

NOAA Coral Reef Conservation Program  
**Final Report**

- A. Award Number: NA11NOS4820006
- B. PO #: C41573
- C. Amount of Award: \$44,619.00
- D. Recipient: (PI's name): Michael P. Hamnett, Kristine Davidson, Risa Minato
- E. Project Title: Day Use Mooring Buoy-Phase III
- F. Award Period: January 1, 2014-September 30, 2014
- G. Period Covered by this Report: January 1, 2014 - September 30, 2014

H. Summary of Progress and Expenditures to Date:

**Projects:**

1. **Project Title:** Day Use Mooring Buoy (DMB) -Phase III
2. **Project Status** (please x):    No activities to date \_\_\_\_    Planning \_\_\_\_  
  In progress \_\_\_\_                          Completed x\_\_\_\_
3. **Summary of Project Accomplishments (by each objective):**

**Objective 1: Find consensus on key decision points for the Day Use Mooring Buoy (DMB) Program at the Department of Land and Natural Resources (DLNR).**

- Built consensus on the adoption of formal DMB Program within Division of Boating and Ocean Recreation (DOBOR) through a series of facilitated discussions and conversations between the Division of Aquatic (DAR) and DOBOR administrators and the DLNR Second Deputy Director.
- Agreed to use Broward County, Florida DMB program as a template (122 DMB and 50,000 registered boaters). The program has a \$60,000 annual budget for maintenance and monitoring, which is contracted. This structure would reduce liability through documented monitoring and maintenance. It would also ensure all buoys receive equal treatment, not just ones used by nongovernmental organizations with deep pockets. Finally, it would create a uniform system of clean, industry-standard DMBs.
- Consensus focused on a newly-established DOBOR DMB Coordinator, who would manage program funds, maintain records, and serve as the point of contact for users. Plan is to ask the state legislature to create a coordinator position permanent within DOBOR, but paid for with the DOBOR Boating Special Fund.

- DOBOR committed 3% gross receipts from identifiable commercial operators who use DMBs to the fund program. Coordinator may be able to seek grants/other funding sources when time permits. Anticipate the funding will cover the coordinator position and annual maintenance and repair.

**Objective 2: Research and develop an Installation Work Plan and budget**

**Objective 2: Create DMB operation plan.**

- Crafted detailed operational plan that covers through the end of 2016. Objectives covered include: coordinator position, liability, rules, assessment of buoys and use, communication, and repair, maintenance, and removal.

<b>Establish position to oversee &amp; coordinate a statewide DMB program.</b>
Determine if position will be contract or state planner.
Identify preliminary responsibilities of position and outline initial goals.
Draft and request job position
Recruit position
<b>Address liability concerns</b>
Determine where state liability exists
Make recommendations to mitigate liability
Implement recommendations to mitigate liability
<b>Update rules to match program</b>
Assess and analyze Legal Framework
Determine whether only those DMBs listed in HAR § 257 are “state” DMBs for legal purposes.
Governing regulatory frameworks
Jurisdictional Analysis
<b>Create contractor checklist</b>
Identify the qualifications and/certifications that will be required of contractors.
Identify the necessary permits required to work in the water, MOA?
<b>Determine how to collect and bin the 3% fee</b>
<b>Assess and document ecology, buoy, use and users.</b>
Oahu
Maui County
Hawaii
Kauai
<b>Standardize buoy specs</b>
Review existing specs.
Determine restrictions of existing USACE permit
Update buoy design guidelines based on load demand and permit restrictions.

<b>Facilitate relationships between commercial dive operators that use DMBs and DOBOR</b>
Create talking points on DMB successes and application in Hawaii.
Identify commercial dive operators that use or would like to use permitted DMBs.
Create a DMB Communication Plan
Implement Communication plan
Create specific protocols for navigating requests, complaints, problems, etc.
Host information gathering meetings in communities around the state.
Conduct outreach through incident report training
<b>Initial repair and maintain and if necessary replace existing buoy repairs</b>
<b>Routine repair and maintain and if necessary replace existing buoy repairs</b>
Determine frequency and SOW for routine repairs, maintenance, and replacement
Solicit bids
<b>Remove unpermitted DMB.</b>
Create protocols
Create structure to report
Create framework to remove unpermitted DMB
Create site specific solicitation for contract to remove unpermitted DMB.
Execute and complete contract
Establish partnership with DOCARE and determine role
<b>Create strategy for installation of new permitted DMB and contract EA</b>
Outline site selection process.
Contract to complete a supplemental EA.
Install new DMB
<b>Inform broader communities about DMB</b>
Host community meetings to share program progress and plans.
Host a DMB use training for commercial vessel operators.
Host a DMB use training for recreational boaters.

