



**Western
Pacific
Regional
Fishery
Management
Council**

December 14, 2021

Mr. Michael D. Tosatto
Pacific Islands Regional Office
NOAA Inouye Regional Center
1845 Wasp Boulevard, Building 176
Honolulu, HI 96818

Dear Mike:

The Western Pacific Regional Fishery Management Council at its 189th Meeting held virtually on September 21-23, 2021, requested that the National Marine Fisheries Service (NMFS) Pacific Islands Regional office (PIRO) continue coordination with the territory governments on the proposed critical habitat designation for coral species listed under the Endangered Species Act (ESA).

American Samoa, CNMI, and Guam Council members remain concerned of the potential impacts of the proposed critical habitat designations for ESA-listed coral species and the inconsistent information provided on NMFS' policy regarding the application of CZMA federal consistency provisions to critical habitat designations. The territory government representatives were told at the All Islands Coral Reef Committee (AIC) meeting that NMFS has an internal policy on federal consistency determinations under the CZMA under which NMFS makes an automatic negative determination for critical habitat designations. NMFS additionally indicated that all that is required in response to Guam and CNMI's non-concurrence is a second letter to the local agencies better explaining NMFS's position.

In response to the Freedom of Information Act (FOIA) request by the three Territorial Governors to obtain this internal policy, NMFS provided five responsive documents, one of which appears to be guidance posted on NMFS' internal website on the application of CZM federal consistency provisions to critical habitat designations. Contrary to the information inferred during the AIC meeting, the guidance indicates that NMFS should assess critical habitat designations on a case by case basis, rather than automatically issuing a negative determination. Two other documents provided in response to the FOIA request were heavily redacted, of which one appears to be a guidance document entitled "Guidance [*redacted text*] of the Coastal Zone Management Act to Critical Habitat Designations." We believe that the designation of critical habitat should be an open and transparent process with any internal policy guidance documents made available to the regulated public.

To date, NMFS has not provided any further response to Guam or CNMI governments in response to their non-concurrence with NMFS' negative determinations. We appreciate that NMFS has been in contact with the territory governments to address other concerns, such as revising the maps for identifying the critical habitat designation boundaries. The Council requests that NMFS continue to coordinate with the territory governments in advance of the final rule to address the remaining concerns, including follow-up on the CZMA federal consistency determination to provide Guam and CNMI governments with specific reasons for not accepting the non-concurrence.

Sincerely,



Kitty M. Simonds
Executive Director

Cc: Janet Coit, Assistant Administrator for Fisheries
Samuel Rauch, Deputy Assistant Administrator for Regulatory Programs
Honorable Lemanu P. S. Mauga, Governor of American Samoa
Honorable Ralph DLG. Torres, Governor of CNMI
Honorable Lourdes A. Leon Guerrero, Governor of Guam
Archie Soliai, Director, AS Department of Marine and Wildlife Resources; Chair, Western Pacific Regional Fishery Management Council
Anthony Benavente, Secretary, CNMI Department of Lands and Natural Resources
Chelsa Muña-Brecht, Director, Guam Department of Agriculture