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November 13, 2020

Ref No: PLN21-001

Mr. John F. Salas, P.E.
Regional Environmental Director (J45) / EV BLL
Department of the Navy
Naval Facilities Engineering Command Marianas
PSC 455, Box 195
FPO AP, Guam 96540-2937

Re: Federal Consistency Determination for the Proposed Tinian Harbor Repairs Within the Coastal Zone of the Commonwealth of the Northern Mariana Islands

Dear Mr. Salas,

The Commonwealth of the Northern Mariana Islands' (CNMI) Division of Coastal Resources Management (DCRM) has reviewed the Department of the Navy's Federal Consistency Determination (CD) received on September 15, 2020 for proposed activities at Tinian Harbor. DCRM also reviewed the requested list of supplemental information which was provided by the Navy on October 28, 2020:

- Supplemental Analysis to address the Division of Environmental Quality (DEQ) Water Quality Standards (NMIAC, §65-130, Parts 001, 100, 200, 400, & 500)
- Documented personal communication, Smith, S. (2020). Tinian Harbor Coral Reef Discussion
- Smith, S. H. (2019). May 2019 Assessment of Selected Portions of Tinian Harbor
- USACE (2018). Tinian Harbor Feasibility Study

DCRM appreciates the collaborative efforts of the Navy throughout the CZMA Section 307 federal consistency process for the proposed Tinian Harbor Repairs, including the sharing of all requested supplemental information. In light of all the information received for the proposed activity, DCRM concurs with the Navy's determination based upon the conditions further outlined herein.

DEQ Water Quality Standards, Northern Mariana Islands Administrative Code (NMIAC §65-130)

DEQ Water Quality Standards (WQS) are federally-approved enforceable policies for the CNMI Coastal Management Program (CMP), and meeting these standards is essential to achieving consistency with the CNMI CMP. 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. The WQCs are integrated into the enforceable policies of NMIAC §65-130, as noted in §65-130-010 Anti-degradation Policy, §65-130-605 Application for Water Quality Certification, §65-130-615 Determination of Water Quality Certification, and §65-130-620 Water Quality Certification & General Provisions, among other sections of NMIAC §65-130.

Turbidity requirements outlined in the DEQ Water Quality Standards (WQS) under Part 400 (Specific Water Quality Criteria) state that turbidity values (NTU) at any point shall not exceed 1.0 NTU over ambient conditions. NMIAC § 65-130-435. The Navy has recognized that sediment trenching would occur and that there is already a high amount of turbidity in the proposed project area, stating, "…the Proposed Action may cause a temporary and localized increase in turbidity, but would not contribute to decreased water quality within the proposed action area." CD at p.18. The Supplemental Analysis (SA) also states that, "Given the brief periods and limited area where sediment would be suspended as a result of trenching activities, and the already high turbidity of the proposed action area, a measurable increase in total filterable suspended solids or turbidity would not be expected" CD SA at p. 6. While the Navy has performed a supplemental analysis of the Proposed Action's compliance with these WQS, DCRM is concerned with the possibility that these turbidity value thresholds may be exceeded and that the Proposed Action will result in other loss of water quality throughout the project duration.

Condition: To be more consistent with NMIAC §65-130 DEQ WQS, the Navy will abide by all conditions listed in CNMI DEQ Water Quality Certifications for Top-Side and In-Water Repairs including, but not limited to, monitoring of turbidity to meet standards and Best Management Practices.

CNMI Coastal Resources Management (CRM) Rules and Regulations (NMIAC §15-10)

The enforceable policies outlined in the Coastal Resources Management Rules and Regulations were analyzed by the Navy to determine if the proposed action is consistent with management standards set forth in DCRM regulations. The Navy analyzed NMIAC §15-10 and determined that within Lagoon and Reef Areas of Particular Concern (APC) (regulated at §15-10-315) and Coral Reefs APC (regulated at §15-10-325) "temporary disturbance of the coral community may occur, [but] the Proposed Action would ensure that continuing degradation of the connecting pier, north quay wall, and berths 1 and 2 would not impact water quality and living resources in the future," CD at p.15, and that "the Proposed Action would reduce the quantity of coral on the pier pilings, [but] this reduction would be temporary as the new surface being installed would provide habitat for future corals to colonize." CD at p.18.

