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Hawaii Coastal Zone Management Program

technical supplement 11

Technical Considerations in Developing a Coastal Zone Management Program for Hawaii

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HAWAII COASTAL ZONE MANAGEMENT PROGRAM

Technical Supplement No. 11

> Coastal Zone Conflict Management
>
> by
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COASTAL ZONE CONFLICT MANAGEMENT

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In response to the United States Coastal Zone Management Act of 1972
(Public Law 92-583, 86 Stat. 1280), the State of Hawaii is working to
formulate a program for the management of its coastal area. In accordance
with Chapter 205A of the Hawaii Revised Statutes, adopted by the State
legislature in 1973, that mandate is being carried out by the State's
Department of Planning and Economic Development. DPED, in consultation
with other agencies, organizations, and individuals, has mapped out a long
range planning effort with the goal of establishing a new coastal zone
management program for the State by 1978. The purpose of this study is to
develop recommendations for the handling of conflict by this new management
system.

1. THE VARIETIES OF CONFLICT

If conflict is to be managed it is important to have a clear idea
of what it is and how concrete cases of conflict can be identified. It is
also necessary to distinguish among the major types of conflict, since
different types may call for different kinds of management. Many, many
other definitions and distinctions may be found in the extensive literature
on conflict.

In the most general terms, conflict is an incompatibility of interests.

One kind is that which goes on within a decision-maker, internal
conflict. This is what happens when one is torn between doing one thing
or another. The owner of a piece of shoreline property, for example, might
have trouble deciding whether to build an elegant, moderately profitable
hotel or an ugly, highly profitable cannery because of the conflict between
his interest in profits and his interest in esthetics. Sometimes the issue
is not an either-or decision but a problem of allocation in which a
decision-maker has to apportion a scarce resource among alternative uses.
One might devote a portion of one's property to housing and another to
farming, but allowing more space for one requires allowing less space for
the other. Such problems of allocation, involving "trade-offs" of some
amount of one kind of advantage for some amount of another, require dealing
with internal conflicts within the decision-maker.

Internal conflicts are resolved in the process of evaluation, of
weighing alternatives, before decisions are made. That resolution may be
so quick and easy that the conflict is not even apparent. Internal conflicts
typically become noticeable only when there is a lack of clarity about one's
preferences, and there is a decision that needs to be made which is
particularly difficult and important.

Situations in which there is an incompatibility of interests between
two or more parties are cases of social conflict. Suppose some people
want to fish and others want to swim in the same bay. To the extent that
fishing and swimming are activities that interfere with one another, the

interests of these two groups are incompatible. Thus these fishermen
and swimmers are involved in a social conflict with one another.

Suppose there was a third party, perhaps a government agency,
which had the authority and responsibility to decide the extent to which
the bay should be used for fishing or for swimming. In facing the
problem of weighing the alternatives, that agency faces an internal
conflict. Its problem is quite different in character from that faced
by the partisans, the fishermen and the swimmers. Internal conflict refers
to a single individual or organization dealing with uncertainty about what
ought to be done. In social conflict there are two or more parties, each
quite certain about what he thinks ought to be done. The problem faced by
a party to a social conflict is to figure out how to make his own preferences
prevail. The two kinds of conflict, internal and social, should not be
confused with one another.

Social conflicts are met by political decisions, while internal
conflicts are met by what may be called technical decisions.

Having interests does not necessarily mean having influence. I may
have strong ideas about what should be done with a given stretch of
shoreline property, but not have any significant power to affect what is
finally done. My interests may be incompatible with those of someone
else who has different interests, but it may be that neither of us has
any substantial role in deciding which outcome is actually obtained. It
could be that our conflict is "resolved" by actions of some third party.
That third party may consider our interests in making his decisions, or
he may take no account of our views at all.

There is a difference between interests and preferences. A person's
preferences are his indications of which conditions in the world he would
like to be the case. These are based on what he understands to be good
for himself, that is, on what he understands to be in his own interest.

Sometimes, however, an outside observer may make different judgments
about what is in an individual's interest. I may want to walk across the
street right now. You, the observer, seeing an oncoming car that I don't
see, may make the judgment that my acting according to my preferences is
not truly in my interest. My own judgment as to what is good for me may
be put in question. While there can be enormous difficulties in validating
the observer's judgments, the point here is simply that there is a useful
distinction to be made between an individual's own preferences and the
interests which outside observers judge him to have.

In most cases it is reasonable to accept an individual's own expressed
preferences as an indicator of his interests. Exceptions may occur where
(1) the individual's expressed preferences are judged to be mistaken
reflections of his true interest; (2) the individual's expressions of his
preferences are judged to be deliberately misleading and deceptive; or
(3) no preferences are expressed at all.

