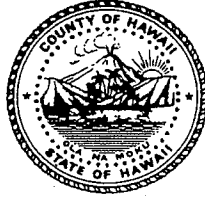


JON HENRICKS
County Clerk



DEPT. COMM. NO. 523

AARON BROWN
Deputy County Clerk

County of Hawai'i
Office of the County Clerk

25 Aupuni Street, Suite 1402 • Hilo, Hawai'i 96720
(808) 961-8255 • Fax (808) 961-8912

July 29, 2021

The Honorable Ronald D. Kouchi, President
Hawai'i State Senate
415 South Beretania Street, Room 409
Honolulu, HI 96813

Dear Senate President Kouchi:

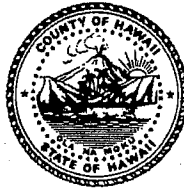
Enclosed please find a copy of Resolution 166-21, adopted by the Hawai'i County Council during its meeting of July 21, 2021.

Sincerely,

Jon Henricks
County Clerk
County of Hawai'i

JH/ra

Enclosure

RESOLUTION NO. 166 21

A RESOLUTION URGING THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION TO PROMPTLY FINALIZE AND ISSUE ITS PUBLICATION OF PROPOSED RULE *"PROTECTIVE REGULATIONS FOR HAWAIIAN SPINNER DOLPHINS UNDER THE MARINE MAMMAL PROTECTION ACT"* (FEDERAL REGISTER CITATION: 81 FR 57854; DOCKET NUMBER: NOAA-2005-0226).

WHEREAS, on October 21, 1972 the Marine Mammal Protection Act ("MMPA") was enacted to protect all marine mammals and prohibit, with certain exceptions, the "take" of marine mammals in United States waters and by United States citizens on the high seas; and

WHEREAS, Congress passed the MMPA in response to increasing concerns among scientists and the public that significant declines in some species of marine mammals were caused by human activities; and

WHEREAS, the MMPA established a national policy to prevent marine mammal species from declining beyond the point where they ceased to be significantly functioning elements of their ecosystems; and

WHEREAS, in implementing the MMPA, the NOAA National Marine Fisheries Service is responsible for the protection of dolphins while the Marine Mammal Commission provides independent, science-based oversight of domestic and international policies and actions of federal agencies addressing human impacts on marine mammals and their ecosystems; and

WHEREAS, in 1994 the MMPA was substantially amended, which included a statutory definition of the term "harassment" as a prohibited activity meaning "any act of pursuit, torment, or annoyance, which has the potential to injure a marine mammal or marine mammal stock in the wild; or has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering"; and

WHEREAS, on August 24, 2016, NOAA published a proposed rule entitled "*Protective Regulations for Hawaiian Spinner Dolphins Under the Marine Mammal Protection Act*" to prohibit swimming with and approaching a Hawaiian Spinner Dolphin within fifty yards (45.7 m) for persons, vessels, and objects, including approach by interception; and

WHEREAS, NOAA Fisheries conducted six public hearings on the proposed rule to collect oral testimony, including two hearings on Hawai'i Island in September 2016 with a public comment period that ended on October 23, 2016; and

WHEREAS, NOAA fisheries extended the public comment period, providing the public with additional time to submit information and comment on the proposed rule by December 1, 2016 deadline; and

WHEREAS, since the close of the extended comment period, this critical rule has not yet been finalized or published; and

WHEREAS, while final publication of the proposed rule remains pending, the easily accessible and predictable Hawaiian Spinner Dolphins continue to endure increasing pressures from wildlife viewing tours, self-guided tourists, residents, and participants in spiritual retreats who seek opportunities to interact and view Hawaiian Spinner Dolphins during their normal resting periods throughout the day; and

WHEREAS, scientific evidence reflects that concerning changes to the behavioral patterns of Hawaiian Spinner Dolphins, such as increase in swimming speeds, aerial behavior, and avoidance, occur when they are closely approached by vessels and swimmers; and

