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Richard V. Salas  
Director, DCRM

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Ref No: PLN22-008

Barbara Alberti  
Superintendent  
US Dept of the Interior, National Park Service  
American Memorial Park  
PO BOX 5198 CHRB  
Beach Rd, Garapan  
Saipan, MP 96950

**RE: Federal Consistency Determination for the Proposed Shoreline Stabilization for Marina Revetment Structures**

Dear Superintendent Alberti,

The Commonwealth of the Northern Mariana Islands (CNMI) Division of Coastal Resources Management (DCRM) has reviewed the Coastal Zone Management Act (CZMA) federal consistency determination (CD) from the National Park Service (NPS) received on September 28, 2021 for two proposed shoreline stabilization projects at Smiling Cove Marina and Outer Cove Marina, within American Memorial Park (AMP). DCRM also reviewed supplemental information submitted with the CD, including various federal and local permits, consultations, plans, and technical reports.

DCRM has been in discussion with NPS for these proposed activities since December 2019 and appreciates the efforts of NPS to ensure interagency collaboration. In light of all the information received for the proposed activity, DCRM concurs with NPS's determination based upon the conditions further outlined herein as they pertain to the federally-approved enforceable policies of the CNMI Coastal Zone Management Program. This determination also serves as DCRM's concurrence for all of the U.S. Army Corps of Engineer (USACE) Nationwide Permits (NWP) under Application #POH-2019-00227 for NPS's proposed activities.

**2 CMC §1511(a)(17) (Public Law 3-47 §3(a)(17)); Northern Mariana Islands Administrative Code (NMIAC) 15-10-315 & 15-10-325; NMIAC 15-10-501 & 15-10-505: Concerning Take of Corals and Seagrasses**

NPS analyzed the proposed activities to determine if they are consistent to the maximum extent practicable with DCRM's federally approved enforceable policies in Coastal Resources Management Rules and Regulations NMIAC 15-10 and 2 CMC §1511 (CNMI Public Law 3-47). NPS analyzed Public Law 3-47 §3(a)(17) and determined that "[m]itigation on the taking of corals would be addressed in accordance with the requirements of the Essential Fish Habitat

Provisions of the Magnuson Stevens Fishery Conservation and Management Act.” CD at 9. NPS also explained this further in its determination of NMIAC §15-10-325, noting that “[t]he Underwater Resource Survey Report recorded numerous very small encrusting coral species growing on the boulder revetment. Several larger massive and branching corals were found associated with the concrete mattress structure. All aspects of the proposed project would be undertaken in accordance with the requirements of the Essential Fish Habitat provisions of the Magnuson Stevens Fishery Conservation and Management Act. A coral mitigation plan is currently under development in concert with NMFS.” CD at 10.

The National Marine Fisheries Service (NMFS) Essential Fish Habitat (EFH) Consultation dated November 13, 2021 was reviewed by DCRM to determine the scope of mitigation recommended by NMFS for NPS’s proposed activities. NPS has proposed to translocate massive *Porites sp.* corals and transplant patches of *Enhalus acoroides* seagrass, and monitor them thereafter, to minimize the damage caused to EFH. NPS has also proposed to offset EFH conversion of 0.69 acres resulting in loss of 708 coral colonies and 9% of seagrass benthic cover through a marine debris plan that includes 26 hours of marine debris removal. NMFS provided conservation recommendations to address the potential adverse effects to EFH.

NMIAC 15-10-315 and 15-10-325 lists DCRM management standards and use priorities for projects that fall within Areas of Particular Concern (APC) for corals and seagrasses. 2 CMC §1511(a)(17) (Public Law 3-47 §3(a)(17)) contains the enforceable policy of protecting coastal resources from take beyond sustainable levels (in this case, specifically corals and seagrasses). DCRM is concerned with adverse effects to corals and seagrasses throughout the project duration and will continue to monitor NPS’s mitigation to ensure the protection of affected coastal resources. DCRM therefore also recommends the following:

- Increased frequency in monitoring to 1, 6, 12, and 24-month post relocation of corals and seagrass.
- Expand list of coral species to be relocated to include *Porites spp.* and *Pocillopora damicornis* that are > 10 cm to nearby habitat or temporary staging area, and *Isopora palifera* to be moved to the DCRM coral nursery.
- A plan needs to be in place in case silt curtains or other BMPs fail that can cause negative impacts to adjacent habitats, and what suitable actions will be taken for mitigation from such events; i.e, inclusion of contingency plans for failed in-water BMPs.
- Relocation of seagrass and corals will also need consultation with DCRM. Suitable relocation sites can include nearby habitat, coral nurseries, a temporary staging area to hold coral fragments that could be replanted back to the project site, or a combination of all three depending on species and size of the colony. There is a concern that recommended sites for relocation within the West Channel and Outer Cover area are too close in proximity to the project site, and can be severely impacted if silt curtains or other BMPs fail. The west causeway is a narrow and is high in boat traffic area. Curtains or other BMPs will decrease the width especially during low tides and possibly harder to spot at night, increasing the likelihood of damage.

