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CONGRESSMAN ED CASE
2ND DISTRICT, HAWAII

ISLANDS OF HAWAII, MAUI, KAHŌ'OLAWĒ, LANĀ'I,
MOLOKA'I, O'AHU (WINDWARD, NORTH SHORE,
CENTRAL, LEEWARD), KAUA'I AND NI'IHAU,
AND NORTHWESTERN HAWAIIAN ISLANDS

November 8, 2005

Mr. Daniel J. Basta
Division Chief
National Marine Sanctuary Program
1305 East-West Hwy, Room 11523
Silver Spring, Maryland 20910

Dear Mr. Basta:

I am writing to seek clarification of federal law, regulation, and policy regarding dumping of sewage in federal waters of the Hawaiian Humpback Whale National Marine Sanctuary (HHWNMS), particularly off of Maalaea Bay and Harbor on Maui. It is estimated that some 85,000 visitors embark on tours into these waters each month.

Please advise if there is anything in the HHWNMW governance structure that allows dumping of untreated or minimally treated human waste from tour boats and other vessels into the waters of the Sanctuary. By all accounts, this is occurring at an increasing rate, along with the practice of many tour operators who take their boats into federal waters three miles from shore to dump sewage because dumping within state waters is prohibited.

It is reasonable to assume that dumping of large quantities of concentrated human wastes and chemicals used to treat that waste would have a negative effect on the well-being of endangered marine mammals, sea turtles, coral reefs, and other marine life. In addition to chemicals, such wastes would normally contain traces of pharmaceuticals.

Providing and requiring the use of adequate dockside pumping facilities for tour boats would be the obvious alternative solution. However, the motivation for the state or county or private parties to provide such facilities or for operators to utilize them is weakened if dumping is allowed in federal waters of the Sanctuary.

I would also appreciate answers to the following questions:

- Does NOAA consider dumping of sewage and chemicals by tour boat operators into the Hawaiian Humpback Whale National Marine Sanctuary a violation of the "takings" provisions of the Endangered Species Act, and HHWNMS regulation, 15 CFR 922.184 Subpart Q (a) (3)? It does seem that polluting the environment in which whales and other endangered species swim would constitute harassment and annoyance.

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- What is NOAA's position regarding whether transporting sewage and chemicals by the tour boat operators to dump into the Sanctuary is a violation of 33 USC 1411(a), transporting with intent to dump?

A clear message from NOAA and the Sanctuary that dumping of human wastes is prohibited in the federal waters of the Sanctuary will certainly motivate the state, county, and private businesses to find other solutions to the problem of disposing of the waste.

With aloha,

A handwritten signature in black ink, appearing to read "Ed Case". The signature is stylized and written in a cursive-like font.

ED CASE
United States Congressman
Hawaii, Second District

Cc: Naomi McIntosh, Manager, HHWNMS