The CD also lists Protective Measures and Best Management Practices such that:
"All in-water activities will cease during the primary coral spawning events each year for hard (scleractinian) and soft (octocorallia) corals. The 2021 coral spawning period is estimated to be 21 days total, including 8 days prior to the full moon and 14 days after:

- Soft corals: May 18–June 8 (Full moon May 26)
- Hard corals: July 5–August 6 (Full moon July 23–24)." CD at p.6.

While the proposed activity is expected to provide beneficial uses through harbor improvement requirements, NMIAC §15-10-311 outlines specific criteria for impact avoidance and mitigation for projects within an APC. These may include further mitigation requirements in order to protect and enhance coastal resource management within APCs. The Navy has determined that disturbances to coral colonies existing in the proposed area would indeed occur, although temporary. DCRM is concerned with the scope of these disturbances throughout the project duration and proposes further mitigation for these APCs.

Condition: To be more consistent with NMIAC §15-10 CRM Rules and Regulations, the Navy will include in its Best Management Practices the ceasing of all in-water activities during the spawning period for hard corals to be extended from May through August 2021. Additionally, for in-water construction activities, hard coral colonies large enough to survive relocation that can be successfully removed without significant damage should be relocated if anode installation cannot avoid damaging colonies.

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.

Sincerely,

JANICE E. CASTRO
Director
Division of Coastal Resources Management

Attachment(s):

- Public Comments: Bureau of Environmental and Coastal Quality, Division of Environmental Quality. Received October 9, 2020.
- Public Comments: Bureau of Environmental and Coastal Quality, Division of Coastal Resources Management, Marine Monitoring Team. Received October 9, 2020.

cc: Mr. Dana Lujan, US Navy NAVFAC
Ms. Glenna Reyes, CNMI CBMA
Mr. Eliceo Cabrera, CNMI BECQ

Comments on NAVFAC CZMA Consistency Determination Tinian Harbor Repairs

5.1 Water Resources, 5.2.1 Coral, and 5.2.2 Essential Fish Habitat – Page 25

<u>Comment 1.</u> NAVFAC recognizes that sediment where SPiRe panels will be trenched and attached to the sheet pile will cause an increase in turbidity. Although, NAVFAC states that the redistribution of sediment will be over the course of a one-day period, and that, there is "…already high turbidity of the proposed action area."

ISSUES:

- No base line data was provided by NAVFAC to support the stated "high turbidity levels" at the Harbor. Although page 272 of the 2018 CNMI 305(b) and 303(d) Water Quality Assessment Integrated Report (IR) was cited (Yuknavage,et.al., 2018), this document only has 203 pages, so it is unclear to which data NAVFAC is citing.
- In addition, the CNMI IRs do not use beach monitoring turbidity data to determine whether a waterbody is impaired. Therefore, NAVFAC's conclusion that increased turbidity would not be an issue is unsupported. To clarify, turbidity, total suspended solids, total dissolved solids and temperature data are used for monitoring permitted in-water activities, and those at surface that may cause water quality impairment, to ensure that CNMI Water Quality Standards (WQS) are met during the permitted activity. The data is not used for assessment of whether Designated Uses are being met. These data from monitoring sites within the work area are compared to data from control site(s) of similar habitat to determine if there has been a specific temporal exceedance of ambient levels. Exceedances of the WQS would require a work stoppage period in order to allow the water quality to return to its natural state before work may resume. This ensures that state and US waters remain "fishable and swimmable."
- The waters of Tinian Harbor are considered Class A waters. CNMI WQS §65-130-435 do not allow for turbidity levels in Class A waters to exceed ≥ 1.0 NTU above ambient conditions.

