

BACKGROUND SUMMARY

A. THE PROBLEM AND SOLUTION.

The problem: The concentrated human fecal matter and urine deposited by tourists in tour boat toilets is dumped overboard in the Hawaiian Islands Humpback Whale National Marine Sanctuary (Whale and Marine Sanctuary), Maui water exposing all living things to pollution and disease.

It is estimated over 1,000,000 passengers yearly ride these tour boats (cruise ship passengers are not included in this estimate).

The solution: mobile dockside pumping. Tour boats contract with local pumper trucks to come to the harbor, pump the sewage from the tour boat toilet holding tanks and transport the sewage to land based treatment facilities. This is convenient, clean, odorless, easy to implement and inexpensive. We understand two tour boat operators (as of November 15, 2005) have recently successfully implemented this practice. Pump Don't Dump advocates have observed this process. It works!

Easily implemented!



Clean!



Odorless!



Boat sewage being pumped from tour boat holding tank to pumper truck tank at dock side. Sewage is transported to Kahului treatment plant.

Inexpensive!

Because of the resistance by tour boat operators, governmental action will likely be required. Specific action may include:

1. Hawaii requesting, pursuant to the Clean Water Act, that the United States create a No Discharge Zone for the Whale and Marine Sanctuary.
2. The Whale and Marine Sanctuary enacting a regulation to prevent dumping in the Whale and Marine Sanctuary.
3. Hawaii requiring, as a condition of use of Harbors, that boaters utilize pumper trucks.

B. BACKGROUND.

For decades tour boat operators, leaving from and returning to Maalaea Harbor, Lahaina Harbor and Kihei Boat Ramp, have been dumping the contents of their heads into the ocean. The materials include concentrated human feces, urine, and chemicals to treat the waste. The number of tours conducted from Maalaea Harbor alone are approximately 2 to 3 dozen daily. The number of people varies, however, is estimated to be several thousand weekly. Estimates for annual passengers in South and West Maui range upward of 1,000,000. This number does not include cruise ships, which is not discussed here. Significant tour boat traffic into the Maalaea Bay and surrounding area also originates at the Kihei Boat Ramp.

The Maalaea Harbor is one of the busiest in the state. All existing slips are used, which require some of the larger tour boats to moor a few miles away, yet operating out of the Maalaea Harbor. The Maalaea Harbor, Kihei Boat Ramp, and Lahaina Harbor tour boat traffic has increased dramatically in the last ten years. The tours concentrate on excursions within the Whale and Marine Sanctuary.

The Whale and Marine Sanctuary encompasses a great area within and around Maui County. It encompasses the southern tip of Maui, the south and west shores of Maui, surrounds the islands of Molokini and Lanai and extends along the south shore of Molokai. Additional parts of the Whale and Marine Sanctuary are located along portions of Oahu, Kauai and The Big Island. See the attached map for portion (in pink) of the area around Maui County.

There have been increased complaints of sewage encounters in South and West Maui waters.

For years, the dumping of waste and treatment chemicals has been common knowledge to many, including personnel in the Whale and Marine Sanctuary offices in Kihei and Oahu. Many complaints have been recorded in letters to editors of local newspapers and many newspaper, radio and television articles have reported on these problems.

The state of Hawaii has collected fees and taxes and is responsible for upkeep of the harbor facilities, but no pump out facilities exist in South Maui; the single location at Lahaina Harbor is claimed to be inconvenient and is seldom used. The state government has, for many years, indicated an interest in installing pump out facilities at Maalaea Harbor; however state interest has accomplished nothing in this regard, and nothing is expected for several more years.

Water in the Maalaea Bay and channels separating the islands of Maui, Molokini, Lanai and Molokai may be unique in that the currents sometimes circulate water from a distance towards shore, over reefs and along the beaches, including from Maalaea Harbor and south, past Makena. The Sanctuary was created based upon shallow and protected water that the whales prefer. The currents are known to change direction. The circulation described may possibly be attributed to the relatively shallow water several miles from shore, the very large area of Maalaea Bay, and the close proximity of the islands of Molokini, Kahoolawe, Lanai, Molokini and Maui.

An obvious short-term solution to this problem is the relatively inexpensive and uncomplicated implementation of dockside pumping and hauling the waste to treatment facilities. In spite of considerable concern and public attention, most of the tour boat operators continue to resist implementing this simple solution. See just how simple in the photos, page 1.

We understand the boating industry requested a Hawaii fee increase with the reasonable expectation of required improvements to the harbors, including pump out facilities. Because of the inaction of the State, many individuals support reimbursement by the state to the vessel operators who may incur expenses for any dockside pumping they should institute.

Those in charge of the Whale and Marine Sanctuary (NOAA) are legally bound to follow the statutes and rules of the United States regulating the Sanctuary, i.e., protect the Endangered humpback whale and the marine environment. NOAA has failed.

