

SCR104/SR70

Measure Title: URGING THE DEPARTMENT OF LAND AND NATURAL RESOURCES AND THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION TO RECOGNIZE THE INCREASING THREAT THAT OCEAN VESSELS PRESENT TO HUMPBACK WHALES WITHIN THE HAWAIIAN ISLANDS HUMPBACK WHALE NATIONAL MARINE SANCTUARY THROUGH STRONGER SAFETY, PENALTY, MONITORING, AND REPORTING REQUIREMENTS.

Report Title: Department of Land and Natural Resources; National Oceanic and Atmospheric Administration; Hawaiian Islands Humpback Whale National Marine Sanctuary; Vessel Restrictions

Description:

Companion:

Package: None

Current Referral: WTL, WAM

Introducer(s): HEE

<u>Sort by Date</u>		Status Text
3/12/2013	S	Offered.
3/19/2013	S	Referred to WTL, WAM.
3/21/2013	S	The committee(s) on WTL has scheduled a public hearing on 03-27-13 9:45AM in conference room 225.

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

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**Testimony of
WILLIAM J. AILA, JR.
Chairperson**

**Before the Senate Committee on
WATER AND LAND**

**Wednesday, March 27, 2013
9:45 A.M.
State Capitol, Conference Room 225**

**In consideration of
SENATE CONCURRENT RESOLUTION 104/SENATE RESOLUTION 70
URGING THE DEPARTMENT OF LAND AND NATURAL RESOURCES AND THE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION TO RECOGNIZE
THE INCREASING THREAT THAT OCEAN VESSELS PRESENT TO HUMPBACK
WHALES WITHIN THE HAWAIIAN ISLANDS HUMPBACK WHALE NATIONAL
MARINE SANCTUARY THROUGH STRONGER SAFETY, PENALTY,
MONITORING, AND REPORTING REQUIREMENTS.**

Senate Concurrent Resolution 104/Senate Resolution 70 urge the Department of Land and Natural Resources (Department) and the National Oceanic and Atmospheric Administration (NOAA) to recognize increased vessel threats to humpback whales, and to increase the approach distance, impose a speed limit, document vessel divergence in log books, and increase the fines.

The Department appreciates the intent of these resolutions and offers the following comments.

The Department recognizes the Legislature's support for Hawaii's wildlife and we are currently working with NOAA to determine the best path forward in dealing with the issue of vessel-whale interactions in a way that reduces the risk of injury to both humans and whales. Efforts to reduce whale strikes are likely be more effective if developed and implemented collaboratively with the shipping industry, other agencies, experts, biologists, and the public.

As part of this process (and in conjunction with NOAA) we are preparing a Sanctuary management plan that considers a variety of approaches to maintaining healthy humpback whale populations. We will evaluate potential management actions in an Environmental Impact Statement (EIS), including an analysis of ecological, cultural, and socioeconomic impacts.

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ESTER KIA'AINA
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAIKOOLAWA ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Please note that the maximum penalty for approaching within one hundred yards of a humpback whale is \$140,000, not \$100,000. The Department expects to have the draft plan and draft EIS available by the 2014 Legislative Session.

HAWAIIAN ISLANDS HUMPBACK WHALE NATIONAL MARINE SANCTUARY

Testimony of
Dr. Malia Chow
Sanctuary Superintendent

Before the Senate Committee on
WATER AND LAND

Wednesday, March 27, 2013
9:45 A.M.

State Capitol, Conference Room 225

In consideration of
**SENATE CONCURRENT RESOLUTION 104/SENATE RESOLUTION 70
URGING THE DEPARTMENT OF LAND AND NATURAL RESOURCES AND THE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION TO RECOGNIZE THE
INCREASING THREAT THAT OCEAN VESSELS PRESENT TO HUMPBACK WHALES
WITHIN THE HAWAIIAN ISLANDS HUMPBACK WHALE NATIONAL MARINE
SANCTUARY THROUGH STRONGER SAFETY, PENALTY, MONITORING, AND
REPORTING REQUIREMENTS.**

I would like to thank the Committee on Water and Land for your efforts to call attention to this important matter. As you are aware, NOAA's Office of National Marine Sanctuaries (ONMS) administers the Hawaiian Islands Humpback Whale National Marine Sanctuary to protect the humpback whale in Hawaiian waters in partnership with the State of Hawaii through the Department of Land and Natural Resources. ONMS is responsible for implementing the National Marine Sanctuaries Act (NMSA) which provides the legal authority for protecting and conserving sanctuary resources.

