



Commonwealth of the Northern Mariana Islands  
**OFFICE OF THE GOVERNOR**  
**Bureau of Environmental and Coastal Quality**

Division of Coastal Resources Management  
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April 18, 2018

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

Re: Routine Program Change to the CNMI Coastal Management Program List of Federal Actions Subject to Federal Consistency Review

Dear Ms. Gore,

The Commonwealth of the Northern Mariana Islands (CNMI) Division of Coastal Resources Management (DCRM) submits this Routine Program Change (RPC), pursuant to the Office for Coastal Management (OCM) for an update to the CNMI Coastal Management Program (CMP) List of Federal Actions Subject to Federal Consistency Review, pursuant to 15 CFR § 923.84 and the guidelines for Routine Program Changes contained in OCRM's 1996 Program Change Guidance and 2013 Addendum.

### **1. Text of the proposed change**

The CNMI CMP's current approved list of Federal Actions only addresses Federal Licenses and Permits subject to review. This update proposes minor typographical edits and clarifications to the existing language and citations of this section as well as the addition of one new license listing under the Department of Energy – Federal Energy Regulatory Commission. In addition, this update proposes new Federal Activity listings for five agencies (Department of Defense, Department of the Interior – National Park Service, Department of Transportation – Federal Aviation Administration and Federal Highway Administration, and Department of the Homeland Security – Federal Emergency Management Agency) as well as three new Federal Financial Assistance listings (Department of Transportation – Federal Aviation Administration and Federal Highway Administration, and Department of Defense – US Army Corps of Engineers).

The full text of the proposed change is included below, with additions shown in red and deletions in ~~strike-through~~. A clean version of the CNMI's proposed listings is included in Appendix A.

## **Northern Mariana Islands' Listed Federal Actions**

### **I. FEDERAL ACTIVITIES**

#### **DEPT. OF DEFENSE**

All Branches (Excluding U.S.  
Army Corps of Engineers)

Operational plans, procedures, or facilities for the handling, storage, or cleanup of hazardous materials.

Location, design, or acquisition of new or expanded defense installations pursuant to 10 U.S.C. § 2802, as amended, regardless of the facility's active or reserve status, and including associated housing, transportation, or other facilities on properties.

Disposal or realignment of Defense property and/or disposal and reuse plans for military base closures pursuant to the Defense Authorization Amendments and Base Closure and Realignment Act.

Establishment or modification of impact, compatibility, security, or other restricted use zones pursuant to 10 U.S.C. § 2802, as amended, if the establishment or modification of such an area or zone will restrict existing or future public access.

Construction or expansion of buildings or erosion control structures; or the acquisition or disposal of land pursuant to 10 USC § 2661 et.seq.10 U.S.C. § 2802, as amended, and/or 40 USC § 101, 10 U.S.C. § 2802, as amended.

Installation, removal, or maintenance of submarine cables.

Defense exercises and the establishment of resource management plans occurring in, over, or adjacent to non-federal lands and waters.

#### **DEPT. OF HOMELAND SECURITY**

Federal Emergency Management Agency (FEMA)

Construction or reconstruction of permanent or semi-permanent housing under the Individuals and Households Program (IHP).

#### **DEPT. OF THE INTERIOR**

National Park Service (NPS)

Authorization to manage and general management including master plans of national parks.

**DEPT. OF TRANSPORTATION**

Federal Aviation Administration (FAA)

Acquisition or disposal of land.

Location, design, construction, or disposal of airports or other air navigation facilities, including communications and radar facilities.

Federal Highway Administration (FHWA)

Highway construction or modification.

