

Mariana Islands Range Complex Project

1. BACKGROUND AND PROJECT PROPOSAL

Federal law requires the Department of Defense (“DoD”) and each of its component branches and services to organize, train, and equip forces for combat. To meet that statutory mission, DoD needs access to areas in which individuals and groups can conduct the training exercises necessary to reach and maintain combat readiness.

The Mariana Islands Range Complex (“MIRC”) is both the name of a geographic area containing a complex of DoD training ranges in the Western Pacific region and the name of a DoD project by which training at those ranges was authorized. To minimize ambiguity, this summary refers to the geographic area as “MIRC” and the project as “Project”.

In terms of geography, the MIRC included land, sea, and airspace areas on and around the islands of Guam, Rota, Tinian, Saipan, and Farallon de Medinilla (“FDM”). It extended from waters south of Guam to north of Pagan, and from an area east of the Mariana Islands west to the middle of the Philippine Sea – an area of approximately 501,873 square nautical miles of ocean and coastal areas, as well as 64 square nautical miles of land.

In terms of training, the MIRC provided a wide variety of land, sea, air, and submarine training ranges of various sizes, many involving live-fire activities.

Significant sea and submarine training areas within the MIRC included the following:

- A training area known as “W-517,” consisting of roughly 14,000 square nautical miles of open ocean south-southwest of Guam, used by the Navy for unit-level training;
- Offshore areas at Agat Bay, Tipalo Cove, Dadi Beach, and Pitti Mine Neutralization Area, Guam, used for a variety of littoral training activities and unit-level training;
- Outer Apra Harbor, Guam, used for a variety of Navy support and training functions; and
- Inner Apra Harbor, Guam, used for support functions and small craft and diver training.

Significant training airspace within the MIRC included the following:

- Warning Area W-517, the airspace above training area W-517 (see above);
- Restricted Area 7201, a 28 square nautical mile area extending for approximately three miles around FDM; and
- Various Air Traffic Control Assigned Airspace areas between Guam and FDM, used for short periods during training activities involving FDM ranges.

Significant training areas on land within the MIRC included the following:

- FDM, a 182-acre island used for live and inert bombing, shore bombardment, missile strikes, and strafing practice;
- The Tinian Military Lease Area (“MLA”), approximately 15,400 acres used for small- and large-unit exercises and expeditionary warfare training;
- Rota special warfare training areas; and
- Guam training facilities Naval Base Guam and Northwest Field, collectively used for unit-level activities, special warfare training, small arms qualification, and urban warfare exercises.

By the early years of the twenty-first century, however, DoD came to believe the MIRC lacked sufficient infrastructure and capabilities to meet all relevant military training requirements – particularly (though not exclusively) requirements related to modern undersea and air warfare. The Project was proposed as a means of addressing these perceived shortfalls and constraints.

Although the MIRC included training facilities and opportunities for multiple branches of the armed services, the United States Navy served as lead agency for the Project by virtue of its DoD-designated role as “Executive Agent” for the range complex.

2. ALTERNATIVES CONSIDERED

The vast size of the MIRC and the wide variety of military training activities conducted there provided the Navy with a broad range of potential alternatives – in theory, it would have been possible to arrange and rearrange training opportunities within the MIRC in numerous different configurations.

Instead, the Navy approached alternatives from a programmatic perspective: maintain existing training (the “No Action Alternative”); meet current military training needs (“Alternative 1”); or upgrade training beyond immediate needs (“Alternative 2”).

Elements of the No Action Alternative (*i.e.*, then-existing training) occurring in portions of the MIRC within the Commonwealth of the Northern Mariana Islands (“CNMI”) included the following:

- Army and Marine Corps surveillance and reconnaissance training in the MLA on Tinian;
- Marine Corps “Ship-to-Objective” maneuvers, evacuation training, and assault support training in the MLA on Tinian;
- Marine Corps direct fire training at FDM;
- Navy amphibious warfare training at FDM;

- Navy combat search and rescue on and near Tinian;
- Air Force bombing at FDM;
- Specialized joint hostage rescue, evacuation training, and urban terrain exercises, on non-DoD land on Rota;
- Boat maintenance on Rota and Saipan; and
- Major training exercises (involving joint expeditionary warfare or multi-strike group exercises) in offshore waters throughout the MIRC.

Alternative 1 included all the actions within the No Project Alternative, as well as additional activities deemed necessary to meet then-current training needs. Of those additional activities, the following were proposed to occur in the portions of the MIRC within the CNMI:

- Additional major training exercises, which would increase the frequency with which the activities listed above (*i.e.*, the No Action Alternative) would occur;
- Intelligence, Surveillance, and Reconnaissance/Strike (“ISR/Strike”) exercises, which would use bombing ranges at FDM;
- Creation of a 10 nautical mile Surface Danger Zone (“SDZ”) surrounding FDM; and
- Anti-submarine warfare training, including a portable underwater tracking range, potentially located in CNMI waters.

