

ACT 313

H.B. NO. 2994

A Bill for an Act Relating to Ocean Recreation.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that:

- (1) The operation of thrill craft and high-speed motorized vessels in the waters of the State poses an unacceptable risk of harm to humans and the environment. The operation of thrill craft and high-speed motorized vessels in some of the State's heavily used recreational waters has resulted in the severe injury and death of recreational swimmers, not to mention a number of "close-calls";
- (2) The operation of thrill craft, parasailing vessels, and high-speed motorized vessels during certain times of the year poses an unacceptable risk of harm to endangered sea creatures such as migratory humpback whales and sea turtles; and
- (3) The operation of thrill craft and high-speed motorized vessels in the waters of the State poses a visual and aural nuisance to the residents in the communities in which they are operated.

The legislature declares that the waters of the State used extensively by recreational swimmers should be safe from the dangers of thrill craft and high-speed motorized vessels which, by their very nature, are inherently risky vessels.

The legislature declares that the waters of the State should be safe from the dangers of thrill craft, parasailing vessels, and high-speed motorized vessels during the annual migration of humpback whales to Hawaii especially in Maui waters identified as critical habitats for the endangered humpback whale. Humpback whales are very acoustically oriented mammals. Continuous traffic and constant underwater noise created by thrill craft, parasailing vessels, and high-speed motorized vessels in near shore, shallow waters threaten humpback whale population recovery by displacing the whales from their favored habitat and further by disrupting the acoustic environment, creating an energetic cost to the whales in responses to these disturbances, disrupting the species' mating system, and threatening the survival of calves.

In view of the inherently risky nature of thrill craft and high-speed motorized vessels and the documented injuries and deaths that thrill craft and high-speed motorized vessels have inflicted on people, the legislature declares that the unrestrained operation of thrill craft and high-speed motorized vessels in the waters of the State poses an unacceptable risk of harm to humans and the environment.

The Legislature is cognizant that, except as otherwise provided by law, all ocean areas appertaining to any government management shall be and are forever granted to the people, for the free and equal use by all persons. However, the State is mindful that in managing and regulating ocean use, priority should be given to those seeking non-commercial recreational opportunities as opposed

to those seeking commercial recreational opportunities. To be a commercial operator is a privilege and not an exclusive right.

SECTION 2. Section 267-3, Hawaii Revised Statutes, is amended by adding three new definitions to be appropriately inserted and to read as follows:

“Commercial high speed boating” means the use of an open ocean racing boat to provide high speed rides to passengers who pay compensation for the rides. “Commercial high speed boating” does not include:

- (1) The use of an open ocean racing boat during an official racing competition; or
- (2) The use of an open ocean racing boat while practicing for racing competition; provided that no passenger pays compensation for riding the boat during the practice.

“Open ocean racing boat” means a motorized vessel which:

- (1) Is designed, modified, or restored for the primary purpose of high speed boat racing; and
- (2) Has the capacity to carry not more than the operator and five passengers.

“Water sledding” means the activity in which an individual is transported or carried over the surface of the water on an apparatus that is more than¹ twelve inches wide and is attached to a towline which is towed by a vessel. If the apparatus is round with a hollow center, the width shall be measured as a straight line:

- (1) Starting from a point on the outer edge of the apparatus;
- (2) Bisecting the hollow center; and
- (3) Ending at the farthest point on the opposite outer edge.”

SECTION 3. Section 267-4, Hawaii Revised Statutes, is amended to read as follows:

“§267-4 Rules. The department shall adopt rules pursuant to chapter 91 to implement the policy and purpose of this chapter, and to classify vessels into appropriate categories and classes.

The department shall adopt rules pursuant to chapter 91 with respect to the following:

- (1) The registration and numbering of vessels;
- (2) The operation, use, and equipment of vessels on or in the waters of the State;
- (3) The conduct of persons involved in boating accidents and in the reporting of the accidents and other casualties and losses to the department; and
- (4) The designation of areas of the waters of the State and time periods during which thrill crafts may be operated, and waters on or above which, and time periods during which, persons may engage in parasailing[.], commercial high speed boating, and water sledding; provided that in designating the areas, the department shall use the official recommendation of the National Marine Fisheries Service with regard to the protection of protected marine life and habitats in adopting rules to implement this section, except as otherwise provided by law.”

SECTION 4. Section 267-16, Hawaii Revised Statutes, is amended to read as follows:

“§267-16 Operation of thrill craft; parasailing[.]; water sledding; commercial high speed boating. (a) No person shall operate a thrill craft unless the person is fifteen years of age or older.

