6, 2022.

Pursuant to 15 CFR § 930.35(c), DCRM objects to the ND on the grounds that coastal effects are reasonably foreseeable. "Coastal effects" are defined in 15 CFR § 930.11 to include any reasonably foreseeable effect on "any coastal use or resource," which is in turn defined to include biological and physical resources such as submerged aquatic vegetation, land, plants, trees, minerals, fish, shellfish, invertebrates, amphibians, birds, mammals, reptiles, and coastal resources of national significance. It is reasonably foreseeable that the ruling to allow specified persons to use the guidelines and specific measures for safely deterring marine mammals will potentially result in coastal effects to marine mammals and other coastal resources in the CNMI.

For clarification, this letter is focused on the threshold question of effects, rather than on the proposal's consistency to the maximum extent practicable with the enforceable policies of the CNMI Coastal Management Program (CMP).

DCRM disagrees with NMFS's conclusion of no reasonably foreseeable effects on the enforceable policies of the CNMI's approved CMP because protecting certain persons from MMPA liability for take resulting from certain deterrent measures may encourage those measures, and any resulting take would remain unlawful in the CNMI.

Provisions in section 101(a)(4)(B) of the MMPA provide protection from liability under the MMPA for nonlethal “take” resulting from deterring marine mammals based on “specific measures” or “guidelines” from the Secretary of Commerce. The guidelines list approved types of deterrents that would be applicable to mysticete and odontocete marine mammal species found in the CNMI, in the form of non-acoustic (visual, physical barriers, and tactile) and acoustic (impulsive:non-explosive, non-impulsive) deterrents. It is reasonably foreseeable that through the voluntary course of following specific measures in the guidelines to deter a marine mammal, an approved person may unintentionally “take” any of these listed marine species. An approved person who complies with these guidelines in deterring cetaceans in the CNMI would be relieved of liability from the MMPA; but they would not be relieved of liability from applicable CNMI laws and regulations. Any take whatsoever of these species is in fact unlawful in the CNMI.

Although NMFS states in the ND that “Compliance with this proposed regulation and MMPA section 101(a)(4)(A) would not obviate the user’s obligation to comply with all other applicable local, state, and Federal requirements related to the use of deterrents,” DCRM is concerned that the adoption of federal guidelines encouraging certain deterrent acts may nonetheless lead to an increase in those deterrent acts being performed in the CNMI as well.

DCRM therefore disagrees with NMFS’s conclusion that the activities would not affect any coastal resource of the CNMI, and requests that NMFS submit a federal consistency determination to the CNMI, including a complete analysis of the proposed guidelines for safely deterring marine mammals consistency with the enforceable policies of the CNMI CZMP, including but not limited to the following federally approved enforceable policies as stated in CNMI Public Law (PL) 3-47 §3(a), 2 CMC §1511(a) and Northern Mariana Islands Administrative Code (NMIAC) Coastal Resources Management Rules and Regulations 15-10-315:

PL 3-47 §3(a)(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.

PL 3-47 §3(a)(17): Protect all coastal resources, particularly sand, corals and fish from taking beyond sustainable levels and in the case of marine mammals and any species on the Commonwealth and Federal Endangered Species List, from any taking whatsoever.

NMIAC §15-10-315(c)(4)(iii), Specific Criteria; Areas of Particular Concern; Lagoon and Reefs: With the exception of permissible fishing activities, no harassing or taking of protected marine species.

Thank you for coordinating with the CNMI CZMP. If you have any questions or need additional information, please contact Arthur Charfauros at (670) 664 8314 or fedcon@dcrm.gov.mp.

Sincerely,

RICHARD V. SALAS  
Director  
Division of Coastal Resources Management

cc: Kristy Long - Fishery Biologist, NOAA Fisheries