

Hawai'i Ocean Resources Management Plan Working Group

Meeting Summary

State Office Tower 4th Floor Conference Room

November 5, 2009; 9 a.m. – 12 noon

Members Present:

Grant Arnold (OHA)
Chris Conger for Sam Lemmo (DLNR OCCL)
Steve Frano (NOAA OCRM)
Melissa Iwamoto (OP/CZM)
Todd Low (DOA Aquaculture Program)
Dana Okano via telephone (Planning, Hawaii)
Sue Sakai for Jim Coon (MACZAC)
Hudson Slay (EPA)
Lisa Ellen Smith via telephone (Planning, Kauai)
Jean Tanimoto (NOAA PSC)
Barry Usagawa (BWS)
Dean Watase (DOT Harbors)

Others Present:

Linda Colburn (Facilitator)
Shichao Li (OP/CZM)
Jessica Stabile (OP/MACZAC)
Doug Tom (OP/CZM)

Interim Developments

- CZM: Doug Tom received a call from Fish and Wildlife, who are interested in climate change issues. They are aware of the Working Group's Climate Change framework document and they may like to participate on the WG in the future.
- Hawaii County: Measure that adds provisions to HRS 46 put together with Corporation Council as part of Mayor's legislative packet. It allows counties to establish a Comprehensive Public Access Program. Once established and adopted by ordinance, this measure will provide liability protection to the County. Currently only the state has such protection regarding public access matters.
- Kauai County: On November 4th, 2009, the County Council adopted an amendment to the shoreline setback - follows 205A certified shorelines. Allows for exemptions for public facilities.
- NOAA PSC: NOAA is developing modules for climate change training, and will hopefully be doing a pilot in Hawaii in early 2010.
- This Saturday, 11/14/09, there will be a work day to help rebuild the lo'i in He'eia. The project requires a lot of labor, if anyone wants to volunteer.
- DOH/CZM: The CZM contract with Tetra Tech to develop a watershed guidance document is underway. The guidance will include a more defined process for groups interested in developing watershed plans. The ORMP Working Group and/or the Watershed Caucus might be used as a resource to the consultant to ensure that whatever is developed is truly useful.
- UH Sea Grant: UH Sea Grant and Hawaii CZM will be participating in the National Sea Grant Climate Network Workshop in Charleston, South Carolina next week. Hawaii CZM will make a presentation on Act 20, which established the Climate Change Task Force, and the challenges that the task force faces. The event is a 3-day workshop with 6 community partners from around the nation and will involve state level participation to small Aleutian fishing villages. The conference will bring in NOAA scientists and other resources within the

Sea Grant Climate Change Network. Conference participants will be broken into six groups and will provide technical support to the 6 partners.

- CZM: CZM is moving forward on the ORMP implementation contract with the HCDA for a He'eia Wetlands project. OP approval was also secured for two additional projects: 1) UH Sea Grant and Malama Maunalua will be funded \$33,000 to build community capacity to address land-based pollution via workshops and education. The group will work through the NEMO network, outreach materials, signage, and other products that might come out of their efforts. 2) The Ka 'Ohana Honu 'apo Estuary project on the Big Island – we are currently awaiting a revised timeline. Funding for this initiative is coming out of CNPCP funding. It has been difficult to find projects to support with these funds due to specificity of eligibility for projects. These funds have been returned in the past for lack of eligible projects.
- DOA: The Hawaii Oceanic Technologies Project passed DLNR Board approval. The project involves untethered fish cages off Kawaihae on the big island. The project proposed 12 cages, but has, so far, been approved for 3. GPS devices are used to track movement of the untethered cages, which are growing out Big Eye Tuna. This is the first un-tethered cage approved. This enables movement of the cages to create “fallow field” conditions. Kona Kampachi are being raised in 150 feet of water. These untethered cages will be in 1500 feet of water. No one is yet sure about material landing on the ocean bottom because of the depth. The cages will sit 60 feet below the water surface and will be marked with buoy on top. There are still some cultural issues – which parties are working through. The key project proponent is about to move into the next phase of funding.
- The state is looking at impending Reductions in Force. People who no longer have positions will be let go on the 20th. Bumping movements start on December 1st. The plant quarantine personnel that handle the importation of algae and fish have been reduced by 50%. In the aquaculture section 75% of the staff are gone. Not sure if a second round of reductions is coming. People engaging DAR will experience changes because of the contraction of staff positions.
 - Shichao and Marnie were also affected by the RIF, but will continue to work for CZM in different, previously vacant, positions within the program. They will continue to work on the same projects as before.
- This may be the last meeting for Doug Tom who is retiring at the end of the year.
 - “The ORMP Working Group has tremendous potential as it is the only entity continually bringing multiple agencies and organizations together to consult on ORMP related matters.” He would like to see ORMP help the state develop its vision for the future.
 - Doug thanked Jim Coon of MACZAC for echoing many of these points. They have worked together since 1984-1985 when Hawaii established the first ORMP in nation.
 - Would encourage consideration of transferring the ORMP into a more prescriptive document. It could provide the vision to support partnerships across many sectors of our community. It is increasingly important to look at the larger overarching concepts as opposed to taking a purely functional approach.
- CZM has contacted DOH re: getting a new DOH rep on the Working Group, now that Hudson has moved back to EPA. Hudson wants to continue to participate to the extent that he is able.

