

BOARD OF WATER SUPPLY  
COUNTY OF MAUI

REGULAR MEETING  
MINUTES OF MARCH 21, 2013

The regular meeting of the Maui County Board of Water Supply was held at the Department of Planning Conference Room, 250 South High Street, Wailuku, Maui, on Thursday, March 21, 2013.

CALL TO ORDER

The meeting was called to order by Chair Kevin Boteilho at 9:02 a.m.

ATTENDANCE

Members present: Kevin Boteilho, Chair  
John Hoxie, Vice Chair  
Patricia Eason  
Donald Gerbig  
Robert Joslin  
William Kamai  
Cyrus Kodani  
Michael Suzuki  
James Rust

Staff present: Dave Taylor, Director  
Paul Meyer, Deputy Director  
Pam Pogue, Water Resources & Planning Program Manager  
Edward Kushi, Jr., First Deputy Corporation Counsel  
Gaye Hayashida, Commission Support Clerk

ANNOUNCEMENTS

None.

APPROVAL OF MINUTES

Minutes of February 21, 2013

Chair Boteilho asked for a motion to accept the minutes of February 21, 2013.

Motion: Member Gerbig moved to approve the minutes of February 21, 2013

Second: Member Kamai

Discussion: None.

Vote: Unanimous. Motion carried. The minutes of February 21, 2013 were approved.

### TESTIMONY FROM THE PUBLIC

There was no public testimony.

### APPEALS

There were no appeals scheduled for this meeting.

### UNFINISHED BUSINESS

None.

### OTHER BUSINESS

#### Report by Department Staff regarding How the U.S. Fish and Wildlife's Critical Habitat Designation for Certain Areas Around Maui County Affects the Department of Water Supply Operations

Pamela Pogue, Water Resources and Planning Program Manager explained that she has some experience with the U.S. Fish and Wildlife's Critical Habitat Designation, which is part of the Endangered Species Act.

This critical habitat designation is not the same as a sanctuary or a wildlife refuge and there are no land use restrictions. This is just the first step in listing a plant or animal species and to ensure consistency among federal agencies ensuring that they don't do anything the flies in the face of the Endangered Species Act. In no way will it impact the actions of the County or what the County does.

Member Kamai asked how these areas came to be designated.

Ms. Pogue replied that it based on best available scientific data from state and federal environmental organizations monitoring the health of various animal and plant species. When the U.S. Fish and Wildlife started seeing declining animal and plant species they decided to designate these areas to try to protect these species. The designation is not a regulatory action rather it is just a flag to say that these areas are being looked at for possible protection in the future.

See Attachment 1

#### Receipt of Board Member request for agenda items to be placed on future agendas

No agenda items were suggested at this time.

## COMMUNICATIONS

There were no communication items.

## DIRECTOR'S REPORT

### DIVISION REPORT

#### February Division Reports

Director Taylor stated that the department is continuing its CIP, operations and maintenance projects such as the replacement of high lift pumps at Kamole, pilot testing at the Olinda Treatment Plant to remove organic carbon, and the installation of a SolarBee aeration system at the Piiholo Plant.

The drought watch which has been in effect since 2009 was removed earlier this week though the department expects these drought conditions to come later in the year.

The director announced that the council's Water Resource Committee will be holding an evening meeting this coming Monday to discuss the water shortage bill. The term "water shortage" is a better description than "drought" because it is about the water system's ability to deliver water and not about the weather.

#### Update on the Hamakuapoko wells

The director referred the board to a memo written by the department's CIP engineer, Jeff Pearson. See Attachment 2.

The department is replacing pumps, doing testing and getting DOH testing. All this is scheduled for completion by September of this year.

Parallel to this is the environmental assessment. They are updating the EA to address comments previously made. Then there is a 30-day challenge period where legal action can be taken over the applicability of the EA. They will find out in the next couple of months whether the EA will be challenged.

#### Update on the Waikamoi Flume Project

The contractor is in the very early stages and some fieldwork has been done. Towards the end of summer the department may have an idea on how far the contractor has gotten and what their projected time of completion is.

The contractor is Global Specialty from the Big Island who has done work for the Department of Public Works in the past.

The contract amount for this work is around \$12 million.

### Update on the Upcountry Water Meter List

The department has offered meters to a number of applicants on the water meter list based on Dowling's water credits of 30,000 gallons. Of those offered meters about half answered yes.

They haven't finished updating the list because in the few months since they first announced the closing of the list to the actual closing the number of applicants have doubled. The director believes that later in the year they will have the list updated.

Director Taylor explained that a number of things have to happen before more meters can be offered. Council has to pass the Water Shortage bill, approve the budget money for more pumping and approve the Water Shortage Rates; Hamakuapoko wells have to be online and ready to use. In addition, if the pilot testing at the Olinda Treatment Plant goes well in removing organic carbon they can move to chlorination and thereby be able to juggle water better.

