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ROUTINE PROGRAM CHANGE

TO COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

COASTAL MANAGEMENT PROGRAM

Request for Concurrence

August 2018

Submitted by: The Division of Coastal Resources Management P.O. Box 501304, Saipan, MP 96950
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INTRODUCTION

The Commonwealth of the Northern Mariana Islands (CNMI) Division of Coastal Resources Management (DCRM) requests the National Oceanic and Atmospheric Administration (NOAA) Office for Coastal Management (OCM) to concur in the incorporation of a Routine Program Change to the Commonwealth's Coastal Management Program (CMP). In addition to minor grammar and punctuation changes, this routine regulatory update clarifies terms and policies enabled by Public Law 3-47, which has been a part of the CNMI's CMP since its approval for incorporation in April of 1986. In accordance with the requirements for Routine Program Changes set forth in 15 CFR §923.84 and the Program Change Guidance document of July 1996 from OCM, the CNMI has prepared the following analysis explaining why the changes to the Commonwealth CMP are Routine Program Changes and not Amendments as described in 15 CFR 923.80(d).

ANALYSIS OF CHANGES

Aside from minor changes in language (i.e. reordering of sentences, ensuring gender neutrality, and removing minor typos) the implementing regulations of Public Law 3-47, 2 CMC §§ 1500 et seq., found in NMIAC § 15-10 have been amended in order to add clarifying terms and reflect updated policies. These regulation updates were developed with and approved by the Coastal Resources Management Agency Board and publicly vetted over a year and a half public notice and outreach effort, consisting of two sets of three public meetings held on Saipan, Tinian, and Rota, as well as numerous notice of publications in the two local papers and on the DCRM website before engaging in the 30-day notice and comment period required by the Administrative Procedures Act, 1 CMC §§ 9100 et seq. Upon the conclusion of this regulatory review effort, the DCRM regulations have been updated as follows:

In addition to minor grammar and punctuation updates, the proposed amendments add clarifying terms and reflect updated policies to the Coastal Resources Management Regulations. Proposed changes aim to streamline regulations and further resource management objectives by amending sections on authority (NMIAC sec. 15-10-005), definitions (NMIAC sec. 15-10-020), jurisdiction from "high tide line" instead of "mean high water mark" (NMIAC sec. 15-10-025, NMIAC sec. 15-10-335), permit requirements (Chapter NMIAC sec. 15-10 Part 100), permit process and fees (NMIAC Chapter 15-10 Part 200), permit review standards and Areas of Particular Concern (APC) guidelines (NMIAC Chapter 15-10 Part 300 through 500), major siting review procedures (NMIAC Chapter 15-10 Part 500), permit extension and amendment fees (NMIAC Chapter 15-10 Part 600 through 700), enforcement actions (NMIAC Chapter 15-10 Part 800 through 900) and federal consistency language (NMIAC Chapter 15-10 Part 1500).

DCRM has identified the following policies as containing standards such that they qualify as enforceable policies for the purposes of CZMA review:

- a. NMIAC 15-10-020 Definitions
- b. NMIAC 15-10-105 APC Permits for Minor and Other Developments

- c. NMIAC 301 General Standards for all CRM Permits;
- d. NMIAC 15-10-303 Standards to Avoid Adverse Impacts;
- e. NMIAC 15-10-305 General Criteria for CRM Permits (with the exception of subsection (e));
- f. NMIAC 15-10-311 Specific Criteria; Areas of Particular Concern; Impact Avoidance, Minimization, and Mitigation Required;
- g. NMIAC 15-10-315 Specific Criteria; Areas of Particular Concern; Lagoon and Reef;
- h. NMIAC 15-10-320 Specific Criteria; Areas of Particular Concern Managaha and Anjota;
- i. NMIAC 15-10-325 Specific Criteria; Areas of Particular Concern; Coral Reefs;
- j. NMIAC 15-10-330 Specific Criteria; Areas of Particular Concern; Wetlands and Mangroves;
- k. NMIAC 15-10-335 Specific Criteria; Areas of Particular Concern; Shorelines;
- l. NMIAC 15-10-340 Specific Criteria; Areas of Particular Concern; Ports and Industrial;
- m. NMIAC 15-10-345 Specific Criteria; Areas of Particular Concern; Coastal Hazards;
- n. NMIAC 15-10-350 Height, Density, Setback, Coverage, and Parking Guidelines;
- o. NMIAC 15-10-505 Specific Criteria for Major Sitings;
- p. NMIAC 15-10-610(e) Mandatory Conditions.

