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GOVERNOR OF HAWAII



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

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**Testimony of  
CARTY S. CHANG  
Interim Chairperson**

**Before the House Committee on  
OCEAN, MARINE RESOURCES, & HAWAIIAN AFFAIRS**

**Wednesday, February 18, 2015  
9:00 AM  
State Capitol, Conference Room 325**

**In consideration of  
HOUSE BILL 869  
RELATING TO SPINNER DOLPHINS**

House Bill 869 proposes to prohibit any person from taking a spinner dolphin. **The Department of Land and Natural Resources (“Department”) appreciates the intent of this measure and offers the following comments.**

The Department has adopted Chapter 13-124, Hawaii Administrative Rules (HAR), which lists the spinner dolphin as an indigenous mammal under Exhibit 1, page 9. However, the increasing concerns over human and vessel-based interactions with spinner dolphins, suggest the Department’s administrative rules could be strengthened and updated to complement existing federal regulations on its marine indigenous wildlife, particularly spinner dolphins. The Department is considering ways to strengthen its administrative rules, increase collaboration with the National Oceanic and Atmospheric Administration to address spinner dolphin harassment, and explore additional mechanisms to access federal funding for the protection of spinner dolphins.

**CARTY S. CHANG**  
INTERIM CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

**DANIEL S. QUINN**  
INTERIM FIRST DEPUTY

**W. ROY HARDY**  
ACTING DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
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KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS



**Conservation Council  
for Hawai'i**

*Hawai'i's voice for wildlife*

*Kō Hawai'i / leo no nā holoholona lōhiu*



Testimony Submitted to the  
House Committee on Ocean, Marine Resources, and Hawaiian Affairs  
Hearing: Wednesday, February 18, 2015 9 am, Room 325

In Support of HB 869 Relating to Spinner Dolphins

Aloha, Chair Ing, Vice Chair Lowen, and Members of the Committee. The Conservation Council for Hawai'i supports HB 869, which prohibits the taking of a spinner dolphin. Snorkel tours and others harass spinner dolphins when the dolphins are sleeping. For years, concerned citizens tried to address this situation by communicating with tour companies to no avail.

Taking of marine mammals without a permit (including harassment) is already a violation of federal law; it should also be a violation of state law.

Human activities should not interfere with essential behavior, such as sleeping, resting, feeding, and breeding. HB 869 encourages responsible wildlife viewing and discourages harassment and other harmful actions. Please kokua.

Mahalo for the opportunity to testify.

Sincerely,

Marjorie Ziegler



*Conservation Council for Hawai'i is a nonprofit, environmental membership organization dedicated to protecting native Hawaiian plants, animals, and ecosystems for future generations.*

*Established in 1950 and based in Honolulu, CCH is one of the largest and most effective wildlife organizations in Hawai'i with more than 5,000 members and supporters, including concerned citizens, educators, scientists, government agencies, and elected officials.*

*Through research, education, service, organizing, and legal advocacy, CCH works to stop the destruction of native wildlife and wild places in Hawai'i.*

*Since 1973, CCH has served as the Hawai'i state affiliate of the National Wildlife Federation.*

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President: Hannah Kihalani Springer | Vice-President: Julie Leialoha | Treasurer: Bianca Isaki | Secretary: Wayne Tanaka  
Directors: Rick Barboza | Ryan Belcher | Maka'ala Ka'auomoana | Koalani Kaulukukui  
Executive Director: Marjorie Ziegler | Administrator: Jonnetta Peters





COMMITTEE ON OCEAN, MARINE RESOURCES, & HAWAIIAN AFFAIRS

Rep. Kaniela Ing, Chair  
Rep. Nicole E. Lowen, Vice Chair

DATE: Wednesday, February 18, 2015  
TIME: 9:00 AM  
PLACE: Conference Room 325

**Speaking in Opposition of HB 869 as Proposed**

RE: RELATING TO SPINNER DOLPHINS.

Chair Ing, Vice Chair Lowen and Members of the OMH Committee:

My name is James E. Coon, President of the Ocean Tourism Coalition. The OTC represents over 300 small ocean tourism businesses state wide. Most of these are family businesses which are locally owned and operated. Many of them have been in business for several decades and are an important and valued part of their respective communities. We want to see Dolphins thrive in Hawaii but think this bill has serious flaws.

