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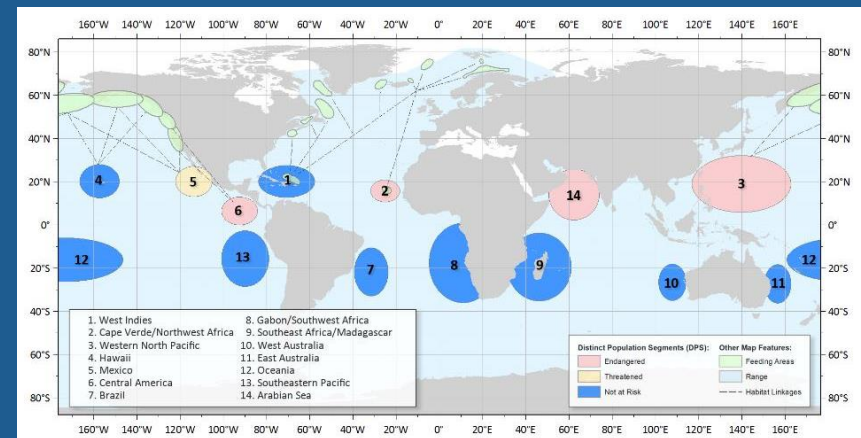
Humpback Whale Approach Rule Summary & Update

MMC Annual Meeting

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Protected Resource Division
May 22, 2019
Kailua-Kona, HI

Approach Rule in Hawai`i – History

- Initial humpback whale approach “interim” rule implemented in 1987.
 - Approach rule finalized in 1995.
 - Only authorized under the ESA, not the MMPA.
- NOAA Fisheries revised ESA listing of humpback whales in 2016:
 - Global species → 14 different distinct populations segments.
 - Hawai`i population no longer listed under ESA protection.
- A new approach rule was authorized under the MMPA in 2016.
 - ESA approach rule would be invalidated with change in listing status
 - An approach rule was deemed still necessary to adequately protect humpback whales from take in Hawai`i.



Current Status

The rule was published as an *interim-final rule* in September 2016:

- Effective in October 2016.
 - Gap in protections could result in increased take.
 - Rule went into effect in coordination with change in ESA listing status.
- Public comments were solicited, only ten were received.
- A *final rule* is currently being reviewed by NOAA Fisheries HQ, will be published with responses to comments.



Humpback Whale Approach Rule

Prohibited activities near humpback whales within 200 nm from shore in Hawai`i:

1. Operate an aircraft within 1,000 feet (304.8 m);
2. Approach, by any means, within 100 yards (91.4 m);
3. Cause a vessel, person, or other object to approach within 100 yards (91.4 m);
4. Approach by interception or “leapfrogging” (i.e., entering in the path of a humpback whale so that the whale surfaces within the restricted distance);
5. Disrupt the normal behavior or prior activity of a whale by any act or omission.

Old Rule vs. New Rule

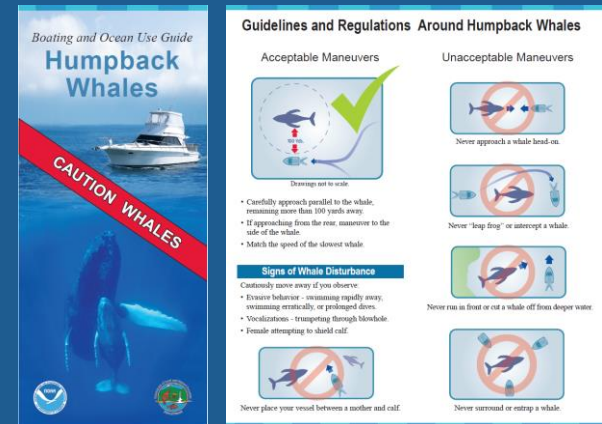
Current rule is similar to the previous rule, but with some updates:

Area of Change	Previous Approach Rule	Current Approach Rule
Statute	ESA	MMPA
Exceptions	Permit authorization	Gov't operations; vessels avoiding imminent danger; vessels with restricted maneuverability; permit authorization
Metric Conversions	1,000 feet = 300 m 100 yards = 90 m	1,000 feet = 304.8 m 100 yards = 91.4 m
Restriction Clarification	"cause a vessel or other object to approach within 100 yards..."	"cause a vessel, <u>person</u> , or other object to approach within 100 yards..."
"No Interception" provision included?	No	Yes