To support NOAA's review and concurrence of the incorporation of these changes, we further note that of the five program approvability areas – (i) uses subject to management; (ii) special management areas; (iii) boundaries; (iv) authorities and organization; or (v) coordination, public involvement, and the national interest – these changes primarily pertain to areas (i) and (v). However, these changes have been determined not to be substantial.

Thus, the updates of NMIAC §§15-10 et seq. should be considered a Routine Program Change, and not an Amendment.

Further details of regulatory changes are listed in the enclosed table.

PUBLIC NOTICE

The public notice announcing the submittal of this RPC to OCM and directing comments as to whether the proposed action constitutes an RPC to OCM is enclosed below. The notice was published in print and posted to the DCRM website on August 29, 2018.

Summary of DCRM Regulatory Update, January 2018

* Sections marked with asterisk indicate internal program elements that are not intended for adoption as enforceable policies by OCM;

“No change” indicates no significant changes made to a section, although minor punctuation / capitalization updates may have occurred.

Section Number and Title	Change Summary	Date Adopted	Date Effective
NMIAC § 15-10-005 Authority	Clarify “authority” of regulations in terms of reorganization and authority to establish rules and regulations.	Jan. 28, 2018	Feb. 8, 2018
NMIAC § 15-10-020 Definitions	<p>Updates and additional definitions including but not limited to jurisdiction from “high tide line” instead of “median high water mark”, clarifies wetland definition using the U.S. Army Corps’ criteria with the exception of a “federal nexus” requirement, defining “coastal high hazard area” as FEMA zones V and VE, including consideration of adverse impacts to air quality as detailed in enabling legislation at 2 CMC § 1511(13), incorporating CEQ definition of “cumulative impact”, and specifying requirements for “authorized representatives” in permit application management.</p> <p>*DCRM acknowledges the definition of “effect” at 15-10-020(dd) is intended for local application only and that for federal consistency review purposes the OCM definition at 16 U.S.C. § 1456(g) is controlling.</p>	Jan. 28, 2018	Feb. 8, 2018
NMIAC § 15-10-025 Conflicts with Regulations of Other CNMI Government Agencies*	Clarifies citation for Saipan Zoning Code and measurement of shoreline from high tide line.	Jan. 28, 2018	Feb. 8, 2018
NMIAC § 15-10-101 Types of Permits and When Permits are Required	Clarifies early planning / consultation required for projects proposed in flood zones or projects proposing hardening shorelines, and consideration of best management practices for stormwater control required in high priority watershed areas.	Jan. 28, 2018	Feb. 8, 2018
NMIAC § 15-10-105 APC Permits for Minor and Other Developments	Articulates policy of implementation of the mitigation hierarchy to avoid, minimize, and mitigate negative impacts in areas of particular concern.	Jan. 28, 2018	Feb. 8, 2018

