



HOUSE OF REPRESENTATIVES

TWENTY-SECOND LEGISLATURE

COMMONWEALTH OF THE NORTHERN MARIANAS COMMONWEALTH
LEGISLATURE

P.O. BOX 500586 SAIPAN, MP 96950

SHEILA J. BABAUTA
CHAIRPERSON
NATURAL RESOURCES COMMITTEE

STANDING COMMITTEE REPORT NO. 22-2
DATE: March 31, 2021
RE: HJR 22-02

The Honorable Edmund S. Villagomez
Speaker of the House of Representatives
Twenty-Second Northern Marianas
Commonwealth Legislature
Capitol Hill
Saipan, MP 96950

Dear Mr. Speaker:

Your Committee on Natural Resources to which was referred:

HJR No. 22-02:

“Strongly supports a delay in the proposed coral critical habitat designation process by National Marine Fisheries Service (NMFS) until such time the 5-year coral status review and coral recovery plan can be completed, and have the Department of Lands and Natural Resources work in coordination with NMFS in identifying appropriate coral critical habitat for the Commonwealth of the Northern Mariana Islands (CNMI) using Best Scientific Information Available.

begs leave to report as follows:

I. RECOMMENDATION:

After considerable discussion, your Committee recommends that HJR. NO. 22-02 be passed by the House in the form of House Draft 1.

HOUSE CLERK'S OFFICE

RECEIVED BY *SR*

DATE 04/22/21 TIME 3:25 pm

II. ANALYSIS:

A. Purpose:

To strongly support a delay in the proposed coral critical habitat designation process by the National Marine Fisheries Services (NMFS) until such time as the 5-year coral status review and coral recovery plan can be completed, and have the Department of Lands and Natural Resources work in coordination with NMFS in identifying appropriate coral critical habitat for the Commonwealth of the Northern Mariana Islands (CNMI) using Best Scientific Information Available.

B. Amendment:

In addition to non-substantive technical amendments, the Committee made the following amendments to strengthen the intent of House Joint Resolution 22-02.

- Page 2:
 - Line 20:
 - Inserted the following language “**WHEREAS**, on March 19, 2021, NMFS denied the Territorial Resource Agency Heads request for a postponement of critical habitat designation until such time that the ongoing ESA five-year status review has been completed, and instead granted a 60-day extension of the public comment period; and”

C. Committee Findings:

Your Committee finds that in accordance with 16 U.S.C. 1531 et seq. and the Reorganization Plan No. 4 of 1970 (35 FR 15627; October 6, 1970), the National Marine Fisheries Services (NMFS) has jurisdiction over the marine and anadromous taxa identified in their rule. Under section 4(a)(2) of the Act, NMFS must decide whether a species under its jurisdiction should be classified as an endangered or threatened species. NMFS makes these determinations via its rulemaking process. The U.S. Fish and Wildlife Service, are then responsible for publishing final rules to amend the List in title 50 of the Code of Federal Regulations (CFR) at 50 CFR 17.11(h).

On December 07, 2012, NMFS published a proposed rule (77 FR 73220) to list 66 petitioned coral species, 12 as endangered and 54 as threatened, and to reclassify from threatened to endangered two coral species: elkhorn coral (*Acropora palmata*) and staghorn coral (*Acropora cervicornis*). NMFS then solicited public comments on the proposed rule through March 07, 2013. On September 20, 2013, NMFS published a notice of a 6-month extension of the deadline for the final coral species determinations because of substantial disagreement regarding the sufficiency and accuracy of the data and analyses relevant to the proposed listing determinations (78 FR 57835)

On September 10, 2014, NMFS published its final rule (79 FR 53852) to list 20 of the 66 proposed coral species as threatened species. Of the 20 proposed coral species listed, 15 species of Indo-Pacific corals were listed as threatened under the Endangered Species Act. NMFS further proposed to designate critical habitat for the seven threatened corals in the U.S. water in the Indo-Pacific. These seven species occurs in the shallow waters of American Samoa, Guam, the Northern Mariana Islands (CNMI), and the Pacific Remote Island Area. The listing of the 20 species was effective October 10, 2014. In that same rule, NMFS also determined that elkhorn coral and staghorn coral did not warrant reclassification from threatened to endangered.