The National Marine Sanctuaries Act requires NOAA to periodically review and evaluate the implementation of sanctuary management plans and goals for each national marine sanctuary. NOAA must revise management plans and regulations as necessary to ensure that national marine sanctuaries continue to best conserve, protect, and enhance nationally significant living and cultural resources.

The Hawaiian Islands Humpback Whale National Marine Sanctuary is currently involved in a management plan review that began back in 2010. This process has involved extensive public engagement and input to ensure that the new sanctuary management plan addresses the needs and concerns of the people of Hawaii. We anticipate that a draft revised management plan and an associated environmental impact statement is expected to be shared with the public for review and input at the end of 2013. A final plan is targeted for completion in 2014.

Humpback Whale protection was identified by the public as a priority issue that the sanctuary should address in its management plan review. NOAA working in partnership with DLNR is committed to dealing with the issue of vessel-whale interactions in a way that reduces the risk of injury to both humans and whales.



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NOAA and the State of Hawai'i - a Partnership for
Protection

E-mail: hihumpbackwhale@noaa.gov Web site: hawaiiumpbackwhale.noaa.gov

HAWAIIAN ISLANDS HUMPBACK WHALE NATIONAL MARINE SANCTUARY

The sanctuary has already taken many steps to address this issue. Management strategies currently being used by the sanctuary include:

- An outreach and education campaign to inform vessel operators on how to safely and legally operate on the water during humpback whale season. This includes a statewide series of boater workshops and the distribution of educational materials related to boating safety to Hawaii's ocean industry.
- Interagency collaborations directed towards reducing the threat from vessel traffic to humpback whales.

The Office of National Marine Sanctuaries is committed to evaluating the risks posed by vessel strikes, determining the appropriate management response and will work with our partners to develop and implement management recommendations that are most likely to succeed in reducing the threat, which could include vessel speed restrictions.

We appreciate the opportunity to provide input on this important issue.

Mahalo nui loa,



Malia Chow, PhD
Sanctuary Superintendent



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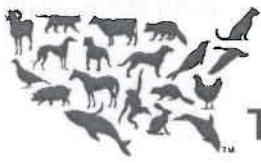
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Protection

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**THE HUMANE SOCIETY
OF THE UNITED STATES**

TO: Honorable Chair Solomon, Vice-Chair Shimabukuro and Committee Members
Senate Water and Land Committee, 3-27-13, 945am, Rm 225

RE: Support for SCR 104/SR 70; Urging DLNR and NOAA to recognize the increasing threat that ocean vessels present to Humpback Whales

Submitted by: Inga Gibson, Hawaii State Director, The Humane Society of the United States, P.O. Box 89131, Honolulu, HI 96830, igibson@hsus.org, 808-922-9910

We ask for your support for SCR104/SR70 that recognizes the threat to humpback whales from collisions with vessels in Hawai'i and urges the National Oceanographic and Atmospheric Administration (NOAA) to protect humpbacks by instituting stronger measures and more active enforcement.

The designation of the Hawaiian Humpback National Marine Sanctuary was recognition by NOAA that our waters are critical to the survival of this endangered species. Humpbacks from both the Pacific Northwest and those who summer in Alaska spend the winter and give birth in our waters. Many of them aggregate off the western coast of Maui. These mothers and their newborns spend much time at or near the surface so are vulnerable to being struck by vessels.

The NOAA Sanctuary website states that “[o]ver the last decade, reports of vessel collisions with humpback whales in Hawaii have increased.” Federal regulations in the Sanctuary currently prohibit vessels from approaching humpback whales within 100 yards and the Sanctuary recommends (but does not require) vessel speeds of 13 knots or less in the Sanctuary. Although NOAA has sponsored workshops to educate vessel operators, humpback whales continue to be struck. This resolution documents a number of collisions, including three incidents within 24 hours during the month of January of this year. However, the Maui News (February 26, 2013, <http://www.mauinews.com/page/content.detail/id/570199/Scientists-seeking-to-slow-boats-to-spare-humpback-whales.html?nav=5031>) additionally reports that there have been nine vessel-humpback collisions just since December, with eight of them in a one month period. Some of these have involved mothers and their calves.

