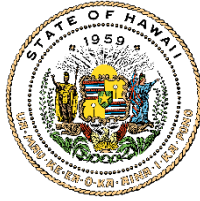


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STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAI'I
DEPARTMENT OF LAND AND NATURAL RESOURCES
KA 'OIHANA KUMUWAIWAI 'ĀINA

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Testimony of
DAWN N. S. CHANG
Chairperson

Before the House Committee on
WATER & LAND

Thursday, April 13, 2023
9:00 AM

State Capitol, VIA VIDEOCONFERENCE, Conference Room 430

In consideration of
SENATE CONCURRENT RESOLUTION 219, SENATE DRAFT 1
REQUESTING THAT THE DEPARTMENT OF LAND AND NATURAL RESOURCES
ADOPT ADMINISTRATIVE RULES REGULATING VESSEL SPEED NEAR
HUMPBACK WHALES

Senate Concurrent Resolution 219, Senate Draft 1 requests that the Department of Land and Natural Resources (Department) adopt administrative rules regulating vessel speed near humpback whales, specifically that all persons operating a vessel other than an inter-island vessel or intra-island vessel as defined in Section 19-41-2, Hawaii Administrative Rules, in state waters shall 1) not exceed 15 knots when the vessel is within an unspecified distance from a humpback whale; 2) not operate the vessel at a speed exceeding six knots when the vessel is within four hundred yards of a humpback whale; 3) ensure that another person on the vessel is acting as a lookout to prevent collisions with humpback whales when the vessel is within an unspecified distance of a humpback whale; and 4) operate the vessel in a manner that is reasonable and prudent to avoid collision with a humpback whale, considering the time of day, time of year, and other relevant factors. **The Department greatly appreciates the intent of this measure to safeguard humpback whales and public safety and provides the comments that the requested administrative rules would be impractical to enforce due to the lack of technology to accurately measure speed limits.**

Humpback whales, or koholā, are ecologically, economically, and culturally important species in Hawai'i. Ensuring safe operation of vessels around humpback whales is important, both for the wellbeing of the whales themselves, as well as for boater safety and enjoyment. In 2021, the Department—through its Divisions of Aquatic Resources, Conservation and Resources Enforcement, and Boating and Ocean Recreation (DOBOR)—partnered with the Hawaiian Islands Humpback Whale National Marine Sanctuary (HIHWNMS), the National Atmospheric

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KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

and Oceanic Administration (NOAA), the Pacific Whale Foundation, the Lāna‘i ferry, and members of the tour boat community to form a “speed limit working group” to identify solutions to prevent accidental injuries to whales and boaters during humpback whale season. This group updated existing “Best Boating Practices” by adding new recommended vessel speed limits under various circumstances.

For example, the recommendation for boats in transit during whale season, November through April, especially in water depths of 100 fathoms or less, is to maintain a speed of 15 knots or less, or minimal planning speed, to reduce the risk of striking a whale. The recommendation for tour operators approaching a whale for viewing at the legal 100-yard distance is to proceed at a recommended max speed of six knots within 400 yards of a whale while making directed approaches and departures. It is also recommended that all boaters post a lookout other than the vessel operator, when transiting in waters 100 fathoms or less during whale season, when possible. The intent is to alert the vessel operator of whale locations.

The recommendations are based on actual strike data provided by HIIWNMS, research in Hawai‘i and elsewhere, the variety and type of vessels in Hawaiian waters (e.g., ferry, barges, tour operators, fishers), whale behavior, whale densities in Hawaiian waters, sea state, time of year, and more. The Department and its agency and organization partners created these recommendations, rather than proposed regulations, in part because vessel speed regulations are practically unenforceable. Current radar technology used to measure speed limits on land is not capable of determining vessel speed on open water. Further, the presence of lookouts is not always possible and is not related to distance from a whale.

These best boating practices are currently posted on DOBOR’s website.¹ The Department has developed printed educational materials to distribute to tour operators and recreational boaters and is currently working with agency and organization partners on a coordinated outreach campaign. These recommendations represent prudent measures to make waters safer for whales and people. The Department believes the establishment of these measures in regulations is unnecessary and potentially counterproductive at this time.

Mahalo for the opportunity to provide testimony in opposition to this measure.

¹ See DOBOR website at: <https://dlnr.hawaii.gov/dobor/boating-with-whales/>

SCR-219-SD-1

Submitted on: 4/11/2023 9:39:44 AM

Testimony for WAL on 4/13/2023 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Cathy Goeggel	Animal Rights Hawai'i	Support	Written Testimony Only

Comments:

We are in strong support of SCR219. This would provide more protection for mothers with calves traversing the islands.

Mahalo

SCR-219-SD-1

Submitted on: 4/12/2023 11:38:23 AM

Testimony for WAL on 4/13/2023 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Zachary LaPrade	Ocean Tourism Coalition	Oppose	Written Testimony Only

Comments:

The Ocean Tourism Coalition (OTC) represents over 300 ocean tour operators throughout the state. We are writing to express our *opposition* to the proposed resolution requesting that the Department of Land and Natural Resources adopt administrative rules regulating vessel speed near humpback whales.

While we fully support the protection of humpback whales and appreciate the importance of responsible boating practices, we believe that the existing regulations in the Marine Humpback Sanctuary in Maui are already adequate to ensure their protection.

The Humpback Whale National Marine Sanctuary has regulations in place that require vessels to maintain a minimum distance of 100 yards from humpback whales and to avoid approaching whales from their front or rear.

The provision in the proposed resolution that limits vessel speed to six knots within 400 yards of a humpback whale is impractical and unnecessary. The proposed speed limit of six knots within 400 yards of a humpback whale is not practical and could lead to dangerous situations for boaters who may need to quickly maneuver their vessels to avoid collisions with other vessels or natural obstacles.

Instead, we recommend that the resolution be adopted with the language that requires boaters to operate their vessels reasonably and prudently to avoid collisions with humpback whales, considering the time of day, time of year, and other relevant factors.

In addition, we would like to highlight the fact that since 2006, there have been only three confirmed collisions between vessels and humpback whales in Hawaii. While we acknowledge that any such incidents are cause for concern, we believe that this low number of strikes demonstrates that the existing regulations are effective in minimizing collisions and protecting the whales.

We support the goal of promoting responsible boating practices and protecting the endangered humpback whales in Hawaii's waters, but we believe that the existing regulations, combined with a requirement to operate vessels reasonably and prudently, are already sufficient to achieve this goal. Thank you for your consideration

SCR-219-SD-1

Submitted on: 4/11/2023 12:02:24 PM

Testimony for WAL on 4/13/2023 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Dana Keawe	Individual	Support	Written Testimony Only

Comments:

Support