PACIFIC WHALE FOUNDATION

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Public Testimony
Gregory D. Kaufman, President

Oversight Task Force meeting, Honolulu, Hawaii, November 6, 2008

We would like to present two items for consideration:

1. The Proposed Kahului Commercial Harbor Pier 2C Mooring Modification, Maui in support of ferry operations. We would like to submit the attached letter written to the Dept of Business, Economic Development and Tourism, November 4th. In summary, the proposed action, which supports ferry operations (namely that of the Hawaii Superferry - HSF) triggers the need for a Biological Assessment be undertaken under Section 7 of the Endangered Species Act (ESA) -- a federal permit is required and a federal agency is involved in the authorization of the proposed action (U.S. Army Corps of Engineers).

   The need for ESA Section 7 consultation is clear and should be initiated prior to the proposed action. We must ensure Reasonable and Prudent Measures are put in place to minimize harmful impacts to Hawaii's humpback whales from Federal agency actions.

2. Use of Thermal Imaging (TI) technology to detect whales. The use of thermal imaging technology is untested in Hawaiian waters. The only reliable means of detecting whales at the surface is by visual detection, which is severely diminished in darkness, high sea states and poor weather. While TI has shown limited use for head detected in cooler waters, its' efficacy is untested in Hawaii where the whale's exhalations and body temperature closely matches the ambient air and sea temperatures.

   TI (if effective) can only detect the presence of a heat producing body at the surface. It cannot determine whether this is a pod (group) of humpback whales, dolphins or other cetaceans. (We already know humpback whales are present along HSF's route from October – May). If TI does detect a humpback pod at the surface, it cannot determine pod composition, pod speed, pod travel direction, pod behaviors or the presence/absence of a calf. Simply knowing whales are along the HSF's route does little to help the captain determine the right course of action to take. Furthermore, collision and near-collision data (between vessels and whales in Hawaii), indicates whales that are struck or nearly struck, are the result of 'surprise encounters' – in other words, undetected by the captain prior to surfacing in the path of the vessel. HSF's TI will do nothing to mitigate these 'surprise encounters' or the large blind spot that appears in front of the HSF. In April 2008 HSF reported four near misses in 48 trips. Each of these near misses qualifies as 'surprise encounter,' with the whales not detected before surfacing at distances of 50, 5-10, 17 and 8 yards from the vessel. HSF's use of TI would not have prevented these near misses.

RECOMMENDATIONS (From December – May):

• Nighttime operations: HSF must curtail all nighttime operations with operations limited from 30 minutes prior to sunrise to 30 minutes after sunset.

• Mitigation of Blind Spot: To help reduce the likelihood of the HSF hitting whales found inside its 100 yard blind spot, HSF must comply with Condition A-5 of the Executive Order 07-10 and install a series of cameras on its bow. The video from these cameras to be routed to the pilothouse whereby a dedicated observer can monitor them during operation.

• Observers: Three full-time observers required. Two observers would be dedicated to forward/lateral detection, with the third observer monitoring the bow camera.

• Independent verification of observer efficacy to be measured randomly throughout the whale season.

• HSF must maintained a minimum of 500 meters distance from sighted whales whenever possible, as required by E.O. 07-10 condition A.4.

Sincerely,

Gregory D. Kaufman
President & Founder
PACIFIC WHALE FOUNDATION