

Enforcement Working Group Recommendations to the Sanctuary Advisory Council



The U.S. Coast Guard and NOAA Office of Law Enforcement enforce the humpback whale approach regulation during on-the-water patrols as part of Operation Kohola Guardian.

Hawaiian Islands Humpback Whale National Marine Sanctuary

Enforcement Working Group Recommendations Report

Working groups are subunits of the sanctuary advisory council. The council is an advisory body to the sanctuary management. The opinions and findings of this document do not necessarily reflect the position of any individuals or agencies including the sanctuary, the National Oceanic and Atmospheric Administration, or the State of Hawai'i.



Working Product of the Enforcement Working Group Date Updated: 11/4/2011

Need for Action

The SAC Enforcement Working Group looked at enforcement as an important issue raised by the public during the public scoping process for the management plan review for the Hawaiian Islands Humpback Whale National Marine Sanctuary. In the comments received enforcement was used to describe a wide range of public concerns that varied from rules and laws that were not being sufficiently enforced to being overly enforced or that future rules and laws would unduly restrict other activities.

The comments included suggestions for speed limits and laws to track derelict nets; more regulations; more enforcement officers; expanding Makai Watch; more education programs; enforcement of water quality regulations; expansion of the sanctuary; and eliminate fishing; but there were also comments that stated that there were too many whales and regulations were not needed anymore.

The entire spectrum of enforcement including a review of existing laws and regulations that serve to protect sanctuary resources and current efforts in ensuring compliance was addressed. A variety of management strategies might be considered to address the issue, such as voluntary compliance, penalty and fines, protocols and community engagement.

Desired Outcome:

The group will engage in two primary activities:

- 1) Describing and evaluating current enforcement efforts and the public's perceptions of those efforts based on current regulations (what's working vs. what's not working, etc); and
- 2) Evaluating future enforcement based on possible future regulations (what can be enforced, etc).

Recommendations may address the entire spectrum from removing restrictions to methods to enhance compliance with existing regulations to proposing changes to existing regulations or crafting completely new regulations.

Recommendations:

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The Enforcement Working Group recommends that:

1. The Enforcement Working Group should continue to be in existence for the time necessary to evaluate recommendations from other working groups.
2. The existing Sanctuary Interagency Law Enforcement Task Force (Task Force) is a valuable law enforcement coordination body and should be continued. The Task Force is comprised of representatives from the following agencies: U.S. Coast Guard, NOAA Office of Law Enforcement (OLE), NOAA Office of General Counsel, State of Hawaii Department of Land and Natural Resource Division of Conservation and Resource Enforcement and sanctuary staff. The Task Force should continue to meet on a regular basis to coordinate and discuss law enforcement activities within the sanctuary.
3. Sanctuary management should coordinate with members of the Task Force and local communities to determine those methods that have been most successful in engaging those communities through continuing education efforts which encourage and achieve compliance with existing laws and rules.
4. Sanctuary management should continue its excellent work of addressing resource protection issues primarily via education and by working directly with user groups to address those activities that have the potential to impact sanctuary resources. For example, the Sanctuary's Ocean Etiquette program has developed brochures targeted to boaters and other ocean users. It has also coordinated with U.S. Coast Guard, OLE, and NOAA Office of General Counsel to host boater workshops in order to minimize whale-vessel interactions. These types of programs should be supported, continued and expanded to address specific user groups of concern.
5. Sanctuary management should seek input from the Sanctuary Advisory Council and work with the Task Force to provide advice on the potential for success of any suggested new regulation, providing input on the regulation's enforceability as well as the financial and human resources (including sworn law enforcement officers) necessary to enforce any such proposed regulation.
6. The Sanctuary Advisory Council should request annual briefings for updates on enforcement activities from the Task Force or the individual members (NOAA Office of Law Enforcement, NOAA Office of General Counsel, State of Hawaii DLNR Division of Conservation and Resource Enforcement, and the U.S. Coast Guard) and ensure that the local communities are aware of the enforcement actions taken as well as the limited financial and human resources dedicated to this task.

Process or methodology

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The Enforcement Working Group met through a combination of Go-To-Meetings, conference calls and in-person meetings. The working group is comprised of representatives from the law enforcement entities responsible for enforcing sanctuary and related laws and also include representatives from the Sanctuary Advisory Council that represent various agencies, organizations and businesses. The working group reviewed the comments from the public scoping process that were identified to be related to the issue of enforcement.

The working group reviewed all current laws relating to humpback whales including not only sanctuary specific regulation, but also other federal and state laws that apply to humpback whales, both inside and outside the sanctuary, as related to the following listed below.

- Endangered Species Act (ESA) - Prohibits unauthorized “take” of endangered and threatened species.
- Marine Mammal Protection Act (MMPA) - Prohibits “take” of marine mammals.
- National Marine Sanctuary Act (NMSA) - Protects humpback whales as a sanctuary resource.
- Hawaii State Laws and Rules - Protects wildlife, manages ocean use, safe boating, etc...

The working group conducted a review of current and ongoing enforcement activities already occurring in the Sanctuary. The members of the Task Force actively conduct enforcement activities, including outreach and education and assessment of civil penalties. However, the results and extent of enforcement efforts are not well known, which led to the recommendation that the Task Force continue to make presentations to the Sanctuary Advisory Council and others.

The working group did not suggest or recommend new regulations regarding humpback whales or for protecting other marine resources, as they determined that the best course of action would be for the other working groups (Climate Change, Ecosystem Protections, Humpback Whale Protections, Maritime Heritage, Native Hawaiian, Ocean Literacy, Offshore Development and Water Quality) to address those issues. If the other working groups determined that new regulations were needed to better protect the resource then the Enforcement Working Group would weigh in to help craft effective and enforceable regulations. In addition to regulations it was understood that there are other tools that could be used to understand and protect the resource including, but not limited to, education, monitoring and research, and other management actions.

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References and Appendices:

- **Contributing Members**

Working Group Chair: Rebecca Hommon, U.S. Navy SAC representative
Working Group Vice-chair: Teri Leicher, Business and Commerce SAC representative – alternate (Jack’s Diving Locker)
Alexa Cole, NOAA General Counsel
Eric Kingma, Western Pacific Fisheries Council SAC representative
Eric Roberts, U.S. Coast Guard SAC representative
Gordon LaBedz, Conservation SAC representative - alternate (Surfrider)
Take Tomson, NOAA Office of Law Enforcement SAC representative
Staff Lead: Paul Wong

- **Definition of Terms**

Sanctuary Interagency Law Enforcement Task Force – The task force was formed at the direction of the ONMS that each sanctuary should have a law enforcement task force. The task force is made up of the following entities that are responsible for enforcing sanctuary regulations: U.S. Coast Guard, NOAA Office of Law Enforcement (OLE), NOAA Office of General Counsel, State of Hawaii Department of Land and Natural Resource Division of Conservation and Resource Enforcement and sanctuary staff.

- **Sources of Information**

NOAA Office of Law Enforcement (OLE)
NOAA Office of General Counsel
State of Hawaii Department of Land and Natural Resources
U.S. Coast Guard
State of Hawaii Office of the Attorney General