



**U.S. DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
**NATIONAL MARINE FISHERIES SERVICE**  
Pacific Islands Regional Office  
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August 2, 2024

Richard V. Salas, Director  
Division of Coastal Resources Management  
Bureau of Environmental and Coastal Quality  
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[rsalas@dcrm.gov.mp](mailto:rsalas@dcrm.gov.mp)

Re: Coastal Zone Management Act determination for final coral critical habitat

Dear Director Salas,

I am writing to inform you of the National Oceanic and Atmospheric Administration (NOAA) National Marine Fisheries Service's (NMFS) determination under section 307 of the Coastal Zone Management Act (CZMA) regarding the designation of critical habitat for the coral species *Acropora globiceps*. As you know, on November 30, 2023, NMFS proposed to designate critical habitat in the Commonwealth of the Northern Mariana Islands (CNMI) for the coral species *Acropora globiceps* (88 FR 83644), which is listed as a threatened species under the Endangered Species Act (ESA). NMFS provided the proposed rule and supporting documents, including the draft Economic Impact Analysis Report, to you and your staff on December 6, 2023. The public comment period occurred from November 30, 2023, to February 28, 2024, during which NMFS held in-person public hearings on Saipan, Tinian, and Rota between January 18 and 25, 2024, met with you and your staff on January 19, 2024, and held a virtual hearing on February 7, 2024. NMFS is currently working to develop the final rule, which is required under the ESA to be completed within one year of the proposed rule.

Under section 307(c)(1)(A) of the CZMA (16 U.S.C. §1456(c)(1)(A)) and its implementing regulations, each Federal activity within or outside the coastal zone that has "reasonably foreseeable effects" on any land or water use or natural resource of the coastal zone must be carried out in a manner consistent to the maximum extent practicable with the enforceable policies of approved State coastal management programs. NMFS has reviewed the relevant enforceable policies of CNMI's approved Coastal Zone Management (CZM) program, including CNMI's Federal consistency list, and have determined that there are no reasonably foreseeable coastal effects from NMFS's designation of critical habitat for *A. globiceps*. This letter explains the basis for NMFS's negative determination (50 CFR § 930.35).

For listed species, the ESA requires NMFS to designate critical habitat. The critical habitat designation for *A. globiceps* is anticipated to consist of multiple discrete areas around the islands of Rota, Aguijan, Tinian, Saipan, Alamagan, Asuncion, Pagan, Maug, and Uracas in CNMI. As part of the CZMA process, NMFS reviewed CNMI's approved CZM program to determine



whether there are any coastal effects resulting from the designation<sup>1</sup>. NMFS determined that the designation of coral critical habitat in CNMI would not directly affect any coastal uses or resources; would not affect public access, recreation, fishing, development, hazards management, marinas, or floodplain management; would not affect land ownership, or establish a refuge or other conservation area. The designation of critical habitat, like a listing of a species under the ESA, provides for a consultation requirement by Federal agencies under section 7 of the ESA. Such ESA consultation requirements already exist for the listed species *A. globiceps* in CNMI.

Under section 7(a)(2) of the ESA, Federal agencies are required to ensure that their actions are not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of any designated critical habitat. Consultation with NMFS is required for Federal agencies when their proposed actions may affect listed species or designated critical habitat. It is through the section 7 consultation process (informal or formal) that NMFS receives information on proposed Federal actions and their potential effects on listed species and critical habitat; NMFS uses this information in developing a concurrence letter or biological opinion on the effects of the planned Federal action on listed species and designated critical habitat. It is then up to the Federal action agencies to decide how to comply with the ESA in light of NMFS's concurrence letter or biological opinion, as well as to ensure that their actions comply with the CZMA's Federal consistency requirement. Since NMFS does not currently know what Federal actions will be proposed in the future in CNMI, how such actions may affect coral critical habitat, or how Federal action agencies will respond to any ensuing ESA consultations on the effects of their actions on coral critical habitat, the indirect future effects of coral critical habitat on coastal uses or resources in CNMI are not reasonably foreseeable. That is, as NMFS currently lacks information on proposed actions that might occur, indirect effects on coastal uses or resources are not reasonably foreseeable.

