



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS  
**OFFICE OF THE GOVERNOR**

26 May 2021

GOV021-131

Dr. Paul Doremus  
Assistant Administrator for Fisheries (Acting)  
NOAA Fisheries Directorate  
1315 East-West Highway  
14<sup>th</sup> Floor  
Silver Spring, MD 20910

RE: Proposed Rule: Endangered and Threatened Species; Critical Habitat for the  
Threatened Indo-Pacific Corals  
Comments from the Commonwealth of the Northern Mariana Islands

Dear Dr. Doremus,

These comments are respectfully being submitted to the National Marine Fisheries Service (NMFS) concerning the Proposal 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 Commonwealth of the Northern Mariana Islands (CNMI) wishes to express several concerns on the critical habitat designation package, as well as the science and justification used by NMFS to support the proposed action. After multiple regional requests to extend the comment period, the NMFS extended it until 26 May 2021.

The Indo-Pacific corals were listed under the Endangered Species Act in 2014. Typically, NMFS designates critical habitat at the same time the species is listed, however this action was delayed for 7 years. Unfortunately, this delay created the unfortunate dilemma where NMFS is simultaneously working on designating critical habitat, conducting 5-year status reviews, and development of Recovery Plans for the same species of corals. The appropriate sequence would have the 5-year status report completed prior to the designation of critical habitat. BSIA is the standard on which all resource management decisions should be based. The current NMFS approach for determining critical habitat does not allow the use of BSIA.

Overall, I am disappointed in the approach NMFS has adopted for the critical habitat issue. I understand there is very little scientific information available for these coral species on which informed management and recovery measures can be based. Yet, NMFS did not provide the courtesy for local government resource agencies to engage in meaningful discussion with your scientists on identifying potential critical habitat areas

in our territorial waters. In complete indifference to the management responsibilities of our local resource managers, NMFS chose to unilaterally propose to designate virtually all the shallow nearshore waters as critical habitat.

The CNMI Legislature stated their position through passage of House Joint Resolution 22-2 (attached). The CNMI Legislature supports a delay in the critical habitat designation process until such time as the 5-year coral status review and coral recovery plans can be completed. The Resolution also recommended that the Department of Lands and Natural Resources and NMFS work cooperatively in identifying appropriate coral critical habitat that is based on BSIA.

### ISSUES:

On 19 January 2021, I jointly signed a letter to the NOAA Assistant Administrator (Fisheries) with the Governors of American Samoa and Guam requesting a 90-day time extension to the comment period in order for the affected Pacific Island communities to fully better understand the critical habitat issue and to review the data. We requested a 90-day extension to properly review the science supporting the designation as our resource agencies were not invited to participate in the planning process. In addition, this is the first time critical habitat would be designated in waters under local CNMI management authority. Unfortunately, NMFS provided only an additional 30 days.

In accordance with 16 U.S.C. § 1456, also referred to as Section 307 of the Coastal Zone Management Act of 1972, NMFS submitted a negative federal consistency determination to our CZM Program Manager related to the proposed coral critical habitat designation. NMFS determined that the proposed action “will have no reasonably foreseeable effects on the enforceable policies of ... CNMI” (Federal Register Vol 85 #229 pp76284). The Division of Coastal Resources Management rejected the NMFS negative determination and urged NMFS to “... consider re-scoping the critical habitat boundaries and/or areas not included in critical habitat, working together with CNMI stakeholders and resource agencies for the purposes of reducing future administrative burden and negative economic effects.” As of 23 May 2021, NMFS has not responded.

As requested by the CNMI, Guam, and American Samoa resource agency heads, a virtual meeting took place on 8 March 2021 with NMFS representatives to discuss broad regional concerns on the coral critical habitat issue. Governmental agencies again requested that NMFS place the critical habitat designation process in abeyance until the ESA 5-year status review has been completed. Again, the request was denied. However, NMFS did provide a 60-day time extension to the public comment period and a promise to “... *work directly with your agency staff to ensure that we have the relevant information from your Departments to incorporate into the final coral critical habitat rule, if warranted.*” It is my understanding that DLNR is still waiting for NMFS to approach them for assistance.

The last issue I wished to bring up is the duplicative and therefore, potentially unnecessary designation of critical habitat. Any additional protections offered to listed corals through the designation of critical habitat could be considered insignificant when compared to the myriad of existing federal and local regulatory programs that protect corals and coral reef habitat. For example, the following regulatory programs minimize direct physical impacts to all corals, protected corals, and coral reef habitat, while others promote water quality improvements necessary for corals to thrive: 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, CNMI section 401 Water Quality Certification, CNMI Coastal Zone Management Program, CNMI Earthmoving and Erosion Control Permit, and the USEPA Construction General Permit. In addition, the CNMI has two coral production facilities that are associated with the CNMI's coral reef restoration program; one of the facilities is propagating threatened coral species.

When existing regulatory coral protections are combined with the scientific information provided by J.E.N. Veron<sup>1</sup>, the justification and usefulness of designating critical habitat in US waters for the Indo-Pacific corals becomes highly questionable.

I would appreciate an NMFS reevaluation of whether critical habitat designations for listed corals are warranted in US jurisdictions in the Indo-Pacific. There appears to be sufficient regulatory protections currently in place to protect the existing coral populations.

#### CONCLUSION:

I support meaningful science-based conservation measures. However, it appears that the critical habitat designation is more related to unnecessary federal overreach with little return on fulfilling conservation objectives. It is our understanding that the main distribution of these coral species are located outside US jurisdictions and their populations are not at risk.

I am respectfully requesting that NMFS withdraw the critical habitat designation until the ongoing coral status reports have been finalized and when affected island communities can be provided meaningful participation in deciding whether critical habitat is in fact, warranted and if so, where critical habitat should be designated. To accomplish this endeavor, I would appreciate if NMFS hold an inclusive in-person workshop with all three jurisdictions that will properly address critical habitat issues.

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<sup>1</sup> review by J.E.N Veron, submitted as part of the comments from the Western Pacific Regional Fishery Management Council.

The CNMI DLNR and Division of Fish and Wildlife are providing technical comments in separate correspondence.

Regards,



ARNOLD I. PALACIOS  
Acting Governor

cc: Governor Ralph DLG. Torres  
Guam Governor Lourdes A. Leon Guerrero  
American Samoa Governor Lemanu P. S. Mauga  
CNMI Congressman Gregorio "Kilili" Sablan  
House Speaker  
Senate President  
DLNR Secretary Anthony Benavente  
DFW Director Manuel Pangelinan