



Strengthening Regional Coordination CZMA Federal Consistency Across the Marianas

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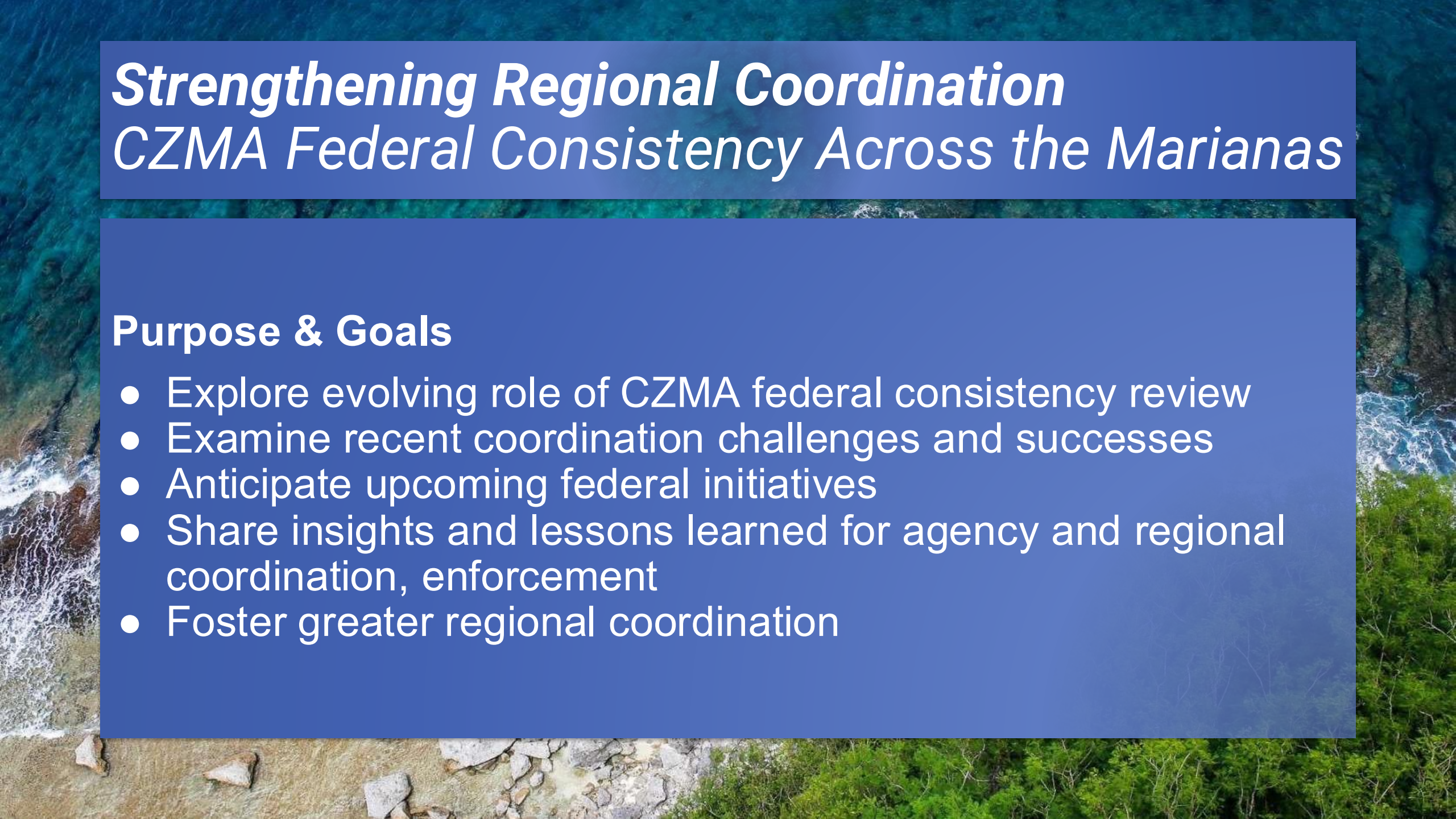
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Purpose & Goals

- Explore evolving role of CZMA federal consistency review
- Examine recent coordination challenges and successes
- Anticipate upcoming federal initiatives
- Share insights and lessons learned for agency and regional coordination, enforcement
- Foster greater regional coordination

Federal Consistency

Federal actions, in or outside the coastal zone, that have **reasonably foreseeable effects** on any **land or water use or natural resource** of a **state's coastal zone** must be consistent with the **enforceable policies** of the state Coastal Zone Management Act programs.