Your Committee further finds that on November 13, 2014, the United States (U.S.) Fish and Wildlife Service under the Department of Interior, came out with a final ruling that would add 20 coral species to the list of endangered and threatened wildlife. The U.S. Fish and Wildlife Service, in accordance with the Endangered Species Act of 1973, as amended, are amending the list of endangered and threatened wildlife by adding 20 species of corals: Boulder star coral (*Orbicella franksi*), lobed star coral (*Orbicella annularis*), mountainous star coral (*Orbicella faveolata*), pillar coral (*Dendrogyra cylindrus*), rough cactus coral (*Mycetophyllia ferox*), *Acropora globiceps*, *Acropora jaquelineae*, *Acropora lokani*, *Acropora pharaonic*, *Acropora retusa*, *Acropora rudis*, *Acropora speciose*, *Acropora tenella*, *Anacropora spinos*, *Euphyllia pradivisa*, *Isopora crateriformis*, *Montipora australiensis*, *Pavona diffluens*, *Porites napopora*, and *Seriatopora aculeate*. These amendments are based on previously published determinations by the National Marine Fisheries Service (NMFS) of the National Oceanic and Atmospheric Administration, Department of Commerce, which has jurisdiction for these species.

Moreover, your Committee finds that three of the 20 threatened coral species listed in the November 13, 2014 ruling by the U.S. Fish and Wildlife are known to occur in shallow or nearshore waters in the CNMI: *Acropora globiceps*, *Acropora retusa*, and *Seriatopora aculeata*. On November 27, 2020, six years after the determination of endangered and threatened coral species was listed, the NMFS gave notice through a proposed rule to designated critical habitat for the threatened Indo-Pacific corals that live in the waters of the CNMI, Guam, and American Samoa. NMFS did not consult with the CNMI, Guam, and American Samoa governments prior to the publication of the proposed rule.

On January 19, 2021, the Territorial Governor's (CNMI Governor Ralph DLG. Torres, Guam Governor Lourdes A. Leon Guerrero, and American Samoa Governor Lemanu P.S. Mauga) sent a letter to NMFS requesting for a 90-day extension to the public comment period in order to review the rule and associated supporting documents. That request was later rejected and only provided for a 30-day time extension.

On March 12, 2021, the Territorial Resource Agency Heads (Anthony T. Benavente, Secretary, DLNR; Chelsa Muna-Brecht, Director, Department of Agriculture Guam; and Taotao Tasi Archie Soliai, Director, Department of Marine & Wildlife Resources Territory of American Samoa) sent a letter to NMFS requesting that NMFS delay the coral critical habitat designation until such time that the ongoing ESA 5-year status review has been completed.

That request was also rejected with an accompanied letter dated March 19, 2021. Although, the request to delay the designation was not granted, NMFS instead granted a 60-day extension to the public comment period. Based on the accompanied letter dated March 19, 2021, your Committee finds that it would be appropriated to amend the proposed legislation to indicate what occurred on such date. Therefore, you Committee agrees with the intent and purpose of House Joint Resolution 22-02 and recommends its passage in the form of House Draft 1.

In closing, it is the intent of your Committee to recommend this legislation for passage as it is critical to communicate the sentiments of the CNMI to our federal counterparts in regards to this critical issue that may have significant ramifications to the livelihood of the CNMI people.

D. Public Comments/Public Hearing:

Public Comments/testimonies were given during the public meeting on March 31, 2021. Those who testified to the committee were:

- Anthony T. Benavente, Secretary, Department of Lands and Natural Resources
- Manny Pangelinan, Director, Department of Fish and Wildlife
- John Gurley, Micronesia Environmental Services
- Laurie Peterka, Executive Director, Friends of the Marianas Trench
- David L. Benavente, Program Manager, Micronesia Islands Nature Alliance (MINA)

*All who testified are in support of the legislation.

No public hearings was scheduled for House Joint Resolution 22-02. And no comments were solicited to respective agencies.

D. Legislative History:

House Joint Resolution No. 22-02 was introduced by Representative Blas Jonathan "BJ" T. Attao on March 16, 2021 to the House and was referred to the House Standing Committee on Natural Resources.