NMIAC § 15-10-110 Temporary Permits for Emergency Repairs	No change.		
NMIAC § 15-10-115 APC, Multiple APC, and Major Siting Permits	Clarifies thresholds for permit requirements.	Jan. 28, 2018	Feb. 8, 2018
NMIAC § 15-10-120 Exceptions from CRM Permit Requirements	Clarifies exceptions to CRM permit requirements.	Jan. 28, 2018	Feb. 8, 2018
NMIAC § 15-10-201 CRM Permit Process – Introduction*	Clarifies Open Government Act application to CRM Agency Board meetings and enables interagency pre-application meetings on request.	Jan. 28, 2018	Feb. 8, 2018
NMIAC § 15-10-205 Permit Application Procedures	Clarifies permit application procedures including enabling digital submission of permit applications and attachments, specifies signatory and representative authorization requirements, allows for “De Minimis Waiver” requests and review procedures for APC application fees, and implements incentivized fee reductions for marine sports and major siting applications.	Jan. 28, 2018	Feb. 8, 2018
NMIAC § 15-10-206 Permit Application Contents	Moved text from NMIAC § 15-10-205 regarding permit requirements to simplify application content requirements.	Jan. 28, 2018	Feb. 8, 2018
NMIAC § 15-10-207	Clarifies certification of completeness procedures.	Jan. 28, 2018	Feb. 8, 2018
NMIAC § 15-10-210 Notice of Application*	No change.		
NMIAC § 15-10-215 Review of Application*	Clarifies approval process in event of deadlocked CRM Agency Board regarding major siting permit decision(s).	Jan. 28, 2018	Feb. 8, 2018
NMIAC § 15-10-220 CRM Permit Hearing	Provides DCRM Director discretion to require applicants physically post notice of public hearings and allows for additional information requests if new matters are raised at public hearings.	Jan. 28, 2018	Feb. 8, 2018
NMIAC § 15-10-225 Filing of Documents	Codifies policy that permit applications must contain sufficient level of detail to support review of potential environmental effects and must avoid “piecemeal” development by having “independent utility.”	Jan. 28, 2018	Feb. 8, 2018

NMIAC § 15-10-230 Decision on the CRM Application	Clarifies requirements of unanimity and procedures for denial /refusal for the CRM Agency Board and unifies notice of publication requirements so notice is given every 14 days for all permits.	Jan. 28, 2018	Feb. 8, 2018
NMIAC § 15-10-235 Appeal of the CRM Permit Decision	No change.	Jan. 28, 2018	Feb. 8, 2018
NMIAC § 15-10-240 Commonwealth Superior Court	Clarifies judicial review for final decisions of the CRM Appeals Board.	Jan. 28, 2018	Feb. 8, 2018
NMIAC § 15-10-301 General Standards for all CRM Permits	Clarifies review standard that applicant must show by a fair preponderance of the evidence that the project will not have a significant adverse impact on the coastal environment or its resources. *DCRM acknowledges that the standard for review for actions undertaken by federal agencies is actions that “may have reasonably foreseeable effects”.	Jan. 28, 2018	Feb. 8, 2018
NMIAC § 15-10-303 Standards to Avoid Adverse Impacts	Moved text from NMIAC § 15-10-301 to emphasize requirement that DCRM and Agency Officials base permit issuance decisions on standards to avoid adverse impacts as enabled by the CNMI’s Coastal Resources Management Act of 1983, 2 CMC §§ 1500 et seq.	Jan. 28, 2018	Feb. 8, 2018
NMIAC § 15-10-305 General Criteria for CRM Permits	Clarifies expectations of cumulative impact analysis, articulates implementation of the mitigation hierarchy to avoid, minimize, and mitigate negative impacts of projects, and requires DCRM Director and Agency Board to consider the adequacy of buffers in environmentally sensitive areas, considering current conditions and future projections where this data is available.	Jan. 28, 2018	Feb. 8, 2018
NMIAC § 15-10-310 Specific Criteria: Areas of Particular Concern; Generally	Enables CRM Agency Officials to incorporate conditions into APC permits to address specific resource management concerns at the discretion of the DCRM Director.	Jan. 28, 2018	Feb. 8, 2018
NMIAC § 15-10-311 Specific Criteria; Areas of Particular Concern; Impact Avoidance, Minimization, and Mitigation Required	Articulates requirements for impact avoidance, minimization, and mitigation through implementation of the mitigation hierarchy. *Affirmative duties imposed upon DCRM are not proposed as enforceable policies, however, resulting mitigation guidance will be included in permit review and is intended for incorporation.	Jan. 28, 2018	Feb. 8, 2018

