U.S. FLAG PACIFIC ISLANDS VESSEL GROUNDING WORKSHOPS

JANUARY AND FEBRUARY 2002

WORKSHOPS PROCEEDINGS

M/V Nago, Saipan, CNMI

National Oceanic and Atmospheric Administration
National Ocean Service

and

Pacific Basin Development Council

U.S. FLAG PACIFIC ISLANDS VESSEL GROUNDING WORKSHOPS JANUARY AND FEBRUARY 2002

SUMMARY AND NEXT STEPS

Figure 1. *M/V Nago*, Saipan, CNMI

I. INTRODUCTION

Vessel groundings in coral reef ecosystems can cause significant habitat damage ranging from physical destruction to toxic pollution. While several federal, state, territorial, and commonwealth legal authorities address some vessel grounding impacts on coral reef ecosystems, cumulatively, these policy and funding mechanisms do not address the full scope of the problem. Gaps in the current policy and legal framework create a number of challenges for natural resource managers working to address these impacts.

The nine longline fishing vessels once grounded and abandoned in Pago Pago Harbor, American Samoa, illustrate the management complexities created by inadequate legal authorities and funding mechanisms. The process to remove the abandoned longliners took approximately 10 years. The Pago Pago Harbor experience illustrates the specific difficulties associated with the removal of grounded vessels once the threat of oil pollution has been removed – just one of the numerous vessel grounding challenges facing coral reef managers.

The experience in Pago Pago Harbor initiated a sequence of events that ultimately led to a draft resolution on grounded vessels that was put forth by the U.S. Coral Reef Task Force (U.S. CRTF) at its August 2000 meeting in American Samoa. In response to that resolution, the National Oceanic and Atmospheric Administration (NOAA) initiated the following three actions to address the issue:

1. NOAA, the Department of Justice (DOJ), and the U.S. Coast Guard (USCG), in consultation with the Pacific Island jurisdictions, formed an internal Grounded and Abandoned Vessel Working Group to review legal and financial mechanisms available for the removal of grounded and abandoned vessels from coral reef ecosystems.
2. NOAA, using funds from the coral appropriation, developed and conducted two workshops on vessel grounding issues in the U.S. Flag Pacific Islands, the summary of which is presented here.
3. NOAA, again with coral funding, is developing a database of grounded and abandoned vessels in coral reef ecosystems, and is consulting and coordinating with Pacific and Caribbean Island jurisdictions to prioritize abandoned vessels for possible joint removal.

II. GENERAL WORKSHOP SUMMARY

The NOAA Office of Ocean and Coastal Resource Management (OCRM) and the Office of Response and Restoration (OR&R), working with NOAA Ocean Service (NOS), NOAA Office of the General Counsel

(OGC), USCG, DOJ, Pacific Basin Development Council, and state and territorial partners, developed and conducted two workshops on a broad set of issues associated with vessel groundings and abandoned vessels in U.S. Flag Pacific Island coral reef ecosystems.

The workshops were held in Honolulu, Hawai`i, January 28 to 30, and Tumon, Guam, February 5 to 7, 2002. Over 90 participants representing four U.S. Flag Island jurisdictions, the Federated States of Micronesia, and five federal agencies took part in the two workshops. In response to the draft resolution of the U.S. CRTF, the workshops focused on the following four major vessel grounding topics: magnitude of the issue, legal frameworks, response and enforcement, and damage assessment and restoration.

Representatives from Hawai`i, American Samoa, the Commonwealth of the Northern Mariana Islands, and Guam each presented information on the status and magnitude of vessel grounding incidents and associated impacts in their respective jurisdictions, as well as on the legal framework under which such issues are addressed. Staff from the OR&R Damage Assessment Center, the Florida Keys National Marine Sanctuary (FKNMS), and the NOAA Office of the General Counsel also shared presentations on legal authorities, restoration, enforcement, and damage assessment. In addition, the National Park Service (NPS) discussed the Biscayne National Park Vessel Grounding Program, and representatives from the Western Pacific Regional Fishery Management Council (WPRFMC) outlined the vessel grounding management measures defined in the Draft Coral Reef Ecosystem Fishery Management Plan. The meeting in Guam featured an address by U.S. Congressman Robert Underwood of Guam.

General discussion centered on potential activities to further address and monitor the magnitude of the issues in each of the jurisdictions, including prevention measures, legal and technical assistance, and funding mechanisms. A summary of these discussions, including key considerations and priority action items, are found in the following two sections.

III. SUMMARY POINTS – KEY CONSIDERATIONS

The workshops resulted in participant identification of the following three coral reef ecosystem vessel grounding scenarios, each with a number of key considerations:

1. **Existing abandoned vessels.**
   - State, territorial, commonwealth, and federal government agencies lack the funding and, in many cases, the specific authority to remove such vessels.
   - In many cases, these vessels continue to damage coral ecosystems through crushing and scraping from storm-induced movement; breaking up and becoming lodged in reef crevices; leaving behind significant sources of iron that may create settling areas for invasive marine species; serving as dumping grounds for hazardous wastes; and entangling fish and wildlife, including endangered species, in gear and vessel components.
2. **Vessels that will ground on coral reefs in the future, be cleaned of their oil, and left in situ.**
   - These incidents raise the issue of whether existing oil pollution authorities can allow for the removal of all vessels in this category and, if so, whether funds will be available to remove such vessels.
   - Similar to existing abandoned vessels, in many cases, these vessels also continue to damage coral ecosystems through crushing and scraping from storm-induced movement; breaking up and becoming lodged in reef crevices; leaving behind significant sources of iron that may create settling areas for invasive marine species; serving as dumping grounds for hazardous wastes; and entangling fish and wildlife, including endangered species, in gear and vessel components.

3. **Vessels that will ground on coral reefs in the future but do not pose a risk of oil leakage.**
   - These vessels either remain abandoned on reefs or are pulled off by salvors or other vessel operators.
   - Minimal monitoring and enforcement capabilities of the jurisdictions and little Coast Guard involvement, due to the absence of an oil pollution threat, most often means that these types of incidents go unreported. As a result, there is a lack of understanding about the magnitude and severity of this specific type of incident.
   - Jurisdictions lack the legal authority, aside from general admiralty law, to seek compensation for damages to coral reef ecosystems, vessel removal, and habitat restoration.

Other Important Summary Considerations:

1. Many vessel groundings occur as a result of typhoons or other coastal/ocean storms. As such, jurisdictions could benefit from better preparedness in the advent of storms.
2. Reported groundings in the Pacific are infrequent, averaging one to three incidents per jurisdiction per year; however, one grounding has he potential to cause significant damage to coral reef ecosystems.
3. General damage assessment and enforcement protocols would be useful tools for natural resource managers in the jurisdictions.
4. Economic values of coral reef resources need to be calculated in order to garner political support for removing vessels, augmenting assessment programs, and instituting legislative changes.
5. Jurisdictions generally lack the specific legislation/authority to address groundings; however, the underlying legislative framework varies from island to island. For example, Hawai`i has possible legislative avenues, while American Samoa has no related legislation.

Figure 2. Abandoned Vessel Removal, Guam

6. Jurisdictions generally lack the financial resources required to take legal action against potentially responsible parties in situations that do not involve potential oil threats.
7. Many grounding incidents involve fishing vessels that lacked financial resources to pay for insurance to cover removal costs and, if necessary, environmental restoration. Oftentimes these vessels are so badly damaged from grounding that they are simply abandoned by their owners/operators.
8. Prevention activities, which have not yet been thoroughly explored to date, are an opportunity to minimize vessel grounding impacts.
9. Habitat damages and costs associated with vessel removal generally increase the longer the vessel remains in the ecosystem. For example, increased removal costs can result from illegal dumping in abandoned vessel hulks and increased difficulty in removing decaying vessel structures; and habitat damages can intensify as a result of iron enrichment and vessel incorporation into the reef structure.

IV. SUMMARY POINTS – PRIORITY ACTION ITEMS

The priority action items from both workshops have been categorized based upon the vessel grounding scenario(s) addressed: 1) existing abandoned vessels, 2) vessels that will ground on coral reefs in the future, be cleaned of their oil, and left in situ, and 3) vessels that will ground on coral reefs in the future but do not pose a risk of oil leakage. To simplify the organization of this section, scenarios 2 and 3 have been combined into one category as both describe future vessel grounding impacts. Action items are further broken down under each scenario by national and island activities.

1. Existing abandoned vessels.

a. National Activities – federal agencies working with Island jurisdictions

- NOAA and USCG will work with Island governments to complete, ground truth, and verify the abandoned vessel database of historical groundings and develop a system for inputting future grounding information into the database.
- NOAA and USCG will work with Island governments to identify high-priority existing vessels for removal.
- DOJ and NOAA will work with Island governments to assess the feasibility of utilizing federal authorities and statutes to remove existing abandoned vessels by consulting with the "Federal Law Legal Flowchart." (See C- Scannell - Authorities Flowchart)
- NOAA and USCG will work with Island governments to develop vessel removal plans, and seek out technical and financial resources to ultimately remove high-priority vessels.
- DOJ and NOAA will seek out opportunities or respond to requests to augment legal assistance to Island jurisdictions by developing communication networks or, if viable, through inter-personnel agreements or similar two-year contracts.
- Federal agencies will work with U.S. Flag Caribbean Islands to understand and document the scope and magnitude of issues in those islands.

b. Island Activities

All Islands

- Island governments will better document the scope and magnitude of impacts of new and existing vessel groundings and will share those findings with NOAA.
- Island governments, with assistance from NOAA and DOJ, will each develop a "Jurisdictional Law Legal Flowchart" to determine if existing abandoned vessels can be removed under current jurisdictional regulations. Local agencies will subsequently define legislative gaps in the current flowchart.
- Island governments will work with NOAA and USCG to identify high-priority existing vessels for removal, develop removal plans, and seek out resources to ultimately remove these vessels.

2. Vessels that will ground on coral reefs in the future, and either do not pose a risk of oil pollution or will be abated of their oil and left in situ.

a. National Activities – federal agencies working with Island jurisdictions

- NOAA and USCG will work with Island governments to identify and develop specific vessel-grounding training needs (e.g., damage assessment training) and include the topics in U.S. CRTF agency training agendas.
- NOAA and USCG will work with Island governments to complete, ground truth, and verify the abandoned vessel database of historical groundings and develop a system for inputting future grounding information into the database.
- USCG and NOAA will work with Island jurisdictions to ensure that proper contact names

and information are included in U.S. Coast Guard Area Contingency and Regional Response Plans.

- USCG and NOAA will provide Island government agency representatives with opportunities to participate in incident command training.
- DOJ and NOAA will seek out opportunities for providing legal assistance to Island jurisdictions by developing communication networks or, if viable, through inter-personnel agreements or similar two-year contracts.
- USCG and NOAA will provide assistance to jurisdictions to better mark reef channels and establish vessel moorings.
- NOAA and USCG will work with Island governments to explore vessel grounding prevention technologies, funding sources, and protocols to implement measures within local waters.
- NOAA and DOJ will work with jurisdictions during new incidents to attempt to get vessels removed under any applicable federal statute or admiralty law.
- USCG and Island governments will seek out opportunities for cooperation with salvors to encourage the notification of appropriate local agency officials when new groundings occur.
- NOAA and Island governments will convene a workshop to determine priority coral reef economic valuation needs in order to 1) demonstrate the significance of services provided by coral reefs, and 2) use in seeking compensation for vessel-grounding natural resource damages.
- Federal agencies will work with U.S. Flag Caribbean Islands to understand the scope and magnitude of issues in those islands.

b. Island Activities

All Islands

- Island governments will work with NOAA and USCG to complete, ground truth, and verify the abandoned vessel database of historical groundings and develop a system for inputting future grounding information into the database.

Figure 3. *F/V Paradise Queen II*, Kure Atoll, Hawaii

- Island governments will work to ensure better documentation of the scope and magnitude of impacts of new and existing vessel groundings.
- Island governments will work with USCG and NOAA to ensure that proper contact names and information are included in U.S. Coast Guard Area Contingency and Regional Response Plans.
- Island officials will explore the feasibility of changing local regulations and introducing a corals "no harm" clause into local legislation.
- Island governments will work with NOAA and USCG to explore new and existing vessel-grounding prevention technologies and protocols to implement within local waters before 1) ships get grounded on reefs, and 2) abandoned moored vessels become grounded due to storm events.
- USCG and Island governments will seek out opportunities for cooperation with salvors to encourage the notification of appropriate local agency officials when new groundings occur.
- NOAA and Island governments will convene a workshop to determine high-priority coral reef economic valuation needs in order to 1) demonstrate the significance of services provided by coral reefs, and 2) use in seeking compensation for vessel-grounding natural resource damages.

- Island governments will work to develop an inter-island network of identified agencies within each jurisdiction to take the lead for enforcing the law and following through in the aftermath of a grounding incident.
- The State of Hawai`i and the Universities of Hawai`i and Guam will complete the coral reef economic valuation studies currently under way and share those results with federal agencies and other Island jurisdictions.
- Island governments will work with NOAA and USCG to identify and develop specific vessel-grounding training needs (e.g., damage assessment training) and include the topics in U.S. CRTF agency training agendas.

American Samoa

- American Samoa government will assess the feasibility of developing a memorandum of understanding (MOU) between various agencies (territory, NPS, Fagatelle Bay National Marine Sanctuary, etc.) for improving vessel grounding response-related activities, including enforcement and prosecution to remove vessels and/or recover damages.

