



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

DIVISION OF FISH AND GAME
1151 PUNCHBOWL STREET
HONOLULU, HAWAII 96813

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Dear Mr. Dinell:

Thank you for your letter of January 28, 1981, requesting our comments on the first draft of the issue paper for Marine Sanctuaries. I apologize for the delay in our response. We have restricted our attention to aquatic resources with the assumption that the Division of Forestry and Wildlife will be responding on matters relating to terrestrial flora and fauna including birds. We have a number of concerns about this issue paper and in light of our involvement in the area of marine sanctuaries perhaps a meeting to discuss this issue is appropriate.

We have tried to restrict our comments to specific statements within the paper but would briefly like to mention our thoughts regarding the style and tone of the paper, particularly as expressed in the first several pages. "Unique" is a good word but tends to lose its impact with over use. It is used approximately a dozen times in the first five pages along with the phrase "found nowhere else in the world." The use of the term "vulnerable" to describe Hawaiian ecosystems in particular, should be clarified. Susceptibility to change as well as resiliency should be recognized as natural characteristics common to the various ecosystems. Proper resource management aims at balanced use of the resource and the marine environment with sanctuary designation constituting only one of the many management tools used to ensure stability of the resources.

The correct designation of the NWHI is Northwestern Hawaiian Islands (according to the DPED State Board of Geographical Names). Although the NWHI may be "the best representatives of pristine conditions in low islands and atolls," they are not "representative" of conditions, pristine or otherwise, in the main Hawaiian Islands which constitute more than 99.8% of the State's emergent lands.

A considerable amount of attention was given to the subject of the Tripartite Cooperative Agreement and the jurisdictional issues in the NWHI. We do not believe that compatibility of commercial use and protection of endangered species is the "central" issue of the Tripartite Cooperative Agreement as stated on page 19. Certainly this question has been a significant factor in motivating the Agreement. Rather, the central issue is and has been "to evaluate the fish and wildlife resources in the NWHI."

There are five issues listed as "central to the resolution of this dispute" between State and Federal governments, regarding jurisdiction over submerged, archipelagic lands in (but not limited to) the NWHI (p. 20). We concur that resolution of the dispute is greatly desirable. However, the listed issues are peripheral or irrelevant to resolution of the dispute. It is likely that the listed areas may be to some degree eased by resolution of the jurisdictional dispute, but resolution of any or all five would not solve the dispute. In essence, the State claims that Federal jurisdiction ends at the high water mark while Federal agencies claim jurisdiction over the near-shore waters as well.

1. Tern island consists of emergent lands greatly modified by the military during World War II. The State is undoubtedly interested in any final disposition but in the interim period is interested in studying the feasibility of a combined research and tightly controlled experimental commercial fisheries base there.
2. The potential designation of critical habitat stems from provisions of the Endangered Species Act and seems more nearly parallel than central to the jurisdictional dispute.
3. The jurisdictional dispute will probably affect the forms of various Fishery Management Plans, but finalization of the Plans need not await resolution of the dispute.
4. The pending results of the Tripartite Study may intensify the dispute by clarifying the nature and magnitude of the resources at stake. However, it is not likely that the results will be central to resolution of the dispute.
5. The fifth issue of a potential wilderness area in the NWHI also does not appear central to the resolution of the dispute.

The proposed CZM efforts to promote resolution of the NWHI jurisdictional dispute may prove counterproductive. The complexities of the issues are such that a CZM sponsored conference to resolve the dispute is wishful thinking. Resolution is most likely to be achieved through lengthy legal proceedings and arguments.