The Ocean Tourism Industry depends on an environment that is healthy and protected. We agree that wise stewardship rules and wildlife viewing guidelines continue to evolve that will both protect Marine Mammals and the environment and not harm the many stakeholders that depend on this same environment for their survival. Some of the issues that should be considered include:

- Spinner Dolphin are already Federally Protected under the Marine Mammal Protection Act (MMPA)
- One is that fines within the Whale Sanctuary Waters have a 5X Multiplier which makes a conviction very costly.
- It should be left to the Federal Government working with the State of Hawaii to determine what the appropriate guidelines for wildlife viewing and penalties should be based on good science for this specific species.
- There is already an MOA between NOAA/NMFS and sister Federal and State enforcement agencies to enforce the MMPA
- While intentionally killing or wounding a dolphin should have hefty fines which are already covered under the MMPA, the "take" or "harass" portions (harass, harm, pursue, or attempt to engage in such action) are not well defined and should exempt innocent passage of vessels etc.
- The penalties proposed in HB 869 (Class C Felony, \$50,000 fine with a potential 5X multiplier in Sanctuary waters plus potential MMPA Fines) seem far too harsh for anything but the most egregious action.

OTC could support a Resolution which let the Sanctuary Advisory Council make recommendations to the Federal Government and the DLNR to continue to develop appropriate Dolphin human interaction.

We humbly ask you to not pass this bill and consider a Resolution instead.

Sincerely,

James E. Coon, President OTC



Kahikolu Ltd., d/b/a Quicksilver  
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Lahaina, HI 96761  
(808) 667-0990 Office  
(808) 667-6707 Fax

**Opposition Testimony To: House Committee on Ocean, Marine Resources, & Hawaiian Affairs  
Kaniela Ing, Chair**

**AND**

**House Committee on Judiciary  
Karl Rhoads, Chair**

**From: Zachary LaPrade  
General Counsel, Quicksilver Charters**

**Date/Time of Hearing: February 18, 2015, 9:00 AM**

**Measure No. and Title: HB 869, Relating to Spinner Dolphins**

Chair Ing, Chair Rhoads and Members of the Committees:

I am General Counsel for Quicksilver Charters, Frogman Charters and their affiliates (the “Companies”). The Companies employ close to 100 people in Hawaii’s boating and tourism industries. We oppose this bill as written

**“Pursue” and “Harass” are Vague and Ambiguous**

The definition of “taking” contains two ambiguous terms that lack sufficient detail for a person to understand the scope of the statute. The ambiguous terms are “*pursue*” and “*harass*”. A statute that imposes felony criminal charges on violators must be clear and unambiguous. Also, because the terms “pursue” and “harass” are vague, the legislature may be subjecting an innocent class of boat operators to a statute that is meant to apply to poachers and similar illegal groups. Please consider the following scenarios:

- Does the term “pursue” or “harass” include navigating a vessel to the last-known coordinates of a Spinner Dolphin Pod?
- Does the term “pursue” or “harass” include following a Spinner Dolphin Pod that is traveling?
- Does the term “pursue” or “harass” include attempting to locate a Spinner Dolphin Pod for the purpose of permitting vessel passengers to take photos?

The remaining definitions of a “taking” are unambiguous (shoot, kill, hunt etc.). However by including undefined terms like “*pursue*” and “*harass*”, the statute extends beyond the scope of protecting Spinner Dolphins from poachers and similar illegal groups, which leads to unnecessary convictions and expensive environmental litigation.

### **The Statute Lacks Sufficient Specificity and Standards**

Other terms in the statute that seem innocuous could lead to confusion. For instance, the term “persons” does not take into account that a vessel usually contains many different people: guests, crew and captains. Also, the state of mind element is not clear. Does the legislature intend for the “knowingly” standard to have the same meaning as set forth in HRS, §702-206? Finally, the statute lacks a standard of proof.

### **Conclusion**

The Companies, and most likely the entire industry, recognize the importance of Spinner Dolphins to the marine ecosystem and tourism industry. But any statute that imposes strict penalties must be carefully drafted. This bill needs additional drafting and the Companies do not support it as written.