WHEREAS, the industry of viewing Hawaiian Spinner Dolphins in Hawai'i is prevalent and increasing dramatically in West Hawai'i, and now includes aggressive underwater, motorized, and tracking methods to view and chase these precious Dolphins, exacerbating impacts to their behavioral patterns; and

WHEREAS, the Kai Kuleana Network, formed in 2013, is comprised of fifteen West Hawai'i communities that are actively engaged in place-based conservation for people and nature to thrive and solution-oriented actions focused on 'āina momona (healthy vibrant places) in each community; and

WHEREAS, the Kai Kuleana Network has expressed opposition to the proposition made by individuals or businesses that personal interaction with or tour viewing operations of Hawaiian Spinner Dolphins are justified because of cultural or religious practice, further asserting that these types of aggressive activities are not of the Native Hawaiian culture, tradition or religion and constitute harassment of the animals (see Exhibit "A" attached hereto); and

WHEREAS, the delay in publishing the proposed rule has hindered the ability to enforce and address impacts, respond to citizen concerns, report potential violations, investigate, and issue citations while imposing an undue burden upon enforcement officers whose duties have been extremely challenging and, often times, futile during the interim before the regulation is finalized; now, therefore,

BE IT RESOLVED BY THE COUNCIL OF THE COUNTY OF HAWAII that it respectfully urges the National Oceanic and Atmospheric Administration to promptly finalize and issue its publication of proposed rule "*Protective Regulations For Hawaiian Spinner Dolphins Under the Marine Mammal Protection Act*" (federal register document citation: 81 FR 57854; docket number: NOAA-2005-0226).

BE IT FINALLY RESOLVED that the County Clerk shall transmit a copy of this resolution to the Honorable Senator Brian Schatz; Honorable Senator Mazie K. Hirono; Honorable Representative Ed Case; Honorable Representative Kaiali'i Kahele; Ann Garrett, NOAA Assistant Regional Administrator – Pacific Island Regional Office, Protected Resources Division; Martina Sagapolu, NOAA Assistant Director – Pacific Islands Division, Office of Law Enforcement; Adam Kurtz, NOAA Protected Species Management Specialist; Honorable Governor David Y. Ige; Suzanne Case, Chairperson, State of Hawai'i Department of Land and Natural Resources; Honorable Ronald D. Kouchi, Hawai'i State Senate President; Honorable Scott K. Saiki, Speaker of the State of Hawai'i House of Representatives; all members of the Hawai'i Island delegation to the State Legislature; and the mayors of all counties in the State of Hawai'i.

Dated at Kona, Hawai'i, this 21st day of July, 2021.

INTRODUCED BY:



COUNCIL MEMBER, COUNTY OF HAWAI'I

COUNTY COUNCIL
County of Hawai'i
Hilo, Hawai'i

ROLL CALL VOTE

	AYES	NOES	ABS	EX
CHUNG	X			
DAVID	X			
INABA	X			
KĀNEALI'I-KLEINFELDER	X			
KIERKIEWICZ	X			
KIMBALL	X			
LEE LOY	X			
RICHARDS	X			
VILLEGAS	X			
	9	0	0	0

I hereby certify that the foregoing RESOLUTION was by the vote indicated to the right hereof adopted by the COUNCIL of the County of Hawai'i on July 21, 2021.

ATTEST:



COUNTY CLERK CHAIRPERSON & PRESIDING OFFICER

Reference: C-326/Waived RAHHEMC
RESOLUTION NO. 166 21

EXHIBIT A

Kai Kuleana Network- West Hawai'i Island

Kai Kuleana Network

PO Box 1056
Kamuela, HI 96743

April 5th, 2021

David Aku Carruthers
1845 Wasp Blvd Bldg. 176
Honolulu, HI 96818
Sent via email to: david.carruthers@noaa.gov

Re: Human interactions with nai'a (dolphins), koholā (whales), hāhālua (mantas) and manō (sharks) in West Hawai'i

