

**Marine and Coastal Zone Advocacy Council
Ke Kahu O Na Kumu Wai**

Wednesday, October 26, 2005
8:00 a.m. to 9:00 a.m.
Hawaii Convention Center, Room 321
1801 Kalakaua Avenue
Honolulu, Hawaii 96815

MINUTES

Members Present: Susan Sakai, Arnold Lum, Scott Sullivan, Donna Brown, Roland Sagum III, James Coon, Don Thornburg, and Ron Terry

Members Absent: Lawrence Aki and Anne Sturgis

OP Staff: Laura Thielen, Douglas Tom, Debra Tom, Dawn Omoto

Members of the Public: Jason Broderson, Tetra Tech

DISTRIBUTED MATERIAL

- Meeting Agenda
- CZM Hawaii Program Report
- Minutes of the August 17, 2005 Meeting
- Tenth ORMP Issue Paper – Coastal Erosion Integrated State Erosion Management System
- Report to OP from HOCC – Request for Draft Goals for the Updating of the State Ocean Resources Plan, dated October 3, 2005

Call to Order

Chair Susan Sakai called the meeting to order at 8:10 a.m.

Public Announcements

Earth Justice, on behalf of Sierra Club and individual beach users has brought a suit to use the vegetation line instead of the highest wash of the waves.

Approval of the August 17, 2005 Meeting Minutes

Minutes were approved.

CZM Hawaii Program Report – Douglas Tom

We are still working on a contract with RCUH to provide administrative support to MACZAC. We anticipate approval shortly and will expedite the process as best we can. It seems that we can get a contract in place before the next MACZAC meeting.

Performance Measures: One of the biggest projects that the Program is working on is performance measures. It is becoming a very complex and complicated project, but it is required. Data will be routinely collected, managed, and reported for the six categories NOAA selected: public access, coastal habitats, coastal hazards, coastal water quality, coastal community development and coastal dependent uses, and government coordination and decision-making. We will be meeting with State and County agencies to assure effective data collection. We will also be collaborating with the agencies to design the system so that it will benefit the State and Counties. As reported earlier, this federal system will influence how programs will be funded by Congress.

Our consultant is John Knox. He and his assistant, Rusyan Mamiit have work experience in this area and have been tremendously helpful in dealing with the various complexities of the Federal requirements. We are still in the process of defining some of the terms.

Section 309 Assessment and Strategy: We have a Section 309 Assessment and Strategy project which we undertake every five years, on how to spend monies to enhance the nine enhancement areas set by the national CZM Act. We submit a strategy to NOAA and they will either agree with it or provide suggestions. Once that is approved, we can use the money for those items identified in the strategy.

Coastal Hazards: This year, we will be spending nearly \$200,000 to help the State Civil Defense and the County of Hawaii in developing modernized wind design code provisions. The last two hurricanes really showed the need to study wind speeds, especially coming down the mountains. Accelerated winds coming off the mountains can cause a lot of damage. We need to have a scientific grasp of the whole thing and this project will accomplish that.

ORMP: We appreciate MACZAC's active involvement in updating the ORMP. After today's workshop, a summary will be prepared and shared with everyone. There will a brief report to the Legislature and most likely it will be more of a status report. It is my understanding that HOCC has scheduled another meeting on December 12, 2005.

Coastal Nonpoint Pollution Control Program: We have completed a few management measures, a number of them are being reviewed, and we have one more to complete. We expect that last management measure to be in this month for the federal government's review.

Even the County governments are moving ahead. Maui County needs to adopt an administrative rule that they are well into the process. The initial detach from the federal government is positive but we are still waiting for a more formal word on it. It is encouraging at this stage.

The Big Island is moving ahead and they have identified exactly what they need to do. Their management measure has to go through the County Council by way of ordinance. There is one more step before going to the Council, and that is the Planning Commission has to review it.

CZM will try to establish close contact as much as we can, to help expedite the processes. We are very serious about meeting our federal deadlines.

Special Management Area (SMA): We had a Section 312 federal evaluation for our Program. It came up with a requirement to undertake a review of the SMA permits, based on citizen complaints. We have met with the Counties and have come up with a draft report.

The final review and revision of a users' guide that we will circulate to the Council for review and comment should be out this week. After that, the responses will be sent to the federal government for review. We are also exploring with the Counties opportunities to include the CZM Program in improving the SMA permit system. There are some ideas that will probably come out of the Counties at the December quarterly meeting.

We really appreciate Arnold Lum's help in getting the Environmental Law Clinic to provide us with legal research and analysis. We think that the questions we raised will help us a lot. We look forward to the results because we would like to share it with the Counties and the people involved. The last page of CZM report lists the five questions that are being addressed.

Sue asked if there were any questions. Jim had a question on the Nonpoint Pollution Control Program. He wanted to know what type of funding we have for that section. Doug mentioned that we don't have funds under Section 6217 so we are relying on our basic Section 306 funds.