NMIAC § 15-10-315 Specific Criteria; Areas of Particular Concern; Lagoon and Reef	Includes sustainable commercial marine sports operation as a high priority use within the Lagoon and Reef APC and removes “seaweed” from “seagrass” management definition.	Jan. 28, 2018	Feb. 8, 2018
NMIAC § 15-10-320 Specific Criteria; Areas of Particular Concern; Managaha and Anjota	Includes sustainable commercial marine sports operation as a high priority use within the Lagoon and Reef APC and removes “seaweed” from “seagrass” management definition.	Jan. 28, 2018	Feb. 8, 2018
NMIAC § 15-10-325 Specific Criteria; Areas of Particular Concern; Coral Reefs	Includes coral enhancement or mitigation projects as “moderate” use priority for coral reef APC.	Jan. 28, 2018	Feb. 8, 2018
NMIAC § 15-10-330 Specific Criteria; Areas of Particular Concern; Wetlands and Mangroves	Clarifies wetland definition using Army Corps criteria with the exception of “federal nexus” requirement, and specifies application of the regional supplement for wetland delineations. Codifies use of Rapid Assessment Methodology for wetland valuation and wetland buffer policies articulated in the 1990 Comprehensive Saipan Wetlands Management Plan and the 2017 wetlands buffers policy brief.	Jan. 28, 2018	Feb. 8, 2018
NMIAC § 15-10-335 Specific Criteria; Areas of Particular Concern; Shorelines	Updates shorelines management standards to require consideration of effects of onshore and nearshore activities on shoreline morphology and vegetation and mandates that where possible, soft stabilization measures should be implemented over “hard” shoreline stabilization or armoring. Encourages use of floating, non-permanent socks or boardwalks and projects resulting in enhancement of existing structures within management standards.	Jan. 28, 2018	Feb. 8, 2018
NMIAC § 15-10-340 Specific Criteria; Areas of Particular Concern; Ports and Industrial	No change.	Jan. 28, 2018	Feb. 8, 2018
NMIAC § 15-10-345 Specific Criteria; Areas of Particular Concern; Coastal Hazards	Updates definition of “high hazard flood zones” (changed from “coastal flood zone”) to include FEMA zones V and VE, defined steep slopes as slopes greater than 30%, and expanded management standards.	Jan. 28, 2018	Feb. 8, 2018

NMIAC § 15-10-350 Height, Density, Setback, Coverage, and Parking Guidelines	Increased shoreline setbacks to reflect best available data on increasing sea levels and storm surge extents.	Jan. 28, 2018	Feb. 8, 2018
NMIAC § 15-10-401 Standards for APC Creation – Authority*	No change.	Jan. 28, 2018	Feb. 8, 2018
NMIAC § 15-10-405 Procedure*	Clarifies procedure that CRM Agency Officials approve proposed creation or modification of Areas of Particular Concern through regulatory review and update procedures.	Jan. 28, 2018	Feb. 8, 2018
NMIAC § 15-10-410 Procedure*	No change.	Jan. 28, 2018	Feb. 8, 2018
NMIAC § 15-10-410 New APC Standards and Use Priorities*	No change.	Jan. 28, 2018	Feb. 8, 2018
NMIAC § 15-10-501 Determination of a Major Siting	Clarifies definition of “major siting” and procedure for DCRM referral for review by the Agency Officials in cases where questions as to major siting classification exist or where review is requested by the Board and directs that all projects classified as major sitings apply for a major siting permit and conform with policies enumerated in 2 CMC § 1511.	Jan. 28, 2018	Feb. 8, 2018
NMIAC § 15-10-505 Specific Criteria for Major Sitings	Clarifies assessment of cumulative environmental impacts (projects shall be selected and developed in order to avoid and minimize primary, secondary, and cumulative environmental impacts) and specifies that full project proposals are required so that actions can be considered together for the purposes of cumulative impact analysis. Where data is available, current and future risks should be considered when assessing potential direct, indirect, and cumulative impacts. To limit avoidable impacts from coastal hazards, major siting proposals must meet or exceed flood hazard reduction standards as codified in NMIAC Chapter 155-10.2 Part 200.	Jan. 28, 2018	Feb. 8, 2018
NMIAC § 15-10-601 Use of Conditions in CRM Permits	No change.	Jan. 28, 2018	Feb. 8, 2018
NMIAC § 15-10-605 Purpose and Scope	No change.	Jan. 28, 2018	Feb. 8, 2018