§ 65-130-435 Turbidity

(a) Turbidity at any point, as measured by nephelometric turbidity units (NTU), shall not exceed 0.5 NTU over ambient conditions except when due to natural conditions.	AA, 1
(b) Turbidity values (NTU) at any point shall not exceed 1.0 NTU over ambient conditions.	A, 2

Therefore, NAVFAC shall establish a monitoring plan to measure the work site turbidity levels compared to a similar habitat control site as described in the following conclusion.

CONCLUSION: NAVFAC's proposed findings are inconsistent with CNMI WQS. As required of other project management, NAVFAC must collect baseline data prior to commencing repairs. As part of a NAVFAC monitoring plan, BECQ requires that monitoring sites, evenly spaced along the length of the transect of the sheet piles, be established and a control site at a location of similar habitat away from the construction site be used as the control ambient value. Water column samples shall be taken at each monitoring site and the control site to monitor daily turbidity levels after each tidal change (i.e., low outgoing, low incoming, high outgoing, and high incoming) over the course of 2 weeks prior to commencing repairs. The samples shall be taken at the top of the water column (1ft below surface), middle (halfway between top and bottom sites), and bottom of the water column (1ft above the benthic surface). After establishing baseline data, NAVFAC shall monitor turbidity levels at the established monitoring sites and control site after tidal changes during the course of repair activities. Anytime that turbidity levels exceed the CNMI WQS for turbidity, work shall cease for at least a 30-minute period, or until subsequent water quality tests show that turbidity levels have returned to <1.0 NTU of ambient levels at the control site(s).

<u>Comment 2.</u> NAVFAC states that the existing sheet piles are heavily damaged, so they do not provide stable habitat and that "Within the water column, in-water activities have the potential to cause behavioral reactions among fish which may be dependent on the habitat…within the proposed action area."

ISSUES:

- At present, the existing harbor and its sheet piles *are* providing fish and coral habitat and therefore, these organisms require protection.

CONCLUSION: CNMI WQS §65-130-101(a) Class AA states:

(1) "It is the objective of this class that these waters remain in their *natural pristine state* as nearly as possible with an absolute minimum of pollution or alteration of water quality *from any human-related source or actions.*"

(2) "The uses to be protected in this class of waters are *the support and propagation of shellfish and other marine life, conservation of coral reefs* and wilderness areas, oceanographic research, and aesthetic enjoyment and compatible recreation with risk of water ingestion by either children or adults."

Given these standards, before repairs to the RO-RO ramp commences, the BECQ MMT shall concur on which coral colonies are to be removed from the sheet piles or immediate area for transplantation to another area of equal depth and wave activity. The coral shall be flagged by BECQ MMT for NAVFAC identification. NAVFAC shall carefully remove corals for transplantation before resorting to grinding colonized organisms. In addition, work shall be performed outside of the main coral spawning period in accordance with CNMI Water Quality Standards, §65-130-530 Dredging and Discharge of Dredged or Fill Material (b)(3)(iii). This section states, "For activities which have the potential to adversely affect coral reproduction, a stoppage period starting around the June or July full moon (to be determined by BECQ), is required. The stoppage period, if determined to be applicable, shall be no less than twenty-one calendar days."

Pg. 6 – Section 1.3 Protective Measures and Best Management Practices
"All in-water activities will cease during the primary coral spawning events each year for hard (scleractinian) and soft (octocorallia) corals. The 2021 coral spawning period is estimated to be 21 days total, including 8 days prior to the full moon and 14 days after…"

One of the best-management practices listed ceasing underwater activities during predicted coral spawning periods in 2021. Reference information should be listed for the spawning periods. In addition, the peak spawning period for *Acropora* spp. was in June for Guam, with spawning occurring from May-July (Keith et al., 2016). This indicates the spawning period for hard corals should be extended starting in May 2021 as a precaution.