

PUBLIC NOTICE
STATE OF HAWAII OFFICE OF PLANNING
HAWAII COASTAL ZONE MANAGEMENT PROGRAM

To: Hawaii CZM Program Resource Agencies and Public at Large
From: Jesse K. Souki, Director, State of Hawaii Office of Planning
Subject: Notice of Routine Program Change to the Hawaii Coastal Zone Management Program;
General Concurrence for Hawaiian Fishpond Restoration Activities

In 1978, the National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, approved the Hawaii Coastal Zone Management (CZM) Program. As a result, any required federal license or permit activity affecting any coastal use or resource must be conducted in a manner consistent with the enforceable policies of the Hawaii CZM Program. As required by federal regulations (15 CFR Part 930) the Hawaii CZM Program established a list of federal license and permit activities which affect coastal uses or resources, and which are subject to federal consistency review.

Periodic changes to the Hawaii CZM Program are necessary to address new challenges, strengthen the management regime, clarify provisions, or otherwise modify management of activities affecting coastal resources. In this regard, the Hawaii CZM Program is modifying its list of federal licenses and permits subject to federal consistency review by issuing a general concurrence for Hawaiian fishpond restoration activities which meet the specified scope and conditions. To assure that these changes are in keeping with the State's CZM law, HRS Chapter 205A, and the National CZM objectives and policies (CZM Act, 16 USC §1456), federal regulations require changes to be submitted for federal review and concurrence before they are officially incorporated into the State's CZM program. The regulations also require a public notice that lists the changes to be posted for the general public and affected parties.

The Hawaii CZM Program concludes that incorporation of the submitted change will not result in a substantial change to one or more of the five program approvability areas identified in of 15 CFR Part 923, Subparts B - F. The incorporation of the submitted change will increase the ability of the State of Hawaii to manage, preserve, and sustain coastal resources.

Accordingly, this notice summarizes the routine program change to the Hawaii CZM Program that is being submitted for federal review and concurrence. The entire routine program change submittal and general concurrence is available for review during office hours, 7:45 a.m. - 4:30 p.m., at the Office of Planning, Leiopapa A Kamehameha Building (State Office Tower), 235 S. Beretania Street, 6th Floor, Honolulu, and may also be viewed online at: <http://hawaii.gov/dbedt/czm>.

The following is a summary description of the routine program change. No new federal permits are being added to the list, nor are any permits being removed from the list. The proposed change is underscored.

Hawaii List of Federal Licenses and Permits Subject to Federal Consistency Review

U.S. Army Corps of Engineers permits required under:

- Rivers and Harbors Act of 1899, Sections 9, 10 and 11
- Marine Protection, Research and Sanctuaries Act of 1972, Section 103
- Federal Water Pollution Control Act of 1972 and amendments, Section 404

General Concurrence for Federal Permit Activities for Hawaiian Fishpond Restoration, Repair, Maintenance and Reconstruction: CZM federal consistency general concurrence

applies to federal permit activities for the restoration, repair, maintenance and reconstruction of existing Hawaiian fishponds, subject to the applicable geographic areas and the relevant conditions. Federal permit activities which satisfy the conditions of the general concurrence are not subject to the consistency certification and review requirements of 15 CFR Part 930, Subpart D - Consistency for Activities Requiring a Federal License or Permit.

Interested parties have three weeks from the date of this notice to submit their comments, by April 12, 2013, to the federal Office of Ocean and Coastal Resource Management (OCRM), NOAA, on whether the proposed modification should be considered a routine program change as defined in 15 CFR §923.84. OCRM will determine the significance of the change and decide whether it will be incorporated into the State's approved CZM Program.

Comments should be submitted to:

Ms. Joelle Gore, Acting Chief
Coastal Programs Division
NOAA Office of Ocean and Coastal Resource Management
1305 East-West Highway
N/ORM3, SSMC4, Room 11305
Silver Spring, MD 20910

A copy of the comments should also be submitted to the Office of Planning, Attention: Routine Program Change, P.O. Box 2359, Honolulu, Hawaii 96804. For more information, please call John Nakagawa of the Hawaii CZM Program at (808) 587-2878.