There are many cases in which no preferences are expressed. Sometimes
this may be due to a lack of awareness of the issues. For example, if

Hawaii were to contemplate closing off in-migration, it is clear that the interests of outsiders would be hurt by such action, even if they were not aware enough to complain about it. Sometimes there is no possibility for expression. Future generations have a very strong interest in what is done in the present, but they have no way of voicing that interest directly. Their interests can only be defended by others who speak in their behalf. Where the parties themselves are not vocal we can speak of implicit conflicts, in contrast to the explicit conflicts, or disputes, which are identified by reference to the expressed preferences of the parties. These could also be described as latent as against manifest conflicts.

Social conflict has been defined as involving an incompatibility of interests between parties. Parties are people, singly or in groups, who have preferences about the conditions of the world. The groups may be organized, as in the case of government agencies or private political action groups, or they may be ad hoc aggregations without clearly defined membership, such as, say, "fishermen" or "supporters of a new harbor." For our purposes, a group constitutes a party if, in relation to the issues at hand, it can sensibly be viewed as having a single, coherent set of interests. Thus, the Department of Transportation or Life of the Land can each be viewed as a single party in relation to the reef runway case. Of course there are conflicts among members within each of these groups, but so long as those conflicts do not concern us, each of these organizations can be viewed a single party.

Different kinds of social conflicts can be distinguished according to the types of parties involved. Chennat Gopalakrishnan and Justin Rutka identified three major groups with distinctly different interests in the coastal regions, the private owners, the environmental and conservation groups, and the government agencies.[1] Finer differentiations could be made within each of these categories, almost without end. Further study and experience can help to show which of the many possible ways of sorting out parties would actually be useful.

One major characteristic by which parties can be distinguished is their power to act in support of their interests. Attention should be given to the fact that many social conflicts occur between parties of greatly unequal powers. Asymmetrical conflicts, such as those between, say, the Mokauea Island residents and the Department of Transportation, or between the State of Hawaii and the Federal Government, are quite different from those between fishermen and surfers or those between state agencies. To the degree that there is an asymmetry, traditional conflict management proposals such as those advocating negotiation and compromise may systematically favor the stronger party.

While the parties to conflict are ordinarily taken to be people, it is sometimes useful to stretch the concept of parties to allow other kinds of entities to be understood as possible participants in conflict. For example, one can think of animals as having interests, and of their being involved in conflicts with each other and with humans. The relationship between Captain Ahab and Moby Dick, or between any fisherman and his prey, is certainly one of conflict. We can move from there to thinking about plants as having interests--as having some things that are good and some

things that are bad for them. By another large step we can understand all elements of nature, and perhaps even all artifacts, as having some kind of interests. It seems useful to think of trees and mountains as having an interest at least in their own continued existence. In this perspective, there is reason to respect the integrity of nature even apart from the fact that humans draw enjoyment and sustenance from nature.

While recognizing these possibilities, I will restrict this study to social conflicts in which the conflicting parties are comprised of people. Thus, environmental issues are included only to the extent that the environment's interests are expressed in and through human interests, and become involved in conflicts with other human interests.

Conflicts may also be distinguised according to the types of issues involved. There are many possible ways of categorizing them: legal vs. non-legal issues, private vs. public issues, issues of access, issues involving historical claims, issues involving disputes over jurisdiction, and so on. Here again, further study is needed before we can know which distinctions would really be useful.

A major class of problems receiving close attention from coastal zone planners is that of incompatibilities among uses. Section 306.d.1 of the Coastal Zone Management Act specifically requires the management authority that is proposed to have the power "to resolve conflicts among competing uses." Of course interactions among uses can sometimes be positive or synergistic, as in the case of aquaculture operations benefiting from the waste heat of power plants. Usually, however, the interaction is one of interference. Harbors interfere with fishing, fishing interferes with swimming, swimming interferes with sailing, and so on.

Excellent methods have been developed for assessing the interactions, and specifically the incompatibilities, among different uses of the coastal zone.[2] In these studies, the problem of managing use conflicts is understood primarily in terms of clarifying the impacts which different activities are likely to have under different conditions. The development of this empirical knowledge of effects is expected to help decision-makers to clarify their preferences and to make wiser choices.

I suggest that, while such empirical information is certainly needed, it is not sufficient for coming to grips with the essence of social conflicts. One major problem is that these research procedures focus on only a subset of the full array of facts which ought to be taken into account in making decisions. They concentrate on the natural, ecological phenomena at the shoreline, and take a rather undifferentiated view of the social environment. For example, while showing that commercial fishing interferes with sport diving, they provide no good way of finding and showing data such as the fact that in the particular community the fishermen may be more needy than the divers, and they may have fewer good alternative activities. So long as there is greater clarity with respect to facts about the natural ecology than with respect to the social environment, there may be a tendency to decide and to optimize only with respect to that subset of facts about the ecological system. More comprehensive tools are needed.

