From: Alexis Strauss
To: Nancy Woo; Janet Hashimoto
Subject: Classification of West Maui waters
Date: 08/04/2011 08:21 AM

Janet, thank you for delving into this. Can HDOH be petitioned to adjust its WQS to clarify this...or what's the process for addressing the ongoing ambiguity?
----- Forwarded by Alexis Strauss/R9/USEPA/US on 08/04/2011 08:20 AM -----

From: Janet Hashimoto/R9/USEPA/US
To: Alexis Strauss/R9/USEPA/US@EPA
Cc: Sara Roser/R9/USEPA/US@EPA, Wendy Wiltse/R9/USEPA/US@EPA, Hudson Slay/R9/USEPA/US@EPA, Elizabeth Sablad/R9/USEPA/US@EPA, David Albright/R9/USEPA/US@EPA, Nancy Rumrill/R9/USEPA/US@EPA
Date: 08/03/2011 04:35 PM
Subject: Fw: Classification of West Maui waters

Alexis: Sara Roser and I had a conference call with Paul Achitoff, Caroline Ishida, David Hencken, and Jessica Freeman (intern) of Earthjustice to discuss Hawaii's classification of waters. It's actually unclear whether W. Maui is in Class A or Class AA waters, after the humpback whale sanctuary designation. Hawaii's standards are written so that there is an automatic designation of Class AA waters (most protective) to waters in "refuges or sanctuaries established by the U.S. Fish and Wildlife Service or the National Marine Fisheries Service." During sanctuary designation, some people clearly remember Larry Lau suggesting that their waters classification does not change. However, we could not find any formal records of HI DOH position on this during sanctuary designation. HI DOH currently is saying that the W. Maui waters are still Class A (and so stated in HI DOH's comment letter to Maui County's 401 cert application). Other strange readings are that NOAA NMFS did not establish the sanctuary since the Sanctuary Office of NOAA established the sanctuary. Therefore, the humpback sanctuary does not automatically change the designation of the waters from Class A to Class AA. I looked up NOAA's organization, and technically that is correct since NMFS is a completely separate office. The Sanctuary Office is under NOAA National Ocean Service (NOS), not NMFS. Further complicating this is that in HI DOH's 2006 integrated report, the maps in the report suggest that W. Maui would be Class AA waters (with hatch marks for overlap with sanctuary waters); although it's kind of unclear because of the mapping of the overlap.

[I would have considered W. Maui as Class AA myself because of the sanctuary designation. However, in situations when it is difficult to interpret the standards, we usually defer to the State. HI DOH is saying that W. Maui waters are Class A. Not sure how courts would rule.]

The only difference between Class A waters and Class AA waters is whether a mixing zone can be applied (only can do in Class A waters). That's why Earthjustice is concerned. They do not want a mixing zone applied to the Lahaina injectate discharge should they need an NPDES permit. I told Paul that we would be concerned also if a mixing zone was applied by DOH just to keep status quo. Also, mixing zones aren't applied for all constitutents. We would not want DOH to grant mixing zones for bacterial indicators and nutrients. However, we also agreed that we ultimately just want the County to go to full or maximal reuse. Paul mentioned that that's also what DOH wants. He also mentioned that Earthjustice is preparing

to sue Maui County.

I'll let you know if there's any further follow up to this. Janet

_____

Janet Y. Hashimoto
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----- Forwarded by Janet Hashimoto/R9/USEPA/US on 08/03/2011 03:40 PM -----

From: Alexis Strauss/R9/USEPA/US
To: Caroline Ishida <cishida@earthjustice.org>
Cc: Wendy Wiltse/R9/USEPA/US@EPA, Janet Hashimoto
Date: 08/01/2011 02:00 PM
Subject: Re: Classification of West Maui waters

Dear Caroline,
thanks for your inquiry. I don't know the answer to your question. My colleague Janet Hashimoto has kindly offered to look into this and reply.
Kind regards,
Alexis
415 972 3572

▼ Caroline Ishida ---08/01/2011 12:35:19 PM---Alexis- My name is Caroline Ishida and I work with Paul Achitoff at Earthjustice in Honolulu. He su

From: Caroline Ishida <cishida@earthjustice.org>
To: Alexis Strauss/R9/USEPA/US@EPA
Date: 08/01/2011 12:35 PM
Subject: Classification of West Maui waters

Alexis-
My name is Caroline Ishida and I work with Paul Achitoff at Earthjustice in Honolulu. He suggested that I contact you because we are looking into what the water classification is for the open coastal of West Maui (offshore of the Lahaina area) because there is some question from the state about the current classification. I was wondering if you knew someone at the EPA who would know for sure whether the waters are marine class A or marine class AA, especially in light of the designation of the Humpback Whale National Marine Sanctuary in the waters off of West Maui.

Thanks,
Caroline

_____

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Because the earth needs a good lawyer

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