Hawaii Coastal Zone Management Program
General Concurrence for Minor Federal Permit Activities for
Hawaiian Fishpond Restoration, Repair, Maintenance and Reconstruction

Senate Resolution No. 86 (SR86), which was adopted by the Hawaii State Legislature on April 10, 2012, urges the Department of Land and Natural Resources, Department of Health, and Office of Planning to streamline the permitting process for the restoration of Hawaiian fishponds. The resolution also requests the Office of Planning to consider “a coastal zone management program consistency statement for Hawaiian fishponds.” Hawaiian fishponds are aquaculture structures, which include man-made and natural enclosures of water in which fish and other aquatic organisms are raised and harvested. Hawaiian fishponds have historic, cultural and economic significance for the State of Hawaii.

In response to SR86 and in accordance with federal regulations, the Hawaii Coastal Zone Management (CZM) Program is issuing a general concurrence for minor federal permit activities for Hawaiian fishpond restoration, repair, maintenance and reconstruction. Coastal Zone Management Act federal consistency regulations (15 CFR Part 930) establish procedures for States to issue general concurrences (15 CFR §930.53(b)) allowing similar minor work in the same geographic area to avoid repeated review of minor federal license or permit activities which, while individually inconsequential, cumulatively affect any coastal use or resource. Federal permit activities which satisfy the conditions of the general concurrence are not subject to the consistency certification and review requirements of 15 CFR Part 930, Subpart D - Consistency for Activities Requiring a Federal License or Permit.

The U.S. Army Corps of Engineers permit is the relevant federal permit for Hawaiian fishpond restoration activities. The Hawaii federal permit list includes the following U.S. Army Corps of Engineers permit authorities:

Rivers and Harbors Act of 1899, Sections 9, 10 and 11
Marine Protection, Research and Sanctuaries Act of 1972, Section 103
Federal Water Pollution Control Act of 1972 and amendments, Section 404

Federal consistency general concurrence procedures (15 CFR §930.53(b)) require that the applicable federal permit activities and the relevant conditions be included in the Hawaii list of federal permits subject to federal consistency review. Therefore, the Hawaii CZM Program is amending the federal permit list to include the general concurrence provisions for Hawaiian fishponds.

Hawaii List of Federal Licenses and Permits Subject to Federal Consistency Review

U.S. Army Corps of Engineers permits required under:

Rivers and Harbors Act of 1899, Sections 9, 10 and 11
Marine Protection, Research and Sanctuaries Act of 1972, Section 103
Federal Water Pollution Control Act of 1972 and amendments, Section 404

General Concurrence for Federal Permit Activities for Hawaiian Fishpond Restoration, Repair, Maintenance and Reconstruction

I. Federal Permit Activities

CZM federal consistency general concurrence applies to the following Federal permit activities for the restoration, repair, maintenance and reconstruction of existing Hawaiian fishponds, subject to the applicable geographic area and the relevant conditions listed below. Federal permit activities which satisfy the conditions of the general concurrence are not subject to the consistency certification and review requirements of 15 CFR Part 930, Subpart D - Consistency for Activities Requiring a Federal License or Permit.

- (a) Restoration, reconstruction, repair and maintenance of fishpond walls and sluice gates, including but not limited to the placement, movement, manipulation and temporary stockpiling of necessary materials.
- (b) Placement, movement, manipulation and temporary stockpiling of small stones or rubble for interior wall fill (ʻiliʻili).
- (c) Silt removal by hand and/or mechanized equipment from within fishponds.
- (d) Vegetation removal by hand and/or mechanized equipment from within fishponds and from fishpond walls.
- (e) Periodic post-restoration maintenance activities required to facilitate the long-term use, management and operation of fishponds.
- (f) Use of hand and/or mechanized equipment to conduct fishpond restoration activities.
- (g) Placement of temporary structures within fishponds which are necessary to conduct restoration activities.
- (h) Placement and use of aquaculture pens, nets, and/or cages within fishponds.
- (i) Use of harvesting equipment within fishponds.

II. Geographic Area

The geographic areas covered by this general concurrence include coastal land areas, shoreline areas, and nearshore ocean waters within the State of Hawaii where existing Hawaiian fishponds are located. The specific geographic area is defined by the type of fishpond.

Fishponds are categorized into six main types according to the “Hawaiian Fishpond Study” (DHM Planners, Inc. and Public Archaeology Section, Applied Research Group, Bernice Pauahi Bishop Museum, June 1989; based on information by William K. Kikuchi, 1973, Hawaiian Aquacultural System). Each fishpond type is specific to a particular geographic area. Refer to Figure 1, which provides a conceptual diagram and geographic area of each type of fishpond.

Type I - Loko Kuapa: A fishpond of littoral water whose side or sides facing the sea consist of a stone or coral wall usually containing one or more sluice gates.