Moreover, the focus on the development of "objective" empirical knowledge as a means of resolving conflicts may lead analysts to forget that conflict can occur even when there is no major disagreement about the facts at all. There may be disagreement only over how those facts are to be evaluated and over whose preferences should prevail. The supporter of a new project may fully agree with its critics about the negative effects that would result, but still argue that the project should be undertaken.

Incompatibilities among different uses may or may not result in social conflicts, depending on whether or not they involve different users. If there is only one user, if it is the same decision-maker who is contemplating each of the different types of activity, his difficulty is one of internal conflict, and his question is a technical question. If the surfers were also the developers, the task of working out the extent to which resources should be devoted to each of those pursuits would be one of clarifying preferences, of working out the appropriate allocation to suit the surfer-developer's own interests.

Thus, conflicts among uses should not be equated with conflicts among users. Social conflict may occur among people pursuing different uses, but there is also important conflict within use categories, among surfers, or among developers, for example. They clash among themselves for access to the highly limited resources. These conflicts, between people rather than technologies, are fundamentally political in character. The focus on incompatibilities among uses that has prevailed seems to have kept students of coastal zone management from seeing and from dealing directly with that political character.

All decision-making involves internal conflict. To deal with the problem of internal conflict would mean dealing with the ways in which alternatives are evaluated and decisions are made in all aspects of coastal zone management. Rather than take on all of that, this study focuses on only a portion of the task of coastal zone management, that of handling conflicts among different parties. In other words, the main issue taken up here is social conflict, not internal conflict.

There is one kind of internal conflict that is of interest here, however. As suggested earlier, at times it happens that two parties are in conflict, but they themselves do not decide the outcome. The outcome is instead determined by a third party, a superior authority—perhaps a government commission, a court of law, or an arbitrator. That third party then faces the internal conflict involved in formulating its decision. One major dimension of that party's problem is to determine to what extent each of the partisan's interests should be taken into account.

2. THE USE OF PRIORITIES

Section 305(b) of the Coastal Zone Management Act requires that the management program shall include, among other things, "broad guidelines on priority of uses in particular areas, including specifically those uses of lowest priority." This is elaborated in the Rules and Regulations established under this section. Under Rule 920.15 it is explained that...

Priority guidelines will serve three essential
purposes:
(a) To provide the basis for regulating land and
water uses in the coastal zone;
(b) To provide the State, local governments, areawide/
regional agencies, and citizens with a common reference
point for resolving conflicts, and
(c) To articulate the State's interest in the preser-
vation, conservation, and orderly development of specific
areas in its coastal zone.

In Rule 923.14 it is further stated that

The priorities will be based upon an analysis of State
and local needs as well as the effect of the uses on
the area. Uses of lowest priority will be specifically
stated for each type of area... The priority guidelines
will set forth the degree of State interest in the
preservation, conservation and orderly development of
specific areas including at least those areas of
particular concern... and thus provide the basis for
regulating land and water uses in the coastal zone, as
well as a common reference point for resolving conflicts.
Such priority guidelines will be the core of a successful
management program since they will provide a framework
within which the State, its agencies, local governments
and regional bodies can deal with specific proposals for
development activities in various areas of the coastal
zone.[3]

The literature on the management of coastal activities, both official
and unofficial, places a very strong emphasis on the determination of
priorities among uses. There are serious difficulties and limitations in
this approach, however. They are worth discussing, even if that takes us
a bit beyond the central theme of this study.

To the extent that establishing priorities among uses is seen as the
central instrument of coastal zone management, it is based on much too
narrow an understanding of what sorts of questions and problems will need
to be faced in the work of management. Issues do not arise simply as
choices between one type of activity and another. Sometimes the issue is
between different types of the same activity, perhaps offshore fishing
as against small boat fishing, or commercial fishing as against sport
fishing. How narrowly or broadly should the categories be constructed?
In establishing priorities far in advance, one may fail to provide guidance
for the kinds of concrete decision problems which will actually arise, and
expend a great deal of energy in making choices among hypothetical alterna-
tives which will never be seriously proposed.

Given the large and open-ended list of activities which would be
unwise or undesirable in any given coastal sector, what is the point of
listing activities of low priority, as required by the Act? Is that list
supposed to be illustrative or exhaustive?

In any concrete decision situation, there will be many considerations which need to be taken into account apart from the relative merits of different types of uses. Why should so much attention be focused on one particular dimension of decision-making problems, while no guidance at all is provided on how other aspects should be taken into account?

Establishing priorities among uses for different segments of the coastal zone misleadingly suggests that there is one best use for each segment, that it can be determined in advance with considerable clarity, and that the designations will be appropriate for a rather long time. I would say that management should instead be understood in more dynamic terms. Why should priorities be determined at the stage of planning of coastal zone management systems? The planners should be concerned with designing procedures by which priorities or concrete decisions can be determined, as part of the ongoing work of management. The planners should not preempt these central functions of management. They should instead create a capability for adapting continuously to changing conditions, including changing views. Rather than decide specific priorities, the planners should provide guidelines for how such decisions should be made. That is, the management system design should be more process-oriented than answer-oriented.