Alternative 2 included all the actions within Alternative 1, as well as additional actions deemed desirable for “upgraded” training. Of these additional actions, the following were proposed to occur in the portions of the MIRC within the CNMI:

- A large-scale fleet strike group exercise, which would use bombing ranges at FDM;
- Additional anti-submarine warfare training, some of which would occur in CNMI waters; and
- Ship squadron warfare exercises, some of which would occur in CNMI waters.

The Navy deemed other programmatic options – including alternative locations, simulated training, reductions in training, and various temporal and spatial limitations within the MIRC – infeasible and eliminated them from detailed consideration.

3. ENVIRONMENTAL REVIEW PROCESS

3.1 Proposed Project and Scoping Process

On June 1, 2007, the Navy formally proposed the Project and initiated the environmental review process by issuing a Notice of Intent to Prepare an Environmental Impact Statement (“NOI”). The NOI began a public scoping period, which included three public meetings – one each on Guam, Saipan, and Tinian – and an opportunity for interested stakeholders to submit comments on issues warranting consideration in the Navy’s Environmental Impact Statement (“EIS”).

The Navy received 25 total comments during the scoping period, including comments from the CNMI Division of Fish & Wildlife and from multiple CNMI residents. CNMI stakeholders identified general concerns about environmental impacts and mitigation, as well as specific suggestions regarding aircraft noise and potential impacts to the Tinian Monarch.

The United States Environmental Protection Agency (“EPA”) and the United States Fish & Wildlife Service (“USFWS”) also submitted scoping comments addressing a variety of issues, including water quality, water availability, impacts to marine resources, invasive species, terrestrial biological resources and habitats, and environmental justice.

3.2 Draft EIS and Comments

On January 30, 2009, the Navy published a Draft EIS for the Project and invited further public review and comment. Public hearings were held at five locations – two on Guam and one each on Saipan, Tinian, and Rota. The Navy reported 129 total attendees at the five hearings.

The Draft EIS fully evaluated all three of the alternatives discussed above, identifying Alternative 1 (meet then-current training needs) as the Navy’s preferred alternative.

The Navy received comments on the Draft EIS from 68 individuals and agencies, including the CNMI Division of Fish and Wildlife, the Department of Public Works, the Chairman of the CNMI House of Representatives, two individual members of the CNMI House of Representatives, the Mayor of the Municipality of Saipan, the Mayor of the Municipality of the Northern Islands, the Mayor’s Office of the Municipality of Rota, the Chairman of the Rota Municipal Council, the Rota Municipal Treasury, the Tinian Chamber of Commerce, and several individual CNMI residents.

Some CNMI stakeholders – including, most notably, the Division of Fish and Wildlife – expressed significant environmental concerns about the Project, particularly with respect to potential impacts on sea turtles and turtle habitat on and around Tinian; potential impacts on FDM wildlife; potential impacts on multiple bird species and their habitats; potential impacts on fruit bat recovery; potential erosion and soil impacts; invasive species; aircraft noise; cumulative impacts; ambiguity in the Draft EIS’s description of proposed training activities; the Navy’s failure to fully specify mitigation measures; and the Draft EIS’s failure to specify preparatory and after-action activities.

Other CNMI stakeholders – including, for example, the Mayor of Saipan – focused on potential loss of access to FDM and other public lands during training exercises.

Still other CNMI stakeholders – including the Chairman of the Rota Municipal Council – inquired about the potential economic benefits of military training.

3.3 Final EIS

The Navy published a Final EIS in May of 2010. The Final EIS, like the Draft EIS, identified Alternative 1 (meet then-current training needs) as the Navy’s preferred alternative.

With respect to environmental issues, the Final EIS identified the following impacts as potentially significant and/or otherwise involving mitigation:

- Marine mammals and sea turtles, which the Final EIS proposed to mitigate with a variety of measures, including
 - Best Management Practices (“BMPs”) for personnel training
 - Exclusions zones around areas used for underwater explosives
 - Development and implementation of a stranding response plan
 - Sonar safety zones
 - Pre-and post-exercise surveys and adaptive management measures relating to same
 - Monitoring, both MIRC-specific and global
 - Additional exercise-specific safety measures for gunnery, anti-submarine warfare, small arms training, bombing, missile exercises, vessel sinking exercises, and sonobuoys;
- Soil erosion, compaction, runoff, and related concerns, which the Final EIS proposed to mitigate with standard BMPs for soil and stormwater, as well as compliance with DoD guidance documents (but not necessarily the CNMI’s own regulations);
- Hazardous materials and hazards, which the Final EIS proposed to mitigate with standard BMPs and a ban on live-fire exercises on Tinian (with the exception of small arms fired into bullet traps);
- Corals, which the Final EIS proposed to mitigate with a series of operational limits on amphibious landings at Tinian’s Unai Chulu, Unai Babui, and Unai Dankulo;
- Ocean water quality, which the Final EIS proposed to mitigate with standard BMPs;

