



# PACIFIC WHALE FOUNDATION

300 Ma'alaea Road, Suite 211 Wailuku, Hawaii 96793  
Phone: (808) 249-8811 • Fax: (808) 243-9021 • [www.pacificwhale.org](http://www.pacificwhale.org)

October 28, 2007

Re: SB 1, SD 1  
RELATING TO TRANSPORTATION.

Requires the Department of Transportation to perform an environmental impact statement (EIS) for certain improvements made to commercial harbors. Permits operation of large capacity ferry vessel company prior to completion of EIS upon meeting certain minimum conditions. Establishes a temporary Hawaii Inter-island Ferry Oversight Task Force. (SD1)

My name is Gregory D. Kaufman, President and Founder of Pacific Whale Foundation. I am speaking on behalf of Pacific Whale Foundation's 140 Maui- employees and its 275,000 members and supporters both in Hawaii and around the world.

My message is simple: do not create special legislation allowing a start-up business to operate without complying with Hawaii's environmental laws particularly HRS 343. We believe such an act would be both illegal and unconstitutional.

If, for some unfathomable reason you choose to pursue this unprecedented action, and venture down this slippery legal slope, we recommend the following conditions be made an integral part of SB1 SD1:

1. Route: The large capacity ferry (LCF) should never be allowed to use its' proposed southern route, which transits waters of Penguin Banks and south of Molokai. All travel to and from Maui must be north of Molokai and never enter waters less than 1000 fathoms, unless on entry to and from Kahului or Honolulu Harbors.
2. Speed: In waters depths of 1000 fathoms or less, LCF be limited to speeds of 13 knots or less.
3. Whales: Given the proposed operator of the LCF has acknowledged (in court) their high-speed vessel has a 100 yard blind spot in front of it, whereby any whale surfacing in this area will be hit (and likely killed), HSF must obtain an Incidental Take permit for endangered humpback and sperm whales found in Hawaii's waters. HSF will be required to apply for such a permit from NOAA's Office of Protected Resources and comply with all such requirements as detailed under Section 10 of the Endangered Species Act prior to operation.
4. Mitigation of Blind Spot: To help reduce the likelihood of the LCF hitting whales found inside its 100 yard blind spot, LCF be required to install a series of

cameras on its bow, and the video from these cameras be routed to the wheelhouse whereby a dedicated observer be required to monitor them at all times during operation.

5. Observers: LCF must employ three independent and trained marine observers to detect cetaceans, monk seals and endangered turtles year round. Two observers would be dedicated to forward detection, with the third observer monitoring the bow camera video feed.

6. Approach Limits: LCF be required to abide by their own self-imposed approach restrictions (*see their PUC application*) to humpback whales based upon the Atlantic Right Whale Code which limits approach to no closer than 500 yards and requires that should a vessel find itself within 500 yards to a whale, that it reduce its speed to “a slow safe speed” of 12 knots and depart the area.

7. Marine Life Mitigation Plan: LCF be required to develop, in concert with State and Federal agencies, a Marine Life Mitigation Plan minimizing impacts to whales, dolphins, endangered and threatened turtles and endangered monk seals, and other marine life.

8. Nighttime operations: During humpback whale breeding and calving months, November 1 to June 1, LCF must curtail all nighttime operations. Operation hours will be limited from 30 minutes prior to sunrise to 30 minutes after sunset.

9. Air pollution: To minimize air pollution created by LCF’s massive engines, the vessel must be required to burn on-road diesel only, and be encouraged to utilize a bio-diesel blend ensuring lower emissions. Further the vessel should be retrofitted with hospital grade mufflers to reduce emissions.

10. Wake: Wake damage from ferries is a serious problem in every community they operate. LCF must reduce its speed to 6 knots or less while within one nautical mile of any shoreline.

11. Research: LCF be required to fund independent research identifying distribution and abundance of cetaceans along its routes and to determine long-range effects of these populations due to its operation.

12. Hawaii Inter-island Ferry Oversight Task Force: This task force should be comprised of independent scientists and representatives from non-governmental agencies – not associated with the LCF. State and Federal agencies should serve as ‘resource’ members to the task force only.

I thank you for your time and consideration of this matter.

Sincerely,

Gregory D. Kaufman  
President & Founder  
PACIFIC WHALE FOUNDATION

