



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Office of Coast Survey
1315 East West Highway, SSMC3, Silver Spring, MD 20910

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FROM: Jay Nunenkamp
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REFERENCE: Federal Consistency Determination for the use of Expendable Bathythermographs (XBTs) in the Commonwealth of the Northern Mariana Islands, April – September 2020

Dear Ms. Castro:

I wanted to provide updates to the information we sent your office (originally sent on December 30, 2019 and updated on February 11, 2020 with information regarding tide buoy installation) about the referenced project. Specifically, Coast Survey is broadening the scope of this project to include the deployment of approximately 45 Expendable Bathythermographs (XBTs) in the waters of the CNMI. We believe that our operational protocols will minimize any impacts to the CNMI coastal resources and coastal uses, and that our activities are consistent with the CNMI coastal program. We are requesting your office's concurrence regarding this determination, per Section 307 of the Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451 et seq.). These additional activities are under the control of Coast Survey, not other elements of NOAA (Such as PIFSC).

1.0 Updates to the Proposed Action

In addition to the activities outlined in our December 30, 2019 consistency determination (the hydrographic survey, the use of UAS, and the reef monitoring), and our February 11, 2020 updated notice (adding the installation of a tide buoy temporarily in two locations), Coast Survey has determined that this project will require the deployment of no more than 45 XBTs in the coastal waters of the CNMI.

XBTs are small probes that are dropped over the side of a ship. As it falls through the water, it measures temperature. Small wires transmit the temperature data back to the ship where it is recorded for further analysis.

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Because the probe falls through the water at a known rate, the depth of the probe can be inferred from the time of launch. Scientists then plot temperature as a function of depth to create a temperature profile of the water. Once the probe has reached its maximum depth, the probe is detached and left on the sea floor; the thin line is retracted back to the ship.

This information is needed to make accurate depth measurements using in waters 200m to 1,500m deep. Coast Survey needs to know how fast the sound wave emitted from the sonar unit travels through seawater. The speed at which sound travels changes as the density of water varies through the water column.

This notice serves as the federal consistency determination for this additional component of the referenced action, as required by Section 307 of the Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451 et seq.).

2.0 Consistency Determination for the Enforceable Policies of the CNMI Coastal Program

In preparing this consistency determination, Coast Survey reviewed the CNMI coastal policies as presented in the CNMI Procedures Guide for Achieving Federal Consistency with the CNMI Coastal Management Program.¹

2.1 Enforceable CNMI Policies that are not Applicable to the Proposed Survey

Due to the scope and nature of our proposed project, Coast Survey has determined that the following CNMI coastal policies are not applicable to the proposed activities, and will therefore not be further considered here:

Northern Mariana Islands Administrative Code (NMIAC) Chapter 15-10:

340: Specific Criteria; Areas of Particular Concern; Ports and Industrial Areas

345: Specific Criteria; Areas of Particular Concern; Coastal Hazards

350: Height Density, Setback, Coverage, and Parking Guidelines

501: Determination of Major Siting

505: Specific Criteria for Major Sitings

Policies Expressed in Public Law (PL) No. 3-47

(1) Encourage and use master planning, floodplain management, and the development of zoning and building code legislation;

¹ <https://dcrm.gov.mp/wp-content/uploads/crm/PROCEDURES-GUIDE-federal-consistency-Sept-2018.pdf>

[accessed July 17, 2019]