**II. FEDERAL LICENSES AND PERMITS**

<u>Federal Agency</u>	<u>Permit Description</u>	<u>Citation</u>
<b>DEPT. OF COMMERCE</b>		
National Marine Fisheries Service (NMFS)	Takeing of marine mammals.	Marine Mammal Protection Act; 16 U.S.C. §§ 1361-1407
	Take of Endangered species permit for (marine species).	Endangered Species Act; 16 U.S.C. §§ 1538-1543
<b>DEPT. OF DEFENSE</b>		
U.S. Army Corps of Engineers (USACE)	Construction of dams or ditches across navigable waters.	River and Harbors Act of 1899; Section § 9; 33 U.S.C. § 401
	Construction or alteration of navigable waters.	<del>Id. Section</del> <i>Id.</i> § 10; 33 U.S.C. § 403
	Establishment of harbor lines.	<del>Id. Section</del> <i>Id.</i> §§ 11; 33 U.S.C. §§ 404, 405
	Temporary occupation of sea wall, bulkhead, jetty, dike, level, wharf, pier or other work built by the U.S.	<del>Id. Section</del> <i>Id.</i> § 14; 33 U.S.C. § 408
	Discharge of dredged spoil into waters of the U.S.	Federal Water Pollution Control Act of 1972; Section § 404; 33 U.S.C. § 1344
	Approval of plans for improvements made under Corps supervision at private expense.	River and Harbors Act of 1899; 33 U.S.C. § 565

	Transportation of dredged spoil for the purpose of dumping it in ocean waters.	Marine Protection, Research, and Sanctuaries Act of 1972 <del>Section § 103</del> ; 33 U.S.C. § 1413
<b>DEPT. OF ENERGY</b> All Offices	Prohibition and construction orders.	Energy Supply and Environmental Coordination Act; 15 U.S.C. §§ 791-798; <del>42 U.S.C. 1875b-1-1857</del>
Federal Energy Regulatory Commission (FERC)	Licenses, renewals, or amendments to licenses for non-federal hydroelectric projects and primary transmission lines.  Threshold: All projects that fall in or within 150 ft of a designated Area of Particular Concern (APC), result in permanent loss of APC resources, fall seaward of a line 150 ft inland of the high hazard (V/VE) floodplain, or when proposed project costs equal to or exceed \$1 million.	16 U.S.C. § 779
<b>DEPT. OF THE INTERIOR</b> Fish and Wildlife Service (FWS)	Take of endangered species (terrestrial species).	Endangered Species Act; 16 U.S.C. §§ 1531-1543
National Park Service (NPS)	Construction of visitor centers on National Park Service managed land.  Construction of electric and communication lines across National Park Service managed land.	16 U.S.C. § 3  16 U.S.C. § 5
<b>DEPT. OF TRANSPORTATION</b> Federal Aviation Administration (FAA)	Approval of airport development project applications.	49 U.S.C. § 171(b)

U.S. Coast Guard

Permits for private aids to navigation. 14 U.S.C. § 83

Permits for construction or modification of bridges or causeways in navigable waters. 33 U.S.C. §§ 401, 491, 625

Authorization for handling of flammable or combustible liquids by bulk in U.S. ports. 46 U.S.C. § 391(a)

Deepwater port permits. Deepwater Ports Act of 1974; 33 U.S.C. § 1501

**ENVIRONMENTAL  
PROTECTION  
AGENCY**

Permits for underground injection. State Drinking Water Act ~~Section §~~ 1421(c)(1); 42 U.S.C. § 300(h)

Permit to operate underground injection wells in designated areas. Resources Recovery and Conservation Act of 1976; 42 U.S.C. § 3257

Approvals under preservation of significant deterioration (PSD) regulations. Clean Air Act of 1976 ~~Section §~~ 110; 42 U.S.C. § 7410

New sources construction/operation permits. ~~Id. Section Id. §~~ 111; 42 U.S.C. § 7411

Approvals under National Emission Standards for Hazardous Air Pollutants (NESHAPS) Regulations. ~~Id. Section Id. §~~ 112; 42 U.S.C. § 7412

NPDES permits for federal installations. Federal Water Pollution Control Act of 1972; ~~Section §§~~ 401, 402; 33 U.S.C. §§ 1341, 1342

