

**MINUTES OF THE
BOARD OF LAND AND NATURAL RESOURCES
LAND BOARD BRIEFING**

DATE: THURSDAY, FEBRUARY 22, 2007
TIME: 3:00 P.M.
PLACE: KALANIMOKU BUILDING
1151 PUNCHBOWL STREET, ROOM 132
HONOLULU, HAWAII 96813

Chairperson Peter Young called the briefing of the Board of Land and Natural Resources to order at 3:13 p.m. The following were in attendance:

MEMBERS

Mr. Peter Young
Mr. Ron Agor
Mr. Jerry Edlao
Mr. Rob Pacheco

Mr. Tim Johns
Ms. Taryn Schuman
Mr. SamGon III

STAFF

Ms. Athline Clark, AR
Dr. Jill Samsau, Research Coordinator, State of Hawaii
Mr. Bin Li, Acting Permits Coordinator, AR
Mr. Wayne Haight, New Acting Permits Coordinator, AR

Mr. Bill Buck, DFAW

OTHERS

Mr. Mark Tossato, Deputy, Pacific Islands Regional Fisheries of NOAA
Ms. Aulani Wilhelm, Superintendent, NWHI
Mr. Don Plascki, Refuge Manager, U.S. Fish and Wildlife Service
Ms. Heidi Guth, OHA
Ms. Margaret Nagamine, Program Manager, NOAA
Mr. Sean Carson, Acting Superintendent, NWHI Ms. Hoku Johnson, Permits, NWHI
Mr. Andy Collins, Education Coordinator, NWHI
Mr. June Glens, Deputy Refuge Manager, U.S. Fish and Wildlife Service
Mr. Dave Bruski, Assistant Refuge Manager for Tern Island for Hillary Horvat
Mr. Marty ?, Environmental Alliance
Ms. Stephanie Fried, Environmental Alliance

Item 1. Briefing on Northwestern Hawaiian Islands Marine National Monument joint permitting process.

This is an informational briefing of the Board, non-action item, public meeting. Some testimony has been submitted.

Introduction

Aquatic Resources and joint Federal Agencies gave testimony on the new Northwestern Hawaiian Islands Marine National Monument (NWHI).

Binder

A binder was handed out to members giving background information on the Establishment of the NWHI Marine National Monument, Federal regulations enacted to legalize the Monument and Memorandum of Agreement with the State of Hawaii. Also State regulations, joint permit application, instructions, draft forms, summary form, 2006 permit register and World Heritage Programme.

Joint Permit Application

Mr. Mark Tossato, Deputy of NOAA Fisheries stated this is a coordination of Federal and State agencies to meet all regulations and conditions to create one monument permit.

Ms. Athline Clark of Aquatic Resources spoke of representatives from all agencies and higher level agencies from Washington D.C. discussing each agency's laws and regulations are considered and the language used is agreed upon by all attorneys across the board. When we say joint they mean everything has been approved by all legal, management, and agencies. On some they are breaking new ground. We are working with the world experts to get the very best on disease protocol.

Mr. Tossato mentioned conditions are 100% grounded to State conditions and some Federal conditions.

Ms. Clark added the permit instructions and application took everything previously founded on what Fish & Wildlife was using and built upon it. Only difference is it's under Monument designation. We went from 3 permit types to 6 permit types and there are certain special conditions that must be requested under the proclamation for certain permit types. This will meet all the requirements of all agencies. The last thing that happens is the Attorney Generals from all three agencies (solicitors, AG, General Council) get together and do the final. We are still working on the permit itself. They are trying to get the highest expertise to work on the special conditions and then bring it back to us.

Board member, Tim Johns asked is the public involved with the MAC/RAC or does this all go through the Land Board? Will you build in a MAC/RAC process?

Ms. Clark replied under the monument law there is no authority toward creation of an advisory council. There is another law that runs right against this which is Federal law.

Mr. Tossato mentioned the Federal Advisory Committee Act restricts the Federal Government from collecting advisory advice unless it is mandated by statute. We still need to overcome that. The only mandated public process right now is the Land Board which we'll use to its fullest extent. NIPA is a required Federal Act which requires an environmental review. Public will have public comment.

Member Johns stated we need to create a process with RAC/MAC.

Ms. Aulani Wilhelm, Superintendent of the NWHI replied they are trying to get there. It is not the perfect process right now, but still open to solutions.

Ms. Clark said we are still working with legal to get the overall. As for the public permit process the Land Board will be the public process.

Board member, Johns questioned is the Land Board the appropriate venue for these permit type questions? Or should it be a different venue?

Ms. Wilhelm reported it is in the State rules. It is coming to the Land Board unless those rules change. Perhaps if there is another venue down the road. Majority of the marine permits will come through the Land Board. There are a number of permits that are on Federal Land are ones that will not come before the board.

Board member Johns said we're joint managers.

Ms. Wilhelm mentioned the policy decision is three agencies co-managing with three signatures on every permit regardless whether the permit comes to the board, State or Peter (or delegate) will sign even if that permit does not come before the board.

Board member Johns inquired can we change our rules where he can't sign or State can't sign unless it goes before the Land Board whether it's in State waters or not?