### ELECTION OF CHAIR AND VICE CHAIR

#### Nominations and Election for Board of Water Supply Chair

Motion: Member Gerbig nominated William Kamai for chair

Second: Member Joslin

Motion: Member Hoxie moved to close the nominations

Second: Member Eason.

Discussion: None.

Vote: Unanimous. William Kamai has been elected chair.

#### Nominations and Election for Board of Water Supply Vice Chair

Motion: Member Gerbig nominated John Hoxie for vice chair

Second: Member Eason

Discussion: None.

Vote: Unanimous. John Hoxie has been elected vice chair.

At this time Director Taylor stated he knows the board made nominations but did they actually vote for these nominees.

Chair Boteilho replied yes, they voted by approving the motions since there were no other nominees.

## RESOLUTIONS

### Resolution 13-01, Commending Kevin Boteilho for His Service and Presentation of Koa Plaque

Chair Botielho and Member Kodani received commendation letters from Mayor Arakawa for their service to the Board of Water Supply.

At this time Ms. Hayashida read Resolution No. 13-01, commending Kevin Boteilho for his service on the Board of Water Supply into the record. The Board then presented him with a koa plaque.

## ADJOURNMENT

There being no further business the meeting was adjourned at 9:35 a.m.

Prepared by:

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Gaye Hayashida  
Commission Support Clerk

Approved by:

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Dave Taylor  
Director

Attachment 1



U.S. Fish & Wildlife Service

# Critical Habitat

## What is it?

When the Fish and Wildlife Service proposes a listing under the Endangered Species Act, we are required to consider whether there are geographic areas that are essential to conserve the species. If so, we may propose designating these areas as critical habitat.

Here are answers to some of the most frequently asked questions about critical habitat.

### What is critical habitat?

Critical habitat is the specific areas within the geographic area, occupied by the species at the time it was listed, that contain the physical or biological features that are essential to the conservation of endangered and threatened species and that may need special management or protection. Critical habitat may also include areas that were not occupied by the species at the time of listing but are essential to its conservation.

An area may be excluded from critical habitat designation based on economic impact, the impact on national security, or any other relevant impact, if we determine that the benefits of excluding it outweigh the benefits of including it, unless failure to designate the area as critical habitat may lead to extinction of the species.

Critical habitat designations affect only Federal agency actions or federally funded or permitted activities. Critical habitat designations do not affect activities by private landowners if there is no Federal "nexus"—that is, no Federal funding or authorization. Federal agencies are required to avoid "destruction" or "adverse modification" of designated critical habitat. The ESA requires the designation of "critical habitat" for listed species when "prudent and determinable."

### What provisions of the Endangered Species Act relate to critical habitat?

To protect endangered and threatened



About 90 miles northwest of Las Vegas, Nevada, Ash Meadows National Wildlife Refuge was established to protect endangered species in uplands and spring-fed wetlands. Plants and animals found nowhere else in the world are at home here, including the endangered Devil's Hole pupfish, the endangered Amargosa niterwort (a plant), and a threatened aquatic beetle species, the Ash Meadows naucorid.



Photo of Ash Meadows National Wildlife Refuge by Mike Bender, USFWS

Photo of the Devil's Hole pupfish by Olin Feurerbacher, USFWS

species, the Endangered Species Act makes unlawful a range of activities involving such species without a permit for purposes consistent with conservation goals of the Act. These activities include take, import, export, and interstate or foreign commerce. "Take" includes kill, harm, harass, pursue, hunt, capture, or collect or to attempt to engage in any such conduct.

The Act requires Federal agencies to use their authorities to conserve endangered and threatened species and to consult with the Fish and Wildlife Service about actions that they carry out, fund, or authorize to ensure that

they will not destroy or adversely modify critical habitat. The prohibition against destruction and adverse modification of critical habitat protects such areas in the interest of conservation.

### How does the Fish and Wildlife Service determine areas to designate as critical habitat?

Biologists consider physical and biological features that the species needs for life processes and successful reproduction. These features include:

- space for individual and population growth and for normal behavior;

### *Myths & Realities*

#### **Does designating critical habitat mean no further development can occur?**

No. A critical habitat designation does not necessarily restrict further development. It is a reminder to Federal agencies of their responsibility to protect the important characteristics of these areas.

#### **Does a critical habitat designation affect all activities that occur within the designated area?**

No. Only activities that involve a Federal permit, license, or funding, and are likely to destroy or adversely modify critical habitat will be affected. If this is the case, we will work with the Federal agency and landowners—including private landowners—to amend their project to enable it to proceed without adversely affecting critical habitat. Most Federal projects are likely to go forward, but some may be modified to minimize harm.

- cover or shelter;
- food, water, air, light, minerals, or other nutritional or physiological requirements;
- sites for breeding and rearing offspring, germination, or seed dispersal; and
- habitats that are protected from disturbances or are representative of the historical geographical and ecological distributions of the species.