We understand that the federal government is considering mandatory speed limits for the Sanctuary that may still allow vessels to travel at 16 miles per hour. In many cases, NOAA has recognized that even lower speed limits are necessary to protect female whales and their young. To protect North Atlantic right whales and their calves on the east coast of the U.S., vessels are required to use speeds of 10 knots or less in areas and seasons of high use by the whales

We agree that mandatory speed limits are necessary. Furthermore, a study of vessel behavior by researchers from the Stellwagen Bank National Marine Sanctuary on the U.S. east coast found that whale watching vessels often ignored mere guidelines for speed in the vicinity of whales, with up to 92 percent non-compliance when in close proximity to whales. It is clear that mandatory speed limits, that are more readily enforced, are important to protect humpbacks and their young in our waters.

Thank you for your consideration of this testimony.

LOUISE HERMAN – SCR104/SR70 – COMMENTS

1. "Kohola" is a generic term for whale, and originally did not specifically refer to the humpback whale. The word is similar to *tofua'a* and *tafora* of the Tongans and Tikopeans, respectively, and to the *tohara* and *tafola*, respectively, of the Tahitians and Samoans, all of which mean "whale," and not humpbacked whale. In the 1971 edition of Pukui and Elbert's "Hawaiian Dictionary," "Kohola" is defined simply as "whale." With the increasing public awareness and popularity of the Hawaiian humpback whales beginning in the late 1970s, the term "Kohola" began to take on the meaning of "humpback whale," and in the 1986 edition of the Pukui and Elbert dictionary, "Kohola" is now defined as "humpbacked whale."

However, in 1987 the Hawaiian Lexicon Committee was formed in Hilo (mamaka@leaki.uhh.hawaii.edu) and in 2003 they published Mamaka Kaiāo "A Modern Hawaiian Vocabulary: A compilation of Hawaiian words that have been created, collected, and approved by the Hawaiian Lexicon Committee from 1987 through 2000." In that compilation humpback whale in Hawaiian is now "Kohola kuāpi'o" or literally arched-back whale. Thus, the Committee apparently recognized that Kohola by itself did not mean humpback whale, and defined a new explicit Hawaiian term.

2. Similarly, "Palāoa" was defined simply as "whale" in the 1971 edition of Pukui and Elbert, but was also used in reference to sperm whale teeth as in the whale tooth pendant worn by the all'i, *lei niho palāoa*." In the 1986 edition of Pukui and Elbert, however, palāoa is defined as "sperm whale," probably for the same reason (increasing public awareness of whales) the kohola took on the meaning of humpback whale. The Mamaka Kaiāo does not mention palāoa or sperm whale.

3. "Palaoa" is mentioned only twice in the Kumulipo, in the First Era, sixteenth verse and seventeenth verse. "Kohola" is not mentioned at all in the Kumulipo.

4. According to my research, there are no petroglyph records of whales, and legends and rituals about whales are absent or are imported from other Polynesian islands. Below is an excerpt from my cited 1979 article (p. 6):

"In 1799, estimates of the Islands' populations were made by the newly arrived Europeans. Maui, with from 40,000 to 75,000 inhabitants, was second in numbers only to the island of Hawaii (Schmitt 1968). Lahaina housed 4000 to 8000 inhabitants. Each winter, the residents of Lahaina should have had many opportunities to observe the whales disporting just offshore, were the whales distributed previously as they are today. Yet, examination of Hawaiian legends, myths, ceremonies, and rituals (Beckwith 1970, Fornander 1969, Kirtley 1971), their petroglyph drawings (Cox and Stasack 1970), the historical writings of early nineteenth century Hawaiians (Malo 1951), and the Hawaiian language (Pukui and Elbert 1971), fails to yield evidence that humpback whales were known to pre-nineteenth-century Hawaiians living anywhere in the Islands."

