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Report of the Marianas Archipelago Fishery Ecosystem Plan Guam Regional Ecosystem Advisory Committee Meeting

Friday, January 21, 2011
Guam Hilton Resort
Micronesian Ballroom
Tumon, Guam
9a.m. – 5 p.m.

1) Welcome and Introductions

Council Chair Manuel Duenas provided an overview of the REAC and the Council. There were over 40 participants that introduced themselves.

2) Approval of agenda

The agenda was approved by consensus.

3) Report of previous REAC recommendations and actions

Mark Mitsuyasu, Council staff, provided an update on the status of the 2010 meeting recommendations.

There were no questions or comments.

4) Coastal Marine Spatial Planning

Joshua DeMello, Council staff, provided the REAC with an overview of Coastal and Marine Spatial Planning. He explained that CMSP was a result of recommendations made to the White House dealing with additional ocean governance from a variety of task forces. He reviewed the definitions and what CMSP can do then explained what the Council is doing, including developing a CMSP policy.

Dot Harris asked if CMSP is more than just protecting the fish? Duenas said yes, that it involves all different sectors to protect the habitat also. He joked that Guam already has CMSP: The Marines are Planning to take our Space.

Vangie Lujan asked about the Regional Ocean Partnerships? DeMello replied that the information isn't available on the Regional Ocean Partnerships as NOAA only put out a funding notice for proposals to develop the ROP. Lujan noted that the Western Pacific Region already has a nominee to the National Ocean Council (Lelei Peau from American Samoa) and that there already is a proposal put in for funding by RCUH to develop the Regional Ocean Partnership.

5) Overview of traditional access and spatial planning

Charles Kaaiai, Council staff, provided an overview of Public Access to Shoreline Hawaii (PASH) and the history of traditional access in Hawaii. He also provided the reasoning behind

the panels being presented at the REAC, saying that the Guam REAC recommendations have mainly dealt with access to resources in the past.

Judy Amesbury noted that the legal test for cultural practice is long and continuous practice, but asked what about situations where the practice was not continuous because a law stopped it? Kaaai responded that there have been a couple of cases in Australia with the aborigines and in New Zealand with the Maori that dealt with this situation, but each group needs to test it for themselves.

6) Panel 1 Presentations and Discussion – Traditional Access and History of Change

a) Arnold Palacios – Mariana Islands

Arnold Palacios spoke about the importance of fishing to native people in the CNMI and the restrictions put on the people by the Spanish, Germans, Japanese and now Americans. He noted that the people of the Marianas are resilient and have adapted to survive despite the challenges they may face. He added that any policies made regarding the CNMI needs to consider the people that are here.

b) Selaina Vaitautolu—Samoan Traditional Marine Access

Selaina Vaitautolu said that traditional access is not an issue in American Samoa, and therefore not a common term, but is something that should be looked at. She described Faa Samoa, or the “way of life” in Samoa noting that culture defines it and it is based upon belief in God and love and respect of the family and selves. She said that strong village leadership by the village council provides the guidance for the village. She notes that oral history tells us that the land was owned by families and not delineated by lines and papers but by natural landmarks. Access is provided for anyone, however the villages can declare such things as closed areas or seasonal restrictions. Vaitautolu notes that today, reasons for fishing have shifted from the daily subsistence into more commercial activities and the impacts of these changes have had a drastic effect upon such things as fishing habitat, quality of catch, and seasonal runs of certain species in certain areas.

c) Dr. Davianna Macgregor – Traditional Access pre-territory

Dr. McGregor first discussed the concept of reserved rights-what rights did a native group have in the traditional system, and were they reserved in the private property system. She asked if in Guam those rights continue to be acknowledged today and are they practiced? (Note: There was no response from the REAC) She said that the right of access is rooted in taking responsibility for the lands of our ancestors and being a steward of that land. She described the Hawaiian access rights situation from pre-history up until the first constitution and into the present. She described how traditional access was granted prior to statehood and how those access rights are continued today.

d) Facilitated Discussion with Presenters and REAC Members

There was a comment from one REAC member that dealt with traditional access. He said that before we can talk about managing resources today with a traditional system, we need to know what our traditional management was. What are the traditions, do they still exist today, do we understand them? One problem is that the people of the Pacific come from an oral society so traditions and land access is passed down through an oral tradition that can’t be put in writing.

One member discussed traditional fish catch and distribution in Guam. He said that ownership of a resource has never been an issue, but you still ask for permission from the traditional fishermen that were there, even if they have been displaced.

Lunch Presentation – Shoreline access restrictions in relation to fishermen deaths.

Kaai'ai provided a summary of the report submitted to the Council by NIOSH-CDC and explained their findings. The report found that there were more deaths by drowning of fishermen on the East coast of Guam after the establishment of the Marine Preserves than before.