I suspect that priorities cannot be meaningfully established except in response to individual, concrete decision situations, and the issue then is not to establish priorities but to make the decision. This may explain why the concept of priorities is rarely discussed in general theoretical studies of management and decision-making.

In making these observations I have taken priorities to mean the development of guidelines for the decision-maker in the form of an ordered list of alternative activities, showing which would be most highly preferred, which would be second most highly preferred, and so on. As guidelines, they are presumably to be taken into account by the decision-maker as he exercises his broad discretion. The assignment of strict standards or requirements would be an entirely different matter, however. It might be required, with the force of law, that certain stretches of shoreline be devoted to particular uses (e.g., recreation) or that certain uses should be prohibited (e.g., industrial operations). Such standards would eliminate discretion at one level, of course, but there would still remain the problem of management within those confines (e.g., what types of recreation should be permitted, on what terms). The arguments that have been presented here against the use of priority orderings do not apply against the use of such statements of requirements or prohibitions which provide clear constraints on decision-makers.

A very common response to the observation that conflict with respect to coastal activities needs to be managed is that what is needed is some sort of priorities. That is certainly the perspective of the Coastal Zone Management Act itself. For the purposes of this study, the most serious difficulty with priorities is that having the state establish priorities concerning different uses of the coastal zone carries in it the implicit assumption that the state itself, through the exercise of its authority, is to make the decisions about which uses are to be

permitted. (I think this assumption prevails despite the statement in Rule 920.15 that one of the purposes of establishing priority guidelines is to provide not only the state but also local governments and citizens with "a common reference point for resolving conflicts.") To focus on priorities is to speak of incompatibilities among uses and the resolution of internal conflicts. Where there is social conflict, it seems to be taken for granted that the difficulties between the parties will be resolved through authoritative government decisions. The help that priority guidelines provide is help for the government in making _its_ decisions.

It may sometimes be wise for the state to make decisions itself, but that should not be assumed simply by default, by a failure to recognize alternatives. To leave all decisions to the state, without question, would seriously threaten cherished democratic values.

The presumption of government control may seem to be softened somewhat by the calls for public participation in coastal zone management. Examination of the discussions about participation, however, shows that participation is interpreted to mean that the public gets to provide information which the government authorities may take more or less seriously in making _their_ decisions. It is not taken to mean participation in the decision-making itself.

3. THE PURPOSES OF CONFLICT MANAGEMENT

To manage something we need to have some idea of what we want to achieve. What is it that is problematic about social conflict? Is it simply bad? Should we work to assure that there will be as little conflict as possible? Or should we be concerned with the ways in which conflicts are acted out, with the possibility that friendly debates might turn into rancorous fights? Or is it the quality of the outcomes of conflicts that should concern us?

Undoubtedly, the most serious mistake that can be made in dealing with social conflict is to assume that it is intrinsically bad, something to be minimized and suppressed. That it is useful in many ways is persuasively argued in Lewis Coser's essay on The Functions of Social Conflict. Following Georg Simmel, Coser argues that

> ... no group can be entirely harmonious, for it
> would then be devoid of process and structure. Groups
> require disharmony as well as harmony, dissociation as
> well as association; and conflicts within them are by
> no means altogether disruptive factors.... Conflict
> as well as co-operation has social functions. Far from
> being necessarily dysfunctional, a certain degree of
> conflict is an essential element in group formation
> and the persistence of group life.[4]

Taking the group in question to be the State as a whole, it should be recognized that a constant current of complaints and disputes is a sign of health and vigor.

Coser concludes by pointing out that

> ... conflict tends to be dysfunctional for a social
> structure in which there is no or insufficient toleration
> and institutionalization of conflict. The intensity of
> a conflict which threatens to "tear apart," which attacks
> the consensual basis of a social system, is related to
> the rigidity of the structure. What threatens the
> equilibrium of such a structure is not conflict as such,
> but the rigidity itself which permits hostilities to
> accumulate and to be channeled along one major line of
> cleavage once they break out in conflict.[5]

Thus, it is important to accomodate conflict within the normal
working of the social system. Too often, public agencies act as if
they thought conflict was evidence of bad management, something to be
ashamed of. They try to mask conflicts and deny their existence. It
should be understood that the challenge to management is not to prevent
conflicts from arising but to assure that conflicts are handled through
processes which lead to outcomes which are somehow good.

The quality of outcomes needs to be assessed not only in terms of the
way they affect the primary conflicting parties but also in terms of the
way they affect the surrounding society as a whole. That is, there is a
general public interest which needs to be taken into account.