Ms. Wilhelm replied I have no answer to that.

Video

NWHI - To give a sense of place and not people to the place.

Memorandum of Agreement

Ms. Clark reported what it does is give the vision, mission and guiding principles for the management of the NWHI. It creates two types of management boards first is Senior Executive Board which is the State of Hawaii and high level representatives from the Department of the Interior & Commerce. Also creates a Monument Management Board which includes two agencies from NOAA, two representatives from Fish & Wildlife and three representatives of the State of Hawaii which are Division of Aquatic Resources, Division of Forestry and Wildlife and Office of Hawaiian Affairs.

We are still trying to come together. It is a work in progress.

Permit

Dr. Jill Samsau, former Permit Coordinator reported permitting goals and trying to simplify the permit process. Joint permit is on line in the Monument website. Three types State had in 2006: education, research monitoring and special permit.

Chairman Young stated we (State) haven't changed our permitting process. We still have 3 permits. Sounds like you separated in multiple ways, but still satisfies the State rules of one of 3 types of permit.

Ms. Clark stated why we are separating it is what is in the proclamation and what is in the regulation catches up.

Ms. Wilhelm replied we are working towards a single joint permit. Until all the regulations are met for everyone.

Chairman Young inquired this raises the question do we need to amend our rules?

Dr. Samsau reported there three yearly deadlines first permit deadline was February 1, 2007 and the next permit deadline is October 1st, 2007. May 1st is for cruises.

Board member Johns asked have you taken into account the cumulative effect for the permit applications that may have been applied for the same period?

Ms. Wilhelm replied yes they have. Right now it's manual. We are trying to keep from doing duplicate work.

Dr. Samsau reported this is what happens. They receive the applications, check for completeness, collated and sent out to appropriate agencies. If there is a need for consultation 45 days before the activity starts then the applicant needs to address any comments. Then if it needs to come before the Land Board it must be posted 6 days before the meeting.

Reviews

Board member Johns asked is the internal review at the State level done by you, committee, or scientists?

Ms. Clark said DOFAW, State biologist, OHA, historic, etc. The form is a work in progress. The reviews are from all over. One form to make it easier. They will look at each permit type, recommendation, purpose, etc.

Board member Johns queried on the identity of the reviewers. Do they do it in committee or individually?

Ms. Clark replied they will do it individually and then compiled together. It will encompass all reviewers at the end.

Mr. Don Plascki from US Fish and Wildlife stated under their refuge law they will do a compatibility determination which is a public process because it is noticed in the newspaper. The people see it in advance.

Ms. Clark confirmed that we will not see the individual reviews, but we'll see an aggregate review that will include everything.

Permit Conditions

Dr. Samsau went over the step by step permit process.

Mr. Tossato stated there will be a set of general conditions for all permits and special conditions. For example there is a dive permit.

Member Johns inquired will this be a situation where they go back and forth?

Mr. Tossato replied they will implement State and Federal rules and make as many thought out decisions ahead of time.

Ms. Wilhelm stated they hope everyone could come together with the lawyers to set the criteria and conditions for this one permit because any one denial will not work. The application is completed and the permit form is getting finalized

Member Pacheco had a concern of the number of people. Is there are way to limit the number of people who go there?

Mr. Tossato explained people are not the best to measure by. The types of activities, number and location of the activities are the things to look at.

Member Johns explained if you can do the activities in three than why have six?

Mr. Tossato agreed. All the staff is concerned with how this permit will affect the monument. Fisheries will always be there to continue research. The entire northern area no longer allows fishing.

Chairman Young asked on the permit if it goes into State waters it goes to the Land board and if it doesn't go into State waters it does not go to the Land Board? Or would we delegate it?

Ms. Wilhelm replied in agreement the State would decide this. All three parties Federal, State and Monument will have to sign. Even access for research.

Chairman Young stated on the forms they should bring it and they should use it as form and process.

Summary

The presenters wanted to apprise the board of the joint application and how it will be processed. We will continue to come before the Land Board for upcoming permits in State waters. NOAA and the other agencies will provide input and more comprehensive analysis prior to submitting the permit. Also per Chairman's suggestion we welcome

approving permits outside the three mile area. And some standard language will be worked out with the Attorney General where all parties are consistent with one another.

Ms. Heidi Guth, Lead Advocate for Native Rights of the Office of Hawaiian Affairs. OHA is concerned with this process and concerned with the quick turn around. They felt things are being pushed through without considering the natural and cultural resources. How is the public going to be more involved? We want to incorporate the Native Hawaiian perspective into the form.

Chairman Young stated those forms are not to be shown publicly. He is still waiting for information from the Office Information Practices on what is confidential? They are sure that this form will change.

Ms. Marty ? of Environmental Alliance stated they are concerned with the number of permits going through. They would like a break down of who, what they are planning to do and when would be helpful.

Ms. Stephanie Fried representing Environmental Defense presented testimony.

The meeting was adjourned at 5:13 p.m.

Respectfully submitted,



Adaline F. Cummings

Approved for submittal:



PETER T. YOUNG
Chairperson
Department of Land and Natural Resources