NPDES permits for discharges into the contiguous zone and ocean waters. ~~Id. Section Id. §~~ 402, 403; 33 U.S.C. §§ 1342, 1343

Sludge runoff permits. ~~Id. Section Id. §~~ 405; 33 U.S.C. § 1345

### III. FEDERAL FINANCIAL ASSISTANCE

#### Assistance Description

#### Threshold

#### **Highway Planning and Construction (20.205)**

All land acquisition or projects that fall in or within 150 feet of a designated Area of Particular Concern (APC), result in permanent loss of APC resources, fall seaward of a line 150 feet inland of the high hazard (V/VE) floodplain, or when assistance is equal to or exceeds \$1 million.

Exemption: Activities required to provide disaster or emergency relief in response to a proclamation issued by the Office of the Governor provided that activities do not include in-water work or result in the permanent loss of APC resources.

#### **Beach Erosion Control Projects (12.101)**

All land acquisition or projects that fall in or within 150 feet of a designated Area of Particular Concern (APC), result in permanent loss of APC resources, fall seaward of a line 150 feet inland of the high hazard (V/VE) floodplain, or when assistance is equal to or exceeds \$1 million.

#### **Airport Improvement Program (20.106)**

All land acquisition or projects that fall in or within 150 feet of a designated Area of Particular Concern (APC), result in permanent loss of APC resources, fall seaward of a line 150 feet inland of the high hazard (V/VE) floodplain, or when assistance is equal to or exceeds \$1 million.

### **2. Identification of Any New or Changed Enforceable Policies.**

No changes to enforceable policies are proposed.

### **3. Description of the Nature of the Change and Why it is an RPC**

The proposal herein can be considered a routine program change rather than a substantial change because these new listed actions do not change the CMP's scope of authority with respect to practice nor space. Listing these actions and coordinating with the corresponding agencies serves to clarify and expedite the existing federal consistency review process by better articulating the actions DCRM, with NOAA approval, considers "reasonably likely to affect" the coastal zone and avoiding the need to request consistency review on a case by case basis as provided by 15 CFR § 930.54.

This federal consistency proposal aligns with DCRM's recent update to its Coastal Resources Management Rules and Regulations (NMIAC § 15-10), and offers an opportunity to match tone, correct spelling and punctuation, account for changes in federal organizational structure, and include specific actions which have become more relevant to and feasible in the CNMI.

#### **4. Likely Effects on Land and Water Uses or Natural Resources of the CNMI Coastal Zone**

The CNMI's Coastal Zone is defined as all territorial lands and waters (2 CMC § 1500 et seq.), leading to a holistic "ridge to reef" approach to coastal resources. The relatively small size of each island magnifies the significance of direct, secondary, and cumulative impacts from development activities. We propose these new listings as they are reasonably likely to have significant effects on our coastal resources. While many of these actions were previously unrealistic or unlikely to occur in the CNMI, due to recent economic growth and increasing national attention we now find that these actions have already taken place or are likely to take place.

Justification for listing each action is included in Appendix B. Overall, DCRM is concerned about:

- Secondary and cumulative impacts to existing infrastructure,
- Secondary and cumulative impacts to sensitive coastal habitats and water quality,
- Consistency with Area of Particular Concern (APC) use standards and management priorities, and
- Restrictions on public access

#### **5. Public Notice**

Appendix C contains the public notice announcing and requesting comments with respect to the content of this proposal, which was published in local newspapers and on the DCRM website ([www.dcrm.gov.mp](http://www.dcrm.gov.mp)) on February 26, 2018.

Appendix D contains the public notice announcing DCRM's submittal of the RPC to OCM and directing comments as to whether the proposed action constitutes an RPC to OCM. The notice was similarly published in print on April 17, 2018 and online on April 18, 2018. The agencies affected by this proposal were also notified via email on April 18, 2018.