The work of managing conflict is different from the work of articu-
lating the public interest and acting in its behalf. Effective spokesmen
for the public interest should have the capability of rising as a party to
conflicts, perhaps through some sort of challenge proceedings, and thus
should not also be given the role of arbiter of conflicts. By this
formulation, any conflict management agency should itself be wholly neutral.
The public interest could make itself felt through some other agency,
through which it might appear as one of the primary conflicting parties,
or as a third party having an interest in a conflict between other parties.

4. INSTRUMENTS OF SOCIAL CONFLICT MANAGEMENT

With the overall coastal zone management program for Hawaii still
unformed, it is impossible to specify one best method for managing conflict.
That choice will depend on the context into which it would have to be
integrated. Therefore, instead of offering one answer, several possibilities
are suggested here from which choices and adaptations can be made as thinking
advances about the design of the program as a whole.

4.1 Techniques

There are many ways in which conflicts can be managed without the
intervention of government to make authoritative decisions on the substance
of the issues. For example, things can be "decided" simply by allowing
market forces to work. The final choice between parties hoping to use a
given shoreline property may be resolved simply by its going to the highest
bidder. Or government may sometimes intervene procedurally rather than

substantively, only to undertake a brokering function. Government
might, for example, help to arrange for mediation or arbitration between
contending parties.

The possibilities for conflict management without authoritative
government intervention are especially clear in the dispute settlement
procedures available at the international level. These techniques are
useful when it is not possible to refer disputes to higher powers, as in
the international community, and they are useful whenever it is deemed
undesirable to submit disputes to higher authority, as may often be the
case with respect to local conflicts.

In this study of means for settling disputes over the global ocean,
Haubert provided this survey for procedures available to the international
community:

A. Inquiry

> In the strictest sense, inquiry is not a means of
> settlement, but an effort to establish a basis for
> settlement. This is generally done by reference
> to a commission which has the sole function of
> clarifying the facts so that the disputants may
> resolve their differences on their own. Inquiry
> has the obvious advantage of not forcing a
> settlement on the parties.... On the negative
> side, inquiry imposes no duty to settle; the facts
> may be determined, but there is no guarantee that
> the conflict will be resolved....

B. Conciliation

> Conciliation consists of referral of the case by
> the disputants to a mutually agreed upon third
> party who is to make an independent assessment of
> the facts and to propose a settlement. Generally,
> the conciliator has no authority apart from that
> granted to him by the parties. The recommendation
> of the conciliator has no binding force or legal
> effect....

C. Good Offices

> For the purpose of calling into existence negotiations
> between the disputants, states, individuals, or
> international organizations offer their services
> and facilities under the term "good offices." As an
> inducement to negotiate, the third party may give
> advice or make proposals, but may not interfere
> with talks once started. Good offices may be offered
> by the third party or requested by the disputants....

D. Mediation

> Mediation is the direct conduct by a third party of

negotiations on the basis of proposals made by
the mediator. Although the mediator has political
authority apart from that conferred on him by the
disputants, his basic task is to seek a compromise
of interests rather than to resolve the legal merits
of the claims....

E. Arbitration

...arbitration is the binding determination of
disputes by one or more umpires chosen by the parties.
...The arbital process usually begins with the
execution of a compromis, which is the basic agree-
ment between the parties to submit to arbitration.[6]

These are all alternatives to adjudication in a court of law. Of
these, only arbitration and adjudication yield decisions which are
binding on the parties. With rather straightforward adaptations, all
of these techniques could be used in the management of social conflicts
with respect to coastal activities.

There is need to make any single, a priori choice among the many
conflict management techniques. Instead, a flexible approach should be
adopted in which a number of procedures are always available, and the
specific choice of techniques is based in each case on an assessment of
the concrete circumstances.

The procedures can be used in sequence, beginning with minimal
intervention and then moving progressively through higher levels of
government involvement. When all else fails, and perhaps only when all
else fails, the government could be called upon to make an authoritative
decision to resolve the conflict in hand.

There still remain the questions of who should apply these procedures,
and under what circumstances. For one class of cases, "disagreement
between any Federal agency and the state in the development of the program,"
Sec. 307.b of the Coastal Zone Management Act specifies that "the Secretary
[of Commerce], with the Executive Office of the President, shall seek to
mediate the differences." The following subsections address the problem
of locating responsibility for dealing with conflicts within the state.

4.2 A Coastal Conflict Management Agency

Conflict management is likely to be most effective if that work is
differentiated from the broader task of management, and responsibility
for it is placed with a specialized body within the larger management
program. I would recommend the creation of a Coastal Conflict Management
Agency. Its primary work would be to help conflicting parties resolve
their differences through mediation, conciliation, arbitration, or other
techniques.

Agency members might at times serve in the roles of mediators,
especially when they can work informally with low level disputes. When

things heat up, however, the Agency should seek outside parties to serve
as mediators, arbitrators, or conciliators. In each case these outsiders
should be selected with the consent of the conflicting parties. The Agency
might also provide services of inquiry or fact-finding, again, not with
the resources of the Agency itself, but through outsiders with whom the
Agency makes arrangements. The Agency would not be a substitute for the
courts in legal disputes, but it may be able to serve the conflicting
parties before they get that far.