#### **What is the process for designating critical habitat?**

The Service may propose to list a species and concurrently propose to designate critical habitat, or it can address a species' critical habitat up to a year after the date of its listing. The Service proposes a critical habitat designation, publishing it in the *Federal Register* and requesting public comments. We may modify a proposal as a result of information provided in public comments. We base our final designation of critical habitat on the best scientific data available, after taking into consideration the probable economic and other impacts of the designation. After reviewing the comments, the Service responds to them and publishes a rule, including final boundaries, in the *Federal Register*.

#### **Are Federal agencies required to consult with the Fish and Wildlife Service outside critical habitat areas?**

Yes, even when there is no critical habitat designation, Federal agencies are required fulfill their conservation responsibilities by consulting with

the Fish and Wildlife Service if their actions "may affect" listed species. The requirement helps to ensure that Federal agencies do not contribute to the decline of endangered and threatened species or their potential for recovery.

#### **What is the purpose of designating critical habitat?**

Designating areas as critical habitat does not establish a refuge or sanctuary for a species. Critical habitat is a tool to guide Federal agencies in fulfilling their conservation responsibilities by requiring them to consult with the Fish and Wildlife Service if their actions may "destroy or adversely modify" critical habitat for listed species. A critical habitat designation helps to protect areas—occupied and unoccupied—necessary to conserve a species. Critical habitat has value in requiring the Service to gather more detailed information about a species than what is required for listing, thereby increasing knowledge to share with Federal agencies—and, in turn, increasing their effectiveness.

#### **The areas shown on critical habitat maps are often large. Are all the areas within the mapped boundaries considered critical habitat?**

No. Our rules typically exclude developed areas such as buildings, roads, airports, parking lots, piers, and similar facilities. Accompanying text describes those areas.

Critical habitat is designed to protect the essential elements of physical and biological features of a landscape and essential areas in the appropriate quantity and spatial arrangement that a

species needs to survive and reproduce.

#### **Why are large areas shown on critical habitat maps if the entire area is not actually considered critical habitat?**

In some cases, precisely mapping critical habitat boundaries is impractical or impossible, because the required descriptions for these precise boundaries would be unwieldy.

#### **Does the Act require consideration of economic impacts as part of designating critical habitat?**

Yes. The Service is required to consider potential economic impacts, as well as any other benefits or impacts of designating critical habitat—and may exclude an area if the benefits of excluding it outweigh the benefits of including it unless that would result in the extinction of the species.

#### **Do economic considerations affect decisions to list species as endangered or threatened?**

No, the Act requires listing decisions to be made solely on the basis of the best available scientific and commercial information.

#### **What is the impact of a critical habitat designation on economic development?**

Most activities that require consultation by Federal agencies proceed without modification. In areas where the species is not present, some project modifications that would not have occurred without the critical habitat designation may be required. For example, the U. S. Army Corps of Engineers may schedule a beach renourishment project—that is adding sand to a beach to stabilize it—before or after the nesting season of sea turtles to avoid harm to the sea turtles, their eggs, or their hatchlings.

#### **How many species have critical habitat designations?**

As of April 1, 2011, critical habitat has been designated for 604 of the 1,372 U.S. species, subspecies, and distinct vertebrate populations listed as threatened or endangered.

**U.S. Fish & Wildlife Service  
Endangered Species Program  
703/358-2171  
<http://www.fws.gov/endangered/>**

**September 2011**

Attachment 2

ALAN M. ARAKAWA  
Mayor



DAVID TAYLOR, P.E.  
Director

PAUL J. MEYER  
Deputy Director

**DEPARTMENT OF WATER SUPPLY**

**COUNTY OF MAUI**

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www.mauewater.org

March 13, 2013

TO: Kevin Boteilho, Chair, and members of the Board of Water Supply  
FROM: Jeffrey Pearson, P.E., Civil Engineer VI, Department of Water Supply  
VIA: David Taylor, P.E., Director, Department of Water Supply  
SUBJECT: HAMAKUAPOKO WELLS - UPDATE

Pump Installation and Water Quality Testing: New well pumps for both wells will be installed and able to operate by September 30, 2013. Water quality testing will also be complete before September 30, 2013.

GAC maintenance: New Carbon and other GAC maintenance will be completed within the pump installation time frame.

Environmental Assessment: The EA should be submitted for final 30 day challenge period by May 1, 2013, FONSI (Finding Of No Significant Impact) June 1, 2013.

Tank design: Tank design will be done in-house and bids for construction will be in September 2013.

The Hamakuapoko wells could be run on an emergency basis prior to completion of the new tank. Therefore water could be pumped to the Kamole Water Treatment Facility by September 30, 2013.

cc: Paul J. Meyer, Deputy Director  
Herb Chang, Engineering Program Manager

*"By Water All Things Find Life"*