Separately, the ESA requires that NMFS consider the probable economic, national security, and other relevant impacts of designating an area as critical habitat (16 U.S.C. 1533(b)(2)). To facilitate consideration of economic impacts and to meet other applicable requirements, NMFS prepared a draft Economic Impact Analysis Report for the proposed critical habitat designation. This analysis estimates the incremental<sup>2</sup>, future economic impacts likely to stem from the designation given the existing regulatory baseline of protections already afforded to *A. globiceps*, including through the jeopardy provision of the ESA and other existing protective laws. As this economic analysis must necessarily forecast future Federal activities, it is also informative for identifying any reasonably foreseeable effects on coastal uses or resources under the CZMA.

As discussed in the draft Economic Impact Analysis Report, the designation of critical habitat for *A. globiceps* is in itself unlikely to result in any new section 7 consultations. Given the listing of

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<sup>1</sup> As noted previously, NMFS also reviewed CNMI's consistency list "Northern Mariana Islands' Listed Federal Actions." In reviewing CNMI's consistency list, NMFS did not find critical habitat identified as a Federal activity that would warrant a consistency determination.

<sup>2</sup> An incremental impact stems from changes in the management of activities, above and beyond those changes resulting from existing required or voluntary conservation efforts undertaken due to other Federal and Territorial and Commonwealth regulations or guidelines.

this coral as threatened, and the fact that the critical habitat overlaps the ranges of other listed marine species (e.g., green sea turtle), section 7 consultations are already likely to occur for activities with a Federal nexus throughout the critical habitat for *A. globiceps*. Thus, absent the critical habitat designation, NMFS is already required to consult on Federal activities that may affect listed species and to consider the potential for jeopardy to those species, as well as identify project modifications accordingly. Given these baseline protections already in place, NMFS considered whether additional or different conservation measures would be needed to avoid destruction or adverse modification of the critical habitat beyond those measures needed to avoid jeopardizing the continued existence of the species, and generally found this to be unlikely. NMFS anticipates that existing baseline protections would also result in avoidance of destruction and adverse modification of the critical habitat, because colonies of *A. globiceps* are typically distributed throughout most critical habitat areas. Thus, NMFS's analysis indicates that the estimated incremental economic impacts of the critical habitat designation are largely limited to the additional administrative costs of considering critical habitat as part of future ESA section 7 consultations. These costs would also be borne primarily by NMFS and the Federal action agencies. Furthermore, and as noted previously, should NMFS recommend any additional conservation measures, it is up to the particular Federal action agency to decide how to proceed in light of NMFS's biological opinion and recommendations. Thus, this analysis provides additional support for NMFS's finding that the critical habitat designation for *A. globiceps* does not have any reasonably foreseeable effects on coastal uses or resources or the enforceable policies of CNMI's approved CZM program. NMFS did not receive any comments or information during the comment period that alter these key conclusions of the draft Economic Impact Analysis Report.

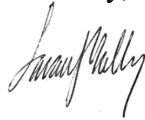
Based on the considerations, NMFS has determined that the designation of critical habitat for *A. globiceps* will have no reasonably foreseeable effects on the following in CNMI:

- Efficient resources management
- Management or development of local subsistence, sport and commercial fisheries
- Development of recreational facilities
- Preservation of traditional rights of public access to shorelines
- Acquisition or use of any lands necessary to guarantee traditional public access to and along the shorelines
- Coordination between Commonwealth and Federal agencies
- Coordination among CNMI agencies

Please let us know whether you agree with NMFS's CZMA negative determination for the designation of critical habitat for *A. globiceps* in CNMI. If there is no response from your agency within 60 days of receipt of this letter, NMFS will assume you concur with this determination.

NMFS values its partnership with CNMI, and looks forward to continuing collaborative endeavors in the marine environment with CNMI. If you have any questions, please contact Lance Smith of my staff at lance.smith@noaa.gov or (808) 725-5131.

Sincerely,

A handwritten signature in black ink, appearing to read "Sarah Malloy".

Sarah Malloy  
Deputy Regional Administrator

CC:  
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