Hawai'i's Coastal Nonpoint Pollution Control Program

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Background

In recent years, it has become increasingly clear that the nation's coastal waters have serious water quality problems. Virtually everywhere, the problems result from what is commonly called *polluted runoff* or *nonpoint source pollution*. These terms both refer to pollutants that enter a body of water as a result of water, such as rainfall and irrigation, flowing over the surface of the land and picking up pollutants such as sediments, chemicals, and nutrients.

In 1990, the U.S. Congress adopted new requirements for coastal states that are designed to protect coastal waters from polluted runoff and restore coastal water quality that has deteriorated because of nonpoint source pollution. All land use activities that contribute or have the potential to contribute to polluted runoff, including forestry, must be addressed by this new program.

The new requirements—called Section 6217 of the Coastal Zone Act Reauthorization Amendments—specify that states with Coastal Zone Management (CZM) programs must develop and implement *coastal nonpoint pollution control programs*. Federal guidance, containing management measures, provides the foundation for state programs. *Management measures* are akin to goals which states must address through the implementation of regulatory and nonregulatory nonpoint source pollution control mechanisms. Land and water users must implement these management measures through the use of *best management practices* (BMPs) on the ground.

The intent of the coastal nonpoint pollution control program is to build upon, rather than duplicate, existing programs. In Hawai'i, the array of existing programs at the federal, state, and county levels will be loosely bound together in a "network" under the rubric of the coastal nonpoint pollution control program. Ultimately, there will be one statewide program for the management and control of polluted runoff, elements of which will be implemented by the existing programs at the federal, state, and county levels.

This program differs from the traditional pollution

control programs mandated by the Clean Water Act in that it is preventive rather than reactive. Instead of waiting until it's a water quality problem downstream and trying to trace it upstream to its source, this program asks that everyone take preventive measures to minimize the amount of polluted runoff leaving their individual properties.

How Hawai'i is developing its coastal nonpoint pollution control program

In Hawai'i, the CZM Program has taken the lead role in developing the state's program, with the Department of Health assisting as resources permit. In developing this program, we have had three interrelated goals:
1. To develop a program that is practically and economically feasible, given Hawai'i's environmental, political, economic, and cultural realities.
2. To create an appropriate mix of regulatory and non-regulatory mechanisms with which to implement the program. Various assessments have concluded that Hawai'i is already over-regulated and under-managed, and we do not want to contribute unnecessary or inappropriate layers of regulation to this already complex system. Rather, we are seeking to develop a program that coordinates among and streamlines existing processes and fills gaps.
3. To involve affected parties (stake-holders) in the program development process. These are the folks that have the expertise and experience to help keep the program grounded in reality.

To involve people in the program development process, we organized a working group and five focus groups. The working group addressed the broader issues of program development, such as monitoring and enforcement. The focus groups discussed the management measures for each of the six categories of nonpoint pollution sources. There was a broad representation of interests on these focus groups. The forestry focus group gathered and evaluated specific information and made recommendations for implementation of management measures, as needed.

Putting it all together: proposed implementation

Due to the small base of commercial forestry operations, forestry in Hawai'i is not currently a significant contributor to polluted runoff. However, the management measures for forestry are still relevant to Hawai'i because there is the potential for significant growth in the forest products industry in the near future.

There are 10 forestry management measures that address:

-preharvest planning
-streamside management zones
-road construction/reconstruction
-road management
-timber harvesting
-site preparation and forest regeneration
-fire management
-revegetation of disturbed areas
-forest chemical management
-wetland forest management

Generally, the program management plan recommends that the implementation of the forestry management measures build upon existing regulatory and non-regulatory mechanisms, with an emphasis on encouraging participation in voluntary, incentive-driven programs. It also recommends that existing laws, regulations, and incentive programs be reviewed and amended to improve agency coordination and to optimize their effectiveness for forestry activities. As forestry activities increase and BMPs for forestry are further developed, other implementation mechanisms may be considered that more directly address forestry's contribution to polluted runoff.

The management plan specifically makes the following preliminary recommendations:
1. Develop a tree farm property tax classification.
Work with the counties to develop a county tree farm property tax classification for land dedicated to sound forest management based on approved plans. This will provide a powerful incentive for land users to participate in the State Tree Farm Program. While the County of Hawai'i has already initiated this process, it needs to be completed. In addition, the value of existing or growing forest trees should be exempted from assessed value for property taxes, eliminating a tax incentive for premature harvest and recognizing the longer rotation ages needed for forest management.
2. Provide adequate financial support for research and development activities, education, and technical assistance.
3. Support coordination among agencies. This includes drafting formal memorandums of understanding between agencies having technical and management expertise with respect to forestry practices and polluted runoff

control, and drafting statutory or regulatory amendments, as needed, to implement the organizational structure, provide program funding, enact a "bad actor" law, and establish incentive mechanisms.

4. Facilitate the direct lease of state lands most suited to forestry in order to encourage responsible forest management. A direct lease recognizes the high up-front costs and long-term return on investment inherent to forestry operations which normally work to a disadvantage during a bid process. In order to secure a direct lease on state lands, however, a land user should be required to develop and implement a management plan specifying best management practices for nonpoint source pollution control.

Questions to the panel

Q: I'm curious to know about propagation of endangered species by private individuals and are the laws being revised to make it possible for private landowners to propagate the native species in their area for the enhancement of these species?

Carol Terry: The state regulations are currently being revised and I know they address propagation by individuals of endangered species. So that's in the works.

Q: Any idea how long before that happens?

Carol Terry: Do you work for the state government? It took us three years to get the game rules changed.

Margo Stahl: I might also add that captive propagation is a tool in our arsenal of recovery, but it has to be carefully weighed against some of the other recovery methods that we use. Actually, it's a last resort in many ways, captive propagation.

Comment: It looks like here in Hawai'i we're at a lot of last resorts.

Q: In the determination of endangered species, what levels of public participation does the act accommodate? We're often concerned particularly in commercial operations with the timing of that assessment. It's very costly to farmers and ranchers. We're not talking about the big guys. We're talking about Joe Sakamoto up in Kona coast, and he's waiting to plant his crops. He cannot wait four months for his crops to go in. Can you address this?

McEldowney: If it's the federal law, you are mandated to consult with the public, and particulary with native Hawaiian organizations, which does add to the time and the cost that you raised. The balance between time and cost I don't think we come to terms with in many respects, because archeology is labor-intensive in many ways. I'd like to encourage that whenever possible projects can be planned in areas that have already been disturbed in the past; that would help tremendously in the process and also save the resources. I realize that isn't always possible, given land ownership and so forth. It is still a dilemma that we have to come to terms with.

Margo Stahl: The endangered species list has to go through public scrutiny and involvement. In fact many of our plants and animals are petitioned for listing from other organizations. We don't usually necessarily do that recommendation first; it comes from the public sector. Because we are subject to the National Environmental Policy Act, most of our activities are under the scrutiny of NEPA and EIS and EA, and those have a public review process, so we have a heavy public participation process.