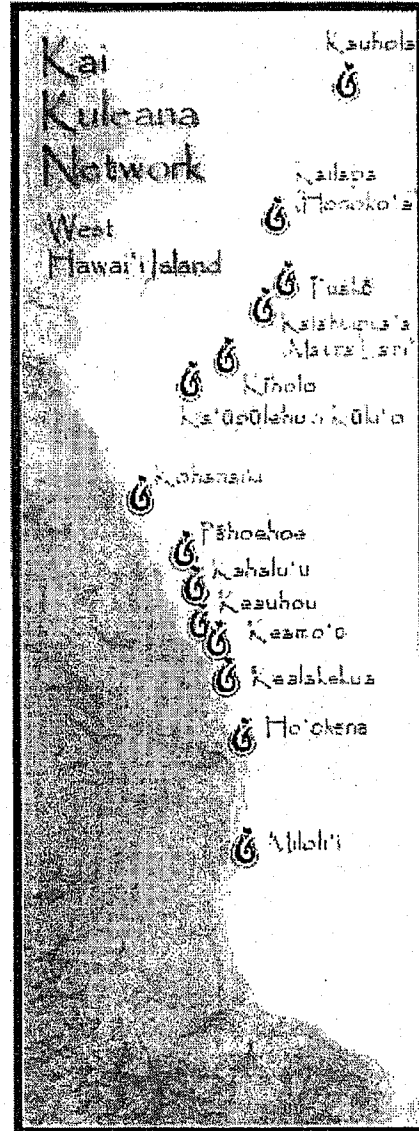
Aloha,

The Kai Kuleana Network would like to comment on culturally appropriate human interactions with nai'a (dolphins), koholā (whales), hāhālua (mantas) and manō (sharks) in West Hawai'i. The Kai Kuleana Network formed in 2013 and is composed of 15 communities in West Hawai'i, from South Kona to North Kohala, that are actively engaged in place-based conservation for people and nature to thrive, and collectively supports efforts to engage in solution-oriented actions to focus on 'āina momona (healthy vibrant places with engaged communities) in each community.

We would like to thank the enforcement officers with the State of Hawai'i Department of Land and Natural Resources and National Oceanographic and Atmospheric Administration with their increased efforts recently to enforce regulations, including the Marine Mammal Protection Act (16 U.S.C. 1361), to protect nai'a, koholā, hāhālua and manō from harassment by humans. Harassment includes any act of pursuit, torment, or annoyance that could injure the animals or **disrupt their normal behavioral patterns**. We would also like to commend those law abiding individuals and businesses that share the oceans with aloha (love) and mālama (care).

It has come to our attention that some individuals or businesses are proposing that the interactions they are encouraging through commercial tour operations or personal interactions are justified by cultural or religious practice, and we would like to express our **opposition** to that

Active Members: Jeffrey Coakley, Kauhola • Diane Maka'ala Kaneali'i, Blossom Pualani Lincoln Maelua, Honokoa/Kailapa • George Robertson, Puakō • Pi'i Laeha, Francis Ruddle, Kalahuipua'a • Ku'ulei Keakealani, Kīholo • Hannah Kihalani Springer, Leina'ala Lightner, Ka'ūpūlehu/Kūki'o • Reggie Lee, Kohanaiki • Malia Kipapa, Pāhoehoe/Kahalu'u/Keauhou • Krista Johnson and Charles Leslie, Nāpo'opo'o/Kealakekua/Honaunau • Charles Young, Ho'okena • Ka'imi Kaupiko, Miloli'i



Kai Kuleana Network- West Hawai'i Island

position. The communities represented by the Kai Kuleana network would like to convey that these types of interactions constitute harassment of these animals and is not a Hawaiian cultural or traditional religious practice in West Hawai'i.

