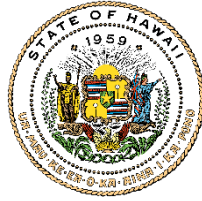


JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



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

P.O. BOX 621
HONOLULU, HAWAII 96809

Testimony of
DAWN N. S. CHANG
Chairperson

Before the Senate Committee on
WATER AND LAND

Friday, March 24, 2023
1:00 PM

State Capitol, Conference Room 229 & Videoconference

In consideration of
SENATE CONCURRENT RESOLUTION 219/SENATE RESOLUTION 157
REQUESTING THAT THE DEPARTMENT OF LAND AND NATURAL RESOURCES
ADOPT ADMINISTRATIVE RULES REGULATING VESSEL SPEED NEAR
HUMPBACK WHALES

Senate Concurrent Resolution 219/Senate Resolution 157 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 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 these measures to safeguard humpback whales, but respectfully opposes them because the requested administrative rules would be impractical to enforce.**

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 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

DAWN N.S. CHANG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
MANAGEMENT

LAURA H.E. KAAKUA
FIRST DEPUTY

M. KALEO MANUEL
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
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

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 HIHWNMS, 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 these measures.

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



COMMITTEE ON WATER AND LAND

Senator Lorraine R. Inouye, Chair Senator
Brandon J.C. Elefante, Vice Chair

NOTICE OF HEARING

DATE: Friday, March 24, 2023
TIME: 1:00 a.m.
PLACE: VIA VIDEOCONFERENCE
Conference Room 229
State Capitol
415 South Beretania Street

TESTIMONY OF THE OCEAN TOURISM COALITION IN OPPOSITION TO SCR219/SR157

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.

Sincerely,

A handwritten signature in cursive script that reads "Zachary LaPrade".

Zachary LaPrade

Director

OTC



Environmental Caucus of The Democratic Party of Hawai'i

WTL_03-24-23 SCR 115/219 SR109/157

TO: COMMITTEE ON WATER AND LAND
Senator Lorraine R. Inouye, Chair
Senator Brandon J.C. Elefante, Vice Chair

CONCERNING: SCR 115/ SR 109 Prohibiting Recreational Boating in Marine Conservation
Districts
SCR 219/ SR 157 Regulating Vessel Speed Near Humpback Whales.

POSITION: FULL SUPPORT

ALOHA Chair Inouye, Vice Chair Elefante and members of the Committee

The Environmental Caucus has an enrolled membership of more than 7,000 politically active Hawaii voters and we strongly support any bill that protects our oceans and sea-life.

These resolutions are so closely related we offer support to both for similar reasons.

Marine Conservation districts were created to protect the sea life in them for the future as a hope for restocking after ignorant or careless recreational boat owners have ruined the ocean they can access. We should not have to remind this committee about garbage thrown over the boat side or running to fast and hitting sea life. Sadly there are some who feel like they can fish anywhere they are. We do not need them to be anywhere near protected areas.

The same goes for protecting the whales, which come here to have their babies and bring in tourist dollars. The Humpbacks were endangered species and many people, and environmental and marine science groups, have labored to help bring them back to a safer sustainable population.

BUT how many times have we seen them arrive tangled in fish nets or wounded by a propeller, or starving because they swallowed plastic and could not digest food? We cannot protect them from all human refuse and abuse. But we can protect them here in Hawaiian waters.

We urge this committee to protect them from local boat operators who are just too foolish or too greedy for tourist dollars to slow down and keep a safe distance. Vote for both SCR115/SR109 and SCR219/SR157

Martha E Randolph SCC Representative
for and on behalf of the Environmental Caucus of the Democratic Party of Hawaii

SR-157

Submitted on: 3/23/2023 10:26:45 AM

Testimony for WTL on 3/24/2023 1:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Bill Caldwell	Testifying for Hone Heke Corporation Dba Expeditions	Oppose	Written Testimony Only

Comments:

Expeditions knows this will inhibit our ability to maintain our Public Utilities Commission (PUC) schedule and depending on sea states, we may need to maintain a specific speed outside of the proposed limits. As stated in the resolution, barges are excluded, The Maui-Lanai ferry should be excluded from these rules as well.

Testimony of Matson Navigation Company, Inc.
Comments on SCR219/SR157
Before the Committee on Water and Land
March 24, 2023

Dear Chair Inouye, Vice Chair Elefante, and Members of the Committee:

Matson Navigation Company, Inc. (Matson) offers comments on SCR219 and SR157, which requests the Department of Land and Natural Resources to adopt rules regulating vessel speed.

As an island state, Hawaii is very dependent upon our commercial harbors to ensure the continued and unimpeded flow of cargo in and out of our State. It is estimated that over 90 percent Hawaii's imported goods pass through our commercial harbors, including consumer goods, motor vehicles, construction materials, and fuel. Given the critical role of our commercial harbors, it is imperative that the State support dependable and efficient cargo transportation and handling to service our residents and businesses.

Matson respectfully requests the following amendments to SCR219 and SR157:

Page 1, lines 31-32 to read: "(1) Prohibit any person from operating a vessel other than an inter-island vessel or intra-island vessel as defined in section 19-41-2, Hawaii Administrative Rules, within the waters of the State at a speed exceeding:"

Page 2, lines 7-8 to read: "(2) Require any person operating a vessel other than an inter-island vessel or intra-island vessel as defined in section 19-41-2, Hawaii Administrative Rules, within the waters of the State to:"

Thank you for considering our comments.