Type II - Loko Pu`uone: An isolated shore fishpond usually formed by the development of barrier beaches building a single, elongated sand ridge parallel to the coast and containing one or more ditches and sluice gates.

Type III - Loko Wai: An inland freshwater fishpond which is usually either a natural lake or swamp, which can contain ditches connected to a river, stream, or the sea, and which contain sluice gates.

Type IV - Loko i`a kalo: An inland fishpond utilizing irrigated taro plots.

Type V - Loko `Ume`iki: A fishtrap which is similar to a Type I - loko kuapa and has various combinations of inward and outward leading lanes.

Type VI - Kaheka and Hapunapuna: A natural pool or holding pond.

III. Conditions

1. Copies of U.S. Army Corps of Engineers permit applications for activities covered by this general concurrence must be sent by the applicant to the Hawaii CZM Program for the purpose of monitoring adherence to the required conditions.
2. Fishpond restoration activities shall be conducted in compliance with applicable State of Hawaii water quality standards and requirements of Hawaii Revised Statutes (HRS) Chapter 342D Water Pollution and Hawaii Administrative Rules (HAR) Chapter 11-54 Water Quality Standards, which are federally approved enforceable policies of the Hawaii CZM Program.

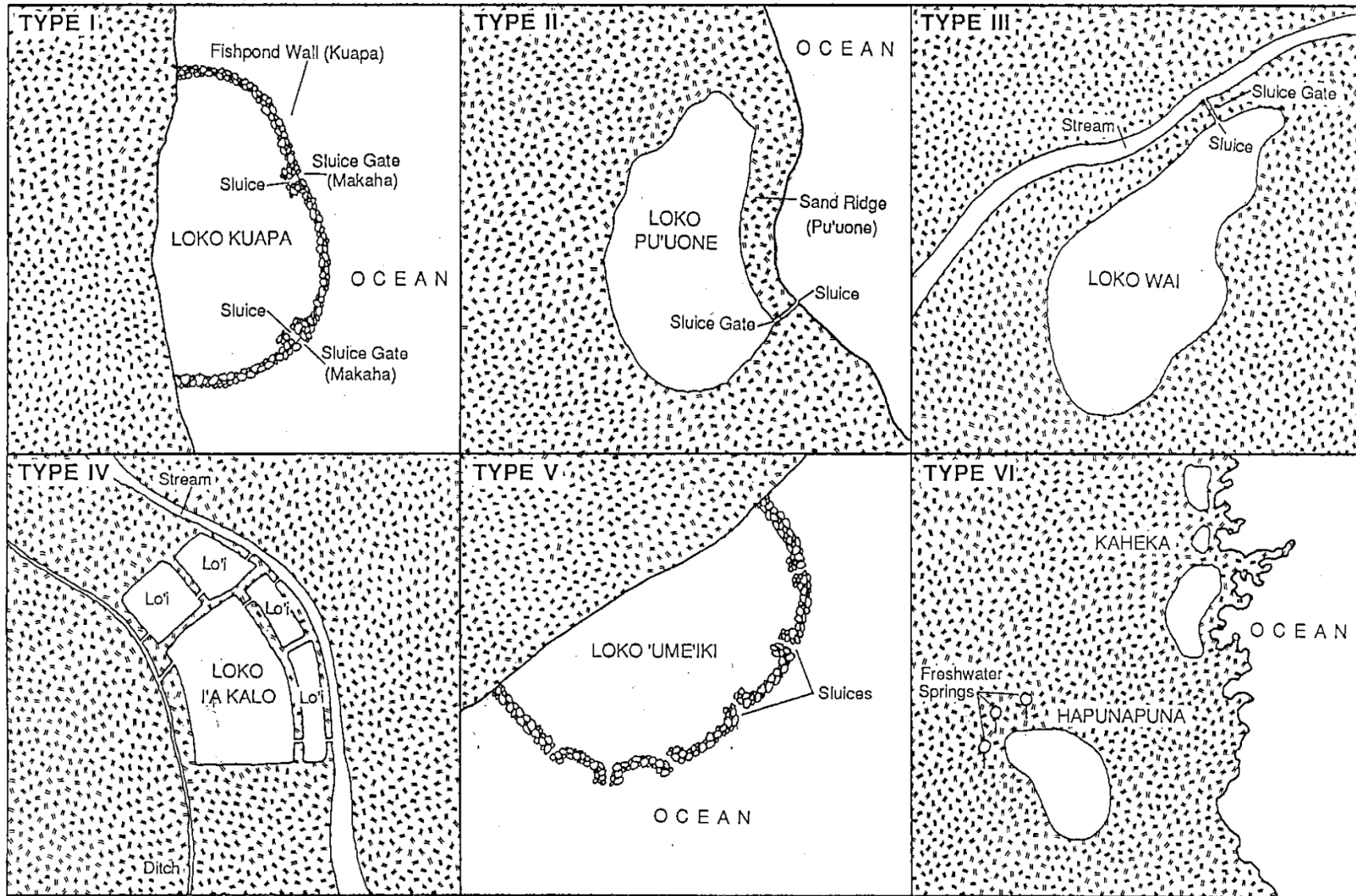
3. Fishpond restoration activities shall be conducted in compliance with applicable State of Hawaii water pollution control requirements of HRS Chapter 342D Water Pollution and HAR Chapter 11-55 Water Pollution Control, which are federally approved enforceable policies of the Hawaii CZM Program.
4. Best management practices, such as silt containment devices and turbidity control measures, shall be implemented during fishpond restoration activities to minimize impacts on surface and ocean water quality. This condition is necessary to ensure consistency with Hawaii CZM Program coastal ecosystems policies established in HRS Chapter 205A Coastal Zone Management (HRS §205A-2(b)(4)(A) and HRS §205A-2(c)(4)), which is a federally approved enforceable policy.
5. Materials used for fishpond restoration, reconstruction and repair may be from on-site and/or off-site, and shall be clean and free of waste products, debris, or any potentially hazardous materials. This condition is necessary to ensure consistency with Hawaii CZM Program coastal ecosystems policies established in HRS Chapter 205A Coastal Zone Management (HRS §205A-2(b)(4)(A) and HRS §205A-2(c)(4)), which is a federally approved enforceable policy.