(b) The department shall adopt rules to designate areas where, and time periods during which, thrill craft may be operated and parasailing, water sledding, and commercial high speed boating may be engaged in.

(c) From October 1, 1988, no person shall operate a thrill craft in the waters of the State, except:

- (1) In areas and during time periods designated by the department; and
- (2) Through areas designated by the department to serve as avenues for the ingress and egress of thrill crafts between the areas designated under paragraph (1) and the shore.

(d) From October 1, 1988, no person shall:

- (1) Engage in parasailing; or
- (2) Operate a motorized vessel towing a person engaged in parasailing; on or above the waters of the State, except on or above areas and during time periods designated by the department.

(e) From January 1, 1989 until January 1, 1990, the department shall not issue an original certificate of number under title 19, subtitle 3, chapter 72, Hawaii Administrative Rules, for any thrill craft for commercial use or vessel used for parasailing activity.

The prohibition of this subsection shall not apply to (1) the issuance of a certificate of number for a new thrill craft or vessel used as a direct replacement for thrill craft engaged in commercial use or a vessel engaged in parasailing, or (2) the renewal, by the owner, of a certificate of number issued for a thrill craft used for commercial purposes or a vessel engaged in parasailing activities prior to June 16, 1989.

This subsection shall be repealed and shall have no force or effect after January 1, 1990.

(f) (e) From October 1, 1990, no person shall:

- (1) Engage in water sledding; or
- (2) Operate a motorized vessel towing a person engaged in water sledding;

in the waters of the State, except in areas and during time periods designated by the department.

(f) From October 1, 1990, no person shall engage in commercial high speed boating or operate an open ocean racing boat for commercial high speed boating purposes in the waters of the State, except:

- (1) In areas and during time periods designated by the department; and
- (2) Through areas designated by the department to serve as avenues for the ingress and egress of open ocean racing boats between the areas designated under paragraph (1) and the shore.

(g) During all weekends and state and federal holidays, no commercial operator shall operate a thrill craft, or engage in parasailing, water sledding or commercial high speed boating, or operate a motor vessel towing a person engaged in water sledding or parasailing in Kaneohe Bay and Maunalua Bay on Oahu as provided for in section 267-

(h) On Sundays, all commercial ocean recreation activities, including those listed in this section, shall be prohibited on Oahu in Kaneohe Bay and Maunalua Bay as provided for in section 267- effective January 1, 1991.

(i) Between December 15 and May 15 of each year, no person shall operate a thrill craft, or engage in parasailing, water sledding or commercial high speed boating, or operate a motor vessel towing a person engaged in water sledding or parasailing on the west and south shore of Maui as provided in section 267-

(j) All commercial use and operator permits issued by the department for commercial thrill craft [and], parasailing, water sledding, and commercial high speed boating activities shall be nontransferable and shall expire upon the dissolution or sale or transfer of any or all interests in the corporation or business entity to which the permits were originally issued."

SECTION 5. Chapter 267, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§267- Ocean recreation management areas. (a) Notwithstanding any other law to the contrary, no commercial operator shall operate a thrill craft, engage in parasailing, water sledding or commercial high speed boating, operate a motorized vessel towing a person engaged in parasailing, or operate a motor vessel towing a person engaged in water sledding during all weekends and state and federal holidays on Oahu:

- (1) In Kaneohe Bay from Mokapu Point to Makahonu Point which includes commercial zones a, b, c, d, e, f, g, i, and j; and
- (2) In Maunaloa Bay from Kawaihoa (Portlock) Point to Wailupe Peninsula and commercial zones a, b, and c.

(b) Notwithstanding any other law to the contrary, all commercial ocean recreation activities shall be prohibited on all Sundays on Oahu in Kaneohe Bay and Maunaloa Bay as defined in section 267- (a)(1) and (2) effective January 1, 1991.

(c) Notwithstanding any other law to the contrary, no person shall operate a thrill craft, engage in parasailing, operate a motorized vessel towing a person engaged in parasailing, engage in commercial water sledding or commercial high speed boating, or operate a commercial motor vessel towing a person engaged in water sledding between December 15 and May 15 of each year in the waters of west and south Maui from Pu'u Ola'i to Hawea Point.

(d) The department may adopt rules pursuant to chapter 91 to further implement this section."

SECTION 6. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.²

SECTION 8. Subject to the foregoing effective date, this Act shall take effect upon approval.

(Approved July 3, 1990.)

Notes

1. So in original.
2. Edited pursuant to HRS §23G-16.5.