**~~Objective 3: Coordinate stakeholder meetings to present site selection criteria and working budget.~~**

**Objective 3: Research DMB liability issues.**

- DMB are similar to a mooring dock whose purpose is to provide anchorage for vessels safe enough to obviate use of anchoring equipment. If DMBs are not properly maintained, state may be held negligent and in breach of its duty of care towards invitees. Therefore, an “assumption of risk” defense may be unpersuasive if cannot demonstrate reasonable effort to maintain safe moorings.
- Placing cost of maintenance on NGOs incentivizes “corner cutting” in both installation and maintenance. Lack of documented state oversight or maintenance puts deep pockets of the state in play if suit is filed. If a mooring is deemed a proximate cause of an injury, court may enquire into whether the state had actual or constructive notice of dangerous condition(s). Documentation of maintenance efforts will bolster state’s contention that it has exercised due care.
- DMB maintenance awardees must be OSHA compliant (29 C.F.R. § 1910 Subpart T). Burden of compliance falls mostly upon contractors to abide by procedural requirements. However, because the state is the ultimate employer, the state should require contractors to supply documentation of necessary insurance, certification and training relevant to scope of work.

**~~Objective 4: Research and provide information to DAR legal fellow~~**

- ~~Task 1: Provide DAR legal fellow with information to draft revised rules.~~
- ~~Task 2: Assist DAR legal fellow integrate comments to draft rule changes.~~
- ~~Task 3: Facilitate discussion with DMB Working Group on next steps after rule change submission.~~

**Objective 4: Survey boaters on their preliminary feelings on DMB and willingness to pay.**

- Drafted a boater user survey to determine who uses the DMB; how much use is occurring; satisfaction level with the current DMB system; and which users to target. In an early conversation with DAR and DOBOR, it was suggested that a survey be administered to as many boaters as possible to determine how best to formalize a state-run day-use mooring buoy program, which could eventually include maintenance of existing moorings and future installations of new ones.
- After review by the DMB working group and further conversations with its members, the draft survey was set aside in order to further built the structure and consensus for a formal state DMB program.

**Objective 5: Coordinate DLNR Day Use Mooring Buoy (DMB) working group meetings.**

- May 2, 2014: Discussed 4 difference programmatic structures with four different lead organizations (State, NGOs, Friends of DLNR, and hybrid). Also discussed different funding mechanisms.
- June 6, 2014: Decide on preferred programmatic structure: State program, run by a DMB coordinator. Details of DAR and DOBOR roles and commitments still to be determined.
- July 7: Met with DOBOR Administrator and got a commitment from him to move forward with the preferred scenario of a DMB overseen by a statewide coordinator whose immediate priorities will be repair and maintenance of existing DMBs to bring them into compliance with best practices and reduce any state liability. In order to fund repair/maintenance and possibly removal of unsanctioned buoys the program will utilize the \$300/3% gross monthly fees paid by commercial *dive* operators to DOBOR. The nexus here is that these companies are the most frequent users of DMBs. We will work with DOBOR/NGOs to identify dive operators whose funds will be earmarked for the DMB program.
- September 2, 2014: Check in on progress towards getting the DMB program up and running and discuss next steps. Presented Oahu DMB Surveys: What we learned, using the Broward County, FL: A model for DMB Management in Hawaii and moving forward: August to December 2014.
- October 27, 2014: Solicit feedback on suggested DMB (Ch. 12-257) rule revisions.

**4. Deliverables and Outcomes** (*How did this project address critical management needs?*)

- Secured funding for formal statewide DMB program and commitment for a position.
- Justification memo counseling greater involvement and oversight by DLNR in the administration of the DMB program (i.e., statutory obligation, liability, conservation)
- Operational Plan detailing activities and timeline for first 3 years of a DOBOR DMB program
- Identify commercial dive operators and estimate funding available for program.
- Developed contractor checklist (e.g., certifications, insurance)

**1. Obstacles or Delays:**

*None. This project is continuing through the DOBOR Boating Special Fund through December 2015.*

Progress Report Prepared by: \_\_Risa Minato\_\_\_\_\_

Signature of Point of Contact: \_\_\_\_\_