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We would urge that caution be taken to document as much as possible, statements made in the issue paper which appear to reflect fact. Many of the biological areas referred to in the paper require substantially greater study before statements are made such as "lobsters are a main component of the monk seal diet" (p. 25) or that "the only major monk seal population that...is healthy resides at French Frigate Shoals" (p. 2). In fact, the entire issue of critical habitat designation must be based upon supporting data which are still woefully lacking. This is not to say, however, that we agree with the statement on page 18 that "the knowledge of essential [biological] processes is necessary in order to provide protection for significant resources in the marine environment." Were this an accurate description of State policy, our incomplete understanding of complex ecosystems would have precluded any State management measures. Such is not the case. State policy has been that management efforts are, and should be undertaken, on the basis of the best information available, with adequate consideration given to the many ramifications occasioned by the decision, including socio-economic impacts. Procedures exist for revising management actions based upon new information and experience. We fear that restrictive measures can be imposed based upon insufficient information and conjecture which soon turn to gospel. For instance, if as stated in the paper, that "a lobster fishery in the NWHI may potentially reduce the availability of a basic component in the diet of the Hawaiian monk seal" is accepted as fact before sufficient research is undertaken, the growing lobster fishery could be severely and unfairly curtailed. Your issue paper does note that "the evidence is not conclusive." We submit that it is as yet not even suggestive, and that, therefore, such conjecture, which may prejudice and contradict the State's policy for the NWHI, should be more carefully detailed.

In keeping with the above remarks concerning scientific validity, we suggest that the statement that "90% of the mating of Hawaiian green sea turtles takes place at French Frigate Shoals" should be referenced. It is also in the area of marine turtles that we request greater clarification between federal and state classification with respect to endangered or threatened status. Five species of sea turtles are mentioned (p. 3) with the green sea turtle incorrectly described as endangered (p. 14).

Because the listing by the federal government of the green sea turtle within the "threatened" category has preempted State's authority to manage this resource, the repeal of Regulation 36 is being proposed. The proposed change will bring the State into conformity with the federal action.

The sweeping statement that hunting, fishing and collecting of species is an obvious threat to endangered species and valuable ecosystems must be challenged (p. 7). This is totally unfounded. For example, there is no evidence whatsoever that the aquarium fish industry affects, much less threatens any endangered species. No species utilized by the industry is under any consideration for "endangered" status. It would be best if the section on "taking" of marine life be rewritten.

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We would appreciate having a couple of other points in the issue paper clarified. There exists no State "comprehensive fish and wildlife resource management plan," as stated on page 22. As yet, few if any state has met the requirements for such a plan. Please clarify which document you are referring to.

The critique of the Marine Life Conservation District program requires clarification. MLCD proposals or specific provisions within the proposal have met with some public resistance which has resulted in deferment of certain proposals. However, to emphasize that "there is often public resistance" (p. 24) due to lack of public awareness is a misrepresentation. Public sentiment has more often than not provided the impetus for MLCD establishment. The discussion of the MLCD designation process is unfortunately misleading:

- a. strategies for communicating information to the public are well established by State, Departmental, and Divisional policy and include newspaper announcements; direct mailings to concerned community groups, public meetings, public hearings, and, finally, the public board meetings at which final recommended approval to the Governor is considered;
- b. current and potential users of proposed MLCDs are not only identified but solicited for comments (see a);
- c. the potential of MLCDs to function as "nursery grounds" is a consideration in every particular proposal, indeed of the entire MLCD system.
- d. specific resources are carefully assessed, and this information is combined with use information (see b) in developing a management regime individually tailored to fit the conditions at each individual MLCD, as is readily apparent from comparison of the regulations (rules) for the existing MLCDs; and
- e. MLCDs are, in fact, subject to a program of periodic surveys precisely for monitoring purposes.

Finally, we agree with the recommendation calling for greater public information and education. So much of our work deals with people management rather than direct manipulation of renewable resources that much more stress is warranted in this area.

We disagree that enhancing public participation in the designation process for a Marine Mammal Sanctuary is appropriate. Until we can be assured that a sanctuary would, in fact, protect marine mammals to any greater extent than presently exists while safeguarding the State's many interests in the marine sector, the international, national and local temper and emotion surrounding the protection and preservation of whales, rather than cold hard facts could further polarize present positions without doing anything to help the whales.