One member commented that after the establishment of the Marine Preserves, there are more problems than drowning; adding that crime and vandalism in areas they can fish can be a problem also. His point was that there may be other incidents/accidents that have occurred since the creation of the MPAs, not just drowning and a study should be done on that too.

One member from DAWR commented that the way the study was conducted condemned the MPAs from the start, and went on a fishing trip for conclusions to do what it wanted. He said that it is good to bring forth the issues because the deaths that did occur is of great concern and Chamorro fishermen need to be more aware. However, he wanted to point out that the study was flawed from the get go and the conclusions may not be where we want to go. He said that the test shouldn't be whether or now we should have the MPAs but where we should go with them.

Another member said that East Agana bay may be a good place to start using MSP and asked DAWR for the alternative explanation for the conclusion of the NIOSH study. DAWR responded that you have to be careful and look at the limitations of the study and the conclusions can only go as far as the study limitations. He also noted that people should be careful when releasing the study and lay people making interpretations of the study.

Another commentor said that this study brought up a lot of issues and said they understand the need for MPAs, but are the benefits for the people or for the fish?

Someone said that GFD has been looking at access and getting access for rescue through private property, while another said that access for rescues will be decreased with the removal of the ramp in Ylig for the bridge expansion project. They said that the **REAC should push for the Federal Highways to rebuild the ramp.**

7) Panel 2 Presentations and Discussion – Maintaining Access to Marine Resources

a) Selaina Vaitautolu—AS Village MPA Program

Vaitautolu presented on the American Samoa community-based fisheries management program where they work with village communities to protect, conserve and sustainably manage resources. The program is co-management between the government and village communities and is a bottom-up approach and not government driven. DMWR provides a “menu” of management tools for communities including size limits, closure times, gear restrictions, etc, depending on what they would like to manage. They also authorize the deputization of the village mayor and two village policemen which increases enforcement capacity.

One member asked what can the village do to enforce the CFMP? Vaitautolu responded that the village can do everything from confiscation to abuse, but legally the agency can not do anything unless they are caught in the act.

Another asked how the larger community was involved in creating the CFMP? Vaitautolu said there really isn't a public process in place when creating the CFMP, but when regulations are

being put into place, the larger public is involved. Since the village creates the CFMP, everyone in the village is involved.

There was a question on whether there was there any systematic surveys by agencies regarding fish stocks of the ecosystem prior to and post regulations? Vaitautolu said that surveys were done prior to the implementation to the program, but none were done after the CFMPs were put into place.

A member commented on how impressed he was on how community-based the program is and things change based-upon the needs of the community. He would like to explore this type of community-based management in Guam also.

b) Dr. Davianna Macgregor - Establishing access rights to resources in Hawaii -- Public Access Shoreline Hawaii; Kaho`olawe Island

McGregor reviewed the rights of Hawaiians to access the shoreline from land including the laws and court cases that challenged access rights. She noted that a change in demographics through tourism and real estate/selling of lands that caused a decrease in support to the law to provide access. Through numerous court cases, many rights for Hawaiians were reaffirmed, including development having to account for cultural rights and traditions. She said that it was important for Hawaiians to do a natural resource inventory to determine the cultural importance of a place and develop guidelines for responsibilities. She also provided examples of access acknowledged by the military, where they do not acknowledge the “legality” of the rights, but to be good neighbors they recognize Hawaiians as a matter of good policy. The examples included cultural practices at Makua, Bellows, Mokapu and Ford Island, as well as a cultural reserve on Kahoolawe and base access for fishing at Barking Sands.

She went on to say that there are different issues regarding access in Hawaii, especially those between Native Hawaiian access and general public access. These differ in the purposes, whether access is for commercial, recreational, or subsistence use, and is a matter of safety vs liability in most cases. The most important thing about access is the responsibility and stewardship of an area.

c) Arnold Palacios – CNMI Traditional Access Policy

Palacios presented on the traditional fishery management policy in the CNMI, explaining that policy is determined by the local agencies as well as the legislature. Lino Olopai provided an overview of traditional and cultural management of fisheries in the CNMI. He explained that the village management is taken care of by the chief, who owns the island, and the rest of the clan has other responsibilities. He said the uniqueness of the culture still exists today, and that there are no problems with access because it goes through the village chiefs, who know how the system works.

d) Manny Duenas -- Community Ocean Access Concerns and Impacts

Manny Duenas reviewed the cumulative impacts to fishing and fishermen on Guam and presented the REAC with the local issues that fishermen are faced with: a proposed ban on scuba spearfishing; proposed coral reef protection; the Micronesian challenge; GovGuam mitigation policy (mitigate impacts on everything but fishing); MPA issues; and Sports Fish Restoration Funds (very little aid to fishing from these funds which are to support fishing). He also presented on Federal issues that the fishermen face: A bill to ban the sale of billfish in the US; proposed listing of Tangissoon and Atuhong under ESA; Proposed listing of over 80 coral species under