From: Teri <teri@jacksdivinglocker.com>  
Sent: Tuesday, February 17, 2015 11:04 AM  
To: omhtestimony  
Subject: Testimony-HB 869: Regarding Spinner Dolphins

To: House Committee on Ocean, Marine Resources, & Hawaiian Affairs

Rep. Kaniela Ing, Chair  
Rep. Nicole Lowen, Vice Chair  
AND  
House Committee on Judiciary  
Karl Rhoads, Chair

From: Teri Leicher: Managing Partner of Jack's Diving Locker Kona, Hawaii

Date/Time of Hearing: February 18, 2015, 9:00 AM (conference room 325)  
Bill No. and Title: HB 869, Relating to Spinner Dolphins

Re: opposition to HB 869 as currently written

Aloha Chair Ing, Vice Chair Lowen, Chair Rhoads and Members of the Committees:

My name is Teri Leicher, managing partner of Jack's Diving Locker. I also have been active either currently or in the past on several boards including, OTC (Ocean Tourism Coalition), HIRSA (Hawaiian Island Recreational Scuba Association), HIIWNMS (Hawaiian Island Humpback Whale National Marine Sanctuary advisory committee), KKCC (Kona Kohala Chamber of Commerce), MKF (Malama Kai Foundation), DLNR's REC/LAS, etc.

I am writing to oppose HB 869 relating to spinner dolphins as it is currently written for the following reasons.

1. The use of the term "Take/Harrass" is too vague. For consistency and better clarification, It should be the same term as "take" is used in HB 1339: Relating to Manta Rays, which is quite clear.

I agree there should be hefty fines if someone kills, injures, touches, feeds, or tries to capture a dolphin. It is also unclear as to whether or not a dolphin approaching a human/boat (which happens on a daily basis) would be illegal. If so ... that will create a nightmare for our legal system, not to mention the voters and visitors being accused.

2. In Kona, Dolphins approach humans on a daily basis. As an example, If you watch the 2013 Ironman Triathalon on TV, you will see that a large pod of dolphins escorted the first hundred swimmers for almost half of the course. With the vague interpretation of the HB 869, all of those Triathletes could have been arrested and going through our court system.

30 years ago, people used to hunt turtles. Dolphins were often shot for sport. I know people who used to do this. I personally found a dead Spinner Dolphin who had been shot. 30 years ago if you saw a turtle, it was a speck in the distance, swimming away from you. Dolphins avoided people. Now with the current protections we have for the animals, they know they are protected. You can lay near a turtle on the beach and photograph it. You can go for a swim, snorkel, canoe or SUP and have dolphins surrounding you whenever they feel like it. They feel safe. It would be terrible to be arresting community members or visitors because a dolphin chose to swim by them.

Many studies show the number of dolphins have increased. Se parate pods are consistently in several bays along our coastline where 20+ years ago, we rarely saw them in these bays. Ask any active water person who has

lived in Kona the last 30 years. It's very obvious now.

3. HB 869 should no be different from the current Marine Mammal Protection Act. It will cause confusion.

4. There is unquantified, biased and flawed information regarding research conducted on Dolphins as specified in this bill. There is research that is not referred to in the bill. There is a lot of research available. Depending on which researcher's data you read, the information does not always jive. Many researchers conducted studies from the surface or land and not consistently on a daily basis. It was a sampling of info that is often not correct. Unfortunately, Gov. agencies appear to fund the research that goes along with what they want to try to prove. I call it "research with blinders". We need to base important decisions like this on unflawed, good science and work as a community to determine wildlife viewing measures. Viewing guidelines have been developed to some degree through CORAL in the past. It has helped.

5. The fines should be consistent with the current MMPA.

6. There is currently a MOA between NOAA/NMFS and Federal and State agencies to enforce the MMPA. This bill is not needed. Why add a conflicting new law to an already complicated large volume of laws.

Mahalo for the opportunity to testify.