Commonwealth of the Northern Mariana Islands (CNMI)

- The CNMI interagency group on vessel grounding will clarify agency roles and responsibilities with respect to prevention and management of vessel groundings.
- The CNMI and Guam will work to establish an MOU between the two jurisdictions and federal agencies responsible for responding to vessel groundings so that the knowledge of trained experts can be shared between the islands. Most of the experts are employed by the government agencies of these two islands.
- The CNMI interagency group on vessel grounding will develop a CNMI Vessel Grounding Action Plan for the prevention and management of future vessel grounding incidents.
    - Potential prevention measures may include, but are not limited to, typhoon contingency planning, improving aids to navigation, and reviewing regulations.
    - Future management actions may include, but are not limited to, conducting a marine resource valuation assessment, identifying an agency to take the lead on implementing preventative actions, and developing local authorities to address vessel grounding incidents.

Guam

- Guam and USCG will seek to better mark the jetties and the channels in the waters of Guam and establish corridors, including offshore banks.
- Guam and CNMI will work to establish an MOU between the two jurisdictions and federal agencies responsible for responding to vessel groundings so that the knowledge of trained experts can be shared between the islands. Most of the experts are employed by the government agencies of these two islands.
- The Universities of Guam and Hawai`i and the State of Hawai`i will complete coral reef economic valuation studies, currently under way, and share those results with federal agencies and other Island jurisdictions.

Hawai`i

- The State of Hawai`i and federal agencies with responsibility in the Northwestern Hawaiian Islands (NWHI) need to examine the need for actions to address groundings in that ecosystem.
- Hawai`i Department of Land and Natural Resources (DLNR) representatives will coordinate a group of expert biologists to be included as contacts in the U.S. Coast Guard Aea Contingency Plan.
- Hawai`i DLNR and the University of Hawai`i will look at the feasibility of developing an

MOU between various agencies, DLNR, and the University of Hawai`i for response-related activities and damage assessments.

- The State of Hawai`i and the Universities of Hawai`i and Guam will complete coral reef economic valuation studies, currently under way, and share those results with federal agencies and other Island jurisdictions.

V. Response to the Grounded Vessel Removal Resolution Put Forth by the U.S. Coral Reef Task Force in August 2000

The U.S. CRTF Draft Resolution on Grounded Vessel Removal highlighted the inability of federal, state, territorial, and commonwealth authorities to comprehensively address grounded and abandoned vessel issues and stated the need to further assess this situation:

- Vessel groundings on coral reefs can cause extensive environmental degradation from the spilling of oil to the grinding and scarring of coral reef habitat; and
- The current Oil Pollution Act of 1990 (OPA '90) sets up a response for oil and hazardous material removal but does not fund the removal of the vessel from the reef; and
- Studies have shown that leaving the wreck on the reef has the potential to cause further degradation of the reef ecosystem; and
- It has been difficult to collect money from the vessel owners to assist in the wreck removal, therefore vessels are left to break apart and scatter wreckage across the reef; and
- The recent cooperative efforts between the Federal agencies and the states and territories to deal with vessel removals in American Samoa and Hawai`i has set an important precedent for dealing with future groundings.

The resolution also called upon U.S. CRTF agencies to thoroughly explore the broad set of vessel grounding issues, and give specific consideration to the four potential management actions listed below. A summary response to each proposed action based on workshop discussions is also provided.

1. Require a bond for fishing vessels entering U.S. territorial waters for the purposes of conducting business at U.S. ports adjacent to coral reefs, as appropriate.

Feasibility – Legislative, Fiscal, and Practical Issues

- Federal legislation that only targets fishing vessels transiting near coral reefs may be unconstitutional.
- If pursued, this action would have to be raised as a priority by U.S. CRTF member agencies and Island jurisdictions, and would require new federal legislation.
- There is a need to document the severity of the problem, and then conduct a comprehensive analysis to determine feasibility, availability of bonds, cost, economic impact, and perverse incentives.
- This action may apply to vessels that are only a part of the problem, i.e., larger vessels that are normally required to be bonded represent infrequent grounding incidents, while smaller vessels, which may ground more frequently, would unlikely be able to afford the bond costs.
- Salvage insurance does not always guarantee removal, and thus new and additional liability provisions would also be needed.
- A bonding requirement only for fishing vessels will not insure against all potential groundings.

Possible Mechanisms and Activities

- Jurisdictions could require local port/harbor agents to carry larger securities/bonds for their vessels in order to address possible damages from coral reef groundings.
- If such a requirement were constitutional, a bonding requirement could be tied to fishing permits.

2. Make recommendations for additional legislation and funding mechanism in addition to the Oil Pollution Act.

Figure 4. Longliners abandoned on coral reefs in Pago Pago Harbor, American Samoa, after Hurricane Val

Feasibility – Legislative, Fiscal, and Practical Issues

- Legislation is probably not a politically feasible alternative at this point in time if it involves new liability or a new federal funding requirement. A case for new legislation needs to be well substantiated, and Island jurisdictions and federal agencies need to work together to determine the severity of the vessel grounding problem in all U.S. waters.
- There is a potential for this action to cause a conflict between states' rights and federal legislation governing reefs in state/territorial waters.
- Assessment of existing federal authorities does contribute to the case that there is a gap in existing authorities. Future legislative alternatives would need to be thoroughly structured based on the gaps found.
- Legislative changes might be possible at the local level, but would be unfunded. This action would require directed, continuous federal funding.
- Funding to support emergency response infrastructure would need to be a component.
- New regulations would require incentives to guarantee federal and local cooperation.
- Potential funding solutions need to avoid taking funds from other high-priority coral reef appropriations.

Possible Mechanisms and Activities

- Informal options between trustee partners could be created (e.g., MOUs for responding to groundings, agreed-upon protocols or guidances, etc.).
- Make amendments to existing Natural Resource Damage Assessment (NRDA) and OPA '90 requirements, e.g., lower vessel size for insurance (requires amending OPA '90) and augment NRDA to include non-oil damages, such as response-caused damages, damages indivisible between grounding and response, and damages caused by the decision to remove oil but leave the vessel.
- The Coral Executive Order asks federal agencies to protect coral reef ecosystems to the maximum extent possible under their authorities. One possible mechanism for improvement to existing regulations may be to see how U.S. CRTF agencies can expand their interpretation of existing laws under their authority, pursuant to the Coral Executive Order.
- Add a funding mechanism and change tonnage requirements under the Abandoned Barge Act.
- Add new coral protected areas to the National Marine Sanctuary System.

3. **Establish a national legislation for coral reef damage assessment, including cultural losses, to serve as a guideline for both penalties and restoration costs.**

   Feasibility – Legislative, Fiscal, and Practical Issues

   - Legislation is probably not a politically feasible alternative – NRDA is highly controversial.
   - OPA '90-based NRDA protocols already exist, and coral-specific injury assessment protocols are used in the Florida Keys National Marine Sanctuary and have been applied to Puerto Rico groundings.

   Possible Mechanisms and Activities

   - Develop comprehensive economic valuations of coral reef ecosystem resources in each jurisdiction to quantify socioeconomic considerations.
   - Develop, adapt, and/or transfer existing protocols as described above.
   - Allow for local decision making/flexibility in the allocation of restoration monies (e.g., allow for restoration funds to be used to restore coral reef ecosystem habitats other than submerged coral reef structures).

4. **Develop federal assistance protocols to augment the ability of islands to initiate rapid response for vessel damage assessment and removal, including training and prearranged access to Departments of Interior, Commerce, Transportation, and Defense assistance in the event of immediate and critical environmental damage.**

   Feasibility – Legislative, Fiscal, and Practical Issues

   - Response to this action does not require significant political support.
   - Work can be accomplished through existing area committees.
   - Existing sources of funds can be used to develop projects and provide training.

   Possible Mechanisms and Activities

   - Utilize state experts to complete vessel grounding database.
   - Update the U.S Coast Guard Area Contingency Plans in the Pacific jurisdictions.
   - Increase prevention education, outreach, and/or warning systems – reef markers, Raycon beacons, etc.
   - Develop networks and/or Memorandums of Understanding (MOUs) for response.

VI. CONCLUSION

Vessel groundings pose serious threats to coral reef ecosystems in the U.S.-affiliated Pacific Islands and other U.S. states, territories, and commonwealths; however, the severity of the problem is not well defined. The Oil Pollution and Clean Water Acts provide the resources needed to respond to the vast majority of vessel groundings that involve the threat of an oil spill or hazardous materials release. The most significant gap in authority for vessel removal occurs once the threat of an oil spill has been removed and the vessel is left grounded. The severity of the remaining threat still needs to be better defined, and NOAA, USCG, and Island governments are committed to documenting that threat.

There are clearly ways in which the existing response networks can be improved. Island jurisdictions working with USCG have agreed to work on making improvements through area committees. These improvements include ensuring that local expertise, particularly biological expertise, is included early in a response and that maximum use of response resources authorized under OPA '90 is made.

There is clear interest at the state, territorial, and commonwealth level to make better use of existing law and regulations to respond to vessel groundings that cause damage and are not covered under OPA '90. Similarly, there may be opportunities at the local level to develop new or amended legislation to provide appropriate authority. Many of those opportunities were discussed in the workshops and mentioned herein. There is also an opportunity for additional federal legal assistance and technical capacity building.

The efforts reported here can serve as first steps in improving the state, territorial, commonwealth, and federal response to grounded vessels. Further effort is clearly needed, and it is hoped that the action items identified in this report will facilitate that additional work.

VII. ACKNOWLEDGMENTS

The U.S. Flag Pacific Islands Vessel Grounding Workshops could not have achieved the success that they did without the support and participation of NOAA's Island and federal partners. Particular thanks go to the Hawai`i Division of Aquatic Resources; the American Samoa Department of Commerce; the CNMI Coastal Resources Management Office; the Guam Department of Aquatic and Wildlife Resources; the Hawai`i Department of Health; the Hawai`i Office of the Attorney General; the American Samoa Attorney General's Office; the CNMI Attorney General's Office; the Western Pacific Regional Fishery Management Council; the National Park Service; and the U.S. Coast Guard Hawai`i and Guam for their valuable contributions.

In addition, the efforts of Dr. Mike Hamnett of the University of Hawai`i, Doug Helton of the NOS Office of Response and Restoration, Pat (Nihi) Kauhane of the Pacific Basin Development Council, Cheryl Scannell of NOAA's Office of the General Council, Bob Currul of the FKNMS/Florida Fish and Wildlife Commission, and Lauri MacLaughlin of the FKNMS were instrumental in this accomplishment.

NOAA also extends thanks to the entire staff of the Pacific Basin Development Council for their efforts in providing logistical coordination. Funding for this workshop was provided by NOAA's National Ocean Service Coral Reef Conservation Program.

This document was prepared by Ellen Sorensen of NOAA's Office of Response and Restoration, and Jonathan Kelsey of NOAA's Office of Ocean and Coastal Resource Management.

VESSEL GROUNDINGS IN THE PACIFIC ISLANDS- HAWAII AND AMERICAN SAMOA CASE STUDIES & ISLAND REPORTS

HAWAII

FRANCIS OISHI, CHIEF, HAWAII DIVISION OF AQUATIC RESOURCES

Overview:

- It is estimated that 3-5 vessel groundings occur each year with a maximum of 10. This is much smaller compared to approximately 500 groundings in Florida.
- These numbers may not be reflective of all groundings that occur as not all are reported.
- In 1994 there were 3 significant groundings.
- Smaller vessels usually do not cause significant damage. Boats usually break up before removal can occur.
- Medium scale vessel groundings such as that of commercial fishing vessels are common in HI. Bulldozer effects can be significant as vessels bump along the reef structure leaving significant scars. Oil effects have not been documented to be significant.
- The vessel grounding of Swordman I cost about $1.5 million to cleanup.
- Paradise Queen II- lobster fishing boat/longliner- ran aground on fringing reef on Kure Atoll in NWHI. Wreck removal was not plausible. This wreck was left exposed and in a year's time was broken up.
- 1989 Exxon Houston- 3,300 gallons of crude oil spilled. Removed vessel from the reef and it sold for scrap removal.
- Overall incident report for HI:
  - Generally wrecks are removed and in a few cases they are not.
  - Generally biologically assessments are conducted.
  - No attempts to carry out restoration as a result of groundings.
  - There are no cases of owners being prosecuted for damaging coral reefs via a vessel grounding.

Capacity:

- Coast Guard, State Agencies, Private Industry.
- Wreck removal monies are provided by the vessel's insurance, in other incidents the National Pollution Funds such as in the case of the Swordman I.

Needs:

- Legal authority.
- Legal mandate to effect resource restoration.
- Financial ability to effect vessel removal.
- Standard techniques, investigation techniques, damage assessment, and legal prosecution.
- Need a comprehensive database.
- Preventative measures to remove abandoned moored vessels before they become an issue.

Priority removal list:

- High visibility: Paradise Queen II and Van Loi
- Feasibility: Sailboats off the coast of Maui

Q. In reading the Hawaii statutes, it seemed they were pretty strict. In your opinion, why isn't the statute strong enough to allow for the removal of wrecks?

A. The statute states that the wreck needs to be removed, but there are no funds and no preventative clause penalizing the owner.

Q. In your opinion do you think that poor aids to navigation contribute to vessel groundings?

A. Would be best to ask the Coast Guard. Don't think that aids to navigation are an issue. The Coast Guard replied that mostly autopilot and weather issues cause vessel groundings.

