



U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Pacific Islands Regional Office
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November 27, 2020

Janice Castro, Director
Division of Coastal Resources Management
P.O. Box 501304
Saipan, MP 96950

Dear Ms. Castro:

We are writing to inform you that the National Marine Fisheries Service (NMFS) proposes designating 17 units of critical habitat for seven threatened Indo-Pacific corals listed as threatened under the Endangered Species Act (ESA) in 2014. The critical habitat units include marine waters in Guam, the Commonwealth of the Northern Mariana Islands (CNMI), American Samoa, and the Pacific Remote Island Area. CNMI includes seven units (Rota, Aguijan, Tinian, Saipan, Anatahan, Pagan, and Maug Islands), which collectively have three of the listed corals (*Acropora globiceps*, *Acropora retusa*, *Seriatopora aculeata*). The proposed designation specifically focuses on natural hard substrate and the associated water column at 0 to 40 m (0 to 133 ft) of depth. However, artificial substrates (e.g., seawalls and breakwaters) and managed areas (e.g., navigation channels and harbors) are not included in the proposed critical habitat designation.

This rule is proposed under authority of the ESA, and is needed to provide for the conservation of the seven threatened Indo-Pacific corals. Enclosed for your review is the proposed critical habitat rule (85 FR 76262; November 27, 2020). The basis for this proposed rule is NMFS's evaluation of the status of each species, the threats and stressors affecting the species, the best scientific and commercial data available, and the input received during the ESA listing process.

NMFS's proposed designations of critical habitat for the seven threatened Indo-Pacific corals will not restrict any coastal uses, affect land ownership, or establish a refuge or other conservation area; rather, the designation only affects the ESA section 7 consultation process. NMFS has identified a wide variety of activities that may adversely modify the proposed critical habitat or that may be affected by the designation. These activities may be subject to ESA section 7 consultation process when carried out, funded, or authorized by a Federal agency. Section 7 of the ESA requires that Federal agencies shall, in consultation with NMFS and/or the USFWS, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of an ESA listed species or result in the destruction or adverse modification of such species' critical habitat.



The proposed critical habitat designation will not affect activities that do not have any Federal involvement; designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. In areas where the listed corals are present, Federal agencies already are required to consult with NMFS under section 7 of the ESA on activities they fund, permit, or implement that may affect the species. Once critical habitat designation is finalized, consultation to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

The ESA requires that NMFS consider the economic, national security, and other relevant impacts of designating a particular area as critical habitat. To ensure we consider any such reasonably foreseeable impacts of the designation, NMFS prepared a Draft Information Report for the proposed critical habitat designation, which is also enclosed, along with its two appendices. In considering the impacts of designating this critical habitat, NMFS used an incremental approach where the reasonably foreseeable impact of a proposed critical habitat designation is analyzed by comparing “without critical habitat” vs. “with critical habitat” scenarios:

- The “without critical habitat” scenario represents the baseline for the analysis, which includes the existing regulatory and socio-economic burden imposed on landowners, managers, or other resource users resulting from all existing Federal, State, and local regulations, including Section 7 consultations on any ESA-listed species such as listed corals, listed sea turtles, and any other listed species. The baseline therefore represents the costs of all efforts attributable to the listing of species under the ESA, i.e., conservation of species and their habitat in the absence of coral critical habitat.
- The “with critical habitat” scenario represents the incremental impacts associated specifically with the designation of critical habitat for the seven corals. In other words, the incremental costs are those attributable solely to the designation of critical habitat for the listed corals, above and beyond the baseline costs associated with their listing.

To derive a measure of the economic impacts of the “with critical habitat” scenario, the analysis quantifies and monetizes the economic impact of the project modifications and administrative effort associated with the section 7 consultation process for activities affecting critical habitat. The critical habitat designation would impose additional administrative costs on NMFS, the Federal action agency, and any third party requiring federal approval or funding, in the consultation process.

NMFS anticipates few incremental impacts of these critical habitat designations. As discussed in the enclosed Draft Information Report, NMFS considered whether additional or different conservation measures would be needed to avoid destruction or adverse modification of critical habitat above and beyond those measures needed to avoid jeopardizing the continued existence of the species as already required by the ESA for these listed species. As described in the Information Report, the maximum number of federal activities likely to occur within coral critical habitat in CNMI that NMFS expects would incur incremental impacts over the next ten years was estimated. This maximum number was derived by assuming that listed corals would not occur within project areas, meaning that conservation measures to minimize the impacts of these federal actions on critical habitat would be the only ESA-related requirements for these federal actions. In reality, one or more of the listed corals are likely to be present in at least some

of the project areas, and thus conservation measures would be required to protect them regardless of critical habitat. Furthermore, project modifications that may be required because of the proposed critical habitat designations are consistent with those that may be required or recommended by other authorities, such as Essential Fish Habitat.

Another consideration is that it will be up to the Federal action agency to first determine whether its proposed action may affect critical habitat or not, based on details about the project and the action area. If NMFS issues a biological opinion to the Federal agency describing conservation measures to minimize the impacts of its project on ESA-listed species, it is also up to that Federal agency to decide how to proceed in light of NMFS's opinion. A biological opinion does not direct other Federal agency actions; rather, a biological opinion informs another Federal agency of the effects of its proposed action on ESA listed species and any designated critical habitat. It is then the responsibility of the Federal agency proposing the activity to comply with the ESA in light of the NMFS's biological opinion, as well as to ensure that the activity complies with the Coastal Zone Management Act. For all of these reasons, NMFS has determined that the proposed designation of critical habitat for the listed corals will have no reasonably foreseeable effects on the enforceable policies of CNMI's approved Coastal Zone Management Program.

NMFS appreciates its partnership with CNMI, and we look forward to continuing our work together to conserve the threatened Indo-Pacific corals. The proposed rule, the Draft Information Report, and other information about this proposed coral critical habitat rule is available on our website at <https://www.fisheries.noaa.gov/action/proposed-rule-designate-critical-habitat-threatened-indo-pacific-corals>. If you have any questions, please contact me at (808) 725-5131 or lance.smith@noaa.gov.

Sincerely,

Lance W. Smith

Lance W. Smith

Enclosures (2)