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- (2) Promote, through a program of public education and public participation, concepts of resource management, conservation and wise development of coastal resources;
- (3) Promote more efficient resources management through:
 - (A) Coordination and development of resources management laws and regulations into a readily identifiable program,
 - (B) Revision of existing unclear laws and regulations,
 - (C) Improvement of Coordination among Commonwealth of the Northern Mariana Islands ' agencies,
 - (D) Improvement of coordination between Commonwealth and federal agencies,
 - (E) Establishment of educational and training programs for Commonwealth government personnel and refinement of supporting technical data;
- (5) Give priority for water-dependent development and consider the need for water-related and water-oriented locations in its siting decisions;
- (6) Provide for adequate consideration of the national interest, including that involved in planning for, and in the siting of, facilities (including energy facilities in, or which significantly affect, the Commonwealth's coastal zone) which are necessary to meet requirements which are other than local in nature;
- (7) Not permit to the extent practicable, development of identified hazardous lands including floodplains, erosion-prone areas, storm wave inundation areas, air installation crash and sound zones and major fault lines, unless it can be demonstrated that such development does not pose unreasonable risks to the health, safety or welfare of the people of the Commonwealth, and complies with applicable laws;
- (8) Mitigate to the extent practicable adverse environmental impacts, including those on aquifers, beaches, estuaries and other coastal resources while developing and efficient and safe transportation system;
- (9) Require any development to strictly comply with erosion, sedimentation, and related land and water use districting guidelines, as well as other related land and water use policies for such areas;
 - (14) Not permit, to the extent practicable, development with the potential for causing significant adverse impact in fragile areas such as designated and potential historic and archaeological sites, critical wildlife habitats, beaches, designated and potential pristine marine and terrestrial communities, limestone and volcanic forests, designated and potential mangrove stands and other wetlands;
- (18) Encourage preservation and enhancement of and respect for, the Commonwealth's scenic resources through the development of, increased enforcement of, and compliance with, sign, litter, zoning, building codes, and related land-use laws;
- (19) Discourage, to the maximum extent practicable, visually objectionable uses so as not to significantly degrade scenic views;
- (20) Encourage the development of recreation facilities which are compatible with the surrounding environment and land-uses;
- (21) Encourage the preservation of traditional rights of public access to and along the shorelines consistent with the rights of private property owners;
- (22) Pursue agreements for the acquisition and/or of any lands necessary to guarantee traditional public to and along the shorelines; and
- (23) Encourage agricultural development and the preservation and maintenance of critical agricultural lands for agricultural uses.

Air and water quality standards and regulations of the CNMI:

DEQ Underground Injection Control Regulations (NMIAC, title 65, chapter 90)

DEQ Drinking Water Regulations (NMIAC, title 65, chapter 20)

DEQ Well Drilling and Well Operations Regulations (NMIAC, §65-140-005, §65140-010)

The policies listed above are not relevant because the use of XBTs will not involve the construction, demolition, expansion, renovation, or other modification to any structure, improvement, or means of transportation. No effects to agriculture, recreation areas, public access, or public utilities such as drinking water are expected.

2.2 Review of Relevant CNMI Enforceable Policies

Our determinations of consistency for the remaining CNMI coastal policies are presented below.

2.2.1 NMIAC 15-10-315: Specific Criteria; Areas of Particular Concern; Lagoon and Reefs

Determination: Consistent. Lagoons and reefs are located in shallower waters where XBTs would not be used. Coast Survey would use XBTs only in waters of 200m depth or more.

2.2.2 NMIAC 15-10-320: Specific Criteria; Areas of Particular Concern; Managaha and Anjota Islands

Determination: Consistent. The XBTs would have no effect on any islands or the shallow waters surrounding islands, as the XBTs would only be used in waters of over 200m depth.

2.2.3 NMIAC 15-10-325: Specific Criteria; Areas of Particular Concern; Coral Reefs

Determination: Consistent. Lagoons and reefs are located in shallower waters where XBTs would not be used. Coast Survey would use XBTs only in waters of 200m depth or more.

2.2.4 NMIAC 15-10-330: Specific Criteria; Areas of Particular Concern; Wetlands and Mangroves

Determination: Consistent. Coast Survey would use XBTs only in waters of 200m depth or more - not in wetlands or mangroves.

2.2.5 NMIAC 15-10-335: Specific Criteria; Areas of Particular Concern; Shorelines

Determination: Consistent. Coast Survey would use XBTs only in waters of 200m depth or more – not on or near shorelines.