Q. In what percent of cases is OPA '90 triggered? Where isn't OPA '90 going to take care of these cases?

A. If there is no oil spilled, or no threat of oil being spilled then there is no potential to trigger OPA '90.

Q. Has there been an increase in groundings over the years? Is there a potential for increased groundings due to cruise ships?

A. Potential concern about the cruise line but not an imminent threat. 1) There were 2 cruise lines here for 20 years and no reports of any vessel groundings. 2) Norwegian recently arrived. They stated that they would not be using shallow water ports, only deep-water ports, which make groundings less of a probability. Other cruise lines coming in after Norwegian will probably follow suit. The number of long liners operating has gone down to 85. Fish and Wildlife Service believes that there will be an increased potential in the NWHI for vessel groundings.

Q. What do you do with the removed vessels?

A. Most are scuttled.

Q. Is the public interested in these cases?

A. High profile cases get press and media interest because of concern for Hawaiian monk seals and seabirds.

Q. How many unreported groundings do you think there are per year?

A. Not sure what this number may be. Perhaps best to ask private salvers.

Q. Why hasn't any restoration been done?

A. There is no specific statute stating that reefs should be restored. There is also no funding source for restoring reefs. If the owner has funds it barely covers the removal of the vessel.

Q. If restoration would be done, what kind would be appropriate in Hawaii?

A. Not sure, this is a big question. At times will do marine debris cleanup as a method to restore the reefs.

Q. Sometimes there does not have to be an authority to do restoration. At times a settlement will include restoration. Do you have any idea why there have not been any prosecutions?

A. This has to do with money and staff time. We do not have sufficient expertise to determine a dollar value for the damage that really is done. This has been a big hindrance in prosecuting these cases.

Q. What type of damage is done to reefs?

A. There are two substrates 1) limestone 2) compacted limestone since it has been exposed for years. Won't see the crushing effect because the substrate is so hard.

AMERICAN SAMOA

LELEI PEAU, DEPUTY DIRECTOR, AMERICAN SAMOA DEPT OF COMMERCE

- Periodic vessel groundings are approximately 3 groundings per 10 years. There are a small percentage of unreported incidents.

Pago Pago Harbor Vessel Groundings:

- 9 long-liners. Ran aground in Pago Pago Harbor due to Hurricane Val in 1991.
- No responsible parties could be located.
- $6.9 million of "Fund" monies were used to remove the vessels.
- USCG removed oil and then declared that the long liners were not a navigation harm.
- 1992-1998 many agencies were asked for assistance. FEMA, ACOE, DOI, USEPA, DOC.
- Private assistance was offered, but this did not come to fruition.
- 1998, USCG discovered un-removed pollutants and committed to removing the pollutants.
- American Samoa requested assistance through the CRTF…NOAA, DOI, and American Samoa government as trustees applied for funding under OPA 90.
- 1998- NRDA and action plan was completed.
- 1999- causeways were constructed to get the equipment to the vessels.
- 2 vessels partly cut up and removed. See presentation.

Lessons learned:

- No local mandate for vessel grounding
- Limited federal authorities for oil/pollutants
- Local EPA does not have a mandate for removing grounded vessels
- No local infrastructure to respond to this type of situation

Existing coordination:

- Regional Response Team is located in Hawaii and response time is long.
- It would be beneficial to have a joint federal/American Samoa contractor on hand to help with consistency, costs, and efficiency in the case of a spill.

Needs:

Technical

- Assessment of value of coral reefs.
- Process for knowing whom to call when groundings occur.
- See presentation.

Financial

- Local/regional contingency fund may need to be established.
- Some way to track liability.
- Better access to OPA funding.

Legal

- Legislative solutions at both local and federal levels
- Process to identify responsible agencies

Priority vessels for removal:

- USS Chehalis, Navy Tanker sank in 1948
- Jui Man 3, longliner on reef since 1981

Local initiatives:

- Insure that American Samoa is better prepared to safeguard our interests against future groundings.
- Prevent unattended abandoned vessels in port by requiring vessels that enter to provide proof of financial responsibility to port officials.
- Proposed legislation.
- Community program and village cooperation strategies.

Q. Can you please describe the status of the Rose Atoll incident?

A. 100,000 gallons of fuel on board. This case is pending in front of Oil Spill Trust Fund. This has been a slow process. Debris has been cleaned up periodically. This is a National Wildlife Refuge. The cleanup has been done, but the money has not yet been released on this.

Q. Can you explain the restoration that has been done in Pago Pago?

A. Hard to tell yet how successful this has been. Much debate regarding to restore or not to restore. Some of the coral translation has not been successful.

Comments:

- Bigger question- what is an appropriate level to which a clean up happens? Also shows that monitoring has to occur in the aftermath of a spill response/removal.
- If one type of restoration is not capable of being done in the damaged area, then compensatory restoration can be conducted.
- Different environmental regimes. Wave action in the Pacific will play a large role in the success of restoration. We can control terrestrial inputs but not wave action.

Q. In the case of the longliners, doesn't the creation of the causeway cause additional damage to the reefs?

A. The local biologists did not support the causeway. The USCG came 3 times to remove the oil from these vessels and could not yet get it all. The Trustees needed to compromise in order to expedite cleanup.

Q. Wouldn't it have been better to remove the vessels initially?

A. Yes, it would have been better. They would probably have remained whole, not been broken into pieces and moved around through the years.

Comments:

- By leaving the remains of vessels, cyanobacteria modified algae can occur in these ecosystems. Large patches of this occurring in NWHI.
- The damage from the debris floating away from the vessel during those ten years could be very detrimental to the health of the reef.
- There are a lot of other materials on these vessels that are not removed under OPA '90. Sewage, refrigerants, polypropylene lines. Many concerns about non-oil spill impacts.

Q. Other than the impacts from vessels coming into the canneries, are there other recreational types of vessel groundings?

A. We don't have a database or tracking system of what they are

Q. Why isn't FEMA coming to the table to assist?

A. Need to look at the FEMA authorities. Typically it is very difficult to access these funds.

Comments:

- HI DLNR received funds from FEMA, but not sure under what authorities.
- Florida may have gotten funding from FEMA to get debris removed from canals.
- FEMA is triggered when the President declares an area a disaster area. Perhaps this definition needs to be broadened to cover coral reefs.
- FEMA regulations are very specific.
- Is there any way to broaden this by including the coral reef bed as part of the definition of a watershed?
- If looking to write new regulations/authorities, then perhaps should consider bringing FEMA to the table.

LOCAL LAWS AND VESSEL GROUNDINGS- HAWAII AND AMERICAN SAMOA PRESENTATIONS

HAWAII

KATHY HO, DEPUTY ATTORNEY GENERAL, HAWAII OFFICE OF THE ATTORNEY GENERAL

- Hawaii has a revolving fund of $5 million, however this fund is not specific to vessel groundings.
- The fund is from the 5 cents an oil barrel tax. For this to be triggered, need to have an oil spill.
- Hawaii tends to rely on the federal government and partners with them to maximize funds and expertise in the case of a spill.
- Shortfalls include no money, no resources, and no expertise. Without federal counterparts Hawaii would not be able to get much done.
- State leads for OPA '90 are the Department of Land and Natural Resources and the Department of Health. For CERCLA the Department of Health has the lead.
- Fishing vessels are the most common type of grounding.

Q. What are the penalties for not removing a vessel?
A. Civil penalty with a maximum fine of $10,000. These monies go to the general fund.

Q. Is there a regulation that a vessel must have $100,000 of insurance?
A. Department of Health does not have such a rule.

Q. Can the reefs be considered State property?
A. Perhaps, but the State does not have an economist to translate the damage to dollars.

Q. Under response law, can you recover the cost of assessment?
A. Yes, the monies go back to the revolving fund. Need to expend the money to make the money back. There is not a separate account from which to pay for the prosecution. Thus, this can be problematic.

Q. Can you bring an admiralty claim against the boat owner?
A. Sometimes, but it takes being aggressive. These cases are not necessarily small cases. When the economic figures (from HCRI study) come in, it will show that any vessel grounding has a potential for a high price tag.

Comments:

- Fishing industry margins are so small and the money is just not there for them to remove vessel when grounded.

- The funds that the Department of Boating and Recreation receive do not go toward environmental restoration or mitigation.
- We need to be creative in working together to remove the nets, etc if the vessel can't be removed.
- Because property law is State specific, it is necessary for the State to determine the loss, not the Federal government.
- The State calls on the federal government experts to see if there is some loss.
- Hawaii Coral Reef Initiative (HCRI) is working on a valuation of coral reefs in Hawaii.
- There could be some type of IPA set up to allow for the federal government to bring their expertise to the states.
- This may not be a legal issue, the issue seems to be money, need money to remove the wreck, money to prosecute, money to do an assessment.
- Boat owners are not being held liable for the damage they do to the trust resources. Is there some way to go after these people? Take a page from the book of Florida.
- The recovery rate for coral in the NWHI is slow thus there needs to be some way to charge for damage to these precious resources.
- We need to look into establishing a fund for wreck removal when all else fails. But also think that there is a need for establishing a law, a very specific law to allow for the removal of derelict vessels. Using the Hawaii statute 128D is still a bit of a stretch.
- In a settlement context can do some creative issues i.e., compensatory damage. To do this, you need to bring a case.
- DOJ does not have its own cases. DOJ gets cases from the agencies. Need to work together. The state needs to talk to the federal agencies then can work with DOJ.

AMERICAN SAMOA
MARTIN MCCARTHY, ASSISTANT ATTORNEY GENERAL, AMERICAN SAMOA OFFICE OF LEGAL AFFAIRS

- No money, no laws, no personnel that would allow the territory to remove vessels.
- The only law on the book is regarding oil discharge or chemical discharge.
- There is no specific law on the books about removing a vessel.
- There is probably a couple hundred thousand dollars in their fund.

Pollution Response Fund:
- Administered by EPA of American Samoa.
- Limited in effectiveness in regards to vessel groundings. No clear means to remove vessels under this law.
- Hard to expand the definition of a pollutant to a grounded vessel.
- There is no history, no precedent, and no prosecution that has occurred.

Summary:
- Have considered the need for liability for vessel owners.
- The canneries are foreign owned, have foreign flag vessels supplying them, and haven't taken responsibility for their external accidents or for making their vessels liable for their actions.

Q. Are there any current cases?
A. Local Coast Guard assesses fines, and enforces theses issues.

Comments:

- Very difficult to work under the federal laws.
- No federal office in the territory.
- No district court, generally American Samoa has not been assigned to any federal district.
- In some cases, federal laws are assigned to particular courts i.e., High Court of American Samoa. Under OPA '90- these are sent to Hawaii District Court.

VESSEL GROUNDINGS, OIL SPILLS, AND MITIGATION MEASURES: THE WESTERN PACIFIC FISHERY MANAGEMENT COUNCIL FISHERY MANAGEMENT PLAN FOR CORAL ECOSYSTEMS IN THE WESTERN PACIFIC

KEVIN KELLY, WESPAC

- WESPAC is mandated under the Magnusun Act to manage the fisheries resources in the western region including, the Hawaiian Islands, CNMI, Guam, and the Pacific Remote Island Areas (PRIAs). FSM fisheries are not managed by WESPAC.
- Pacific fishing fleet: Hawaii has the greatest number of vessels permitted and CNMI has the least. The probability of a vessel grounding increases with an increase in the number of fishing permits.

Coral Reef Ecosystem Fishery Management Plan:

- Recently the Council created a Fisheries Management Plan for coral reef ecosystems in the Pacific. This plan is currently under review. The plan defines a coral reef ecosystem as all hard bottom surfaces out to 50 fathoms.
- Specifically, the Coral Reef Ecosystem Fishery Management Plan includes a vessel insurance requirement where *"All fishing vessels including those regulated by existing FMPs operating in or transiting a MPA must carry insurance to cover the cost of vessel removal and pollution liability in the event of a grounding. The insurance liability so required will be based on vessel category, permit type and fishing area."*
  - This is only for fishing vessels in marine protected areas in the Pacific a) no take and b) low use which have to be designated under the fisheries management plans.
  - The last sentence is fairly vague for how much insurance is required. The fleets in these areas are very different and thus need different requirements.
  - If found to have no insurance, penalties could occur i.e., removal of a permit in perpetuity.
  - NWHI bottom fishing vessels would be regulated under this Plan.
  - The constitutionality of this requirement is being investigated. It is not clear if the Council can require vessels to have insurance in certain areas of the ocean.

Current Insurance:

- Currently, protection and indemnity insurance in the amount of $500,000 has three tiers:
  1. Crew
  2. Property
  3. Environment
- In the case of an accident, insurance will first cover damages to the first tier, then the second and finally the third. Thus, the removal of a grounded vessel would not be plausible until the 3rd tier. At that point, there may not be funds available to cover these costs.
- Need to look at other options to better understand where the removal of the vessel can occur.
- WESPAC intends to develop a more overarching plan that would help better protect the pacific islands. This could be implemented through either the FMP or other federal laws.

Comments:

- Perhaps there are 2 preemption issues relating to the WESPAC plan: 1) constitutional question of requiring insurance in particular areas which could infringe on Admiralty law, and 2) an inconsistency with OPA '90.
- There is also an issue of foreign flag vessels transiting through EEZ.