#### **6. Consultation with Federal Agencies**

Each affected Agency was notified of the pertinent proposed change(s) and asked to comment on the draft language. Email correspondence, conference calls, and/or in-person meetings were held with the appropriate representatives of all Agencies. The Department of Defense acknowledged receipt of the notice through the Naval Facilities Engineering Command Marianas (NAVFACMAR) in September of last year but has not provided direct feedback. DCRM assumes consent. The following summarizes the discussions that occurred between DCRM staff and the federal agencies:

- The National Park Service noted that the agency does not acquire ownership of property in the CNMI but is authorized by land owners to manage designated areas. Therefore, it was suggested that the new direct activity listing include "authorization to manage" along

with the proposed “general management including master plans of national parks” and that the existing construction-related listings be updated to refer to “National Park Service managed land” as opposed to “National Park Service land.” DCRM concurs.

- FEMA expressed concern that it would be inappropriate to request review of its Individual Financial Assistance to disaster areas programs because individuals may use the grants to cover any emergency expenses, not only housing repair or replacement costs. FEMA also clarified that the Direct Housing program does not extend to the Pacific Islands and suggested that while the Permanent Housing Program would be eligible for federal consistency review, it would be more appropriate to address it as a direct federal activity. FEMA noted that permanent houses are re-built in place in accordance with minimal local building codes. DCRM accepts the proposal to list housing-related projects meeting the threshold under the direct activity category.
- The FAA first requested maps of the CNMI’s Areas of Particular Concern as cited in the proposed threshold. Subsequently, FAA noted that many projects would exceed the \$1 million threshold and provided DCRM with a list of existing NEPA categorical exclusions. Due to differences in the scale of airport improvement work relative to the potential impacts between the mainland and the CNMI, DCRM chooses to proceed with the original proposed threshold.
- The FERC Hydropower division explained that the permits it issues are solely administrative and that the listing should be limited to “licenses, renewals, or amendments to licenses for non-federal hydroelectric projects and primary transmission lines.” DCRM concurs.
- The Federal Highway Administration questioned what was meant by “transportation facility” as included in the federal financial assistance threshold and asked to simplify the proposed blanket threshold to address only those activities with which it might engage. FHWA and DCRM agreed to modify the threshold accordingly:

All land acquisition or projects that fall in or within 150 feet of a designated Area of Particular Concern (APC), result in permanent loss of APC critical coastal resources (APC), fall seaward of a line 150 feet inland of the high hazard (V/VE) floodplain, ~~;~~ ~~pertain to power generation, mineral extraction, wastewater treatment, and associated infrastructure, transportation facility, or land acquisition;~~ or when proposed assistance is equal to or exceeds \$1 million.

FHWA and DCRM also negotiated an exemption for “activities required to provide disaster or emergency relief in response to a proclamation issued by the Office of the Governor provided that the activities do not include in-water work or result in the permanent loss of APC resources.”

- Listings addressing the Department of the Interior Office of Insular Affairs and Federal Communications Commission were withdrawn due to suggestions that consistency



review should or would occur earlier in the process for projects that would ultimately come out of these offices. DCRM has withdrawn these listings from this request.

Thank you for your consideration of this routine program change request. If you have any questions or concerns, please do not hesitate to contact me at [jcastro@dcrm.gov.mp](mailto:jcastro@dcrm.gov.mp) or DCRM's Federal Consistency Coordinator, Emily Northrop, at [enorthrop@dcrm.gov.mp](mailto:enorthrop@dcrm.gov.mp).

Sincerely,



JANICE E. CASTRO  
Director  
Division of Coastal Resources Management

Enclosures: **Appendix A – Final Proposed Listings**

**Appendix B – Justification Table**

**Appendix C – Public Notice of Federal Consistency Listings Update**

**Appendix D – Public Notice of RPC Submittal**

cc: Kerry Kehoe, NOAA OCM  
David Kaiser, NOAA OCM  
Robbie Greene, NOAA OCM  
Colby Stewart, CNMI AAG  
Eliceo D. Cabrera, CNMI BECQ  
Emily Northrop, CNMI BECQ-DCRM  
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