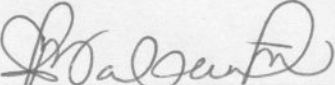
E. Cost Benefit:

The enactment of House Joint Resolution 22-02, HD1 will not result in additional cost to the CNMI Government as it is a House Joint Resolution that states the sentiments of the CNMI to the designation of the proposed coral critical habitat process by the National Marine Fisheries Service (NMFS).

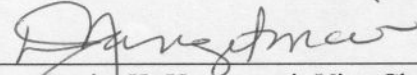
III. CONCLUSION:

The Committee is in accord with the intent and purpose of H.J.R. No. 22-02, and recommends its passage in the form of House Draft 1.

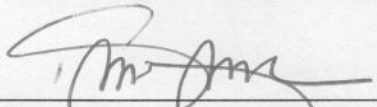
Respectfully submitted,



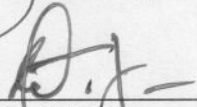
Rep. Sheila J. Babauta, Chairperson



Rep. Denita K. Yangetmai, Vice Chair




Rep. Angel A. Demapan, Member



Rep. Richard T. Lizama, Member

Rep. Patrick H. San Nicolas, Member

Reviewed by:



House Legal Counsel

TWENTY-SECOND NORTHERN MARIANAS COMMONWEALTH

LEGISLATURE

IN THE HOUSE OF REPRESENTATIVES

MARCH 16, 2021

First Regular Session, 2021

H. J. R. 22-2, HD1

A HOUSE JOINT RESOLUTION

Strongly supports a delay in the proposed coral critical habitat designation process by National Marine Fisheries Service (NMFS) until such time as the 5-year coral status review and coral recovery plan can be completed, and have the Department of Lands and Natural Resources work in coordination with NMFS in identifying appropriate coral critical habitat for the Commonwealth of the Northern Mariana Islands (CNMI) using Best Scientific Information Available.

- 1 **WHEREAS**, coral reefs are unique ecosystems that dominate the seascape
2 in the near-shore marine environments of the CNMI that sustain our local island
3 communities through livelihood, fishing, tourism and a foundation for customary
4 exchange and cultural activities; and
5 **WHEREAS**, coral reefs face various threats such as climate change, land-
6 based source of pollution, and over-exploitation and as such, they need protection;
7 and
8 **WHEREAS**, the National Marine Fisheries Service (NMFS) listed 15
9 species of Indo-Pacific corals as threatened under the Endangered Species Act on
10 10 September 2014 and seven species occur in the shallow waters of American

1 Samoa, Guam, the Commonwealth of the Northern Mariana Islands (CNMI), and
2 the Pacific Remote Island Area; and

3 **WHEREAS**, NMFS determined that three of the 20 Threatened coral
4 species listed in 2014 are known to occur in shallow nearshore CNMI waters;
5 *Acropora globiceps*, *Acropora retusa*, and *Seriatopora aculeata*; and

6 **WHEREAS**, on 27 November 2020, six years after the coral species were
7 listed, the NMFS gave notice through a Proposed Rule that critical habitat would
8 be designated in the shallow nearshore waters of the CNMI, Guam, and American
9 Samoa; and

10 **WHEREAS**, NMFS did not consult with the CNMI, Guam, or American
11 Samoan governments prior to publication of the Proposed Rule; and

12 **WHEREAS**, CNMI Governor Ralph DLG. Torres, Guam Governor
13 Lourdes A. Leon Guerrero, and American Samoa Governor Lemanu P.S. Mauga
14 sent a letter dated 19 January 2021 to the NMFS requesting a 90-day time extension
15 to the public comment period in order to review the rule and associated supporting
16 documents; and

17 **WHEREAS**, NMFS rejected the three Territorial Governor's request for a
18 90-day extension of the public comment period and instead, provided only a 30-
19 day time extension; and

20 **WHEREAS**, on March 19, 2021, NMFS denied the Territorial Resource
21 Agency Heads request for a postponement of critical habitat designation until such

1 time that the ongoing ESA five-year status review has been completed, and instead
2 granted a 60-day extension of the public comment period; and

3 **WHEREAS**, NMFS is also simultaneously conducting a 5-Year Coral
4 Status Review on the same species of corals where critical habitat is being
5 designated; and