As proposed here, the Conflict Management Agency would have no sub-
stantive powers of its own, in the sense that it would never be called
upon to make decisions on the merits of the conflict before it. If, after
trying to work with the conflicting parties, the Agency felt the situation
was deadlocked, it could then refer the case to other authorities for a
decision.

Which conflicts should be handled by the Conflict Management Agency?
I would say that it should consider any case brought to its attention at
the request of any (one or more) parties to a conflict. The Public Interest
Commission, proposed in the following subsection, would also have this
power to bring conflicts to the attention of the Agency. Given its limited
resources, the Agency would have to have some discretion as to which of the
cases brought to it would actually be handled. Its rules of selection,
perhaps best formulated after some experience is gained, should not
systematically discriminate against any particular groups. In fact, if a
good system of referrals and of volunteer mediators were developed, it
could be that no cases would have to be refused completely. Even seemingly
minor, "nuisance" cases could be referred to panels of citizens formed to
help in the management of small conflicts.

4.3 A Public Interest Commission

There should also be created a Public Interest Commission whose task
would be to articulate the public interest with respect to coastal activities.
It should be separate from the Conflict Management Agency because its work
of brokering conflicts would be quite different, but the two would be
expected to work rather closely with one another.

No precise definition of the public interest can be provided to tell
the Commission how to formulate its position in particular cases. Rather
than try to develop substantive rules, the best guidance that can be
provided in planning the operations of the Commission probably would be
to specify the procedures it should follow. A few such procedural guide-
lines are suggested here.

The Public Interest Commission would have to follow precisely specified
methods and would have to operate within narrow constraints if it is not to
arouse fears of abuse of its powers. Among its major powers, however, would
be the right to challenge proposed coastal activities on the grounds that
they were harmful to the general public welfare. The Commission would then
become a party to a conflict with the proposers of the action. Their
conflict could then be brought to the Conflict Management Agency for its
assistance in finding a solution. The Commission would also have the right

to propose and to participate in conflict management proceedings if a conflict between other parties appeared to threaten the public interest.

Several devices could help to assure that the Commission continued to serve the general public welfare rather than any special interests. For example, its members could be chosen from a broad range of occupations, ethnic groups, socio-economic levels, and so on. I would recommend a random selection from a pool of those people who expressed an interest in serving on the Commission. Alternatively, the Commission could be comprised of State legislators or other government officials. There would be perhaps twelve members, each serving a non-renewable term of two years, with six being replaced each year. The Commissioners would be expected to serve the public as a whole rather than any particular constituencies.

The Public Interest Commission would have no substantive powers apart from informational matters: the power to challenge actions, to argue, to conduct inquiries, to hold hearings, and to do research. It should have the power to submit questions to the general public through surveys or other means. The power to make decisions concerning whether or not specific projects would be allowed to proceed would remain with the other agencies having the relevant jurisdictions. Thus, the Commission would not in any sense constitute an authority over the other agencies.

4.4 Creating Conflict

Given that conflict can be positively useful, it may be desirable to devote some resources to generating conflict, or more precisely, to bringing latent conflicts to the surface where they can be seen and where they can be faced squarely. The critical requirement is information. People need to know when their interests are endangered so that they can act on those concerns. They need to be able to act while there is still some hope that ordinary political action can lead to an accomodation. The alternative is radical action, or perhaps more likely, severe alienation from the political process. Though possibly very inconvenient, it is far wiser and far healthier for the social system if conflicts are met directly rather than being suppressed.

It is for these reasons that the Coastal Zone Management Act requires that the program to be adopted must be open and allow for public participation. The Public Interest Commission could be given special responsibility for assuring that openness prevails throughout the management program, especially where that helps to make implicit conflicts explicit.

One of the best assurances that the general public interest is served by any government decision would be a requirement of full disclosure of the basis for that decision. A good start in this direction has been established by the requirement of environmental impact statements. The account of the basis for a decision would include a statement of the benefits and costs and the parties on which they fall for each of the major action alternatives that were contemplated. Of course the extent and detail to which such documentation is required should be tailored to the importance of the decision and the degree to which it is controversial. There can be no expectation of unanimity or even general consensus on all issues, and at

times decisions would have to be made even in the face of deep
divisions. But at least the requirement of public disclosure and
defense of the bases for decisions can help to deter actions which
grossly violate the public interest in the service of private interests.
Secrecy can generally be assumed to serve as a cloak hiding violations
of the public interest. Public disclosure provides opportunities for
engaging in conflict which might otherwise be denied.