2.2.6 PL 3-47 (4) Plan for and manage any use or activity with the potential for causing a direct and significant impact on coastal resources. Significant adverse impacts shall be mitigated to the extent practicable

Determination: Consistent. The deployment of up to 45 XBTs in CNMI waters would not have a noticeable effect on any CNMI coastal resources.

2.2.7 PL 3-47 (10) Maintain or improve coastal water quality through control of erosion, sedimentation, runoff, siltation, sewage and other discharges

Determination: Consistent. The deployment of XBTs would have no effect on erosion, sedimentation, runoff, siltation, sewage, or other discharge.

2.2.8 PL 3-47 (11) Recognize and respect locations and properties of historical significance throughout the Commonwealth, and ensure that development which would disrupt, alter, or destroy these, is subject to Commonwealth and any applicable federal laws and regulations

Determination: Consistent. No adverse impacts to historical, archeological, or architectural sites are anticipated from the project activities. Coast Survey is consulting with the CNMI State Historic Preservation Officer for their concurrence on this determination, based on the nature of our work.

2.2.9 PL 3-47 (12) Recognize areas of cultural significance, the development of which would disrupt the cultural practices associated with such areas, which shall be subject to a consultation process with concerned ethnic groups and any applicable laws and regulations

Determination: Consistent. No adverse impacts to historical, archeological, or architectural sites are anticipated from the project activities. Coast Survey is consulting with the CNMI State Historic Preservation Officer for their concurrence on this determination, based on the nature of our work.

2.2.10 PL 3-47 (13) Require compliance with all local air and water quality laws and regulations and any applicable federal air and water quality standards;

Determination: Consistent. The deployment of up to 45 XBTs would not have any impact on air quality, and would not have a noticeable effect on water quality. The probes that are left on the sea floor are constructed of small amounts of metal and biodegradable plastic.

2.2.11 PL 3-47 (15) Manage ecologically significant resource areas for their contribution to marine productivity and value as wildlife habitats, and preserve the functions and integrity of reefs, marine meadows, salt ponds, mangroves and other significant natural areas;

Determination: Consistent. The proposed survey, including the use of XBTs, would take place in accordance with the requirements of the Endangered Species Act and the Essential Fish Habitat

Provisions of the Magnuson Stevens Fishery Conservation and Management Act. Coast Survey would implement any required mitigation measures that are developed in the course of complying with these laws.

2.2.12 PL 3-47 (16) Manage the development of the local subsistence, sport and commercial fisheries, consistent with other policies;

Determination: Consistent. No part of the project would involve the collection of fish for any purpose. 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.

2.2.13 PL 3-47 (17) Protect all coastal resources, particularly sand, corals and fish from taking beyond sustainable levels and in the case of marine mammals and any species on the Commonwealth and Federal Endangered Species List, from any taking whatsoever;

Determination: Consistent. Prior to installation, Coast Survey would survey the proposed buoy location with high-frequency (200 kilohertz or higher) multibeam echo sounders to ensure that the anchor hardware would not be placed on or near any corals or other sensitive features.

2.2.14 DEQ Wastewater Treatment and Disposal Rules and Regulations (NMIAC, §65-120010, and §65-120 Part 1700)

Determination: Consistent. The proposed action would not include the disposal of any hazardous substances into the water or other media. The XBTs are constructed of metal and biodegradable plastic.

2.2.15 DEQ Water Quality Standards (NMIAC, §65-130, Part 200, Part 400, Part 500)

Determination: Consistent. The proposed action would not include the disposal of any hazardous substances into the water or other media. The XBTs are constructed of metal and biodegradable plastic.

3.0 Conclusion

Based upon the information provided above, the NOAA Office of Coast Survey has determined that the deployment of up to 45 XBTs in CNMI waters is consistent to the maximum extent practicable with the enforceable policies of the CNMI Coastal Management Program. We are requesting that your office respond to this notice as soon as you are able, as our project is slated to begin around April 1. We request that the CNMI Coastal Management Program response be sent to jay.nunenkamp@noaa.gov. Thank you for your time and your expertise.