FEDERAL LAW AND VESSEL GROUNDINGS

CHERYL SCANNELL, NOAA, OFFICE OF GENERAL COUNSEL

SEE PRESENTATION: "C-SCANNELL – GROUNDING LEGAL AUTHORITIES"

Q. What defines a response?

A. Has to be a response undertaken by a federal or state agency.

Q. Does the action that results from the decision not to respond- have any legal standing under OPA?

A. The injury could be secondary or tertiary – does not have to be directly linked to oil.

Comments:

- Is no response considered a response action? If so can costs be able to be recovered for a lack of action?
- There is no essential habitat designated for the monk seal or green sea turtle.
- If a vessel is aground on critical habitat, then should be able to go to court and get the owner to remove the vessel.

Insurance:

- Not a likely practical or legal solution as there would likely be significant opposition and constitutional challenges.

Q. Could you require a vessel owner to have a contract with a cleanup company to respond if there is a spill or damage to a natural resource?

A. OPA would preempt this, as every carrier needs insurance under this legislation.

Comments:

- In Florida tried to enforce a recreational boating permit, but the State legislature did not accept this.
- WESPAC could say that the owner would have to buy insurance in order to get a permit. The insurance may be permissible if it is included in the cost of the permit.

Comments:

- Boating and fishing special use license and permits- in Florida this was vetoed by the Governor.
- Increase funding for the abandoned barge act- perhaps amend the act to be for vessels that are less than 100 tons. Perhaps allow the coast guard to keep these funds.
- Good to look into all statutes to see if there is a possible mechanism for money for vessel removal.
- There is a difference between a grounding in coral vs. coral reef ecosystems.
- If a boater grounds and gets itself off the reef, there is still damage:
  - There needs to be documentation before there can be a damage.

- In Hawaii the only groundings that are documented are the big ones. In Florida they document much more groundings because they are on the spot all the time watching. In Hawaii need more folks in the water.

HOW OTHER STATES/TERRITORIES HANDLE VESSEL GROUNDINGS

CHERYL SCANNELL, NOAA, OFFICE OF GENERAL COUNSEL

SEE PRESENTATION: "C-SCANNELL – STATE GROUNDING AUTHORITIES"

Q. Should you specify the type of substrate to be damaged?
A. Tricky question. Needs to be looked into more.

Q. Has any review of state regulations been completed to show how an owner can go about removing the vessel since the act of removal can cause more damage?
A. Mississippi is the only state that has restoration built into their statute. This specifically addresses environmental harm. Most are not environmental harm statutes.

Q. Isn't there a sanctuary law that states how the boat is to be removed?
A. The Act notes that the owner is responsible for the damage and if more damage is done in removing the vessel then they will be charged for that to. The Act recommends hiring a salver.

Q. Is there any way to increase criminal penalties?
A. States vary. Some go civil, some criminal. Knee jerk reaction in Hawaii was to go civil because prosecutors would not touch this environmental crime. Florida law is criminal.

INTRODUCTION TO LEGAL CHANGES THAT MIGHT BE POSSIBLE AT THE FEDERAL LEVEL AND AT THE LOCAL LEVEL

- Three to five vessel-grounding incidents a year is not that many, but it does necessitate a change in current structure.
- A reef, is not a reef, is not a reef and thus groundings on these reefs need to be looked at differently. There may be one grounding a year, but it could be on a very sensitive, unique ecological resource.
- Look to better identify vessel groundings by reporting on the currently unreported groundings and documenting the frequency and severity of incidents perhaps by enlisting a team of experts from various agencies.
- Although only 3-5 groundings, nothing has been done to clean up the current wrecks. There is a potential for a cumulative amount of damage.
- Need a comprehensive database of vessel groundings and input from all agencies. Perhaps set up a 24-hour hot-line number.
- Maybe an on-call Rapid Assessment Team should be created to assess damage.
- OR&R developing a database of all abandoned vessels. There is a website up and running at http://restponse.restoration.NOAA.gov.dac/vessels.
  - Work to sketch out the details of this database and the parameters that need to be inputted.
  - It is possible to e-mail OR&R updated information.
  - Suggest that Doug, Francis, and Dave discuss this in more detail.

Q. Do you want to think about trying to cover anchor damage under this type of law?

A. In the Dry Tortugas, anchor damage and chain damage was tremendous. Sanctuary emergency legislation was passed creating an extended area of protection- deemed the "area to be avoided" where no anchoring is permitted.

Comments:

- Should conduct a cost comparison of a quick reaction versus a drawn out process.
- Conduct a cost benefit analysis of waiting versus getting the job done right away.
- Have federal and state agencies report what their costs are associated with a grounding incident.
- There is little incentive to mount a case against a boat owner if none of the money is going to a particular case, but rather to a general fund.
- Look at a case history of where an RP paid right away versus a long drawn out process.

Needs:

- Technical help to assess the damage
- Training of local staff in response and assessment techniques
- Figure out a way for agencies to conduct a damage assessment i.e., funds
- Encourage Attorney General's offices in states/territories to address grounding cases and issues
- Build public support through outreach and education on the issue of vessel groundings
- Add to NMFS agenda for boating training- vessel grounding issues
- Like Australians, add VMS to all boats to set off warning systems when getting close to reefs
  - This is tied to the permitting system
  - VMS is not enough, also need an alarm system connected
  - VMS may not work in Hawaii
  - Need accurate maps for VMS to work

Legal Authorities of State and Territories:

- Federal legislative solutions need administration's support.
- Do we need U.S. Department of State support for foreign vessels?
- State/territorial permit to sell fishing products.
- Should legislative solution mirror NMSA to cover all injury, including liability and funds?
- Lack of motive, problems with seeking compensations from parties that lack money.
- American Samoa lacks a federal court, local laws and therefore needs federal support. In addition have unique foreign fleet considerations because of canneries and/or need to develop local statutes.
- Limited resources, funds, humans and therefore would need federal support from DOJ to move forth.

JANUARY 29 - PRACTICAL LESSONS

OVERVIEW OF CURRENT COAST GUARD PROTOCOL FOR VESSEL GROUNDING RESPONSE AND DISCUSSION

CAPTAIN PAULA CARROLL, U.S. COAST GUARD HAWAI`I

Oil Pollution Act of 1990:

5 scopes of the act

1. Prevention
2. Preparedness
3. Response
4. Liability/compensation
5. Research and technology

Prevention

Regulatory initiatives

- Double hull requirements
- Measures to reduce oil spills from single hull tank
- Access to driver records, prior to renewing licenses
- Enhancement to civil and criminal

Non-regulatory initiatives

1. **PTP-** prevention through people. 80% of marine casualties have a human error element. Systematic people focused approach to reducing pollution. Holistic view of assessing where the risks are and how to make them better. Look at training, work hours etc. This is a people focused approach to recognize that a balanced approach is the most effective. This is a cornerstone strategy to increase safety and environmental compliance.

2. **Risk based decision making-** making the best decisions for a given situation through weighing the costs and benefits of such an action. Focus on the probability that it could occur, and how to address it if it does.

3. **Stakeholder input**- Utilize a collaborative approach to this issue by seeking input into marine safety issues.

Results to date of this Act

- Average number of oil spills greater than 10,000 gallons dropped by about 50%.
- 50% decrease in gallons spilled per million gallons shipped.
- No spills over one million since 1991.
- Still getting spills, but the big ones just are not being seen anymore.

Preparedness

Area committees and area contingency plans- the Federal on-scene-coordinator must develop management plans that:

- Describe management system
- Define adequate plan to remove worst case discharge
- Describe area covered by plan
- Describe responsibilities
- List available resources (how much boom, response equipment)
- Describe procedures for decision on alternative technologies
- Describe how plan integrates with other plans such as in-situ burning plans

Vessel and Facility Response Plans

Vessels have to have a plan for how they will respond in the event that something happens while they are visiting a particular area. This applies to tankers, as this was the impetus of the Act after the Exxon spill.

Shipboard oil pollution and emergency plans (SOPEPS)

- Result of MARPOL
- Pertains to tanks ships greater than 150 gross tons and vessels greater than 400 gross tons

Exercises under OPA '90

Preparedness for Response Exercise Program (PREP)

- Developed to create a realistic exercise
- Internal exercises required by a facility and vessel response plan regulations
- This program is voluntary
- External exercises are large scale exercises for government, non-government, federal/state participants
- At times process drills occur- internal exercises to make sure that the protocols are in place and up to date. This validates the readiness of the response community

Spill of National Significance (SONS)

- Multi-state, multi nation program of an Exxon Valdez type of scale
- The incident severely impacts human health and or the environment
- Exceeds the capacity of one area

Response

Best response

- Response Management System- seeking to make the response more efficient.
- National Strike Force (NSF).
- Public Information Assist Team (PIAT).
- Response resources inventory RRI network.
- National oil spill removal organization (OSRO) classification program.
- Propositioned equipment- booms, boats ready for response. Equipment located at 22 sites throughout the country.

Liability and Compensation

Oil Spill Liability Trust Fund (OSLTF)

National Pollution Funds Center (NPFC)

- Fiduciary agent for OSLTF
- Financial oversight for EPA superfund portion accessible to the coast guard
- Manage the Fund- Since 1977- handled over 4000 oil spill situations. 50 million emergency funds and the 950 million fund available to congress
- Certify the financial responsibility (CoFR) of vessel owners
- Manage major support activities- vessels over 300 gross tons
- Fund assessments of environmental damage assessments

Research and Development

- Coast Guard is the leader in cooperative research and development
- Significant improvements include:
  - Pre-positioned spill response equipment
  - Multi-agency team building enhancement system
  - Improved spill containment boom
  - Vessel of opportunity skimming system
  - On-scene command and control system

Current projects

- Pollution incident simulation, control and evaluation system (PICES)- input parameters and provide you with what some of the outcomes may be
- Waterways evaluation tool (WET)
- Cost modeling systems (PACE)- how do you assess the damages that may result
- Integrated navigation systems
- Human performance standards and safety
- Computer-based training

Summary:

- Reduction in spills
- Regulatory and non-regulatory strategies
- Preparedness at all-time high
- Better response systems
- Refined funding mechanisms
- Need a tool box with a lot of tools

Q. When can we use the fund to get vessels off of reefs?

A. It all comes back to oil. The U.S. Coast Guard is willing to be flexible and creative in accessing the fund, but the issue is oil. You can't always pull the vessels off of the reef.

Q. Given immigrant vessels, would homeland security monies cover this?

A. Not sure yet where the priorities fall for homeland security.

Q. Does the Coast Guard have the responsibility for removing wrecks?

A. No, this is an Army Corps of Engineers issue if it is in the path of navigation.

Q. If a ship runs onto a reef, breaks up, and sinks causing oil to spill, you are now left with sediment contamination. Could the OPA Fund be utilized to remove the vessel so that sediment cleanup could occur?

A. This could be pushing the envelope. It is typically up to the regional coordinator.

Q. How often do you come up against the OPA regulations and can't address the issue of vessel grounding impacting the reef?

A. More often than not the vessel is left there while the oil is removed from the vessel.

Comments:

- In American Samoa as well as Hawaii, there are a lot of grounded vessels that get grounded that are not reported because the owners typically get them off the reef.
- Notification is important, but there are so many remote locations that it is difficult to be notified of all incidents.
- The Coast Guard deploys crews as quickly as possible and reports incidents to the necessary folks as indicated with area contingency plans.
- In the FSM, there is no direct process to deal with vessel groundings. The U.S. Coast Guard can only be brought in with an advisory role. There is no funding or authority to address these incidents under OPA.
- There is no international policy of how the U.S. should respond to these types of spills.

Q. How much does the Executive Order help to push OPA '90?

A. OPA is used to the maximum extent that it can be implemented.

Q. Do you feel restricted in your authority?

A. Each of us would like to do as much as we can to have a clean environment. Each of us has policy and statutory guidelines to which we have to adhere.

Q. Is there some way to have a standard interagency team available to go out and do an initial assessment?

A. The area command does just this.

Q. If there is an example where there is a legitimate threat of a discharge, and you can either remove the oil and leave the vessel or remove the vessel with the oil, isn't it a policy decision about which method to pursue?

A. The tasking under OPA '90 is to remove the oil.

Comments:

Q. Is there a better way to get funding or special appropriations for certain vessels?

A. This would mean going to legislation. Currently the Abandoned Barge Act is an unfunded mandate that requires the coast guard to remove barges. If there were a potential to get special appropriations then the U.S. Coast Guard would probably be pushing this more. It is the OSC's call as to which approach should be implemented and most OSCs will push the envelope as far as possible. With many cases, the cost of returning to remove the oil again and again may be more than removing the vessel initially.

LESSONS FROM FLORIDA KEYS NATIONAL MARINE SANCTUARY VESSEL GROUNDING RESPONSE AND ENFORCEMENT

BOB CURRUL, FLORIDA FISH & WILDLIFE COMMISSION/FKNMS

History of the Florida Keys National Marine Sanctuary:

- 2900 square miles in the sanctuary
- 1990 established the sanctuary following 3 groundings in 16 days
- Bans off-shore drilling
- Areas to be avoided
- Management plan finalized in 1997

Authorities:

- Mini-312- recovers the cost of restoration and response but the case does not require bringing in DOJ. Keep this at a NOAA level
- Summary settlement is a citation, which is issued, in order to deal with a smaller case without involving a large number of people/lawyers

Enforcement:

- NOAA and the State of Florida Fish and Wildlife Conservation Commission (FFWCC) have a partnership for sanctuary enforcement. The State of Florida has the ability to withdraw from the partnership at any time.
- NOAA and the State of Florida Fish and Wildlife Conservation Commission (FFWCC) have boarding authority to search, inspect, and seize any vessel suspected of violating the National Marine Sanctuaries Act.
- Sanctuary regulations prohibit a vessel from striking or injuring coral, seagrass or other immobile organism. Sanctuary violations are generally civil.