6. Whenever active fishpond restoration activities are occurring, work areas shall be monitored for endangered, threatened or indigenous species protected by the State of Hawaii under HRS Chapter 195D Conservation of Aquatic Life, Wildlife, and Land Plants, and HAR Chapter 13-24 Indigenous Wildlife, Endangered and Threatened Wildlife, and Introduced Wild Birds, which are federally approved enforceable policies of the Hawaii CZM Program. If any protected endangered, threatened or indigenous species are present in the vicinity of the restoration area, work shall cease until the animal has left the area.
7. Fishpond restoration activities shall be conducted in compliance with applicable State of Hawaii conservation district requirements established in HRS Chapter 183C Conservation District and HAR Chapter 13-5 Conservation District, which are federally approved enforceable policies of the Hawaii CZM Program.
8. The State Historic Preservation Division (SHPD) shall be consulted prior to beginning fishpond restoration and any requirements of SHPD shall be complied with. This condition is necessary to ensure consistency with HRS Chapter 6E - Historic Preservation, which is a federally approved enforceable policy of the Hawaii CZM Program.
9. Fishpond restoration activities shall be conducted in compliance with special management area and shoreline setback area requirements of the respective county in which the fishpond restoration occurs. This condition is necessary to ensure consistency with HRS Chapter 205A Coastal Zone Management (HRS Chapter 205A, Part II and Part III), which is a federally approved enforceable policy of the Hawaii CZM Program.
10. Public access along the shoreline shall not be precluded by any fishpond restoration activities. If restoration work involves an area used for public shoreline access and if safe public access cannot be maintained during restoration, then provisions shall be made to

ensure that public access is provided by alternative routes and/or means. This condition is necessary to ensure consistency with federally approved Hawaii CZM Program enforceable policies for ensuring and managing public access established in HRS Chapter 205A Coastal Zone Management (HRS §205A-2(b)(1)(A) and HRS §205A-2(c)(1)(B)) and HRS Chapter 115 Public Access to Coastal and Inland Recreational Areas.

IV. General Concurrence Procedures

- (a) Federal permit activities which satisfy the conditions of the general concurrence are not subject to the consistency certification and review requirements of 15 CFR 930, Subpart D - Consistency for Activities Requiring a Federal License or Permit.
- (b) Copies of federal license and permit applications for activities subject to the general concurrence must be sent by the applicant to the Hawaii CZM Program for the purpose of monitoring adherence to the required conditions.

Figure 1
HAWAIIAN FISHPOND TYPES



“Hawaiian Fishpond Study”

DHM Planners, Inc. and Public Archaeology Section, Applied Research Group, Bernice Pauahi Bishop Museum, June 1989