*Condition: To be more consistent with NMIAC §15-10 CRM Rules and Regulations and 2 CMC § 1511 (Public Law 3-47), NPS will continue discussions and data sharing with DCRM regarding the project status and proposed mitigation, including all monitoring data for translocated corals and transplanted seagrasses and the status of mitigation agreements between NPS and NMFS.*

**2 CMC § 1511(a)(13) (Public Law 3-47 §3(a)(13)); DEQ Water Quality Standards (WQS), Northern Mariana Islands Administrative Code (NMIAC) §65-130**

The DEQ WQS outlined in NMIAC §65-130 are federally-approved enforceable policies for the CNMI Coastal Zone Management Program (CZMP), as authorized by 16 U.S.C. § 1456 (f); and meeting these standards is essential to achieving consistency with the CNMI CZMP. While Clean Water Act Section 401 federally authorizes Water Quality Certifications (WQCs) for relevant federal actions in the CNMI, and WQCs are a separate reviewing process from the CZMA Section 307 federal consistency process, there is a great deal of overlap between the two processes. NPS noted that, “[d]espite marina waters being of lower quality, excavation activities during demolition/construction of the two shoreline revetment structures has a potential to violate CNMI Water Quality Standards” and that “[t]he National Park Service will abide by conditions included in the CNMI Section 401 Water Quality Certification authorization that would be issued for these projects.” CD at 12. 2 CMC § 1511(a)(17) (CNMI Public Law 3-47 §(a)(13) also establishes that it is the policy of the CNMI to require compliance for all local air and water quality laws and applicable federal standards.

The NPS Section 401 Water Quality Certification Application Monitoring Plan was reviewed by DCRM to evaluate potential coastal effects that would violate DEQ WQS enforceable policies and to determine consistency to the maximum extent practicable. Since the WQC requirement in § 65-130 Part 600 has yet to be determined by BECQ, DCRM’s CZMA concurrence will be conditional upon this requirement being met. NPS’s activities will fall under §65-130-530 Dredging and Discharge of Dredged or Fill Material and will therefore require the use and maintenance of BMPs and other conditions deemed necessary by BECQ. This may include dewatering requirements, multiple turbidity curtains, spill prevention BMPs, appropriate corrective actions to meet violations, limitations for mixing zones, and work stoppage for coral spawning periods.

*Condition: To meet consistency with NMIAC §65-130 DEQ WQS, NPS will abide by all conditions listed in CNMI DEQ Water Quality Certifications and by any additional protective measures, limitations, and monitoring or mixing zone requirements that BECQ identifies as being necessary to protect resources of concern. This shall include a potential stoppage period for coral spawning annually around May through August 2022 that shall be no less than twenty-one calendar days around each full moon, if determined to be applicable by BECQ, and will require further coordination.*

**2 CMC § 1511(a)(17) (Public Law 3-47 §3(a)(17)); NMIAC § 15-10-315**

NPS evaluated coastal effects regarding take of ESA listed species and indicated that “NPS initiated Endangered Species Act Section 7 informal consultation with both the USFWS and

NOAA NMFS on 31 July 2021. The USFWS concurred with the NPS effects determination via letter dated 9 August 2021.” CD at 9. In addition, NPS indicated that “The two shoreline revetment projects are expected to have no measurable negative impacts on the lagoon ecosystem and will not prevent or hamper any actions supported by this policy.” CD at 10. NPS is currently awaiting NMFS’s Section 7 informal consultation effects determination. 2 CMC § 1511(a)(17) (CNMI Public Law 3-47 §3(a)(17)) establishes that it is the policy of the CNMI to protect all coastal resources, particularly sand, coral and fish, from taking beyond sustainable levels, and in the case of marine mammals and species on the Commonwealth endangered species list, from any taking whatsoever. In addition, NMIAC § 15-10-315(4)(iii) establishes that the take of protected marine species is an unacceptable use.

*Condition: To meet consistency with 2 CMC §1511(a)(17) (Public Law 3-47 §3(a)(17)) and NMIAC § 15-10-315(4)(iii), which protect ESA-listed and protected marine species from take, NPS must receive concurrence with NMFS’s ESA Section 7 informal consultation prior to commencement of proposed activities.*

Pursuant to 15 C.F.R. §930.4, a conditional concurrence automatically becomes an objection if the conditions are not satisfied. If the requirements in 15 C.F.R. §930.4(a)(1) through (3) are not met, then all parties shall treat this conditional concurrence letter as an objection pursuant to 15 C.F.R. 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. Should you have any questions or require further information, please contact Arthur Charfauros at (670) 664-8314 or fedcon@dcrn.gov.mp.

Sincerely,



RICHARD V. SALAS  
Director  
Division of Coastal Resources Management

cc: Tim Clark (WAPA-AMME)  
Jennifer Rebenack (DSC)  
Jonathan Gervais (PWR)  
Larry Maurin (BECQ-DEQ)  
Albert Williams (USACE)