- Invasive species, which the Final EIS proposed to mitigate by requiring (i) inspections and quarantine protocols, (ii) compliance with an invasive species/biosecurity plan, and (iii) awareness training;
- Effects on wildlife, which the Final EIS proposed to address in a variety of context-specific ways, including
 - On Tinian, establishing “no disturbance” areas on certain beaches, prohibiting helicopter over-flights in wetland areas, banning training near Hagoi, and prohibiting off-road travel in or near limestone forest habitats
 - On Rota, prohibiting removal or trimming of trees containing Mariana crow, fruit bat, or bridled white-eye
 - On FDM, conducting bird surveys, rat eradication, and imposing targeting restrictions during nesting season;
- Effects on cultural resources, which the Final EIS proposed to address through compliance with the terms of a National Historic Preservation Act (“NHPA”) Programmatic Agreement (“PA”) (further described below); and
- Recreation, which the Final EIS proposed to address by establishing a system providing the public with advance notifications of training-related closures.

It is worth noting that aircraft noise associated with training activities – an area of significant community concern – was not addressed in the Final EIS mitigation discussion.

Also notable was the fact that a separate Final EIS addressing DoD’s “Guam and CNMI Military Relocation Project” was pending at the same time. Although the Navy’s EIS for the Project asserted that the two documents had been harmonized, there were in fact significant differences between them in scope, substance, and process – and, perhaps more importantly, neither document was clear about whether its conclusions accounted for the environmental consequences identified in the other. In short, the structure and contents of the EIS left readers without sufficient information to form a clear picture of the relationship between the two projects or their collective consequences.

3.4 Record of Decision

On July 28, 2010, the Navy issued a Record of Decision (“ROD”) approving Alternative 1 (meet then-current training needs). The ROD incorporated mitigation measures set forth in the Final EIS, as well as those derived from other federal review processes (*see* below).

4. NATIONAL HISTORIC PRESERVATION ACT CONSULTATION

Prior to the Project, NHPA compliance for training activities within the MIRC was memorialized in a 1999 PA between DoD, the federal Advisory Council on Historic Preservation (“ACHP”), and the CNMI Historic Preservation Officer (“HPO”) (for training conducted in the CNMI) and a 1999 Memorandum of Agreement (“MOA”) between DoD, the ACHP, and the Guam HPO (for training conducted in Guam).

In 2007, the Navy re-opened NHPA section 106 consultations the CNMI HPO, the Guam HPO, the ACHP, and the National Park Service (“NPS”) to address the Project’s potential effects on historic properties and cultural resources. Public information about the consultation process is extremely limited. But it appears the consulting parties reached agreement on a new PA in the summer of 2009, the terms of which were to remain in effect until 2019.

Between August 22, 2009, and December 11, 2009, the 2009 PA was executed by signatories representing the Navy, the United States Air Force, the CNMI HPO, the Guam HPO, and NPS.¹

The 2009 PA was most notable for establishing “no training” and “limited training” areas designed to protect historic and cultural resources on Tinian and Guam.

On Tinian, the 2009 PA established “limited training” areas at Unai Masalok (along Beach Access Road, approximately 200 feet inland); at Unai Dankulo (at various points along the beach and inland); and at Unai Babui (a broad area of coastline west and north of North Field). A large “no training” area was established at Unai Chulu, with just two narrow routes – one for tracked vehicles and the other for rubber-tired vehicles and pedestrians – from the beach to the interior of the island.²

Other Tinian-specific provisions of the 2009 PA included the following:

- Mandatory installation of bullet traps for any targets within historic buildings or structures;
- Quarterly monitoring of the condition of known historic and cultural resources, with reports submitted to the CNMI HPO;
- Ongoing monitoring of cumulative impacts of military training on the Tinian National Historic Landmark, with an annual report submitted to the CNMI HPO and a final report provided to NPS; and

¹ ACHP does not appear to have executed the document – though there is no public record of any ACHP objection either.

² The Navy established additional “no training” areas at Lake Hagoi and Chiget based on concerns about wetlands/wildlife and unexploded ordnance (respectively). Neither was expressly intended to protect specific historic or cultural resources.

- Compliance with Tinian-specific procedures for treatment of human remains.

The 2009 PA does not contain any provisions specific to Saipan or Rota.

5. FEDERAL CONSISTENCY DETERMINATION

On March 18, 2009, the Navy submitted a Coastal Zone Management Act (“CZMA”) consistency determination to the CNMI Coastal Resources Management Office (“CRMO”). The consistency determination purported to find that the Project would be consistent, to the maximum extent feasible, with the CNMI Coastal Management Plan.

CRMO neither concurred in nor objected to the Negative Determination within 60 days. The Navy therefore presumed CRMO concurrence when deciding to approve the Project.