Teri Leicher



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## ing2-Mary

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Friday, February 13, 2015 7:30 PM  
**To:** omhtestimony  
**Cc:** babyjean@hotmail.com  
**Subject:** Submitted testimony for HB869 on Feb 18, 2015 09:00AM

### **HB869**

Submitted on: 2/13/2015

Testimony for OMH on Feb 18, 2015 09:00AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Ronnie Perry	Individual	Support	No

Comments: I strongly support this bill. We need to respect other forms of life. Human activities that cause the decline or harassment of other species should be controlled. Please vote for this bill.  
Mahalo, Ronnie Perry

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## ing2-Mary

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Saturday, February 14, 2015 7:10 PM  
**To:** omhtestimony  
**Cc:** ndavlantes@aol.com  
**Subject:** \*Submitted testimony for HB869 on Feb 18, 2015 09:00AM\*

### **HB869**

Submitted on: 2/14/2015

Testimony for OMH on Feb 18, 2015 09:00AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Nancy Davlantes	Individual	Support	No

### Comments:

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## ing2-Mary

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Friday, February 13, 2015 6:24 PM  
**To:** omhtestimony  
**Cc:** etvuong@hotmail.com  
**Subject:** \*Submitted testimony for HB869 on Feb 18, 2015 09:00AM\*

### **HB869**

Submitted on: 2/13/2015

Testimony for OMH on Feb 18, 2015 09:00AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Erik Vuong	Individual	Support	No

#### Comments:

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ing2-Mary

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From: mailinglist@capitol.hawaii.gov  
Sent: Tuesday, February 17, 2015 9:13 AM  
To: omhtestimony  
Cc: matt.htfa@gmail.com  
Subject: Submitted testimony for HB869 on Feb 18, 2015 09:00AM

Categories: Created PDF

**HB869**

Submitted on: 2/17/2015

Testimony for OMH on Feb 18, 2015 09:00AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Matthew Ross	Individual	Oppose	No

Comments: As a fisherman and diver, I enjoy seeing dolphins in the ocean and appreciate their importance to the local economy. I do not wish so see them killed or harassed. However, these animals are already fully protected by the Marine Mammal Protection act. As such, this law serves no purpose. We do not need to waste more time and public resources on an issue that's already been addressed on the federal level. Please do not pass this bill.

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ing2-Mary

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From: mailinglist@capitol.hawaii.gov  
Sent: Tuesday, February 17, 2015 11:54 AM  
To: omhtestimony  
Cc: mendezj@hawaii.edu  
Subject: \*Submitted testimony for HB869 on Feb 18, 2015 09:00AM\*

**HB869**

Submitted on: 2/17/2015

Testimony for OMH on Feb 18, 2015 09:00AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Javier Mendez-Alvarez	Individual	Support	No

Comments:

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ing2-Mary

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From: mailinglist@capitol.hawaii.gov  
Sent: Tuesday, February 17, 2015 10:42 AM  
To: omhtestimony  
Cc: cathyg@animalrightshawaii.org  
Subject: \*Submitted testimony for HB869 on Feb 18, 2015 09:00AM\*

**HB869**

Submitted on: 2/17/2015

Testimony for OMH on Feb 18, 2015 09:00AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Cathy Goeggel	Animal Rights Hawai'i	Support	No

Comments:

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ing2-Mary

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From: mailinglist@capitol.hawaii.gov  
Sent: Wednesday, February 18, 2015 6:54 AM  
To: omhtestimony  
Cc: igibson@hsus.org  
Subject: \*Submitted testimony for HB869 on Feb 18, 2015 09:00AM\*

**LATE**

**HB869**

Submitted on: 2/18/2015

Testimony for OMH on Feb 18, 2015 09:00AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Inga Gibson	Humane Society of the US-Hawaii	Support	No

Comments:

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ing2-Mary

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From: mailinglist@capitol.hawaii.gov  
Sent: Wednesday, February 18, 2015 12:34 AM  
To: omhtestimony  
Cc: cariagacora@yahoo.com  
Subject: \*Submitted testimony for HB869 on Feb 18, 2015 09:00AM\*

**LATE**

**HB869**

Submitted on: 2/18/2015

Testimony for OMH on Feb 18, 2015 09:00AM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Nercy Kramars	Individual	Support	No

Comments:

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Kenneth W. LeVasseur  
47-389 Ahaolelo Road, Kaneohe, Hawai'i 96744

**LATE**

Re: HB869 - Relating to Spinner Dolphins

Aloha and mahalo for the opportunity to testify in favor of HB869.