Laura also mentioned that under the federal law, they are probably not allowed to do the unfunded mandates. What they do say is that if your are a voluntary State that has come forward and voluntarily asked to be a federally recognized CZM program, then you have to have management measures on nonpoint source. The monies may be dried up, but under the law the State has to have federally-approved management measures for nonpoint source discharge, or it faces mandatory penalties of reduction in funds by 10% a year.

The feds have chosen not to enforce that to date, but the law is on the books. If we do not complete this by February, we face the risk of losing up to 30% of all of our CZM funding. The concern right now is that even though EPA and NOAA are really happy with the progress we made recently, both with the Counties and Department of Health, the final decision whether to enforce that statutory penalty is not up to the EPA staff.

Jim said that his interest is focused on the marine pollution on Maui. He was wondering if there is any EPA funding or additional help and weigh-ins that the Department can come along side the others who are trying to facilitate this; not just DLNR, but maybe some additional support for mitigating the current legal nonpoint source pollution that continues to plague, especially the south Maui coastline. It might even be just a pilot project addressing that one area. Having the moral support weighing in on that just may move some of these things forward. However, they're still talking years before these things get resolved and the community is just not going to wait.

Laura pointed out that these management measures are for runoff, but they have to be enforceable requirements, things like agriculture, new construction, post-construction. That is what the Counties are having to pass now, post-construction runoff standards. There will be new regulations or rules that are enforceable.

Could there be some weigh-in on whenever there is development happening in a harbor, that it is one of the criteria, where feasible? If that could be part of a mission and vision that different agencies would have, then we might see over a period of twenty years a large improvement in that area. Maybe that is one more area that you can come along side, and even DLNR-DOBOR, to weigh-in on it.

Arnold said that one of the problems is there are three separate agencies: (1) the Department of Health (DOH) which has the storm water permit that cycles out once construction is completed, (2) DLNR has regulating the harbors, and also the pump-out problem, and (3) the Counties can't enact post-construction runoff standards without passing an ordinance. He did not think that the Planning Commission could adopt more than a policy. You have the County Council, the Land Board, and DOH's Environmental Health Division. There is no statutory mandate that they work together.

Sue said that this sounds like an ORMP issue. It has to be integrated. Jim stated that it is still doable because for instance Maui, the County Council and probably the Land Board will be supportive of this. DOH has come out with their AG's ruling on what they can enforce and they would like to see those things stopped.

From the federal standpoint, we are getting a lot of focus by our Congressional delegation. EPA is doing a preliminary investigation on whether they can make the entire whale sanctuary a no discharge zone. They have a hard time telling every boat in Hawaii that they can't pump in, in federal controlled waters. The State would show good faith that they're trying to resolve their part of that problem, as many communities have done throughout America.

Arnold thought that a MOA is one possible vehicle. The Mayor would have to sign but cannot sign without County Council approval. Jim just met with the Mayor on Monday and think that he would sign a MOA. Laura mentioned that this came up on the Brownfields that we are doing

with the County of Maui and they have an ordinance where the Mayor could not sign inter-governmental MOA.

Working Group Reports

Ocean Resources Management Plan Implementation: - The last ones to go to the ORMP meetings were Jim and Arnold. Jim took Arnold's wish list and said that is what we're voting for. Arnold said that at the very first meeting, Larry Lau suggested that the report recommend specific action be taken as three kinds of actions. These are statutory, administrative rule-making, and policy MOA type guidance. The final product does not reflect that. It talks about short-, mid-, and long-range goals. There are no specific recommendations for example, in terms of legislation. An example is the short-range goal of facilitating the establishment of effective Marine Protective Areas based on available knowledge and values. We did not end up with a document that had specific recommendations, but one that had long-range goals protecting the environment.

It was also mentioned that HOCC, with their hard-core attendees whose experience is mostly in planning, you would then have a planning document. If there were more administrators, there would probably be a different type of report.

Sue noted that at other meetings she attended, the people changed, where in one agency you have two or three people shuttling in and out so you lack the consistency. Very few people were able to speak for their agency. Hawaii and Maui Counties sent people consistently but there weren't people from Oahu or Kauai.

Kem Lowry called and e-mailed Sue about what he is going to be doing today. He will be facilitating and Sue told him to please do not do issue identification because so much was done in the HOCC.

Shoreline Certification Working Group: - Donna Brown and Don Thornburg: Don mentioned that it did address all the issues that were there during the meetings. The State organizations have key people in place who are aware of the problems and seem to be addressing them. It is unsure what the final recommendations will be. Donna mentioned that at the last meeting they went over a draft plan. Everyone should be submitting comments, last week being the deadline.

Dolan Eversol did the draft plan from the comments from the other meetings. We went through the draft and talked the whole thing over. Dean Uchida who used to work for DLNR tried to change everything to what he wanted. He totally rewrote the whole draft and submitted his version for people's comments. Hopefully, his got thrown away and comments are only for the original. There hasn't been word on what is happening with that.

Don stated that the strange thing in the beginning was that the wording of the resolution strayed away from the intent of what properly establishes the shoreline. Donna said that it is what they came back to at the end, that this is only the establishment of the shoreline. Each County has their own setback and they are not even dealing with that part. They are talking about how to establish where the shoreline is. They are not talking about the issues of ownership of property, but the line that is used for setback. A lot of times that line is used for ownership too. Of course, the landowner wants to own more land.

