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UFISINAN I MAGA'HÅGAN GUÅHAN
OFFICE OF THE GOVERNOR OF GUAM

May 25, 2021

MR. MIKE TOSATTO

Regional Administrator

U.S. DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

NATIONAL MARINE FISHERIES SERVICE

Pacific Islands Regional Office

1845 Wasp Blvd., Bldg.176

Honolulu, Hawaii 96818

Re: Proposed Rule - Endangered and Threatened Species; Critical Habitat for the Threatened Indo-Pacific Corals comments from Guam

Hafa Adai Mr. Tosatto:

I am providing comments to The National Marine Fisheries Service (NMFS) regarding the Proposed Rule (see 85 FR 76262; 27 November 2020) to designate critical habitat for seven threatened corals in U.S. waters in the Indo-Pacific. The proposed rule states that three of the species are found in Guam's territorial waters. I am greatly concerned about inadequacies in the process of this proposed designation, as it applies to Guam. After substantial discussion with our team of experts, it is clear that this proposed rule was made without the best scientific data available and, of even greater concern, made without any input from or consideration of local regulatory agencies. From the start, this process was flawed.

Given that NMFS did not consult or consider any government agencies prior to publishing the proposed rule, teams in Guam, CNMI, and American Samoa have been rushed through what should be a thoughtful, measured process. Further to this point, the territories and the Western Pacific Regional Fisheries Management Council had to request that NMFS hold a public hearing. Until the hearings were requested, NMFS was not considering holding a hearing during which information and transparency in process would be shared with stakeholders.

Although the proposed rule was published on November 27, 2020, the Guam Coastal Management Program (GCMP), which handles all federal consistency matters, was not notified until January 25, 2021. On January 25th, GCMP received a negative determination letter and initiated the 60-day process for federal consistency review internally and within network agencies. GCMP concluded that NMFS' negative determination was not consistent with the approved development and resource policies of the Guam Coastal Management Program, in accordance with the Coastal Zone Management Act of 1972, (P.L. 92-483) as amended, (P.L. 94-370). GCMP submitted their review on March 26, 2021. NMFS has not responded or submitted an appeal.

To: Mr. Mike Tosatto
Fr: Governor of Guam
Date: May 25, 2021
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Included in GCMP's findings in the Federal Consistency Review for NMFS' proposed critical habitat are input from the Guam Department of Agriculture (DOAG) and Guam Waterworks Authority (GWA). Each agency provides compelling statements and questions regarding the fallibility of NMFS assertions as to the Best Scientific Information Available, as well as the science and justifications utilized for this proposed action. DOAG's technical comments will be submitted separately. GWA's comments are included in the GCMP review.

Both DOAG and GCMP have refuted NMFS' claim that suitable substrate is widely distributed throughout Guam's coastal areas and that suitable water quality parameters are also distributed in Guam. Both GCMP and DOAG challenge the veracity of NMFS' maps included in the rule. In the proposed rule, NMFS states that managed areas will be excluded, but then provides maps that show critical habitat surrounding most the entire island, thus presenting contradicting information. At the very least, NMFS should have provided maps that accurately delineate essential features and proposed exclusions to critical habitat. Additionally, the maps NMFS used were also ground-truthed and found to be flawed and error-laden.

Mr. Tosatto, on March 19, 2021 you sent a letter to Guam Department of Agriculture Director Chelsa Muna-Brecht in which you stated NOAA Fisheries, your staff, would work directly with DOAG agency staff to ensure relevant information is shared. Yet, since March 25th her office and staff have been requesting the shape files used to develop the proposed critical habitat maps proffered by NMFS and have yet to receive the shape files. Instead, email after email provided maps that were not relevant to what was requested. As of today, May 24th, the requested files have not been provided.

Another issue raised by our team is the unnecessary and duplicative bureaucracy created with this designation. Several federal and local regulatory programs exist that protect corals and reef habitat. Many minimize direct impacts to coral reef habitat, while others promote water quality improvement. Programs such as National Environmental Policy Act, Clean Water Act section 404 (especially the section 404 (b)(1) Guidelines and Compensatory Mitigation Plans) and Rivers & Harbors Act section 10, Endangered Species Act sections 7 and 10, Magnuson Stevens Act Essential Fish Habitat consultation, Guam's Coastal Zone Management Program, USEPA National Pollutant Discharge Elimination System, USEPA Section 402 General Construction Permit, Guam Section 401 Water Quality Certification, the Guam Seashore Protection Commission, Guam Land Use Permits, Guam Marine Preserves, and several Guam laws on coral protection. The addition of a critical habitat designation would exacerbate the existing permitting process and jeopardize project efficiency.

These extensive programs and permitting processes already cause significant delays in construction and economic development projects in Guam. We are a small island trying to recover from the economic losses brought about by the COVID-19 pandemic. Our economy was all but decimated. As my administration is now leading us back on the road to recovery, are we to be further hampered by another layer of unnecessary delays caused by a flawed rule?

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My comments are the mere tip of the spear. Both the GCMP federal consistency review and DOAG technical comments provide much greater specificity regarding the inaccuracies and inefficiencies of this proposed rule.

Both I and the 36th Guam Legislature believe this rule to be erroneous. I support the 36th Guam Legislature's Resolution 46-36 (LS) urging NMFS to delay the proposed critical habitat designation process until the 5-year coral status review and coral recovery plan are completed. Then, we will at least be able to verify that NMFS is using current best available data. Lastly, I encourage NMFS to bring Guam, CNMI, and American Samoa experts and governing agencies together and conduct a workshop to openly address and resolve coral critical habitat issues before coming to any final decision.

Senseremente,



LOURDES A. LEON GUERRERO
Maga'hågan Guåhan
Governor of Guam

cc: *Honorable* Joshua F. Tenorio, Lt. Governor of Guam
Director Chelsa Muna-Brecht, Department of Agriculture
Deputy Director Adrian Cruz, Department of Agriculture