The popular market for swimming with dolphins in the wild in Hawai'i can cause serious disruption in the dolphin's life. There are so many people that want to be an ambassador to dolphins or just their best friend. But there is very little education so they can grasp the issues they are involved in. For example, "Dolphin-Huggers are so focused on "sharing" with the dolphins through hugs and dorsal rides and "expressing" their love of dolphins that they do not listen to the dolphin. Dolphins do not like to be hugged or anyone holding on to their dorsal fin. These actions scare dolphins and make them very nervous because it impedes their movement. The only time you should hold on to a dolphin's dorsal fin is if you are noticeably injured and the dolphin has come to rescue you. If the Huggers knew that through education they would be more willing to approach dolphins more appropriately. Dolphin-Huggers have loved the Spinners out of Kealakekua Bay on the Big Island into adjacent bays that do not have the benefits of Kealakekua and our own Makua dolphins have been forced further out into the bay to escape those who love them. The problem can be explained this way.

There are at least three ways dolphins say "no". Most prevalently is the "tail slap". The tail slap is an active threat display that says "stop", "stay away" and "noooo". To the uninitiated it is cute and they play "patty cake" back with them - not good, but it does show the Huggers lack of understanding. The second is a static display, the sigmoid position. The sigmoid comes from the shark's pre-attack position. The shark's dorsal lobe of their caudal fin is larger than the bottom and when they are about to attack, sharks cock their body in a sigmoid so they can push off of that larger dorsal lobe of their tail fin. Dolphins have adopted that sigmoid position to threaten and say no to anyone who will listen. Again, the uninitiated think that is a dolphin posing, like for a picture because it is static and assume that it is a nice gesture and they want to approach the dolphin. Actually, when you turn and immediately leave the area, the dolphin may sometimes realize you understand it is saying no and then initiate contact for a great swim together, at least that has happened to me. Finally, dolphins are vulnerable when giving birth and one method of protecting the process from sharks is to kick-up mud from a muddy bottom. This puts the dolphin in the advantage because they can echolocate on the shark, but the shark cannot see the dolphin giving birth. The "midwife" is the one managing all this and if you come upon them in a boat, the midwife tries to tell you to leave by swimming on the side imitating a shark so their tail fluke and pectoral fin look like a shark's caudal fin and dorsal fin. She is trying to say, "No, go away!" The uninitiated may assume the dolphin is swimming on its side because it is disoriented if they can tell that it is a dolphin swimming on its side (not all can tell), without processing all the clues of the scene. They may try to help and create a problem at this vulnerable time.

These three problems can explain the need for this legislation and also an education program. The legislation alone could cause damage to aspects of our tourism market. If the Department of Business, Economic Development & Tourism and its subsidiary agencies could create a fifteen to twenty minute video on "Protecting our Spinner Dolphins" and have it available in every hotel room and on Olelo so that tourists and residents can see how to protect our spinners. The education would enlist the help of those who want a dolphin experience.

Another, need in the legislation is the creation of three categories of dolphin interaction. Research Permits allow scientists and trained professionals to listen to wild dolphins and understand their behavior. Some of my anecdotes above come straight out of the literature because scientists were listening when dolphins were talking. Another category is to enlist the help of the tour group leaders taking people out to see the dolphins. This would be a Tour Group Permit and require a license for the tour group leader and each leader that takes a subgroup of the tour group out separately. The license would require a full knowledge of all the applicable laws regarding swimming with the dolphins and the licensee would be required to promote the DBEDT education program and participate in updates to the program. The last category is the general public and they are required to follow the laws and regulations regarding swimming with the dolphins.

Whereas the Research Permit allows some exemptions to the interaction limits of the laws and regulations regarding swimming with the dolphins, the Tour Group Permit has no exemptions and a licensee can lose their permit if they are found to have intentionally violated any of the laws and regulations. Losing the license prevents them from advertising and otherwise recruiting customers for dolphin excursions. Losing the license makes them a member of the general public and puts them in jeopardy of the full extent of the consequences of this bill.

Aloha,  
Ken LeVasseur  
239-5875