ESA; regurgitation of existing laws elsewhere into Guam doesn't work; Federalization of Guam's Marine Preserves (on the National Registry); CNMI bottomfish permits and reporting regulations; Ocean-dredged material disposal site (EPA-1 million cubic yards per year); Ylig bridge expansion (no boat ramp); ACLs; and Catch Shares. He also said that the fishermen are facing additional pressure due to the military buildup: Ocean training area W-517; Pagat Marine Firing Range; land-based military firing ranges and ocean ranges; Other military buildup impacts (new fishers, fresh water intrusion, etc); and Current military restricted access of marine water areas (Cabras Island, Orote Pt, Double Reef). He reiterated the need for fishermen to be aware of these issues and that access to fishing is being impeded by many different sources.

8) Local Initiatives and Actions

a) Military efforts to mitigate marine spatial closure impacts on the fishing community

The Joint Guam Program Office was invited to participate but they declined.

b) Guam Fisheries Act

Duenas presented a community initiative to protect indigenous fishing rights in Guam called the Guam Fisheries Act. It includes the establishment of a limited entry system with a control date of 12/31/2006 (buildup year announcement) where individuals and their descendants who have lived on Guam as of this date will receive a general permit (which exempts them from other parts of the act. Those taking residence in Guam after the control date must apply for permits (ages 18-64) and pay fees for different uses of coastal resources including shoreline and offshore fishing, freshwater fishing, and commercial marine operations. The act would also create a marine visitors user fee of \$2 for all individuals residing in a hotel or like facilities to be placed in a fisheries development fund. The fisheries development fund would be used to provide funding for projects that promote fishing and cultural programs. A Marine Resource Management Council (with 9 voting members, two designated non-voting, and no more than 3 observer members) would also be created through the Act with members nominated from each village area and members of indigenous and fishing organizations as well as designees from government agencies. This MRMC would provide advice to the Guam legislature natural resources committee.

One REAC member commented that the fisheries development fund should also be used to provide funding for enforcement of the act.

c) Indigenous Fishing Rights

Senator Judy Guthertz presented on the indigenous fishing rights of Guam and the law put into place. She provided an overview of what the law mandates and provided an update on the status of where the law is currently. She said that the law has passed so the Guam Department of Agriculture is in violation of the law having not provided the draft regulations to the legislature for review and approval within the ninety days mandated by the law. She said that the Department of Agriculture is currently stuck on draft 19 but was told that it will be provided to the legislature in the next couple of months.

There was some discussion from the REAC members regarding the placement of proposed "culturally managed areas" or CMAs. The DAWR said they are looking to put them in East Agana and in Asan, but said there needs to be discussion with the community on the proper locations.

There was concern by some members that the task force meetings to develop the draft regulations did not include fishermen organizations or Chamorro cultural practitioners and only University of Guam and Department of Agriculture officials.

There was also some concern about the law's language limiting gear to those used after 1950. Senator Guthertz said that it is a takeoff point, not forcing them to use modern gear, but also not limiting them to only traditional gear and materials. It was pointed out that it's not about how you harvest the resources, but the sharing with the community and the tradition of harvesting that is the essence of the rules being developed.

A request was made from other members for a community-based, transparent process for developing the regulations and for the community to be involved early and often

9) Public Comment

There was no public comment.

10) Concluding remarks and summary of recommendations

The Guam Regional Ecosystem Advisory Committee Recommended:

- 1. The Council look at ways to support, through its fishery development program, the rebuilding of a boat ramp in Ylig that was removed due to the bridge expansion. The boat ramp is important for both fishermen's access as well as emergency response on the East coast of Guam.**
- 2. The Council send a letter to the appropriate agencies in Guam regarding the clarification of public access times to parks and beaches.**
- 3. The Council develop follow-up studies to the NIOSH report to determine additional factors in drowning (e.g. wave conditions, currents, swimming ability, etc) and provide recommendations to improve safety at sea.**
- 4. The Council assist Guam fishermen in developing an MOU with the military to recognize or acknowledge fishing rights in Guam. Can use the ROD from the Military-buildup EIS (in the appendix of the ROD-creating the civilian coordination council-see if the REAC can be represented there) Have the Council investigate the composition of the Civilian Coordination Council to determine if there is a place for the Council or for fishermen.**
- 5. The Council support a cooperative community project to develop a better relationship between the Guam fishing community and Division of Aquatic and Wildlife Resources (DAWR).**
- 6. The Council work through the Mayors Council of Guam to develop Community-based Fishery Ecosystem Monitoring and Management Plans to enhance community participation in fisheries management.**