NMIAC § 15-10-610 Mandatory Conditions	Updated timing and duration mandatory condition to allow for the Director to extend or amend permits upon expiration with good cause.	Jan. 28, 2018	Feb. 8, 2018
NMIAC § 15-10-615 Insurance Condition	No change.	Jan. 28, 2018	Feb. 8, 2018
NMIAC § 15-10-701 CRM Permit Amendment	Clarifies permit amendment procedure and increases threshold of “significant alternation” from \$5,000 to \$50,000 and adds reopener clause to allow for permit amendments or modifications if a new adverse impact is discovered.	Jan. 28, 2018	Feb. 8, 2018
NMIAC § 15-10-705 Transfer of Interest	Clarifies transfer of interest procedures.	Jan. 28, 2018	Feb. 8, 2018
NMIAC § 15-10-801 Enforcement of CRM Permits: Purpose	No change.	Jan. 28, 2018	Feb. 8, 2018
NMIAC § 15-10-805 Grounds for Action	Clarifies grounds for action for violation of permit conditions, regulations, or material misstatement.	Jan. 28, 2018	Feb. 8, 2018
NMIAC § 15-10-810 Warning	Clarifies discretionary warning procedures.	Jan. 28, 2018	Feb. 8, 2018
NMIAC § 15-10-815 Permit Enforcement Notice	Clarifies permit enforcement notice procedures.	Jan. 28, 2018	Feb. 8, 2018
NMIAC § 15-10-820 Enforcement Action and Suspension	Clarifies enforcement action procedures.	Jan. 28, 2018	Feb. 8, 2018
NMIAC § 15-10-825 Permit Hearing Enforcement	Clarifies permit enforcement hearing procedures and timeline.	Jan. 28, 2018	Feb. 8, 2018
NMIAC § 15-10-830 Remedies	Enables implementation of “supplemental environmental projects” when proposed for the purposes of enforcement settlement agreements.	Jan. 28, 2018	Feb. 8, 2018
NMIAC § 15-10-901 Enforcement of CRM Standards and Policies: Purpose	No change.	Jan. 28, 2018	Feb. 8, 2018
NMIAC § 15-10-905 Investigation	Clarifies investigation responsibilities and procedures.	Jan. 28, 2018	Feb. 8, 2018
NMIAC § 15-10-910	No change.	Jan. 28, 2018	Feb. 8, 2018

Conditions Warranting Investigation			
NMIAC § 15-10-915 Warning	No change.	Jan. 28, 2018	Feb. 8, 2018
NMIAC § 15-10-920 Enforcement	Clarifies violation and response timeline and procedures.	Jan. 28, 2018	Feb. 8, 2018
NMIAC § 15-10-925 Determination of Fines and Penalties	No change.	Jan. 28, 2018	Feb. 8, 2018
NMIAC § 15-10-930 Enforcement Hearing	Clarifies hearing procedures.	Jan. 28, 2018	Feb. 8, 2018
NMIAC § 15-10-935 Enforcement by Commonwealth Superior Court	No change.	Jan. 28, 2018	Feb. 8, 2018
NMIAC § 15-10-935 Enforcement by Criminal Prosecutions	No change.	Jan. 28, 2018	Feb. 8, 2018
NMIAC § 15-10-1001 Public Information and Education*	No change.	Jan. 28, 2018	Feb. 8, 2018
NMIAC § 15-10-1101 CRM Coastal Advisory Council: Creation*	No change.	Jan. 28, 2018	Feb. 8, 2018
NMIAC § 15-10-1105 Adopt Internal Procedures*	No change.	Jan. 28, 2018	Feb. 8, 2018
NMIAC § 15-10-1110 Advise CRM*	No change.	Jan. 28, 2018	Feb. 8, 2018
NMIAC § 15-10-1115 Conduct Meetings*	No change.	Jan. 28, 2018	Feb. 8, 2018
NMIAC § 15-10-1201 CRM Public Records: Retention*	Articulates procedures for CRM to retain and store documents, clarifying digital storage is acceptable.	Jan. 28, 2018	Feb. 8, 2018
NMIAC § 15-10-1205	Articulates procedures for and application of the Open Government Act to public information.	Jan. 28, 2018	Feb. 8, 2018