- State of Florida investigates boating accidents and boards vessels engaged in fishing. Violations are either civil or criminal, but are mostly criminal.
- Most groundings in the Florida Keys are due to negligence.

Grounding totals 1997 to 2001	
Year	**Number of vessels grounded**
1997- 1998	507
1998-1999	549
1999-2000	581
2000-2001	660
*About 3-5% are coral groundings	

Notification and response:

- The initial notice of an event is received at a FFWCC dispatch center. This computer aided dispatch system is where all the groundings are recorded whether they cause damage or not
- Calls are received from marine salvers, the Coast Guard, the boat operator, general public, Sanctuary staff, patrol officers, and aircraft pilot from FFWCC
- If in a coral area, there is damage to the resource, and the vessel is over 30 feet, then the Sanctuary Lieutenant is notified
- If officer is in doubt, calls in a marine biologist
- At times the damage assessment is begun when the grounding occurs, if not then wait until the ship is removed

Q. Are the officers' trained biologists?
A. No.

Q. Does this matter in court?
A. No.

Q. How does the officer assess the scene?
A. They mark it, eyeball it, and make a preliminary assessment. There are so many groundings that the officers have to come up with a quick assessment approach.

Fines:

- Coral- $100 plus $75 per square foot up to 10 square feet.
- Sea grass- $100 plus $75 per square yard of seagrass.
- In FY2001, 121 sea grass cases and 14 coral cases.
- The money collected from summary settlements goes back into the Sanctuary - can be used by the Sanctuary Superintendent as they see fit.
- Most fines are above summary settlement parameters, and all damage action funds go to restoration.

Removal:

- Officers monitor vessel removal. In coral try to expedite this process so as to reduce further damage.
- Vessel removal is limited to high tide and engine use is limited. If complicated, then a removal plan is developed and its use is strongly suggested.
- Since 1997 only seven vessels have not been removed by the responsible party.
  - USCG- removed 1.

- NOAA- removed 2.
- Florida Derelict Vessel- removed 4 (Florida derelict law states that you can't leave a vessel in a wrecked condition on the state resources).

Large Vessels Groundings:

Damage is considered the following

- Coral- anything over 10 square feet
- Seagrass-anything over 10 square yards

Case statistics

- 33% of large groundings are vessels between 41 and 50 feet
- Recreational 74%, Commercial 26%
- Power vessels 78%, Sailing vessels 22%

Case preparation

- Officer has to be aware of what the responsibilities are of the prudent mariner, and:
  - Takes photographs on arrival
  - Checks the bridge to see that no navigation is turned off and documents the readings
  - Seizes, logs, charts, electronics - need a warrant to download information from the electronics
  - Interviews operators and observers
  - Documents all navigation equipment and whether it was in use
  - Documents charts in use
  - Ensures the position is fixed
  - Processes evidence
  - Completes the report
- If an officer is in doubt, calls in a marine biologist

Small/Medium Vessel Groundings:

Damage is considered the following

- Coral- anything less than 10 square feet
- Seagrass-anything less than 10 square yards

Case preparation

1. **<u>Biological assessment</u>**
   - Similar to a ship case preparation but on a smaller scale
   - No "marine casualty enforcement check list"
   - Officer physically marks site for the biologist
   - Once assessed, cases are processed as damage actions or penalty actions depending on the extent of damage and the restoration required

2. **<u>Summary settlement cases</u>**
   - Method of getting rid if a small case without involving a large number of lawyers.
   - Officer measures damage.
   - Issues a citation and an information sheet.

Two types of "Mystery groundings":

1. Site without a boat
2. Damaged boat but no idea where it went- interview the operator to determine where it has gone

Success rate:

a. No court cases lost
b. No court cases since 1993
c. All ship cases are paid expect one
d. 97% collection on closed assessment cases
e. 95% collection on summary settlement cases

Q. Is drinking involved in any of these?

A. At times, but not often.

Prevention:

Direct intervention

- Team OCEAN- stopping a boat before it runs aground, distributes information at high usage sites

Local outreach and education (contact Bob if interested in any of these materials)

- Protecting Paradise video, pamphlets, video- to boat rental facilities to play before renting a boat. 8 minutes. How not to run aground and what to do if you do.
- Public service announcement- running for past 10 years.
- Grounding prevention presentations.
- Waterways- TV show on public television.
- Monthly brochure route- distributed educational materials to about 400 businesses in Florida keys and south Miami.
- "Keeping your bottom off the bottom" brochure.
- Sticker that goes on all rental boats in the Florida keys- this has helped to reduce the number of rental boats running aground.

National and International Outreach

- National publications.
- Area to be Avoided on US nautical charts- reduced the number of ship groundings on reef.
- About to be designated a "Particularly Sensitive Sea Area" by IMO- only 3rd one in the world.

Improved channel and reef marking

- Raycon beacons installed to mark channels and since installation, no ship groundings

Conclusion:

- Regardless of prevention and outreach, vessel groundings in both seagrass and coral ecosystems, are increasing or remaining stable. In the Keys, over 2000 groundings have occurred since 2000.

Q. Where does the money come from?

A. Some from budget, some from advertising, some from grants.

Comments:

- Biologists play an extensive role in the FKNMS process.
- A multi-disciplinary response/assessment team, as appropriate, is important.
- In Hawaii the USCG is the first to be notified.
- When the Coast Guard gets notified, this goes to the National Response Center and they should be distributing the information to the correct agencies accordingly.

- This may be where things are falling through the cracks. Currently the national response center sends a fax. Perhaps if there was a pager or a direct contact number then a biologist could more immediately respond to the incident? Faster oral notification is needed.
- Mooring buoy system- tropical fish industry had to pay a licensing fee these monies went to pay for the portion of this program. State has been able to find creative ways to help fund different initiatives.

Q. How many enforcement officers are there in Hawaii and American Samoa?
A. In Hawaii the enforcement officers are charged with patrolling lands and water. In addition, safety regulations demand that there are 3 to 5 officers on each enforcement boat.
In American Samoa there is 1 Sanctuary officer and 4 or 5 DMWR officers, but they also enforce hunting and land issues.

Q. Does the FKNMS have a citation authority?
A. Yes, it is a Sanctuary regulation. The State has coral regulation but there is no seagrass regulation.

Q. In terms of area response plans is there something that can be handed to boat owners that states what a responsible party can and can't do in the event of a grounding?
A. In the Florida Keys, we hand them a booklet of their rights and responsibilities as a responsible party.

Q. In American Samoa, who is the first responder?
A. American Samoa, EPA.

Q. In the Team Ocean program, how are the boats funded?
A. These were donated by the State of Florida, as they were too slow for enforcement.

Q. How many summary settlements do you have a year?
A. 14 coral, 120 seagrass. If is a commercial vessel than raise it to a higher level.

POSSIBLE LESSONS FROM NATURAL RESOURCE DAMAGE ASSESSMENT (NRDA) AND DAMAGE ASSESSMENTS IN THE PACIFIC ISLANDS- DISCUSSION

DOUG HELTON**,** NOAA, NATIONAL OCEAN SERVICE (NOS), OFFICE OF RESPONSE AND RESTORATION (OR&R), DAMAGE ASSESSMENT CENTER (DAC)

The application of OPA:

- One of the goals of the Oil Pollution Act of 1990 (OPA) is to ensure that the polluter pays the cost of the incident. Claims can be made for both vessel removal and natural resource damage assessment.
- Due to the *Gatlin* decision the only damages that are recoverable are those caused by: 1) oiling 2) the threat of oil or 3) the result of response actions.
- OPA has a strong response authority and is a potential source of funding for grounded vessels.
- Under OPA, oil related impacts are compensable.
- Physical impacts are compensable if they are the result of a response action.
- Preliminary assessment costs are recoverable.
- OPA can be used if there is concern about lost uses i.e., vessel groundings may result in beach closures and the loss of recreational opportunities and it is possible to argue that these lost uses are a result of a response action.

Q. If a beach is closed in response an oil spill, than this opens the door for OPA?

A. Yes, this does.

Natural Resource Damage Assessment (NRDA):

- May be a tool for vessel removal and restoration but the costs of initiating this process could outweigh the recoverable damages for small incidents
- Further this process is time consuming and requires much staff to conduct properly

General advice for initiating NRDA under OPA:

- Proceed carefully
- Accomplish as much as possible under emergency response
- Consult with counsel early regarding legal strategies
- Initiate preliminary assessment to collect ephemeral data
- Pre-incident planning is critical, especially for remote incidents
  - Identify response team both technical and legal
  - Establish prompt notification protocols
  - Coordinate with co-trustees and response agencies
  - Develop rapid assessment methods
  - Acquire appropriate equipment, funding and contract support
  - Train personnel

Fundamental concepts of Damage Assessment:

- Goal is to restore the environment back to the baseline.
- NRDA actions should not interfere with the primary goal of an effective response.
- NRDA actions are separate from and supplementary to response actions.
- Injury caused by the response is compensable.
- Not all spills warrant a NRDA- may have to accept some loss of resources in the cases where the costs of the assessment outweigh the benefits of recovery. Typically the Damage Assessment Center only responds to spills greater than 10,000 gallons.
- NRDA actions are compensatory and not punitive- not conducting an assessment to punish someone just trying to restore the damage that was done to the resource.

NRDA Process:

1. Preliminary assessment

- Scoping exercise
- Takes place during response

2. Restoration planning

- Restoration under OPA is very broad
- Conduct injury studies
- Develop reasonable range of restoration alternatives
- Develop restoration plan

3. Restoration implementation

- Settle or litigate
- Implement and monitor projects

Injury Assessment Overview:

OPA does not mandate specific injury assessment methods but requires that

- Procedures that you choose need to be based on sound science
- Additional cost of more complex procedures must be reasonably related to the incident

- Procedure must be reliable and valid for the particular incident

Context

1. What you will do in one region is very different in what you would do in another region
2. Need to justify why you took actions and why the action was appropriate for this particular case

Judgment

- Best professional judgment of experts is always needed- may need to justify actions in a court of law and will need to defend the actions that are taken
- Local knowledge of resources of risk is essential to implementing the best strategy

Range of Procedures

- In most spills rely on a wide range of approaches; data modeling, laboratory analyses, expert judgment, peer review, field surveys. Need to document as carefully as possible how you reached your conclusions
- These procedures can be used alone or in any combination
- Simplified approaches are not necessarily less rigorous or less valid than the field and laboratory studies
- The additional precision and accuracy of more complex procedures may not be warranted given the limited precision implicit in many types of restoration—costs need to be considered
- Most assessments use a combination of assessment tools
- Not all spills warrant an extensive field assessment and models may be utilized

OPA restoration requirements

- Funds recovered must be spent on restoration.
- Plans shall be developed and implemented only after adequate public notice.
- No double-recovery of claims.
- Nexus to the injury- some logical connection to the injury in the field.

Emergency restoration

- Reattachment of corals, or debris and rubble removal.

Primary restoration

- Goal is to return injured resources and services to baseline conditions i.e., restoration of a reef framework, planting of sapling trees for a forest fire, restore reef framework.

Compensatory restoration

- Compensating for interim losses from the date of the injury until recovery of injured resources and services. This allows for a larger number of alternatives i.e., creating access to water or creating trials, removing wrecks and fishing nets from reefs, or seeking to prevent future groundings or incidents.

Funding

- Monies from the National Pollution Funds Center can be used to initiate a damage assessment, fund injury studies, and implement restoration

Conclusions:

- Trustee should try to accomplish as much as possible during the response
- OPA based NRDA is appropriate for oil injuries, response injuries, and non-divisible injuries
- Preassessment funding options should be considered

Q. During the Tesoro spill, there were some carcasses of endangered species. There was much argument about the exact number of birds killed.

A. NOAA does count listed species. But don't always need to typically do an exact count. They can get a general idea.

Comments:

- In coral situations, it depends on what the species is and where you are trying to measure.
- Need to look at the methods available and determine which is the most important to implement.
- This was written in this way to justify more simple methods.

Q. Has NOAA ever gotten a group of scientists together to discuss methodologies to use in coral areas?

A. Many folks in Florida Keys were involved in a workshop with Florida Park Service to standardize the methods to a degree, but they are not very far along with that yet.

DATABASE OF GROUNDED AND ABANDONED VESSELS IMPACTING CORAL REEFS

DOUG HELTON- NOAA, NOS, OR&R, DAMAGE ASSESSMENT CENTER

http://restponse.restoration.NOAA.gov.dac/vessels

- Database funded using NOAA/NOS Coral Reef Conservation monies.
- Seeks to inventory abandoned vessels in U.S. waters.
- Utilized various sources to find abandoned vessels, spoke with Coast Guard, State of Florida, State of Hawaii, Guam, CNMI, American Samoa, and the NOAA navigation database.
- Currently the database has 1,400 entries, most in the Atlantic, and most have only partial information filled out:
  - This database was designed based on the Coast Guard database.
  - For each vessel there are about 40 fields for data including: General information on the vessel, size, condition, location, owner, the incident, date, response action, legal status, endangered species, general threats that the vessel poses to the environment, and a contact section- to whom you should talk about the wreck.
- Range of abandoned vessels in some areas because there is not yet validation that the vessel is still there.
- The goal is to get a list of all the vessels, determine which ones need more information gathered, and prioritize the vessels that are causing the most amount of damage.
- Doug will pass around information sheets and ask each jurisdiction to try and fill out more information for each vessel in their area.