A sound management program is more likely to emerge from a sound
design process. This means that conflicts should be well managed not only
after the coastal zone management system is approved and implemented but
also during the planning of that system. To achieve this, people need to
be kept very well informed of current thinking as the program development
process advances. Indeed, Section 306.c.1 of the Act specifically requires
that the development of the management program be conducted in such a
manner as to provide the "opportunity of full participation" by government
agencies and by "other interested parties, public and private...." Section
306.c.3 requires that "the state has held public hearings in the development
of the management program."

Inter-agency coordination mechanisms can be understood as one means
for making latent conflicts manifest so that they can be effectively managed
before they become troublesome. This coordination is needed not only after
the coastal zone management program is implemented, but also in its planning
stages. Other planning efforts, such as the Hawaii Water Resources Regional
Study, need to be kept in close touch if there are not to be serious eruptions
of conflict among planners at later stages.

A good effort to supply the kind of information that is needed was
provided for a time through the publication of a periodic Coastal Zone
Communique' by the Sea Grant Program at the University of Hawaii. It began
in 1972 and kept interested people informed until 1974 when Hawaii received
its planning funds from the Federal government. The last words of the last
Communique' are pertinent here:

> Coastal zone planning guidelines specify that
> participating states in the new federal program
> should provide procedures to assure adequate
> citizen participation in coastal zone plan develop-
> ment and its subsequent implementation.... New
> approaches to organizing governmental procedures
> relating to coastal zone planning such as the
> issuance of periodic newsletters, information
> exchanges, and other communication techniques
> may be established to meet the spirit and require-
> ments of the Coastal Zone Management Act.[7]

Another similar newsletter should be established, and not be delayed
until after the design of the management system is finalized. It might
be entitled the Coastal Zone Forum, and give particular attention to airing
differences in views as to how Hawaii's coastal resources should be managed.
It would also be useful if a series of public meetings could be held. These
should not be stiff, formal "hearings" but regular meetings between the

planners and the general public where each could inform the other about
their thinking on coastal zone management. Some other innovative outreach
techniques might be used as well, such as radio and cable television to
provide two-way communications with people who would otherwise not get to
meetings.

4.5 A Coastal Management Agency

As I have suggested, several functions ought to be carried out if
conflict is to be managed effectively. There should be some way to
facilitate resolution through decisions of the parties themselves before
the conflict is referred to higher authority. There should be a system-
atic procedure for bringing conflicts to attention for management. There
should be some way to make the public interest felt. Some effort should
be devoted to making implicit conflicts explicit, primarily through
adequate information programs.

In the preceding subsections the approach was to assume that
conflict management was one element within a larger management program.
Whatever the exact structure of that larger program, the tasks of conflict
management could be handled by separate, specialized subagencies within the
program. By virtue of their distinct mandates, these subagencies would
assure that the problem of conflict management was given full consideration.

Another, perhaps more practical approach, would be to argue that these
functions should not be separated from coastal zone management as a whole.
The work of conflict management could be incorporated, without much dis-
tinction, into the mandate of the more comprehensive managing entity. The
particular tasks that have been highlighted remain important, but they need
not be carried out by separate sections of the management organization.

As for the design of the overall management program, the first
thought might be to propose creation of a new agency which would take over
the powers of the existing agencies with responsibilities in the coastal
zone. I have already indicated my objections to this kind of concentration
of power on the grounds that it would endanger democratic values. Also, I
think that any new proposal should be based on the understanding that
current political prerogatives, while not immutable, should at least be
respected in some degree. But perhaps most importantly, there is just
too much to be done. A new agency occupied with concrete problems in
relation to particular activities could not possibly give enough attention
to all of the different activities in the coastal zone, and it would miss
the special problems that can only be seen and managed by an agency which
worked to establish an overview.

In my judgment a new entity, a Coastal Management Agency, should be
created, to concentrate on overviewing and coordinating management of
coastal activities.[8] The Agency would work not only to resolve conflicts
but also to prevent degradation of the coastal zone, to seek improvements,
and to generally advance the public interest. To the extent possible,
however, these responsibilities would remain with the other, established
agencies which now have a role in the management of Hawaii's coastal zones.
That is, because of their enormous fund of experience and technical

expertise, primary responsibility for management of particular activities would continue to rest with these separate, specialized agencies.

In advocating the creation of a comprehensive Coastal Management Agency, I do not mean to suggest that all decisions should be ad hoc and governed by no master plan of any kind. New, clear requirements and prohibitions may be formulated as well, within which this new agency and other, older agencies would exercise their discretionary powers.

The specialized agencies should not be seen as subordinate to the new Coastal Management Agency. Relations should be kept relatively informal and unstructured so that the Coastal Management Agency would be seen as a facilitator, helping the other agencies. Rather than take over their specialized functions, the Coastal Management Agency would work with the established agencies and, through their joint effort, help to see that the public interest in the coastal zone was well served.