The tour boat operators represent that they are three miles from shore when they dump the feces, urine and treatment chemicals. It is common for operators to hold the contents of the head from prior excursions, including overnight and as long as for several days. A popular site for tours is Molokini Island, a State Marine Life and Bird Conservation District which is also within the Whale Sanctuary. Another is "turtle town" near Makena Landing on Maui. Part of the attraction and income for the tour boat operations is that these areas are replete with humpback whales, sea turtles, giant rays, monk seals, dolphin, fish and other marine life, many of which are endangered or threatened, and some found no where else in the world. The humpback whales utilize these areas for winter habitat, bearing their young, and mating. The tour vessels must often be in close proximity to the humpbacks, turtles or other marine life when they dump the human waste and chemicals.

There is growing evidence in the form of scientific studies, that the drugs ingested by humans are excreted by humans in their urine. These excretions have detrimental effects on

marine life. The drugs of concern include drugs for birth control (proven to "bend" gender of fish, causing inability to reproduce), heart, blood pressure, nervous disorders, etc. See:

<http://www.abag.ca.gov/bayarea/sfeb/programs/>

<http://www.dep.state.fl.us/law/Grants/CVA/CVA>

<http://www.on.ec.gc.ca/epb/fpd>

<http://environment.about.com/od/waterpollution/a/canadasewage.htm>

<http://www.monitor.net/rachel/>

Birth Control Tainted Water can Bend Gender of Male Fish (June 30, 2003 Contra Costa Times) - no link available

The public is expressing great concern for the health of the marine environment and beaches. Reducing stress to the marine environment caused by human activity must be a goal.

C. ENFORCEMENT.

We are unaware of a single enforcement action initiated by NOAA regarding the Whale and Marine Sanctuary in relation to the dumping of concentrated human waste and treatment chemicals within or adjacent to the Whale Sanctuary. We are also unaware of any state action in relation to dumping of human waste and treatment chemicals by tour boat operators in the Whale and Marine Sanctuary.

It is widely represented that it is legal to dump human feces, urine and treatment chemicals as long as the dumping takes place only three miles from shore; however, in many instances this dumping is within the Whale and Marine Sanctuary and may be in violation of the Endangered Species Act and other Sanctuary regulations (see below).

Naomi McIntosh, NOAA's Manager of the Whale and Marine Sanctuary has represented that a "loophole" was purposely written into the regulations to allow dumping of sewage into the Sanctuary.

Other federal laws may be violated, and the Whale and Marine Sanctuary has failed (as of November 15, 2005) to respond to questions regarding the following:

1. What is NOAA's position regarding whether dumping of sewage and chemicals by the tour boat operators into the Whale and Marine Sanctuary is a violation of the "takings" provisions of the Endangered Species Act, and the Whale and Marine Sanctuary rule, 15 CFR 922.184 Subpart Q (a) (3)? "Taking" is defined and interpreted to include harassment and annoyance of the whales or other endangered species. Whales and other endangered species must necessarily swim in the water with the dumped human waste and chemicals. Witnesses have reported direct dumping on whales.

2. What is that agency's position regarding whether transporting sewage and chemicals by the tour boat operators to dump into the Whale and Marine Sanctuary is a violation of 33

USC 1411(a), transporting with intent to dump?

This statute reads as follows:

(a) Except as may be authorized by a permit issued pursuant to section 1412 or section 1413 of this title, and subject to regulations issued pursuant to section 1418 of this title, (1) no person shall transport from the United States, and (2) in the case of a vessel or aircraft registered in the United States or flying the United States flag or in the case of a United States department, agency, or instrumentality, *no person shall transport from any location any material for the purpose of dumping it into ocean waters.* [Italics added]

It is noted that the definitions for this statute may allow incidental dumping of a boat's sewage (aside from Sanctuary and Endangered Species Act issues). However, if the tour operators are doing as represented, the single reason to travel the three miles from shore may be to dump human waste, which is not incidental to the tours. It is clear to observers that the tour boat operators are holding and transporting the human feces, urine and treatment chemicals to the ocean waters for dumping.

The federal laws, and purpose of the Whale and Marine Sanctuary require aggressive prosecution of those dumping concentrated human waste and treatment chemicals within the Sanctuary and within three miles of the shores of Molokini and Maui. Hawaii state also requires aggressive prosecution of illegal dumpers.

D. SUMMARY.

Marine Sanctuary laws were intended to provide sanctuary to the animals and to protect the habitat. To the extent that NOAA takes the position that somehow there exists a "loophole" in the laws that allow sewage to be dumped in the Sanctuary, then we think the agency is culpable for not having closed the "loophole" many years ago.

It is inconceivable that state and federal agencies assert that dumping human sewage in the Hawaiian Islands Humpback Whale Marine Sanctuary may continue one more day.

It is inconceivable that tour boat operators continue to dump human sewage into the water. They make their money from duped passengers who may swim in the same waters that the sewage is dumped. They make money from the marine resource they pollute.

The immediate, inexpensive and simple solution is for the boat operators to have the sewage hauled away for land-based treatment. The government should require this solution.