5. Thus, although not all would agree, humpback whales appear to be relatively recent visitors to the islands. Their first acknowledged presence is in the early 1800s and were certainly present during the heyday of Pacific whaling for sperm whales from approximately 1820-1860, as newspaper advertisements urged whaling ship to come to Lahaina and to take the whales that are abundant there. Of course, the whalers having recently returned from perhaps several years of sperm whaling in Japan waters or "on the line" were not interested in humpbacks. However, several local parties did begin whaling for humpbacks in the Auaua channel from approximately 1835 to 1860, or thereabouts. Some of the whales were flensed in

the area that is now . Whales were presn Below is an excerpt from the summary and discussion section of my cited 1979 article (p. 11):

"This historical review suggests that humpback whales first made their appearance in the Hawaiian habitat they now occupy less than 200 years ago. Seemingly, the whales were unknown to the Hawaiians of the pre-European era before 1778. We cannot definitely dismiss the alternative possibility that the Hawaiians simply paid no attention to the whales for more than 1000 years, but it seems to this writer as difficult to account for such a vagary in human behavior as to accept the possibility of a recent habitat change by the whales. Were archaeological digs to uncover ancient bone remnants of mysticete whales or baleen plate, the situation would change, but so far this has not been the case."

Piikea Tomczyk

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 26, 2013 12:01 PM
To: WTLTestimony
Cc: jeff@mauidiveshop.com
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SCR104

Submitted on: 3/26/2013

Testimony for WTL on Mar 27, 2013 09:45AM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Jeffrey Strahn	Maui Dive Shop	Oppose	No

Comments: Please do not advance this bill. The speed limits 15 knots are to low for smaller vessels and a 200 radius for whales is to far for whale watching.

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Piikea Tomczyk

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SCR104

Submitted on: 3/26/2013

Testimony for WTL on Mar 27, 2013 09:45AM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
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Marjorie Ziegler	Conservation Council for Hawai'i	Support	No
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Comments:

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Piikea Tomczyk

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SCR104

Submitted on: 3/26/2013

Testimony for WTL on Mar 27, 2013 09:45AM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
david e. barker	maui trailer boat club	Oppose	No

Comments: Aloha, As Commodore of our club I am speaking for our club. We are opposed of this bill as written. We are not opposed to the protection of the whales, even though their population continues to increase. With the increase of whales in the local waters it is becoming more difficult for the fisherman to transit to the fishing grounds and maintain the current 100 yard distance from the whales as they surface to breath. Setting a max defined speed is not prudent non is it safe to class all vessels into one category, every vessel is manufactured differently and preforms and operates safely at different speeds as to which it was designed to operate. My 24' deep vee boat empty will not plan until I reach a speed of 13 knots and as I add weight the planning speed increases. The United States Coast Guard recognizes this and states the safe speed is determined by the vessel and the sea conditions without determining a set knot speed. We have ample laws in place now to protect the whales, what we need is to have enforcement of our current laws, not more laws that may or may not be enforced. Everyday that I am on the water I see people approaching the whales and getting as close as to not hitting them to either swim with or get close-up pictures. There have not been any reported whale strikes by sport fisherman, there have been encounters where the fisherman is at anchor bottom fishing when the whales approach and rub up against or tail slap the boats, which is not at the control of the fisherman. Thank you for your time, I would to say again that we have current laws in place to protect the whales, we do not have enforcement of the laws. The problem is the charter boats that target the whales and purposely operate close to the whales that is causing the strikes and problem. david e. barker commodore maui trailer boat club

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Piikea Tomczyk

From: mailinglist@capitol.hawaii.gov
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SCR104

Submitted on: 3/23/2013

Testimony for WTL on Mar 27, 2013 09:45AM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
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Cynthia Kennedy	Individual	Support	No
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Comments:

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Nina Monasevitch - INDIVIDUAL – Support

March 26, 2013

Testimony on SCR104

I fully support speed limits to help protect whales in their mating and nursery grounds. Published research documents that speed is the main factor in vessel strikes. As well, speed limits in other areas have helped reduce vessel collisions with whales. It is imperative for the well-being of the whales that speed limits be made and enforced.

Regarding increasing the required distance between an approaching vessel and humpback whale from 100 to 200 yards: It is a good idea in theory. However, humpback whales are very curious and often approach boats on their own. I have experienced this dozens of times personally. Just last week on Kauai a tour company had two whales encircling and rubbing the boat for almost two hours. If whales approach a vessel within 100 yards it is safest to stop the vessel.

So regarding (3) (A) It would be more disruptive to the whales for the vessel to try to move away if the whales choose to approach a vessel.

In my experience the main issue is captains chasing whales. Again, speed is the documented number one factor involved in vessel strikes. For a short synopsis on the science see:

http://www.koholaleo.com/vessel_strikes.html

Thank you for your consideration on this important matter.
Nina Monasevitch Lihue, Kauai