Q. Is there any information available on the restoration techniques that were implemented in vessel groundings in coral reef ecosystems in the Florida Keys?

A. Some more information in the Wellwood paper, which was written by employees of the Florida Keys National Marine Sanctuary.

Comments:

- Telephone wire laying companies pay up front cost of mitigation to pay for the damage that they do in laying lines. In addition, they are currently talking with the State of Florida regarding the mitigation of sites where no restoration has been conducted.
- There is a need to have local training so that responders are prepared.

- Some major progress has been made toward a rapid ecological assessment protocol. The completion of such protocols could fit well under the OCRM coral grants and be beneficial to the jurisdictions.

VESSEL GROUNDING INJURY ASSESSMENT- METHODS FROM THE FLORIDA KEYS NATIONAL MARINE SANCTUARY (FKNMS)

LAURIE MACLAUGHLIN, NOAA, NOS, FKNMS

Current events in Florida Keys National Marine Sanctuary:

1. Three shrimp trawlers grounded in late December and early January causing extensive damages to coral and seagrass ecosystems.
2. A damage assessment was recently completed which assessed the extent of injury resulting from the placement of un-permitted artificial lobster habitats. Vessel grounding monies were utilized to salvage these habitats.
3. During the past 8 years there have been several documented cases of the devastating impacts of boat anchor to coral reef ecosystems.

Injury Assessment in the Florida Keys National Marine Sanctuary:

Categories of Injury

Large/Catastrophic Vessel Groundings

- Section 312 of the National Marine Sanctuaries Act is the authority that the Sanctuary has available to them to assess the damage to the reefs and conduct restoration. Full damage assessments are conducted when these groundings occur.

Medium Vessel Groundings

- Are handled through a mini-312 program. Some minimal restoration is conducted, but mostly compensatory restoration is conducted.

Small Vessel Groundings

- Officers many times assess these areas themselves. Must be less than either 10 yards of seagrass of 10 square acres of coral. Officers take still pictures and estimate damage.

Response

- Immediate response is critical not only to the response but also to the damage assessment
- Conduct damage assessment while the response is occurring
- Collect video photography of the damage
- Advise salvagers of a potential exit route for the vessel to help minimize further damage to the habitat
- Mark sites with buoys or stakes, also take GPS coordinates so that biologists can return to the site
- Biologists assist salvers with the response by removing debris from the area

Types of Assessed Injuries

- Parking lot effect- when a vessel plows into the bottom and bulldozes the area- aerial photography is used to depict damage
- Blow holes- created by boats trying to lift themselves off the area
- Burms- material expelled from blow holes

Assessment

Large and Catastrophic Vessel Groundings

- Use high-resolution aerial photography with a fixed wing aircraft that will take true vertical photography with a 90-degree angle to the water. This technique is very dependent on the viability of the defendant as it is costly. Further analysis is also needed.
- Permanent markers are placed in grounding areas. GPS reference coordinates are taken at all stakes.
- Video photography is taken.
- Boundary markers and sometimes bricks are used to define the injured area for purposes of aerial photography.
- A north arrow is placed on the substrate for scale as well as a point of reference.
- Aerial imagery is placed in ArcView or another type of software then the square footage of damage is calculated.

Medium/Small Vessel Groundings

- Map the area of injury by walking the perimeter. GIS based software allows staff to produce images of the damage, and this is very defensible.
- Where both coral and seagrass damage is done then two different methodologies are used and added together.
- Recently begun using a video transect technique to determine percent cover damaged
- With all these techniques, ground truthing also occurs. For details see the paper by Goodwin and Hudson that was circulated at the workshop.
- All groundings are treated as a crime scene. Look for boat paint. Collect chips of the bottom paint. Look for bottom paint skid marks. Collect as much evidence as possible.

Volunteer Efforts*:*

Reef medics

- A volunteer program that creates a sense of stewardship. This is a 3-tier program, which includes response, injury assessment, and restoration.
  1. **Response**- these people are the watchdogs who look for the groundings.
  2. **Injury assessment**- reporting and investigating-helping sanctuary staff.
  3. **Restoration**- triage, going out to help with the restoration of the areas.
- One of the drawbacks of this program is that there is great liability in having divers dive off of NOAA boats. This reduces the number of volunteers who can dive at the site, as volunteers have to be trained. There is a limited amount of work that can be done snorkeling.

Q. Does this hold up well in court?

A. This injury is clear as well as causation is very clear. This has held up well.

Q. If the seagrass beds are destroyed, how quickly do they come back?

A. Depends on the hydrology. Sometimes grow back. In a low energy area, the grass probably would recover. In Belize, all the damage in seagrass has never recovered in 40 years.

Q. Has the concept of establishing a perimeter been used in the coral?

A. Yes, the contractor wore a helmet with the GPS unit on it diver with an antennae on the surface. And worked similarly to seagrass.

Q. Are you still doing percent for partially and totally destroyed coral?

A. Trying to just denote the totally destroyed area.

KAREN BATTLE, DOI, NATIONAL PARK SERVICE, DAMAGE ASSESSMENT PROGRAM

- Civil and criminal penalties exist under the National Park System Damage Assessment Program.
- Criminal violation has a restitution schedule- Must pay the restitution amount depending on the extent of damage which is considered property damage.
- The Park system has been successful in both civil and criminal process.
  - In a criminal fund the money goes to the general fund.
  - In 19JJ the restitution money should go to the particular park for restoration.
- In the long run- criminal is faster and cheaper but the burden of proof is higher.
- Biscayne National Park has authority over salvers. Salvers must have a permit, photo id; sticker on the boat, each crew member registered, each boat registered, each one must follow the particular protocol of the park. Salvers come in once a year for a meeting. Talk about removal techniques. If can't get an authority over them- try to get them into a meeting to discuss the issues.
- Biscayne National Park created a vessel-grounding document that is particular to the site, but there may be elements that can be transferred from one area to another.
- Biscayne has a five-year database on vessel groundings. Is there a way to combine all of these databases?

Q. Who gets the money from these cases?

A. In Biscayne and Everglades, DOI owns the property and gets the money. In Dry Tortugas not sure who owns the land.

Q. In the manual, if a Good Samaritan causes damage then they too are responsible for any damage that they may cause. Is this a good approach?

A. All salvers in Biscayne are about a 30-minute boat ride from any incident site. So within a park, it is best to get an expert involved. In other areas that are more remote/spread out, it will be difficult to have such a quick response time.

ASSESS, RESPOND, RESTORE, AND RECOMPENSE FOR ENVIRONMENTAL DAMAGE- DEVELOPING STANDARDIZED PROTOCOL: DISCUSSION

Working within the current structure:

- Areas of better coordination between federal and state agencies seem like a plausible solution to improving the current situation.
- Need to work with Doug Helton to further the database that he has been working on. Help to ground truth and verify the data.
- Work with the area response teams to become better involved with the response process.
- Who is going to work with the response team to try and tweak the system so that initial response gets accomplished?
- Need someone who is in a better position to get all the folks to the table. Need to shake the tree to get all the players to the table.
- Seems to be an opportunity with the CRTF.
- Need to identify a counterpart to work with Cheryl on these issues to define a protocol in both Hawaii and American Samoa.
- American Samoa cannot rely on Hawaii response, as it is so far away need to build their own capacity.
- The needs of Hawaii and American Samoa are very different and need to be handled differently.

- In the sanctuary there is always a sanctuary person involved with the incident. In Hawaii it is a Coast Guard show, they liter the fuel, do what they do and go home. In Florida it is not a Coast Guard show, but a Sanctuary show where the threat of oil is not the primary concern. In Florida they have a funded mandate and they have a government structure in place.
- In an emergency response situation the Coast Guard has a presence. They are the responsible Federal Agency.
- Area contingency plans- need to make sure that they are specific about who should be contacted in each area.
- In Hawaii many people carry beepers or cell phones. If there is a list of primary biologists who could respond then they could go and do some initial assessments…currently none of this is being assessed. This would be a simple matter of changing the current area response manual.
- For what purposes are you assessing? Prevent loss of critical habitat and mitigate since we cannot yet prosecute under Hawaii law.
- In Hawaii there is a co-trusteeship between DLNR and the Department of Health.
- Perhaps should get a list of personnel resources together so that it is known who has what employees and expertise throughout various state and federal agencies.
- It seems that the state expertise needs to be represented at the response. Need to attend such meetings in order to make this voice heard.
- Need to outline how to get specific people involved in this issue.
- State agencies are stretched, are at incident response then have to do natural resource damage assessment. Perhaps the state needs to hire on contractors.
- NOAA getting notified of >10,000 gallons spill. Out of about 200 each year, NOAA only can go after the top 6. Perhaps it is best to go after the bigger cases and try to hit the low hanging fruit.
- In Florida between 1990 and 1997 only 2 seagrass groundings were addressed…it takes time to build momentum.

Food for thought:

- What can we do now with little effort i.e., databases?
- What can we do under existing authorities?
- What could we do with some help from the federal government?
- What could we do under OPA 90 area contingency plans?
- What can we do to change state level legislations?
- Do we need to change federal statutes?
- Are there issues that we want to take to the Task Force given the current plan of action?
- What is the end goal that each jurisdiction is hoping to obtain?

JANUARY 30 - LOOKING TO THE FUTURE

ELEMENTS OF A PROTOCOL FOR DEALING WITH VESSEL GROUNDINGS IN THE PACIFIC ISLANDS

Existing Grounded Ships:

High priority issues

- Need to know what you are dealing with before you begin
- Have to know full vitals on all before you can begin to prioritize as you are not sure which are posing a threat to coral reef ecosystems
  - Look at existing grounded vessels
- This has the makings of a working group to carry on after this workshop is over--- get together with jurisdictional representatives to figure out what is missing.

- Does the current abandoned vessel inventory have the correct fields listed in it?
- Get all federal agencies to have some responsibility for helping

Priority Vessels

American Samoa

- There are more vessels than the *Chaellis*. A couple of grounded boats are out there and it is not certain who owns them. They do not seem to be an oil pollution threat.
- There are at least 3 other vessels in American Samoa.
- Need to make a distinction between grounded vessels and sunken vessels because there are different threats.
- However, there is still a cultural aspect. In some circumstances, it is not safe for fishing and swimming and therefore hard to promote an appreciation for the coral ecosystem if you are not able to swim/fish there.

Hawaii

- *Van Loi* is a problem. Sits on a fringing reef in the main Hawaiian Islands. This is not a pollution threat, but there are perhaps monk seals and sea turtles present.

Q. What should ideally happen with these existing ships in American Samoa?

A. Determination of who owns the vessel, once that is ascertained, need to know if there is an oil threat, identify a funding source.

Q. Is there a way to tap into OPA monies using the research and technology mechanism?

A. Probably not.

Comments:

- Not sure if removing a wreck is R&T in and of itself, but there are aspects of R&T in this. Are their benefits of partial removal/total removal? Monitoring would also have to be involved in these removals so that you can better understand what is occurring. If don't get money to remove the vessel could monitor to see what damage is being done?
- State submerged lands are still considered state lands. What is the process for removing an abandoned car, perhaps this same process could be applied to these cases, and this would give the state the authority to remove the vessel.
- There is a phone tree that exists for each jurisdiction. If there is concern then this could be ironed out today. This is present in the area contingency plans.

Next Steps

- Get salvers more involved with these workshops.
- Address questions raised at the Task Force meetings.
- Hawaii and American Samoa to review the abandoned vessel database and provide Doug Helton with updated fields.
- Take each case and run it through the legal framework spreadsheet to see which laws are applicable.
- Encourage feds to assist states and territories to build capacity.
- Need to identify the need to justify legislation, need to put together an effective case.
- Next steps: need to better define the problem.

Q. Is there a potential for the Coast Guard to be a Trustee in these cases?

A. While it may be beneficial to have the Coast Guard as a Trustee, there are a number of impediments to having co-guard being a trustee.

Q. Could biologists be sent from the State to help with the initial response?

A. In Hawaii when a command center is set up, all response activities are used to assist with a natural resource damage assessment and then a suit. This happens, biologists from the state are sent in.

Q. If changes in the area contingency plans need to be made then how can American Samoa and Hawaii get involved?

A. Area committee is really where people need to get involved. Are the right people getting notified? The jurisdictions are allowed to bring anyone to these meetings that they like.

Comments:

- In American Samoa- one person handled this and now that person is gone. Working to get someone up to speed and more involved.
- In Hawaii, would like to see a broader range of biologists involved with these committees. Francis will have Dave Gulko coordinate a group of experts and then collect all input and report back to the area committee.
- May be beneficial to develop a written protocol for each area's particular biological issues.
- How do we go about getting a biological rapid assessment complete? The lead biologist needs to make sure that these concerns are raised in the area contingency plans.
- If the trustees have a particular concern than it can be placed in the area contingency plan.