Presentation on Legal Non-Conforming Structures Along the Shoreline

Dana Okano, CZM planner with the County of Hawaii, had previously made a presentation to the Working Group on the challenges associated with legal non-conforming structures along the shoreline. To continue the discussion, Office of Hawaiian Affairs (Grant) and U.S. Army Corps of Engineers (USACE) attorney (Lindsey) have been working with Dana to understand how USACE would address this issue. This remains a matter of significant concern as many more structures are evidencing serious shoreline erosion concerns. USACE did not have a solution, per se, but acknowledged that we will be facing more of these types of cases in the future.

Some of the questions and comments that were discussed include:

- Do we continue to allow people to rebuild, harden, and repair bluffs because they are designated “legal non-conforming?” How will we handle this as a State? The particular Big Island case in the presentation will probably have to be handled by the County on its own.
- California has a Bluff Erosion Program that calculates soil erosion for a pre-determined lifetime of a property. The property owner is required to compensate the State for the loss of sediment.
- It is important to consider a technological approach from a geological perspective. If you harden a shoreline area in front of one parcel, it can exacerbate the erosion situation for an adjacent parcel. Increased in-scour often occurs when you create a fixed face that is not mobile. This increases wave energy around the edges of the hardened area.
- Can the County put an indemnity clause in its permits that the owner cannot rebuild if a dwelling is swept away? This cannot be accomplished through a SMA permit, but could be done with County permits. The County is already concerned about takings now.
- If there is an erosion problem within 20 feet of an endangered structure, the State will work with them to put in an emergency sandbag structure with the life span not to exceed 5 years. At the end of that period, the structure has to come out.
- One point to address in situations like these is systemic shoreline erosion that is migrating. This could affect long-term use of a property before revetment.
- Dana considers this to be something that should be worthy of a statewide stance, since all islands will be addressing this in the future. Regarding the specific case, they will see if the property owners resubmit an application with more information.
- The most important concerns to be assessed are the health and safety issues. These issues are paramount in State deliberations. Consider looking at State and County roles vis a vis health and safety.
 - The taking issue also needs to be acknowledged.
 - There are applicable provisions in the land use law. There may be an instance where a “nuisance clause” is an exception to taking – which references health, safety, and welfare.
 - From an SMA perspective, the County could concentrate on health and safety which could be a basis for denying a SMA permit.
 - Condemnation - Are funds available for such purposes?

Working Group evaluation results

The ORMP Working Group members were asked to provide feedback about their experiences over the last year through an anonymous survey conducted by the facilitator. The survey included questions on how participation on the Working Group has benefited the members, and

what aspects would benefit from change going forward. The preliminary results of the evaluation were discussed, and will be summarized in the next report to the ORMP Policy Group.

Next Steps

ORMP Annual Report – Working Group members can send relevant examples of collaboration to Marnie for inclusion into the annual report. Caucus chairs are expected to send in a summarized report on this year’s activities.

The Working Group decided to conduct end-of-the-year wrap up work via email in December and reconvene in January. The next meeting will be on Thursday, January 7th @ the Office of Planning conference room from 9am-noon. Agenda items will include: an update on the 2009 ORMP annual report; feedback from Working Group’s questions to the OP Director; and caucus time.