Outreach to Promote Compliance

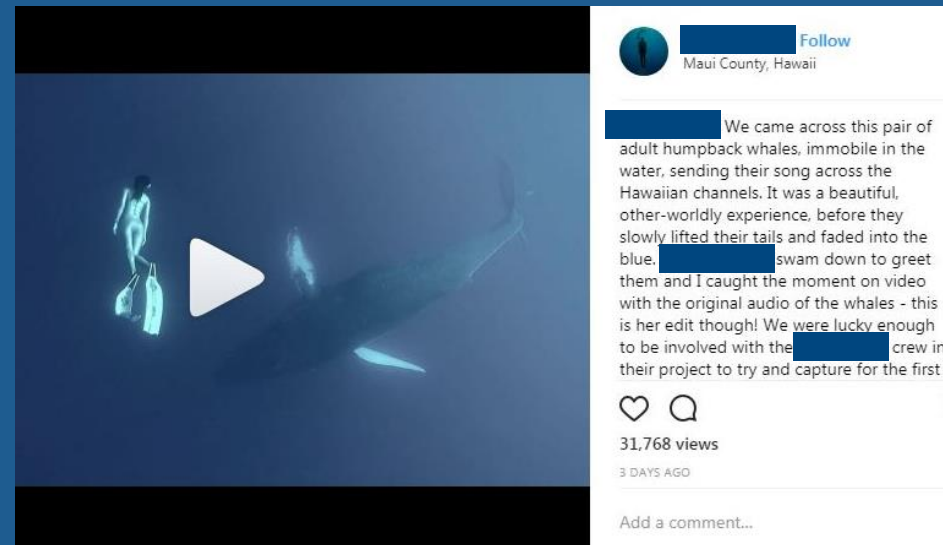
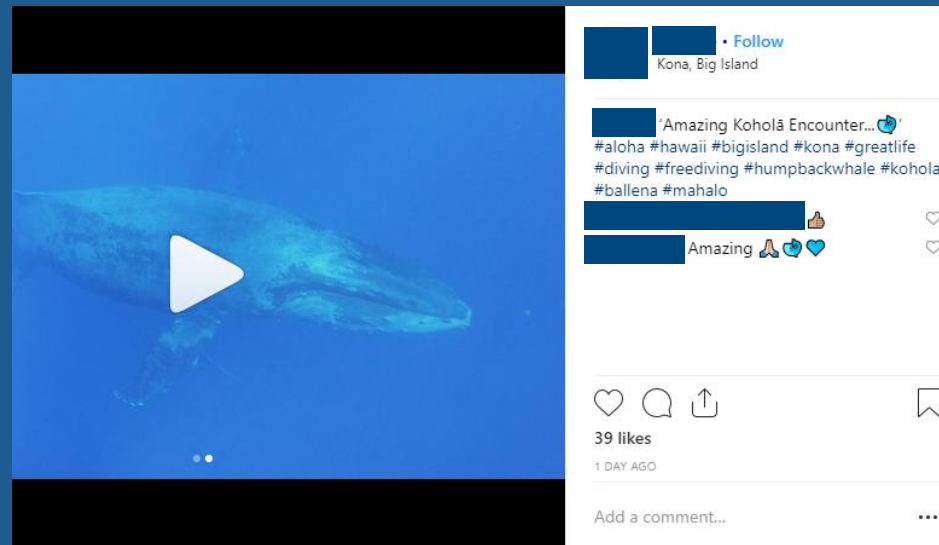
Outreach in collaboration with the Sanctuary:

- Support development of Boating and Ocean Users Guide for Humpback Whales brochure.
- Ocean Users Workshops on each island.
- Outreach events (Sanctuary Ocean Count, events at Waikiki Aquarium, World Oceans Day, and others).
- Media events and TV appearances near the beginning of whale season.



Managing Reports of Harassment

- PRD receives and processes reports of potential take incidents (PTIs).
 - Process that responds to reports of PTIs using systematic decision trees to determine if the incident should be:
 - Forwarded to NOAA OLE (Enforcement Referral), or
 - Managed by PRD through outreach (Management Action).
 - Receive ~70 reports (all species) annually, most from social media.



Enforcement

Authorized enforcement agencies:

- NOAA Office of Law Enforcement (OLE)
 - Primary enforcement agency for humpback whales.
 - Increased on-water patrol efforts in Maui during whale season.
- Hawai`i Division of Conservation and Resources Enforcement (DOCARE)
 - Joint Enforcement Agreement (JEA) authorizes DOCARE to enforce MMPA and ESA.
- U.S. Coast Guard
 - *Operation Kohola Guardian* – cooperative effort with NOAA OLE and DOCARE to patrol Sanctuary waters.
 - Both on-water (ship) and aerial (helicopter) patrols.
 - Strong focus on outreach and education.



Actions & Resources Needed

Overall, the rule is effective in minimizing disturbance to humpback whales and is a valuable tool for outreach and enforcement.

Areas to improve:

- Engagement on social media:
 - Close interactions with humpback whales are becoming “normalized”.
 - Swimming with humpback whales (recreational and commercial).
 - Drone videos and photos.
 - Limited outreach presence on social media.
- Cooperation with the news media:
 - Multiple news reports glamorizing close interactions with humpbacks.
- Enforcement presence on islands other than Maui:
 - Many resources committed to Maui Nui waters.
 - Commercial and recreational interactions are occurring on all islands, particular O`ahu and Big Island.



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