

Birth of a Humpback Whale

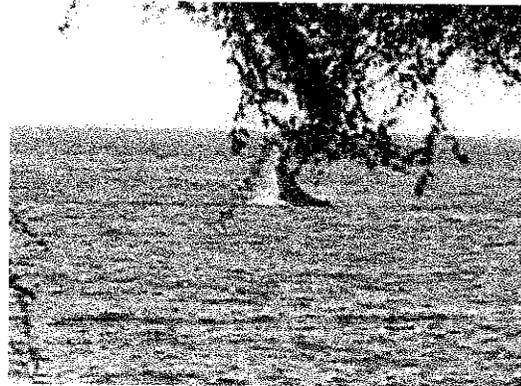
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NOAA's Hawaiian Islands Humpback Whale National Marine Sanctuary Public Scoping Meetings

Lahaina Civic Center, 1840 Honoapiilani Highway, Lahaina, Maui, HI 96761
August 17, 2010

Remarks of Dr. George R. Harker, (aka Dr. Leisure)
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Implications HAWAII REVISED STATUTES CHAPTER 195D revision of the Twenty-Fifth Legislature, 2010.

Chapter 195D originally adopted by the state about 1973 is the state's response to the federal Endangered Species Act. In the last session of the legislature it was changed to make "taking" a Monk Seal a class C felony with a possible fine of \$50,000. It actually made the change to apply to any "endangered species" and not just the Monk Seal. Section (g) "Notwithstanding any law to the contrary, any person who intentionally or knowingly takes an endangered species in violation of this chapter shall be guilty of a class C felony;"

The second change to the statute allows "any person, acting as a private attorney general, may commence a civil suit on the person's behalf:

(1) Against any other person, or any state or county agency or instrumentality that is alleged to be in violation of this chapter or any rule adopted under this chapter;":

In other words most any person in this room may take an action against any other person who "knowingly takes an endangered species." Remember the definition of "take": "means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect endangered or threatened species of aquatic life or wild life, or to cut, collect, uproot, destroy, injure, or possess endangered or threatened species of aquatic life or land plants, or to attempt to engage in any such conduct;"

Before the change a person could take an individual to court who did not comply with the "habitat conservation plan" associated with this statute. Now a person can go after anyone who violates the most central point of the Endangered Species Act, the "take."

There are many issues that should be addressed by the Hawaiian Island Humpback Whale National Marine Sanctuary and that is what this scoping meeting is about. I will present a number of issues but also note that most if not all of them can be addressed directly through the avenue provided in HRS Chapter 195D.

Monk Seals and the Hawaiian Island Humpback Whale National Marine Sanctuary

The Monk Seal program as currently promulgated and executed by NOAA is critically flawed and is accelerating the Monk Seal down the road to extinction.

NOAA suggest that people stay 150 feet away from a seal, avoid eye contact, if encountered in water to leave, and that they may bite.

Under Federal and State statutes all of the above could constitute a "take".

I have been observing the Monk Seal since 2006 and its interaction with NOAA personnel and other humans and have some observations to support my position stated above.

Current protocol on a beach haul out is to cordon off the seal with yellow tape 150 from creature. People in that range or even beyond are asked to move away. A blog site: monksealmania.blogspot.com monitors and reports the actions of "posses" formed to enforce this policy. One posse member was struck by a thrown rock after talking to kids and their parents about running up on the seal.

Marking the site of a seal haulout calls attention to what would go unnoticed by most people. A particular good example of this is the March 20, 2010 haulout 4 miles south of Lahaina, Maui. After the NOAA people arrived and made sure the tape was visible from the roadway traffic came to a virtual stop. Traffic was delayed for hours. Keep in mind this is an area where surfers often park on both sides of the road and it is quite normative for traffic to pass through cautiously yet still maintain a good flow. With the caution tape things changed dramatically.

NOAA is committed to removing Monk Seals that are "to tame." In the last few years they have removed at least three creatures of which I am aware. In the literature these animals are viewed as "genetically tame" and are known for their friendliness and tolerance of man. If friendliness is a criteria for removal the species does not have a chance.

On October 9, 2009 a Monk Seal was born on Koki Beach Hana. I had an opportunity to watch this seal grow to nine weeks of age. To learn more about Koki, just search Goggle, "Koki Monk Seal." Koki was tagged and also had a transmitter placed on him. About April 4, 2010 his last reported position was southwest of where he was born about fifteen miles. NOAA suggests the battery on the transmitter went out as they are prone to do. Word on the street was that Koki had been killed by a spear fisherman. Four months later there have been no further sighting of Koki alive or dead.

NOAA put a lot of effort into keeping the public away from the mother and pup. They also talked of taking Koki away because they feared he would be "to friendly" and yet when local observers reported that he may have been killed they did not respond with anything more than "battery failure" and "this happens all the time."

I am closing this testimony with a brief comment about the historical Hawaiian fish ponds. The identification and restoration of these sites should be an integral part of any sanctuary plan. The restoration of the natural stream flow and surface runoff is essential to the health of these fish pond. Anything that has a negative effect on this effort such as pumping brackish water from heavily depleted ground water sources must be stopped. Applying brackish water in hillside irrigation is a "take" under the Endangered Species Act i.e. "to destroy, injure,... land plants, or to engage in any such conduct;"

Not so long ago the indigenous Hawaiians feed more people on these islands than live here today utilizing those fish ponds. Today I understand we import 75% of our food.

It is self evident that our country is moving toward nuclear conflict. Its financial structure is collapsing and we would be well advised to be prepared to sustain ourselves with the resources at hand rather than depend on those coming from "off island.." I would suggest the incorporation of this basic premise as part of any Sanctuary Plan.

I note the deadline for written comments is October 16, 2010. I hope to prepare more specific ideas but will close my public remarks at this time. Thanks for your attention.