Testimony of the Hawaii Harbor Users Group
Comments on SCR219/SR157
Before the Committee on Water and Land
March 24, 2023

Dear Chair Inouye, Vice Chair Elefante, and Members of the Committee:

The Hawaii Harbor Users Group (HHUG) is a non-profit maritime transportation industry group comprised of key commercial harbor users statewide. HHUG offers comments on SCR219 and SR157, which requests the Department of Land and Natural Resources to adopt rules regulating vessel speed.

As an island state, Hawaii is very dependent upon our commercial harbors to ensure the continued and unimpeded flow of cargo in and out of our State. It is estimated that over 90 percent Hawaii's imported goods pass through our commercial harbors, including consumer goods, motor vehicles, construction materials, and fuel. Given the critical role of our commercial harbors, it is imperative that the State support dependable and efficient cargo transportation and handling to service our residents and businesses.

HHUG respectfully requests the following amendments to SCR219 and SR157:

Page 1, lines 31-32 to read: "(1) Prohibit any person from operating a vessel other than an inter-island vessel or intra-island vessel as defined in section 19-41-2, Hawaii Administrative Rules, within the waters of the State at a speed exceeding:"

Page 2, lines 7-8 to read: "(2) Require any person operating a vessel other than an inter-island vessel or intra-island vessel as defined in section 19-41-2, Hawaii Administrative Rules, within the waters of the State to:"

Thank you for considering our comments.

SR-157

Submitted on: 3/22/2023 2:44:49 PM

Testimony for WTL on 3/24/2023 1:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Alan Van Abdill	Individual	Oppose	Written Testimony Only

Comments:

Honorable Representatives,

I respectfully submit this written testimony for your review when considering SCR 219 and SR 157.

I believe that my background and experience fully qualifies my testimony as an expert on this subject. I have a lifetime of boating experience. I have worked on Hawaiian waters, (concentrated specifically) in Maui County waters since January of 1984. I have operated vessels in Hawaiian waters five to seven days a week as a licensed 100 ton Master since April of 1986.

Firstly I would like to address line 1 of SR157. The Distinct Population Segment (DPS) Central Pacific stock of Hawai'i's humpback whale population is not considered endangered. The fact is that that according to a rule by the The National Oceanic and Atmospheric Administration (NOAA) that was published in the Federal Register on 09/08/2016 , Hawaiian humpback whales are no longer considered endangered or threatened and have been delisted from the Endangered Species Act of 1973. [<https://www.federalregister.gov/documents/2016/09/08/2016-21276/endangered-and-threatened-species-identification-of-14-distinct-population-segments-of-the-humpback>]

The DPS of the Central Pacific stock are granted protection under the Marine Mammal Protection Act (MMPA) and are listed as depleted. [https://www.fisheries.noaa.gov/species-directory/marine-mammals?q=%22humpback+whale%22&field_species_categories_vocab=All&field_species_details_status=All&field_region_vocab=All&items_per_page=25].

Therefore, I respectfully submit that you please consider revising line 1 of SR 157.

Line 8 addresses vessel collisions with humpback whales. According to the most recent report from NOAA titled "Injury Determinations for Humpback Whales and Other Cetaceans reported to NOAA Response Networks in the Hawaiian Islands in 2018, During 2018, there were 19 reports of cetaceans with human-caused injuries, including 4 humpback whales involved in vessel collisions, 11 humpback whales entangled in presumed fishing gear or marine debris. If we are genuinely concerned about the health and welfare of Hawaiian humpbacks perhaps the greatest threat of entanglement should be addressed first.

[<https://www.fisheries.noaa.gov/resource/document/injury-determinations-humpback-whales-and-other-cetaceans-reported-noaa-1>]

Please be advised that all prudent professional operators in Maui County waters have a lookout posted even when humpback whales are not present. All prudent and professional operators reduce their speed whenever a hazard (including derelict fishing gear and marine debris) or for that matter, any threat to passenger, crew, vessel and/or marine life safety are detected. These federal mandates (DOT/USCG) are already in place. New state statutes are redundant to established laws.

As to speed limits; I understand the need to limit approach and departure speeds while actively watching whales. An immediate reduction of speed is also warranted when a pod unexpectedly surfaces in close proximity. However, when a vessel is transiting between islands or areas and is actively avoiding with no intent in approaching humpbacks, the already established Federal rules of ingress and egress should apply. An inter-island ferry that transports not only residents and visitors but also police, firefighters, doctors, nurses and other daily commuters would all be radically affected by the time lost in speed reduction. There is also no consideration of the schedules of inter-island shipping. If you must pass this resolution, please consider exempting transportation and shipping. Please note that Hawaiian waters are not only the home of humpback whales, Hawaiian waters are the habitat of her stewards, residents and visitors.

Please also consider the astronomical level of funding that would need to take place in order to enforce this type of legislation. DLNR enforcement (in both manpower and funding) are already struggling with the ability to enforce laws that are on the books. This type of funding can be better allocated in other areas to benefit the taxpayers and people of Hawai'i.

I am vehemently opposed to SR 157 and SCR219.

DPS of humpback whales are improving world wide, of the 14 DPSs identified globally only 4 are considered endangered and 1 considered threatened. There are federal laws already in place within The National Hawaiian Islands Humpback Whale Sanctuary. We are, and have been moving ecologically in the right direction. Increasing legislation at this stage of a scientifically documented recovery of the Central Pacific DPS is redundant and a waste of taxpayer dollars.

Thank you for your consideration

Capt. Alan V. Abdill