6 **WHEREAS**, NMFS has stated that their 5-Year Coral Status Review will
7 be completed in February 2022 and will contain additional information, including
8 previously unknown data, on the listed corals; and

9 **WHEREAS**, NMFS is also simultaneously developing a Recovery Plan for
10 the ESA-listed Indo-Pacific corals, and will be convening a Recovery Planning
11 Workshop with experts and stakeholders in May 2021 to gather additional
12 information for the recovery status review and input on potential recovery actions
13 and priorities; and

14 **WHEREAS**, due to the ill-timing of (1) coral critical habitat designation,
15 (2) 5-Year Coral Status Review, and (3) Recovery Plan development, critical
16 habitat designation would be completed prior to the CNMI being able to examine
17 the additional data and information contained in the 5-Year Coral Status Review
18 and recovery plan; and

19 **WHEREAS**, the ESA-listed 15 Indo-Pacific corals occur across a broad
20 range spanning many nations, with US waters comprising less than 1 percent of
21 their collective ranges; and

1 **WHEREAS**, the CNMI Government promotes and encourages the use of
2 Best Scientific Information Available (BSIA) as the gold standard in resource
3 management; and

4 **WHEREAS**, the NMFS is proceeding with the designation of coral critical
5 habitat despite not having completed the 5-Year Coral Status Review and Recovery
6 Plan and therefore, violates the intent and purposes of BSIA; and

7 **WHEREAS**, the current NMFS approach on designating coral critical
8 habitat will not allow the CNMI the opportunity to properly identify critical habitat
9 for those ESA-listed coral species found in their waters as a significant amount of
10 relevant data and information is held by NMFS and not being made available for
11 review;

12 **NOW, THEREFORE, BE IT RESOLVED**, by the House of
13 Representatives of the Twenty-Second Northern Marianas Commonwealth
14 Legislature, the Senate concurring, that the House and Senate for itself and on
15 behalf of the people of the Commonwealth of the Northern Mariana Islands,
16 extends its full support of the request by the Department of Lands and Natural
17 Resources:

18 (1) to delay the current proposed coral critical habitat designation process
19 until such time as the 5-Year Coral Status Review and Recovery Plan has been
20 completed; and

HOUSE JOINT RESOLUTION 22-2, HD1

1 (2) to have the Department of Lands and Natural Resources work in
2 coordination with the NMFS in identifying coral critical habitat in the CNMI.; and
3 **BE IT FURTHER RESOLVED** that the Speaker of the House of
4 Representatives and the President of the Senate shall certify and the House Clerk
5 and the Senate Legislative Secretary shall attest to the adoption of this joint
6 resolution and thereafter the House Clerk shall transmit a certified copy to the Mr.
7 Samuel D. Rauch III, Deputy Assistant Administrator for Regulatory Programs,
8 National Oceanic and Atmospheric Administration; Mr. Michael Tosatto, Regional
9 Administrator, Pacific Islands Regional Office, National Oceanic and Atmospheric
10 Administration; Honorable Ralph DLG. Torres, Governor, Commonwealth of the
11 Northern Mariana Islands; Honorable Gregorio “Kilili” C. Sablan, U.S. Delegate
12 to the United States Congress, 117th United States Congress; Honorable David M.
13 Apatang, Mayor of Saipan; Honorable Edwin P. Aldan, Mayor of Tinian and
14 Aguiguan; Honorable Efraim Atalig, Mayor of Rota; Honorable Vicente C. Santos,
15 Jr., Mayor of the Northern Islands; and Anthony T. Benavente, Secretary,
16 Department of Lands and Natural Resources.

Prefiled: 3/12/2021

Date: 3/12/2021

Introduced by: /s/ Rep. Blas Jonathan “BJ” T. Attao
/s/ Rep. John Paul P. Sablan
/s/ Rep. Edmund S. Villagomez
/s/ Rep. Denita Kaipat Yangetmai
/s/ Rep. Ralph N. Yumul

HOUSE JOINT RESOLUTION 22-2, HD1

Reviewed for Legal Sufficiency by:

/s/ Joseph L.G. Taijeron, Jr.
House Legal Counsel