New Un-reported Groundings:

- Those that get reported to federal agencies but not the state or territory
- Those that get a salvage operator involved but are not reported to government
- Those that get reported to no one

Comments:

- Investigate state/territory boater accident and or grounding notification laws- new or existing.
- Implement a 24 hour dispatch to receive calls.
- Perhaps call a meeting of the salvers. Institute a way for the salvers to report groundings to the state.
- Outreach is critical to making this effort successful i.e., getting divers involved with such an initiative.
- Many times there are no state/federal enforcement folks on the water.
- Establish an incident reporting system. If a citizen-reporting program is begun then there needs to be a way to follow up on these reports. The preliminary issue is helping to define the initial problem. The next step would be to garner support and get enforcement folks on the water.
- Could establish an MOU between the State and University of Hawaii. Such a plan could utilize the dive program at the University to help complete profile assessments of the abandoned vessel database.
- Need to produce a state level flow chart similar to the one that Cheryl created at the federal level. Then need to see what legislation would be needed that may also be plausible.
- Have State Attorney General sit down with DOJ and NOAA Counsel.
- States to include breakage in their definition of grounding.
- Prevention and education are the key issues.
- The cost for Radar systems in the NWHI could be shared with all partners up there. The question then becomes, how do you enforce this?

Q. Are there any salvers in the area?
A. Not many.

Coral Reef Task Force resolution on vessel groundings:

1. **Require a bond for fishing vessels entering U.S. territorial waters for the purposes of conducting business at U.S. ports adjacent to coral reefs, as appropriate:**
   - Raises constitutional questions due to creation of new legislation.
   - May be appropriate as a last resort, should focus on #2 first.
   - Need to document the severity of the problem that would warrant the development of this approach.
   - Perhaps could be tied on to a port fee.
   - Must be raised as a priority by: USCRTF, USCRTF member agencies and jurisdictions.
   - Lack of deep pockets that might make such a program sustainable.

2. **Make recommendations for additional legislation and funding mechanism in addition to the oil pollution act**
   - A case for new legislation needs to be well documented, as in #1 above.
   - Potential for states rights conflicts with federal legislation governing reefs in state/territory waters.
   - May need to first use existing authorities to build case and address problem, with new legislation on the horizon.

3. **Establish a national legislation for coral reef damage assessment, including cultural losses to serve as a guideline for both fine and restoration costs**

4. **Develop federal assistance protocols to augment the islands ability to initiate rapid response for vessel damage assessment and removal including training, prearranged access to DOI, DOC, DOT and DOD assistance in the event of immediate and critical environmental damage.**
   - Utilize state experts to complete vessel grounding database.
   - Update the area contingency plans.
   - Prevention education, outreach, and or warning systems –reef markers, Raycon beacons.
   - Develop networks for response/MOUs.

Next Steps:
- Continue (and expand?) abandoned vessel database.
- Develop ongoing groundings database to determine scope of problem - web-based interface for grounding registry (include public in ability to report?).
- Need to make enforcement more responsive and/or complete the prosecution.
- Work to develop cooperation on involving state/territory staff in USCG responses.
- Look at existing cases, to be documented in database, for a greater federal hook.
- Assess the existence of local hooks and develop local legal flowcharts.
- Look at feasibility in American Samoa of an MOU between various agencies (territory, NPS, FBNMS, etc) on response.
- State of Hawaii to examine feasibility of actions to address groundings in NWHI.
- Local and/or regional examination of opportunities to educate user groups.
- Participation in incident command training - HI and American Samoa.

- Jurisdictions examine building incident/damage reporting systems.
- Explore local changes in American Samoa to coral regulations, introducing greater harm clause. Look at legislative changes in Hawaii.
- Look at including vessel grounding priority in National Strategy.
- Explore prevention technologies (reef markers, Raycon).
- Train biologists in damage assessment, chain of custody, etc.
- Legal technical assistance (IPA, etc.).

Honolulu Vessel Grounding Workshop
January 28-30, 2002
Participant List

Ms. Karen Battle
Damage Assessment Case Officer
National Park Service
75 Spring Street, SW
Room 1146
Atlanta, GA 30303
PH: (404) 202-3907
FAX: (404) 331-2630
Email: Karen_Battle@nps.gov or
kebattle@yahoo.com

Mr. Antonio Bentivoglio
Marine Specialist
U.S. Fish & Wildlife Service
300 Ala Moana Blvd.
Honolulu, HI 96850
PH: (808) 541-1699
FAX: (808) 541-3470
Email: Antonio_Bentivoglio@fws.gov

Ms. Genevieve Brighouse
Program Manager
American Samoa Coastal Management Program
Department of Commerce
American Samoa Government
Pago Pago, AS 96799
PH: (684) 633-5155
FAX: (684) 633-4195
Email: Gene.Brighouse@noaa.gov or
GBRIGHOUSE@doc.asg.as

Ms. Edna Buchan
Water Program Manager
American Samoa Environmental Protection Agency
Executive Office Building
Pago Pago, AS 96799
PH: (684) 633-2304
FAX: (684) 633-5801
Email: ednabuchan@hotmail.com

Mr. Pablo Camarillo
U.S. Department of Navy
850 Ticonderoga St., Suite 100
Pearl Harbor, HI 96818
PH: (808) 472-7150
FAX: (808) 473-1136
Email: camarilp@pearlharbor.navy.mil

Captain Paula Carroll
Chief, Marine Response Branch
U.S. Coast Guard
14th Coast Guard District, Marine Safety Division
300 Ala Moana Blvd., Room 9212
Honolulu, HI 96850-4982
PH: (808) 541-2118
Fax: (808) 541-2116
Email: pcarroll@d14.uscg.mil

Mr. Christopher G. Chung
Program Manager
Coastal Zone Management Hawaii
Office of Planning
Department of Business, Economic Development
and Tourism
State of Hawaii
P.O. Box 2359
Honolulu, HI 96804
PH: (808) 587-2820
FAX: (808) 587-2824
Email: cchung@dbedt.hawaii.gov

Mr. Robert G. Currul
Lieutenant
Florida Fish & Wildlife Conservation Commission
7120 SW, 58th Street
Miami, FL 33143
PH: (305) 395-0101
FAX: (305) 289-2326
Email: Bob.Currul@noaa.gov or
currulr@gfc.state.fl.us

Mr. Thomas Friel
Special Agent
NOAA Fisheries, Office of Law Enforcement
NWHI Coral Reef Ecosystem Reserve
6700 Kalanianaole Highway, Suite 215
Honolulu, HI 96825
PH: (808) 397-2658
FAX: (808) 397-2662
Email: Tom.Friel@noaa.gov

Mr. Vincent L. Grimaldi
Port Operation LCPO
U.S. Department of Navy
850 Ticonderoga St., Suite 100
Pearl Harbor, HI 96818
PH: (808) 473-2385
FAX: (808) 473-1136
Email: grimaldl@pearlharbor.navy.mil

Mr. David Gulko
Department of Land & Natural Resources
State of Hawaii
1151 Punchbowl Street, Room 330
Honolulu, HI 96813
PH: (808) 587-0318

Email: david_a_gulko@exec.state.hi.us

Dr. Michael P. Hamnett
Senior Policy Analyst
Pacific Basin Development Council
711 Kapiolani Blvd., Suite 1075
Honolulu, HI 96813
PH: (808) 956-7469
FAX: (808) 956-2889
Email: hamnett@hawaii.edu

Mr. Doug Helton
Rapid Assessment Program Coordinator
U.S. Department of Commerce
National Oceanic & Atmospheric Administration
7600 Sand Point Way, NE
Seattle, WA 98115
PH: (206) 526-4563
FAX: (206) 526-6665
Email: Doug.Helton@noaa.gov

Mr. John Hickey
U.S. Fish & Wildlife Service
300 Ala Moana Blvd., Room 3-122
Honolulu, HI 96850
PH: (808) 541-3441
Email: john.hickey@fws.gov

Ms. Kathy Ho
Department of the Attorney General
State of Hawaii
745 S. King Street, Room 200
Honolulu, HI 96813
PH: (808) 587-3050
FAX: (808) 587-3077
Email: kho@eha.health.state.hi.us

Mr. Eldon Hout
Manager
Pacific Services Center
U.S. Department of Commerce
National Oceanic & Atmospheric Administration
737 Bishop Street, #2200
Honolulu, HI 96813
PH: (808) 532-3200
FAX: (808) 532-3224
Email: eldon.hout@noaa.gov

Ms. Leanora P.D. Kaiaokamalie
Planner
State Office of Planning
Coastal Zone Management Program
State of Hawaii
P.O. Box 2359
Honolulu, HI 96804
PH: (808) 587-2831
FAX: (808) 587-2899
Email: 1dizo1@dbedt.hawaii.gov

Mr. Kevin E. Kelly
Fishery Council Staff
Western Pacific Regional Fishery
Management Council
1164 Bishop Street, Suite 1400
Honolulu, HI 96813
PH: (808) 522-8224
FAX: (808) 522-8226
Email: Kevin.Kelly@noaa.gov

Mr. Jonathan Kelsey
U.S. Department of Commerce
National Oceanic & Atmospheric Administration
Ocean & Coastal Resource Management
737 Bishop Street, #2200
Honolulu, HI 96813
Cell: (808) 927-0817
PH: (808) 532-3203
FAX: (808) 535-3224
Email: Jonathan.Kelsey@noaa.gov

Ms. Darcee Killpack
Spatial Technology Coordinator
NOS Pacific Services Center
737 Bishop Street, Suite 2200
Honolulu, HI 96813
PH: (808) 532-6433
FAX: (808) 532-5569
Email: Darcee.Killpack@noaa.gov

Ms. Karen H. Koltes
Natural Resources Program Manager
U.S. Department of the Interior
Office of Insular Affairs, MS 4328
1849 C Street, NW
Washington, DC 20240
PH: (202) 208-5345
FAX: (202) 501-7759
Email: karen_koltes@ios.doi.gov

Mr. Laurence Lau
Department of the Attorney General
State of Hawaii
465 S. King Street, #200
Honolulu, HI 96813
PH: (808) 587-3861
Email: Laurence_k_lau@exec.state.hi.us

Ms. Lauri MacLaughlin
Resource Manager
National Oceanic & Atmospheric Administration
Florida Keys National Marine Sanctuary
216 Ann Street

Key West, FL 33040
PH: (305) 292-0311
CELL: (305) 304-7346
FAX: (305) 292-5065
Email: lauri.maclaughlin@noaa.gov

Mr. C. Curtis Martin
Emergency Coordinator
Department of Health
State of Hawaii
919 Ala Moana Blvd., Suite 206
Honolulu, HI 96814
PH: (808) 586-4249
FAX: (808) 586-7537
Email: cmartin@eha.health.state.hi.us

Mr. Martin McCarthy
Assistant Attorney General
Department of Legal Affairs
American Samoa Government
P.O. Box 7
Pago Pago, AS 96799
PH: (684) 633-4163
FAX: (684) 633-4195
Email: martin_mccarthy@yahoo.com

Ms. Lynn Nakagawa
Coastal Zone Management Hawaii
State of Hawaii
P.O. Box 2359
Honolulu, HI 96804
PH: (808) 587-2898
FAX: (808) 587-2899
Email: lnakagaw@dbedthawaii.gov

Mr. Francis Oishi
Program Manager
Division of Aquatic Resources
State of Hawaii
1151 Punchbowl Street, Room 330
Honolulu, HI 96813
PH: (808) 587-0094
FAX: (808) 587-0115
Email: francis_g_oishi@exec.state.hi.us

Mr. Lelei Peau
Deputy Director
Department of Commerce
American Samoa Government
Pago Pago, AS 96799
PH: (684) 633-5155
FAX: (684) 633-4195
Email: Lelei.Peau@noaa.gov or LPEAU@doc.asg.as

Mr. Quincy Pence
Program Coordinator
NOAA/NOS Pacific Services Center
737 Bishop Street
Mauka Tower, Suite 2200
Honolulu, HI 96813
PH: (808) 532-3201
FAX: (808) 532-3224
Email: Quincy.Pence@noaa.gov

Mr. John Polhemus
Wildlife Biologist
Department of Land & Natural Resources
Forestry & Wildlife Division
State of Hawaii
2135 Makiki Heights Drive
Honolulu, HI 96822
PH: (808) 973-9789
FAX: (808) 973-9781
Email: opihi3@earthlink.net

Ms. Rebecca Pollock
CZM/GIS Assistant
Coastal Zone Management Hawaii
Office of Planning
Department of Business, Economic Development
and Tourism
State of Hawaii
P.O. Box 2359
Honolulu, HI 96804
PH: (808) 587-2820
FAX: (808) 587-2824
Email: cchung@dbedt.hawaii.gov

Ms. Sylvia Quast
Attorney-Advisor
U.S. Department of Justice
Environment & Natural Resources Division
Policy, Legislation & Special Litigation Section
P.O. Box 4390, Ben Franklin Station
Washington, DC 20044-4390
PH: (202) 514-1806
FAX: (202) 514-4231
Email: sylvia.quast@usdoj.gov

Captain Terry Rice
Chief, Marine Safety Division
U.S. Coast Guard
14th Coast Guard District
300 Ala Moana Blvd., Room 9212
Honolulu, HI 96850-4982
PH: (808) 541-2118
FAX: (808) 541-2116
Email: trice@d14.uscg.mil

Mr. W. Patrick Ross
Vice President
Sea Engineering, Inc.