Arnold said that it is part of the Earth Justice lawsuit. Certification is a de facto termination of property rights. Copies of the pleadings should be obtained because this is a new lawsuit. There is a lawyer Isaac Moriwaki who can be reached at 599-2436. It is not available on a website because these are pleadings and not decisions of the court.

Old Business

Jim Coon spoke about the Maalaea pump out situation. He had a meeting with Peter Young and some key people in the ocean and tourism committee. It was not a very satisfactory meeting. Peter could not clearly see any short-term solutions. He had a long-term plan, not a guaranteed one, but a projected long-term plan if funding comes in. For every idea, there were reasons you can't do it. Jim said that he sort of gave up on the deal on his side for the moment because there is no movement.

Jim met with the Mayor on Monday. He agreed to help fund a pump truck to go to Maalaea Harbor once a week to service the boats. He does not want to pick up the whole tab himself and feels that maybe the Federal government or other State groups would help. Jim thought the State would take about three years so the Mayor is willing to take it for that long. The goal is to have this thing in place by December 15. He also has something going with the County Council and they are very interested in helping to resolve it.

Right now, there are only two entities handling waste by pumping it onshore. The Pacific Whale Foundation brought in their own truck and they got an exemption to use salt water to handle their waste. The waste facility does not accept salt water because it affects the ph balance in the recycled waters. He told the Mayor that there should be a standard rule where you can accept what comes out from these boats, or not. The standards should apply to everyone.

The plan is to go out to the industry and try to get them to retrofit their boats, and do it immediately. If he can get 20% to 30% of the operators to take advantage of what the County is providing, then the community support for this may bring the rest of the companies in on it. It averages about \$2000 per vessel to do the modifications to retrofit the boats.

There is a provision within the DOBOR rules that says that if you make a harbor improvement or something that the State doesn't have funding for, you can spend your dollar to make that

improvement. Maybe you could then write off a percentage of that against the mooring fee, especially since they have another million and a half dollars that came in.

The Mayor does not want to give Kahului Harbor land because of the super ferry and everything else that goes with it. They are still forced to cross the Alenuihaha Channel to Honolulu. They make a commitment with the Coast Guard, the date being set months before, where they have to haul and unload at a certain time. If there is a storm out on the Channel, then there is a dilemma. The inflexible schedule compromises the safety of vessels and their crews.

Maui has 80% of the charter fleet and no place to haul out the boats. It seems that DLNR is the obstacle, no we can't do it.

Arnold asked why they couldn't haul out of Kaunakakai. There is no infrastructure over there. You can't get to land from there. It is not the right spot.

Coastal Hazard Mitigation Workshop – Donna Brown: The workshop was basically based on the booklet by Dennis Wong, who was also a speaker. The workshop was good, more like an informational thing for the public and covered a lot of things. Chip Fletcher came, and Dolan Eversol and others gave talks on the problems with construction too close to the ocean. They also talked about tsunami and hurricanes and how people might construct their houses in a better way. There were also quite a few people from real estate.

On the second day, they passed out a huge book. They were talking about construction to help recharge the water. Instead of making everything cement, use different kinds of construction methods so water can still percolate down.

ORMP – Approval of the Tenth Issue Paper – Scott Sullivan: Sue noted that Doug's report mentions that they will be retaining a consultant to write the plan. Laura told her that they would consider MACZAC's working papers for the plan.

We have a tenth one and Sue wanted a vote on this, just like the others. Scott spoke briefly on the proposal. This actually goes back 10 years to the old MACZMAG. It is sort of a rewritten recommendation. Basically, the observation is that State coastal zone responsibilities are so fragmented between the agencies and there's very little communication between agencies. It seems like an ineffective way to manage the coastal zone.

This proposes to try to establish a single office, a department basically, set up for the coastal zone. The information is fragmented, spread out, and no one agency has all of the information. This is a very ambitious suggestion and State agencies won't give up their parts so easily. He's thinking of an actual functioning with authority department. Jim asked if this would be administratively attached to a cabinet department. Scott envisions it being attached to DLNR.

Arnold stated that to create a separate department would require a constitutional amendment to the State Constitution. Jim asked if it would take some of the functions away from DLNR and Scott said it would. Jim also wanted to know if it would cover harbors or marine protected areas. To garner support, you would have to know what areas are covered. This is not the first attempt to create a department of oceans or similar within the State. This concept goes back even to earlier MACZMAG. This concept has a lot of support in a lot of different circles.

Sue said that the group did not have to vote on the details of this concept because when they did the other working papers, there were a lot of details in there that had to be worked out. Jim moved to endorse the concept and it was seconded and passed unanimously.

Next Meeting Date

The next meeting should be scheduled in January 2006. We also have a couple of vacancies to fill and several of the members have terms that are expiring. The Office of Planning will be sending out letters asking if we want to continue serving.

Adjournment

The meeting was adjourned at 9:06 a.m. to attend the ORMP Workshop.