We have collectively witnessed thousands of incidents over the years where individuals and commercial operators are violating these laws, especially related to nai'a (dolphins), even after being warned and cited. Over the past few years, there has been a sharp incline in these incidents concurrent with the increasing numbers of tourists and new marine-based businesses that encourage and support this inappropriate behavior. This is significant, as a single disturbance may seem inconsequential, but nearshore pods frequently experience chronic disturbances throughout the day from commercial dolphin tours and recreational viewers. Dolphin researchers have documented that these pods are engaged by swimmers and boaters over 82% of the time they are present in our waters during the day (Tyne et al. 2017).

We would like to share our position that there is no Hawaiian indigenous cultural nor religious practice, past or present, that allows or encourages interactions between humans and nai'a that involves touching, swimming with or alongside, following, or pursuing these animals. The *only* occasion where direct interaction may be appropriate is when a recognized cultural practitioner, working with federal and state agency partners, assists with a stranding or responds to a potential injury or death of a protected marine species, following strict cultural protocols. There are some cultural practices involving manō (sharks) but again, these are done under strict guidance of indigenous practitioners and is not something taught to the general public.

In addition, these interactions that constitute harassment pose significant safety risks to humans, as it is a common practice by commercial operators to have guests snorkeling in large groups while the boat operators engine is on, resulting in dangerous boating operations that may result in injury to those in the water.

Thank you for the efforts by your agencies to uphold the regulations in place to safeguard these animals from harassment, and the opportunity to share our perspectives from the communities in West Hawai'i.

'O mākou nō me ka 'oia'i'o,

Signed on behalf of the Kai Kuleana Network by lineal descendants and representatives from Kīholo, Kailapa (Honokoa), Ka'ūpūlehu, Kūki'o, Pāhoehoe, Kahalu'u, Keauhou, Kealahou, Nāpo'opo'o, Honaunau, Ho'okena, and Miloli'i.



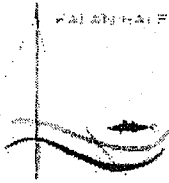
Charles K. Leslie
Kupuna Lawai'a
Nāpo'opo'o, Hawai'i

Malia Kipapa
Kipapa 'Ohana, Pāhoehoe, Kahalu'u, Keauhou

Kai Kuleana Network- West Hawai'i Island

Ka'im Kaupiko

Ka'imi Kaupiko
Pa'a Pono & Kalanihale



Charles Young

Charles Young
KUPA Friends of Ho'okana Beach Park



Hannah Kihalani Springer

Hannah Kihalani Springer
Kama'āina of Ka'ūpulehu, Kona 'Akau



Ku'ulei Keakealani

Ku'ulei Keakealani
Lineal Descendant of Kekaha, North Kona
Cultural Director
Hui Aloha Kiholo



Blossom Pualani Lincoln Maielua

Blossom Pualani Lincoln Maielua
President Kūpapa Community Association



Hui Aloha Kiholo

Diane and Roger Kanealii, Jr.

Diane and Roger Kanealii, Jr
Kawaihae, Hawai'i

Kai Kuleana Network- West Hawai'i Island

CC:

Michael.tosatto@noaa.gov, NOAA Regional Administrator
Elizabeth.osullivan@noaa.gov, NOAA General Counsel
Martina.sagapolu@noaa.gov, NOAA Office of Law Enforcement- Pacific Islands Division, Assistant Director
Ann.garrett@noaa.gov, NOAA Protected Species
David.carruthers@noaa.gov, NOAA Enforcement Officer
Suzanne.case@hawaii.gov, DLNR Chair
jason.k.redulla@hawaii.gov, DOCARE Enforcement Division Chief
Brian.j.neilson@hawaii.gov, DAR Administrator
curt.a.cottrell@hawaii.gov, DLNR State Parks Administrator
adam.kurtz@noaa.gov, NOAA Marine Life Coordinator
mitchd.roth@hawaiicounty.gov, Mayor Hawaii County
parks_recreation@hawaiicounty.gov, Director Hawaii Parks and Recreation