Public Access to CRM Records*			
NMIAC § 15-10-1310 CRM Access to Records: Private Records	Articulates limits to private record requests.	Jan. 28, 2018	Feb. 8, 2018
NMIAC § 15-10-1310 CRM Access to Records: Public Records	Articulates limits to public record requests in accordance with applicable federal requirements.	Jan. 28, 2018	Feb. 8, 2018
NMIAC § 15-10-1401 Computation of Time	No change.	Jan. 28, 2018	Feb. 8, 2018
NMIAC § 15-10-1500 – Federal Consistency	Updated to conform with national standards for application of federal consistency through the state coastal zone management program.	Jan. 28, 2018	Feb. 8, 2018



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Public Notice

From the COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
COASTAL MANAGEMENT PROGRAM
of the CNMI'S DIVISION OF COASTAL RESOURCES MANAGEMENT

DATE: August 29, 2018¹

NOTICE OF APPROVED PROGRAM CHANGES: Pursuant to 15 CFR § 923.84, notice is hereby given that the National Oceanic and Atmospheric Administration's Office for Coastal Management (OCM) has reviewed a routine program change request (RPC) submitted on May 17, 2018 by the Division of Coastal Resources Management (DCRM) and has approved changes to the CNMI Coastal Management Program (CMP).

OCM has approved 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 subpart C of the Federal Consistency regulations. 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. 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. In addition, OCM recognizes the CNMI Air Pollution Control Program requirements at 2 CMC §§ 3121 and 3122 as enforceable policies of the CNMI CMP.

The complete approved list of federal actions subject to CZMA review, along with OCM's full review of the RPC, is available on the Federal Consistency page of the DCRM website at: <https://dcrm.gov.mp/wp-content/uploads/crm/CNMI-2018-1-Decision-Letter-8-22-2018.pdf>.

NOTICE OF ROUTINE PROGRAM CHANGE REQUEST: This notice also serves to inform the public that, in response to OCM's review, DCRM is submitting an additional RPC request to amend DCRM regulations codified at NMIAC § 15-10 to reflect minor changes in wording and to clarify terms, and to recognize certain policies as enforceable policies of the CNMI CMP.

DCRM has determined that these updates constitute a routine program change to DCRM's federally-approved coastal management program because the actions do not make any substantial changes to: (1) uses subject to management; (2) special management areas; (3) boundaries; (4) authorities and organization, or (5) coordination, public involvement, and national interest.

¹ Please note that the website links provided in this notice were updated on September 13, 2018.

DCRM is requesting that OCM concur with this determination. The full Routine Program Change memo submitted to OCM can be accessed on the Federal Consistency page of the DCRM website at: https://dcrm.gov.mp/wp-content/uploads/crm/CNMI-DCRM_Ch15-10-Regulations-RPC-request_082918-1.pdf.

Comments regarding whether this program modification does or does not constitute a routine program change may be submitted to NOAA OCM within three weeks of the date of this notice.

Please send all comments to:

Ms. Joelle Gore, Acting Chief
Coastal Programs Division
Office for Coastal Management
NOAA National Ocean Service
1305 East West Hwy., Room 11321
Silver Spring, MC 20910

If you have any questions regarding this notice, please contact DCRM at 670-664-8510 or FedCon@dcrm.gov.mp.