Pier 21
Honolulu, HI 96817
PH: (808) 536-3603
FAX: (808) 536-3703
Email: seaeng21@lava.net

Mr. Cecil Santos
Oahu District Land Agent
Department of Land & Natural Resources
State of Hawaii
P.O. Box 621
Honolulu, HI 96809
PH: (808) 587-0433
FAX: (808) 587-0455
Email: cecil_b_santos@exec.state.hi.us

Ms. Cheryl Scannell
Natural Resources Attorney
U.S. Department of Commerce
National Oceanic & Atmospheric Administration
9721 Executive Center Drive No., Suite 137
St. Petersburg, FL 33702
PH: (727) 570-5365
FAX: (727) 570-5376
Email: Cheryl.Scannell@noaa.gov

Ms. Ellen J. Sorensen
U.S. Department of Commerce
National Oceanic & Atmospheric Administration
1305 East-West Highway, Room 10122
Silver Spring, MD 20910
PH: (301) 713-2989 ext. 108
FAX: (301) 713-4389
Email: ellen.Sorensen@noaa.gov

Ms. Catherine Swift
Biologist
U.S. Department of the Interior
U.S. Fish & Wildlife Service
P.O. Box 50088
Honolulu, HI 96850
PH: (808) 541-1699 ext. 171
FAX: (808) 541-2756
Email: Katie.swift@fws.gov

Mr. Togipa Tausaga
Director
Environmental Protection Agency
American Samoa Government
Executive Office Building
Pago Pago, AS 96799
PH: (684) 633-2304
FAX: (684) 633-5801
Email: togipatausaga@hotmail.com

Dr. Dave Wilson
Fisheries Biologist
Department of Marine & Wildlife Resources
American Samoa Government
P.O. Box 7998
Pago Pago, AS 96799
PH: (684) 633-4456
FAX: (684) 633-5944
Email: dave_t_Wilson@hotmail.com

Ms. Wendy Wiltse
Environmental Scientist
U.S. Environmental Protection Agency
EPA-PICO
300 Ala Moana Blvd., Box 50003
Honolulu, HI 96850
PH: (808) 541-2752
FAX: (808) 541-2712
Email: wiltse.wendy@epa.gov

Lieutenant Joseph M. Zwack
Chief
Pollution Prevention and Response
Marine Safety Office
U.S. Coast Guard, MSO Honolulu
433 Ala Moana Blvd.
Honolulu, HI 96813
PH: (808) 522-8264 ext. 351
FAX: (808) 522-8270
Email: Jzwack@d14.uscg.mil

Experience with Ship Groundings - American Samoa

Past Incidents & Experience

Scope of the problem in Am. Samoa

- Periodic vessel groundings occur in the Territory, primarily by longliner fishing boats.

  Coral reefs are damaged, pollutants are released, and vessel removal is often very slow or never accomplished. To solve the problem we have technical, funding, and legal needs.

Frequency of incidents

- **Average 3 per 10 years excluding 1991 storm event (9 vessels)**

There is a small percentage of unreported incidents that can cause significant damage to coral reefs during grounding and removal.

A case study of 1991 grounding in American Samoa

i) Cause
ii) Scale of incident
iii) Status / Response
iv) Measures that could have prevented the grounding

- Nine Abandoned vessels landed on the reef in Pago Pago Harbor which occurred as a result of Hurricane Val(1991)
- Removal took 10 years and cost over $6.9 million from Oil Pollution Act (OPA) fund, excluding USCG cost of removal of pollutants.
- No Prosecution
- "Corporate Shell" owners incorporated in Asia had declared bankruptcy 2 weeks before the hurricane & left vessels unattended
- Individual owners could not be located. Therefore, no responsible parties could be identified for the vessels

- **Initial Response after Hurricane Val:**
  - **USCG removed pollutants including 10,000 gal. of petroleum products**
  - **USCG determined wrecks were not a hazard to navigation. Therefore, no further action required by them**
- **ASG actions 1992 – 1998:**
  - **ASG requested assistance for removal of vessels from Federal Agencies:**
    - **FEMA, ACOE, DOI, USEPA, DOD / US Navy**
    - **Federal response: no jurisdiction / no funding**
  - **US Congressional Visit in 1997 did not result in commitments for assistance**

- *Private Assistance was offered*
  - Several off-island contractors offered to remove vessels at costs ranging from $2 million to $17 million
  - One contractor offered to remove at no cost if allowed to sell the scrap metal, but withdrew offer due to drop of price for scrap metal

- *Long term response*
  - In 1994 small oil spills appeared near wrecks
  - In 1998 USCG discovered un-removed pollutants including petroleum products and many ammonia cylinders, and committed to removing the pollutants
  - ASG requested assistance through the new US Coral Reef Initiative. NOAA, DOI, & ASG as Trustees applied for funding from the National Pollution Funds Center via OPA 90

- The Process (1998)
  - National Resource Damage Assessment (NRDA), EIA, and Action Plan completed
  - NRDA enabled access to Oil Spill Liability Trust Fund
  - Trust Fund allowed for restoration of resources damages/injuries by USCG during removal of pollutants

- **USCG / NOAA Removal Actions (1999)**
  - Access to vessels established (enhanced / constructed causeways)
  - Pollutants removed (18,000 gal petroleum products, asbestos, and ammonia)

- 2 vessels partly cut up, dragged off reef, re-floated and disposed of at sea
- 6 vessels cut apart by heavy equipment and removed

- 1 vessel had broken up prior to 1999 and no pollutants remained onboard. Therefore, the vessel was not eligible for Oil Spill Liability Fund
  - DOI provided some funds
    - allowed partial removal
    - a few small pieces still remain on reef

- **NOAA Restoration Actions**
  - Documented impacts to reef
  - Documented recovery of reef
  - Documented restoration efforts (coral transplantation)

Lessons Learned

Existing management capacity

- Staff: Limited, not specific to groundings
  - Federal: USCG
  - Local: ASEPA
- Infrastructure: Limited, not specific to groundings (oil spill related)

Existing coordination of efforts / funding

- Regional Response Team (delay time in response)
- Took a Trustee relationship established for Val incident
  - USCG / DOI / DOC / ASG

Specific needs identified from Am. Samoa experience

Technical needs

- **Assessment of value of all coral reefs (social, biological, cultural, economic)**
- **Process to follow if groundings occur**
- **Determine jurisdictional, health and safety and reef damage issues**
- Established removal protocols

Funding needs

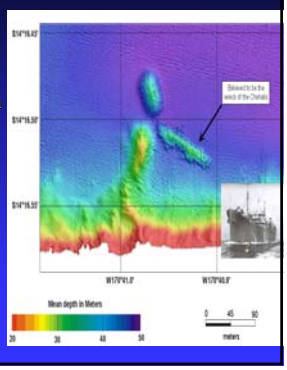
- Local / Regional contingency fund (locally generated)
- Federal contingency fund other than Oil Pollution Act (OPA)

Legal needs

- Legislative solutions at both local and Federal levels
- Process to identify responsible agencies

Priority vessels for removal:

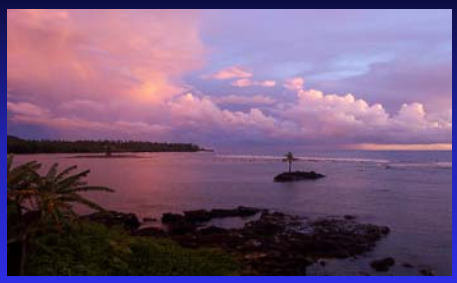
- **USS Chehalis: Navy tanker sunk near port (1948). Leaking oil?**
- **Jui Man #3: longliner on the reef in Amouli (grounded 1981)**
- **Young Kwang #1 and Unknown Vessel #1259: Longliners (2) on the reef in Aunu'u (grounded 1985 and ?)**



Local Initiatives

- Am. Samoa is undertaking efforts to insure we are better prepared to safeguard our interests against future groundings
- Prevent unattended "abandoned" vessels in port by requiring vessels that enter to provide proof of financial responsibility to Port Officials
- Proposed legislation (supported by Gov. Tauese)
- ASEPA community program (village cooperation strategies)

Fa'afetai Lava ma Tofa Soifua



USGS / NOAA web site that details incident available at:

www.incidentnews.gov/incidents/incident_2htm

The web site is the source of the wreck photos in this presentation

Laws Pertaining to Vessel Pollution/Grounding in American Samoa

The Territorial laws of American Samoa do not address either the problem of sunken or grounded vessels, or compensation for damages to natural resources after a grounding or pollution event. Existing laws address only possible penalties and cleanup responsibility for pollutant discharges caused by vessels in territorial waters. These authorities are summarized as follows:

1) Harbor Pollution Discharges, A.S.C.A. § 20.1116. Under this provision, the Director of Port Administration may order the person(s) responsible to remove or clean up the discharge at the responsible party's expense, but only if a spill or discharge occurring in Pago Pago Harbor is deemed an "emergency" by the director. Responsible persons may be summarily fined for discharges or charged with a crime pursuant to A.S.C.A. § 20.1115 and § 20.1714.

2) Harbor Cleanup Fund, A.S.C.A. §§ 20.1117, 20.1118. These statutes authorize the Executive Secretary of the Environmental Quality Commission (currently the director of ASEPA) to spend Marine Pollution Account funds to abate discharges caused by *unknown* vessels throughout the *waters of American Samoa*. Unfortunately, the language appears to restrict expenditures to pollutant discharges (not grounded vessels themselves) and seems to require an "unknown" violator before funds may be spent. Further, the statute(s) do not expressly authorize the Secretary to bring suit in the name of the fund to recover monies spent responding to a discharge when the violator becomes known after the discharge and cleanup are complete.

3) Public Health Act, A.S.C.A. § 25.0109, authorizes the director of Public Health to order a responsible party to abate a "public health nuisance" or personally take action to abate the nuisance at the responsible party's expense. Unfortunately, if a grounded vessel did not present a sufficiently serious pollution threat, and, accordingly, did not rise to the level of a public health nuisance, it is unclear whether the director of Health would have jurisdiction to order abatement of the pollutant discharge, or to order removal of a wrecked vessel.

In sum, these statutes provide various agencies of the American Samoa Government with limited authority to respond to vessel pollution events, but none authorize the government to tackle removal of a wrecked vessel from territorial waters. Also notably absent are any statutory provisions relating to recovery of natural resource damages for oil pollution discharges or vessel grounding events.

Legislation Addressing the Vessel Grounding Problem

Because the laws of American Samoa do not address the problem of vessel groundings, existing legislation must be amended or new legislation enacted. One possible approach would be to expand the existing territorial oil response clean-up fund provisions (A.S.C.A. § 20.1117 and 20.1118) to include removal of wrecked vessels. In addition, the legislature might invest the director of Port Administration with authority to

remove or scuttle a vessel wrecked on the reefs in territorial waters under A.S.C.A § 20.1116. A more effective approach, however, might involve special legislation targeting removal of vessels causing harm to valuable natural resources when the vessel owner fails to claim the vessel or otherwise commence removal within a certain time frame. In each circumstance, however, care must be taken to insure that the chosen approach will not directly invade the specialized field of federal admiralty law to avoid possible federal preemption problems.

Additionally, to ensure that vessel owners are at least financially responsible for their vessels in local waters, legislation modeled on OPA § 1016 could require small commercial vessels (less than 300 gross tons)[1] to provide proof of financial responsibility to Port Administration officials. Such proof might include documentation showing marine pollution insurance, letter of credit, a surety bond by a local bonding agent or other guarantees from local businesses--like the Starkist Samoa and COS Samoa Packing tuna canneries. In the event that a vessel could not produce the required proof, Port officials could deny entry to the undocumented vessel, or detain and seize said vessel pending receipt of a proper Certificate of Financial Responsibility (COFR) from the Coast Guard or its ASG equivalent. In the event of a grounding, the territory could file suit in the High Court of American Samoa against the surety or the vessel owner to recover its response costs.

Finally, a more distant solution might involve modifications to federal laws. It is possible, for example, that the Rivers and Harbors Act could be amended to require the Secretary of the Army to protect coral reefs, marine sanctuaries, marine protected areas and like "navigable waters" from significant harm caused by grounded vessels engaged in interstate commerce. Or, the OPA[2] and federal Clean Water Act's summary response authority might be stretched to include provisions relating to grounded vessels or the lowering of the financial responsibility threshhold for vessels using U.S. ports under the OPA § 1016.[3] The 2000 Coral Reef Protection Act could also be modified to require removal of grounded vessels posing a threat to the health and viability of coral reefs. But these "federal fixes" are beyond what can be accomplished locally, without the consensus and lobbying efforts of the states in Congress.

Undoubtedly, local legislative approaches will need the assistance and expertise of policy analysts from various federal agencies to ensure that the legislation will work within existing federal environmental laws and admiralty principles. Additional funding may also be needed for the Territory, in the event that local response and removal funds for wrecked vessels are established to protect precious reef ecosystems and other natural resources.

---

[1] Vessels less than 300 gross tons and not transporting oil are exempt from OPA section 1016's financial responsibility requirements, and are therefore not checked by our local U.S. Coast Guard detachment.

[2] Another OPA problem for American Samoa is that jurisdiction is reposed in federal district court in Hawaii. Local courts lack jurisdiction. It is possible the Act could be amended to vest the High Court with jurisdiction.

[3] Such statutory amendments may be less feasible, owing to the focus of the OPA on responding to discharges of oil and hazardous substances from large, ocean voyaging transport vessels.

The views presented in this document are those of the authors and not necessarily representative of the position of any agency or of the federal government.

The PACIFIC BASIN DEVELOPMENT COUNCIL (PBDC), a regional economic development organization for American Samoa, Guam and Northern Mariana Islands, co-sponsored the Vessel Groundings Workshops through support from the U.S. Department of Commerce, National Oceanic and Atmospheric Administration (NOAA), Office of Ocean and Coastal Resource Management (40AANC1A4070, September 1, 2001). The statements, findings, conclusions, recommendations, or other data contained herein do not necessarily represent the official views of the PBDC Board of Directors.