- CZMA § 307 (16 U.S.C. § 1456)
- 15 C.F.R. Part 930

One of two incentives for coastal states to participate in the CZMA.

Federal Consistency Federal Actions

- Federal agency activities and development projects
CZMA § 307(c)(1), (2), 15 CFR 930, subpart C
- Federal licenses or permits (non-federal applicants)
CZMA § 307(c)(3)(A), 15 CFR 930, subpart D
- Outer Continental Shelf plans
CZMA § 307(c)(3)(B), 15 CFR 930, subpart E
- Federal financial assistance to state or local agencies
CZMA § 307(d), 15 CFR 930, subpart F

Key Differences

- Effects Test Decision Maker
- Timeline
- Final Decision Maker & Appeal Options

Federal Consistency Coastal Effects

“Any reasonably foreseeable effect on any coastal use or resource of the state”

15 CFR § 930.11(g)

- Direct
- Indirect
 - Cumulative impacts
 - Secondary impacts (but not a string of possibilities)
- May be adverse or beneficial
- “Reasonably foreseeable” ≠ likely
- Not tied to NEPA finding of no significant impact
- **Uses** – Public access, recreation, fishing, historic, cultural, development, hazards management, marinas, and resource creation or restoration
- **Resources** – Air, wetlands and water bodies, aquifers, aquatic vegetation, plants, animals, land, minerals, and coastal resources of national significance

Federal Consistency Enforceable Policies

1. Be based on a legally binding state authority (enforceable mechanism)
2. Contain a definable standard
3. Be reviewed & approved by NOAA via program change

Must not:

- Be preempted by federal law
- Discriminate against a particular group or activity
- Assert jurisdiction over federal agencies, lands, or waters
- Be superseded by subsequent state law
- Merely be a directive to develop regulations
- Incorporate other policies by reference

Federal Consistency Decision

Concur

- Action proceeds as proposed
- Future changes to action or effects may require supplemental review

Conditionally Concur

- Agency or proponent can choose to comply; else treat as objection
- Agency must enforce conditions

Object

- **Federal Activity:** Agency may not proceed unless demonstrate “consistent to maximum extent practicable”
- **Federal Permit:** Permit may not issue. Applicant may appeal to Commerce Secretary on national interest or national security grounds.

Coastal Programs

Guam

Program originating legislation, place in government

- Established in 1979 through a CA between the NOAA and Bureau of Planning (now BSP), Office of the Governor and draws its authorities from the Coastal Zone Management Act (CZMA) of 1972 and 5 GCA Ch.1, Article 2, Centralized Planning under the renamed Bureau of Statistics and Plans, Office of the Governor

Key sources for enforceable policies

- Adopted by Guam Executive Order 78-37

Process for engaging networked program partners

- A) Intergovernmental memorandum; B) quarterly coordination meetings; C) direct consultation with network partners as needed.

Northern Mariana Islands

Program originating legislation, place in government

- CNMI Public Law 3-47 and preceding regulations. BECQ is composed of DEQ and DCRM (Coastal Program housed in DCRM)

Key sources for enforceable policies

- Aforementioned Laws, DEQ laws and regulations, certain other laws such as flood damage prevention regulations

