

# Creating Enforceable Regulations<sup>1</sup>

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## Presentations

### 1. Three Cases of Coral Reef Destruction and Investigation in the Philippines

*Rene Acosta*

There are different formulas prescribed by known experts for estimating the cost of damaged coral reefs but the absence of a government - imposed national standard exposes these formulas to arbitrary use of individual experts. Findings by these experts are rarely checked or contested by another expert, if at all there are efforts to validate them.

The presentation described three cases of coral reef destruction and investigation in the Philippines. The first case is the accidental grounding of M/V Malindo II in 2004 in Busuanga; the accidental grounding of M/V Rainbow Warrior in Tubbataha Marine Park in 2005 and the gathering of corals in Sangat Marine Park in 2006, all in the western Philippine province of Palawan.

The causes of the damage to the reef areas were outlined along with the extent and estimated cost of the damage, the valuation formula used, the profile of valuers and the sanctions imposed and the manner by which the investigations were conducted.

### 2. The Strategic Approach to Compliance in the Great Barrier Reef Marine Park

*Mick Bishop*

The Great Barrier Reef Marine Park is managed and protected through zoning plans and regulations. A network of 164 highly protected, no take, areas together cover 115,240 square kilometres. In addition, fishing is also regulated in zones that comprise twice that area. A high level of compliance with zoning provisions is crucial for them to be effective in their goal protecting the biodiversity and ecology of the Marine Park. Regulation of waste discharge, shipping activities, tourism and recreation use and other activities further helps manage impacts on fragile environments. High use and remote areas each present unique challenges to compliance management.

Recognising that resources to undertake compliance will always be limited, the Great Barrier Reef Marine Park Authority has developed a successful strategic approach. Consideration of compliance issues began very early in the design and development of new zoning plans and regulations. Well-developed risk assessments target surveillance and enforcement resources at the areas, times and sources of greatest ecological threat. Increasing use of intelligence and multi-agency cooperation has improved surveillance and helped implement successful enforcement operations. Quality control of investigation processes, effective

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<sup>1 1</sup> Workshop report from the 3<sup>rd</sup> International Tropical Marine Ecosystem Symposium held in Cozumel, Mexico 16-20<sup>th</sup> October 2006. Theme 3 – Enforcement and Investigation. Visit [www.itmems.org](http://www.itmems.org) for more information.

prosecution and significantly higher penalties have further increased deterrence of illegal activity.

### 3. Education of legal statutes as a management tool

*Beth Lumsden and Stuart Corey*

The US Coral Reef Task Force contains twelve US federal agencies and seven State and Territorial jurisdictions with coral reefs. The number one management priority reported by every jurisdiction is enforcement of coral reef ecosystems. To support this, five federal agencies developed a series of workshops held in each jurisdiction to educate local enforcement entities on US laws and their local applicability.

The results of the workshops were later assessed. Results included:

- Mechanisms to develop partnerships among local environmental officers, permittees, and prosecutors
- Local agencies discovered complementary capabilities and developed teams to cooperatively use authorities
- As an example of a tangible outcome, in American Samoa, the participants agreed to form a local Enforcement Task Force to cooperatively strengthen their enforcement capabilities

US coral reef ecosystems face many of the same issues faced around the world such as corruption, nepotism, lack of awareness of regulations, lack of knowledge or understanding of available tools etc. This technique can be utilized in any country. Education on laws and their applicability in coral reef ecosystems furthers the ability to implement effective conservation and management strategies.

#### Discussion/Issues/Recommendations

- Integration of enforcement in planning is vital - especially zoning and building MPA networks.
- While there may often be plenty of legislation, many enforcement problems are transboundary problems requiring regional cooperation as well as among different agencies.
- Often biologists drive recommendations without checking with the legal department. At other times, legal input may be included but without checking with enforcement people concerning practicability. Enforcement people should approach planners and regulator writers to bring enforcement people in at the beginning of the process.
- Sometimes minor changes in wording of regulation can make it much more enforceable. Cyanide and blast fishing are illegal but possession of the equipment should be also be. Use of square boundaries, where possible, for no-take areas makes them easier to enforce and helps users to know if they are in or out.
- Enforcement in developing countries is difficult for many reasons - e.g. corruption, sometimes related to large scale powerful corporations. This can make it difficult for local communities or Government powerless to cope. Use consumer action groups to pressure politicians and generate political will for more action including the right to information. Transparency is important - the community need access to outcomes of cases.
- Keep enforcement staff in a separate chain of command and funding to help reduce political influence, promote professionalism.

- Often no forum for dialogue between scientists and enforcement staff - need forums/mechanisms to link them for a 2-way flow of information/understanding.
- If law on corals written at species level - difficult for enforcement inspector to realistically ID species...need to think about making rules realistic, e.g. use orders or families rather than species.
- Conservationists need to not just focus on planning but also understand enforcement and support that as well.
- NGOs and other funding donors should support enforcement but not necessarily do the enforcement.
- In Hawaii - program to use citizens/volunteers for surveillance/detection and try to focus on user groups - best bang for buck.
- Involve and support community groups. The Philippines has good examples. Be careful to not raise unrealistic expectations, be honest with them and at least use information for intelligence and targeting areas for future actions
- Rewards or incentives for law enforcers are needed in many countries, but be careful as the public may not view it favorably. Reward agencies, but perhaps not individuals.
- Regional fora and workshops are needed. These should involve more than enforcement personnel. Invite others that need to be involved - biologists, mayors, etc. Keep dialogue moving more than just once every 4 years at ITMEMS. Consider formalisation of regional groups and allow interchange/observers between regional groups.
- A Regional environment ministers group is scheduled to meet in Manila. Need to provide and develop an enforcement agenda for that meeting - especially for transboundary issues. Input to ASEAN summit meetings.
- Bernd Cordes (D&L Packard Foundation) will organize enforcement meeting as well. Bernd to get professional enforcers in on the meeting.
- Many enforcers can't attend meetings such as this because they are too busy enforcing!!! Make it worth their while - look at link with other enforcers.

### ITMEMS2 Review

The ITMEMS2 statement and recommendations on enforcement were reviewed by the session participants. Participants agreed that the statement and recommendations remain valid today and are reproduced below:

*“Without enforcement, MPAs and OCM programs will not provide their intended benefits to the marine ecosystems and the communities that depend on them. There is an urgent need for greater recognition by government, funding agencies and NGOs that effective enforcement of marine resource use regulations is considered essential by both local communities and marine managers, and requires much greater financial and political support. There is a widespread view from communities and managers across all tropical marine regions that the damage caused by and profitability of marine resource crimes are not recognized by the judicial system.*

*ITMEMS2 recommends:*

- *Government, funding agencies and NGOs recognize that effective enforcement of marine resource use regulations is considered essential by local communities and marine managers and requires much greater financial and political support.*

- *MPA and ICM planning explicitly incorporate consideration of compliance issues from the outset in the planning process.*
- *Fines and penalties for illegal acts be set at levels where they act as true deterrents rather than being considered by offenders as a cost of doing business*
- *MPA and ICM planning explicitly recognize that local compliance can increase dramatically if communities are aware of and involved in MPA management and if they can invest in sustainable use, and;*
- *MPA and ICM managers address the urgent need for greater communication, collaboration and sharing of lessons learned between countries on the issue of marine enforcement. "*