To illustrate how this would work, sea-based transit systems would continue to be the primary responsibility of the Department of Transportation. The Coastal Management Agency would intervene only to assure that the Department of Transportation was fully informed of the likely interactions of the activities it contemplated with other activities, and to assure that the general public interest was fully respected. Similarly, land use management functions such as zoning in the shoreline area would be left to the agencies having that reponsibility inland. The Coastal Management Agency's function would be to assure that the land management agencies were fully sensitive to the special considerations appropriate to lands near the shore.

The Coastal Management Agency's activities would generally be advisory, working through other established government agencies, but it would not be restricted to those channels. It would have the right to advise private parties, and it would have the right to hold hearings and to conduct inquiries. It would work to assure that there was effective public participation in the activities of the specialized agencies.

The Coastal Management Agency would also serve the public through a clearinghouse function. Aspiring users of the coastal zone have a right to demand clarity with respect to their rights and obligations and to demand prompt response to their requests. The Agency would help to assure that application, hearing, and decision-making procedures were not designed to accomodate the convenience of bureaucrats rather than serving the needs of their public. The Agency could provide applicants with a single contact point where all requirements could be learned quickly, and it could work to streamline the permit process. The Agency would constantly work toward improving coordination and cooperation, not only among the agencies, but between the agencies and the public as well.

At times the Coastal Management Agency's advising would not be enough. Other government agencies or private parties might not be sufficiently responsive. Where its ordinary advising was found to be inadequate, the Agency should have the right to exercise certain decisive powers in the public interest.

The precise nature of these decisive powers needs to be thoroughly explored and debated and negotiated. The Agency could be narrowly circumscribed or it could be given broad discretion over a wide range of issues. What follows is just one of the many possible formulations which might ultimately be decided upon.

The new Coastal Management Agency should have the right to step in where no other agency had a clear mandate. It should exercise certain management powers in the case of otherwise irreconcilable conflicts, whether those conflicts involved private parties or government agencies or both. The Agency should also have the right to challenge decisions of others concerning the coastal zone. In cases of disagreement with other government agencies or with private interests, the Agency should have the right to press for what I call hard decisions.

The Agency could be designed so that it does not make the hard decisions itself. It could serve entirely as an advisory body, administering and facilitating, and turning hard decisions over to other entities.

There are several options. The hard decisions could be referred to a special representative commission created specifically for the purpose of making decisions about coastal zone activities in terms of the general public interest. Or one or more currently existing government agencies might be designated as the appropriate body to which hard decisions should be referred. Or one body might be used for certain types of decisions while others are used for other types.

Another possibility is that the hard decision-making might be taken through a step-wise procedure. Original decisions could be made by the Coastal Management Agency itself, under specified conditions. These, however, could be subject to an appeal process, which would then send the question to a special commission or other designated body. When there was an appeal of that body's decision, those hardest of decisions could then be taken to the legislature or to the Governor.

Thus, the Coastal Management Agency could provide the needed overview without being the overlord. In its coordinating, challenging, informing, and referring, it would function in full recognition of the essentially political character of coastal zone management. Included among its major concerns would be the effective management of conflict to serve the interests of all of the people.

FOOTNOTES

1. Chennat Gopalakrishnan and Justin Rutka, "Some Institutional Constraints to Coastal Zone Management: A Case Study of Hawaii," _American Journal of Economics and Sociology_, Vol. 33, No. 3 (July 1974), pp. 225-232.

2. See, for example, Jens C. Sorensen, _A Framework for Identification and Control of Resource Degradation & Conflict in the Multiple Use of the Coastal Zone_, Berkeley: Department of Landscape Architecture, University of California, 1971, or R. Bruce Rettig, "Some Economic Aspects of Conflicts Over Land Use in the Coastal Zone," _Coastal Zone Management Journal_, Vol. 1, No. 3 (1974), pp. 291-303. Also see the matrix showing degrees of compatibility among different use reproduced in Edward Wenk, Jr., _The Politics of the Ocean_, Seattle: Washington: University of Washington Press, 1972, p. 179.

3. _Federal Register_, Vol 38, No. 229 (Thursday, November 29, 1973), p. 33047, and Vol. 40, No. 6 (Thursday, January 9, 1975), p. 1687. These are reproduced in Appendix B of John Armstrong _et al._, _Coastal Zone Management: The Process of Program Development_, Sandwich, Massachusetts: Coastal Zone Management Institute, 1974.

4. Lewis A. Coser, _The Functions of Social Conflict_, New York: Free Press, 1956, p. 31.

5. _Ibid._, p. 157.

6. William H. Haubert II, "Toward Peaceful Settlement of Ocean Space Disputes: A Working Paper," _San Diego Law Review_, Vol. 11, No. 3 (May 1974), pp. 733-756.

7. _Coastal Zone Communiqué_, No. 15 (August 30, 1974), p. 8.

8. This proposal was presented in my earlier essay on "Coastal Zone Management in Hawaii: The Major Issues."