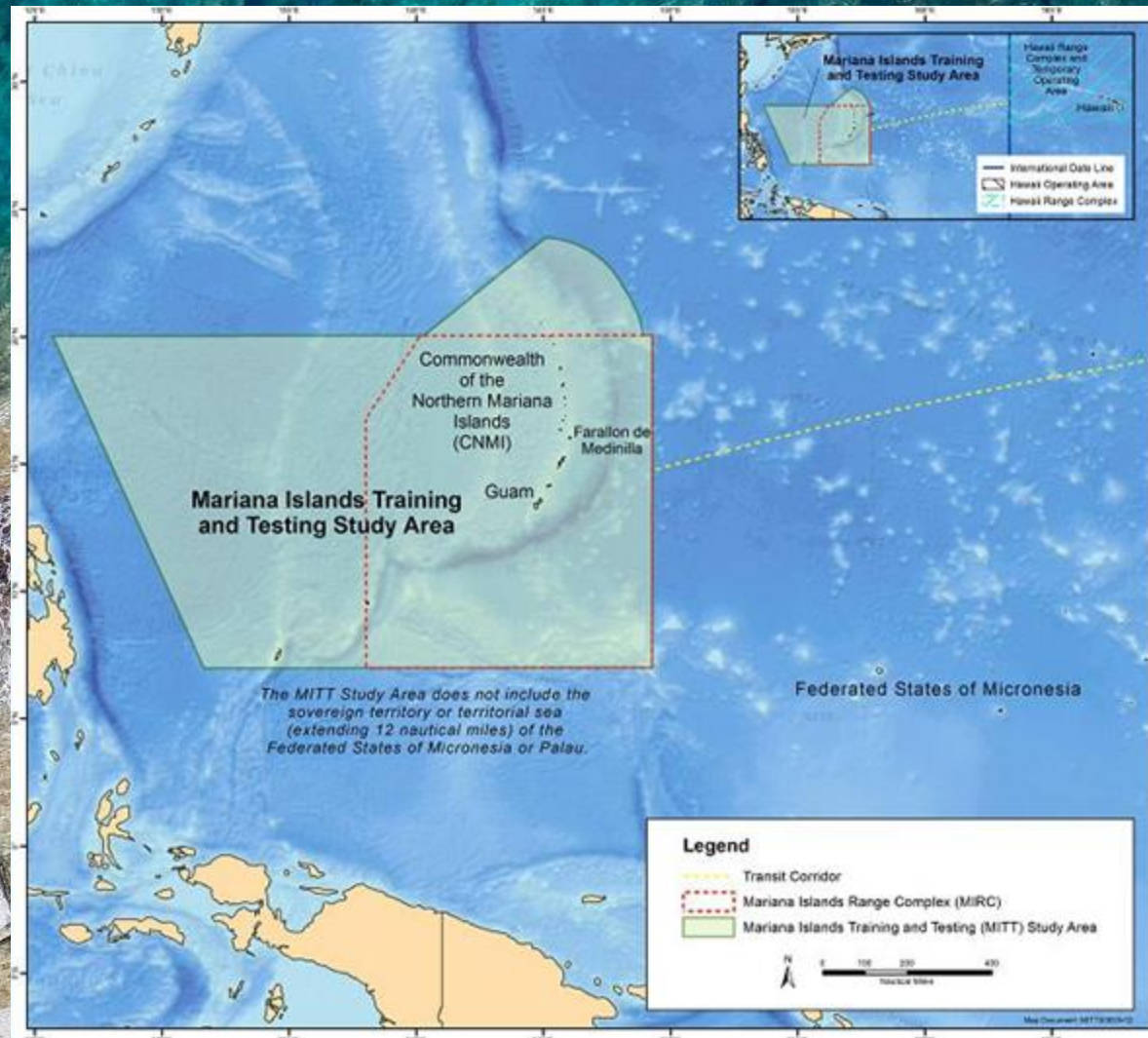
Process for engaging networked program partners

- Permitting Process has Agency Board comprised of members from various resource agencies. Direct consultation as needed with other branches.

Recent Federal Consistency Reviews

- DOD MITT (Mariana Islands Training and Testing)
- NMFS ESA Coral Critical Habitat Designation

Recent Federal Consistency Reviews





NOAA NMFS



Figure 17. Specific areas of coral critical habitat for *A. globiceps* (0 - 12 m depth, blue) in the Rota Unit.

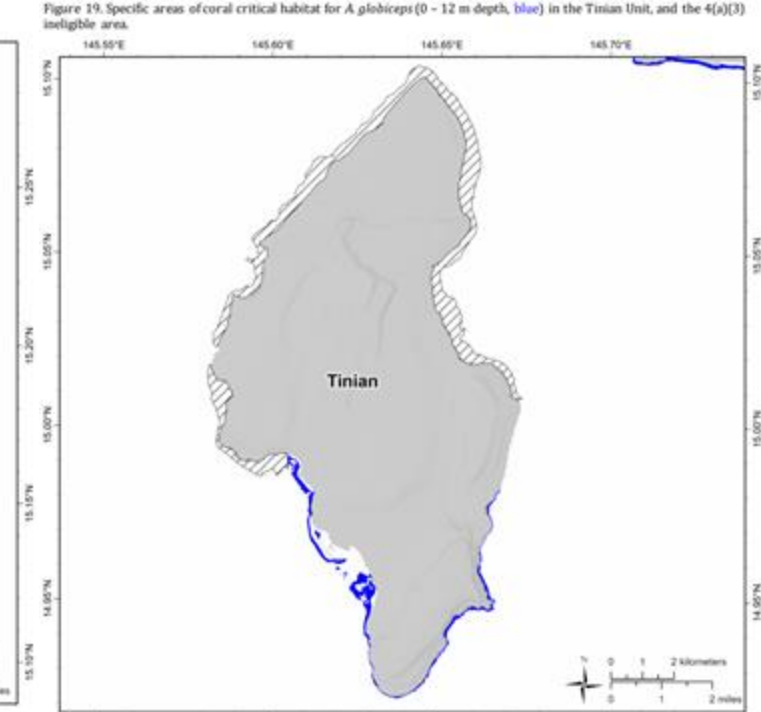
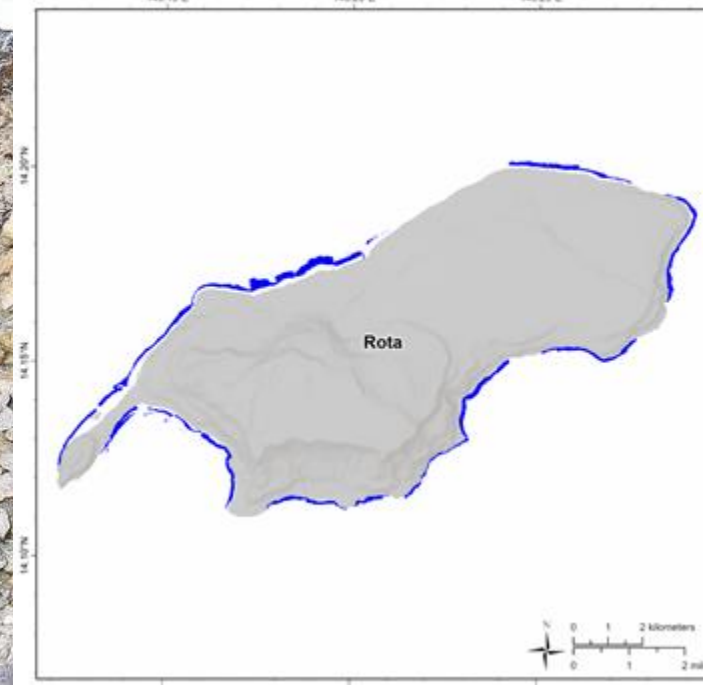
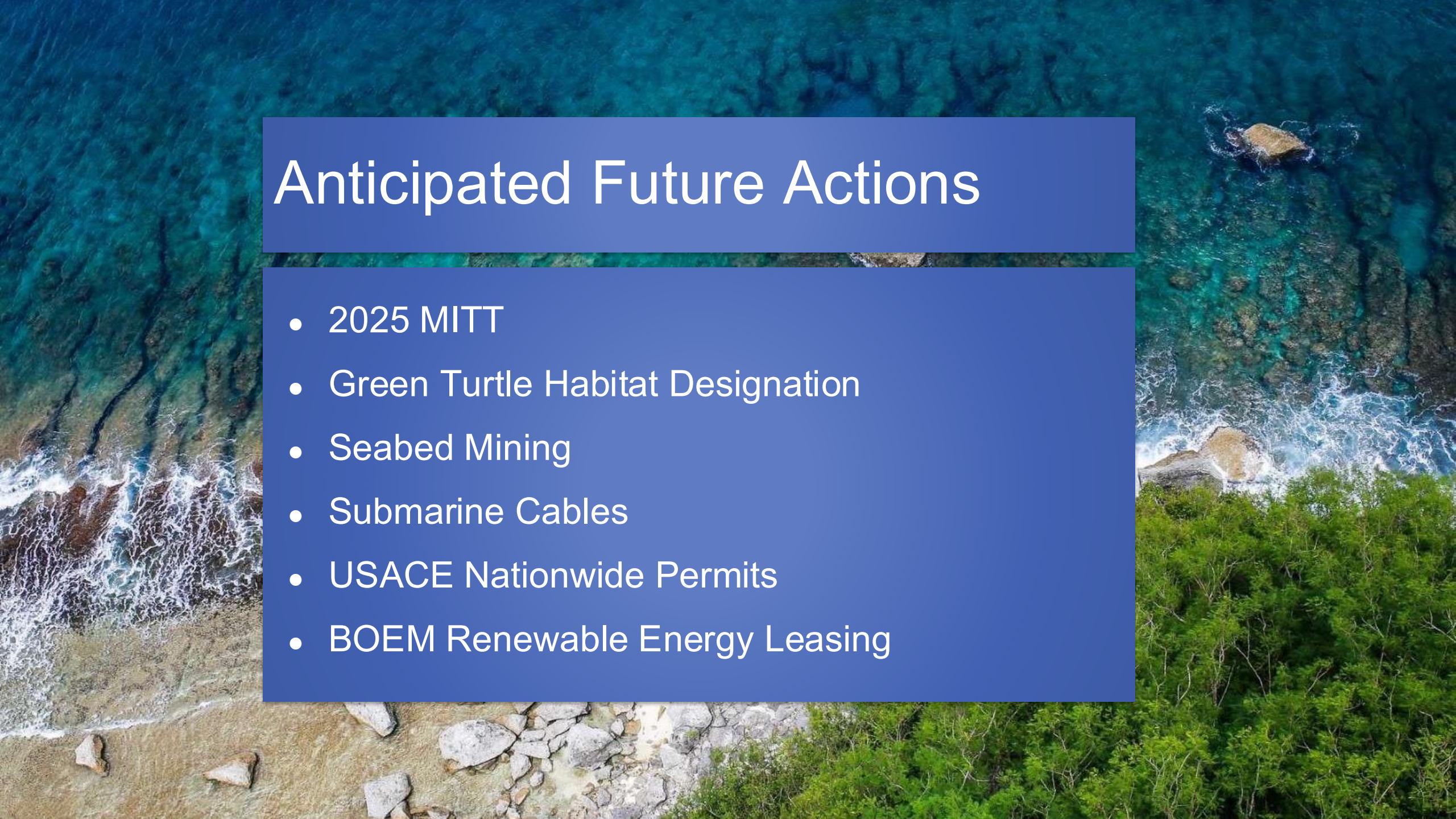


Figure 16. Specific areas of coral critical habitat for *A. globiceps* (0 - 12 m depth, blue) in the Guam Unit, and the 4(a)(3) ineligible areas.



An aerial photograph of a tropical coastline. The top half of the image shows deep turquoise ocean water with visible coral reef patterns. White surf is breaking against a rocky shoreline. The bottom half of the image shows a dense green forest of tropical trees and shrubs. A semi-transparent blue box is overlaid on the center of the image, containing the title and a list of future actions.

Anticipated Future Actions

- 2025 MITT
- Green Turtle Habitat Designation
- Seabed Mining
- Submarine Cables
- USACE Nationwide Permits
- BOEM Renewable Energy Leasing

Discussion

Questions for Panelists?

Networked Agencies: What is your process when you receive a federal consistency review package from CZM? How do you consider impacts and conditions? How can we work together to improve the process?

Condition Enforcement: Under the CZMA, it is the federal agency's role to enforce conditions. What are lessons learned for navigating and successfully securing effective coordination and enforcement in practice?

Regional Coordination and Collaboration: How can the CNMI and Guam coastal programs improve regional coordination on federal consistency review of regional projects?

Sí Yu'os Ma'ase'

