Is Hawaii Doing Enough To Overseer Commercial Tour Operators?

Jonathan Owens, a 58-year-old father of two from Louisville, Kentucky, booked a tour with the nonprofit Pacific Whale Foundation last summer to snorkel at Molokini Crater — a small, crescent-shaped island off the south coast of Maui.

During the Aug. 18 trip, he was found unconscious in the water near Molokini and pulled back aboard the Odyssey, the foundation's 95-foot, double-deck catamaran.

The boat returned to Maalaea Harbor, some 40 minutes away, where medics were waiting. Life-saving efforts were unsuccessful and Owens died.

Five days later, Jang Aew Kim, a 73-year-old woman from Grand Prairie, Texas, died after snorkeling off of Molokini during a tour with the same organization to the same place on the same boat.

In fact, four people died on Pacific Whale Foundation tours in a 14-month period from June 2015 to August 2016.

Looking back even further, no other tour boat company in Hawaii has been associated with more than one tourist death in the past four years and the vast majority of killer whale deaths during their tours, a Civil Beat review of tourist deaths showed.

It’s unclear why Pacific Whale Foundation has had more deaths than other companies. The organization did not respond to repeated requests for comment for this story.

Some suspect the distance to Molokini plays a role since it takes longer to return to shore if an accident happens out at sea, and medical experts say a key to saving drowning victims is getting them medical help quickly. Wrongful-death lawsuits filed against the nonprofit have blamed negligent employees, but those cases have either been dismissed or settled with undisclosed terms.

But what is clear is that government regulations have not kept pace with the commercial tour industry.

And ocean safety advocates and others question whether enough is being done to protect the customers who are entrusting their
Hawaii Department of Land and Natural Resources: Safety tips for boating and water sports.

Visitor Deaths on Tours, 2012-2015

Visitor deaths on tours since July 2012, according to media reports collected by D.H. White.

After concerns mounted over tour operators essentially taking over public beaches in Kauai, for instance, Honolulu limited commercial activity there. Kayak companies were deemed particularly problematic because they rent their watercraft to virtually anyone who wants to paddle, including out to the Molokai Islands a mile offshore — the site of numerous rescues.
Your operators have skirted efforts to clamp down on their ability to drop off passengers at Hanauma Bay, the state’s most popular snorkeling destination. The park’s management plan banned large tour buses from just dropping off and picking up passengers, but smaller vans were simply registered as taxis to get around the rule.

"Unfortunately, there are a lot of operators that sell themselves as tour operators in their publicity but they only are registered as taxi companies," said Alan Hong, the retired manager of Hanauma Bay Nature Preserve and a former tour operator himself. "They drop off up to 25 to 30 percent of the visitors to Hanauma Bay at any given time."

Operators with taxi licenses are allowed to drop people off, he said, whereas operators with commercial tour permits have more rules to follow, such as being in the water with their customers to help ensure their safety.

"Those operators that are operating under a taxi license just hand their people the equipment, give them a quick orientation while they’re driving their van or taxi out there, and say, ‘If you’re a poor swimmer, just stay in front of the lifeguard tower.’" Hong said. "That’s essentially how it is."

Pacific Whale Foundation touts the expertise of its employees on its website. The organization trains the "certified marine naturalists" who go along on the tours to explain the fish, corals and other features.

The nonprofit was founded in 1980 to save whales from extinction, and it does research in Australia and Ecuador as well as Hawaii, according to its website. The company offers a variety of snorkel tours and dinner cruises in addition to educational programs and conservation work, and says it has hosted more than 3.5 million people from around the world on tours.

Still, the organization has been the subject of controversy, including lawsuits over the past 20 years.

The National Oceanic and Atmospheric Association sued Pacific Whale Foundation for falsifying and withholding research in the 1990s, as well as approaching whales in early 1998 without a proper permit, according to news reports. The nonprofit fired a researcher who was supposedly to blame and settled the lawsuit.

A lawsuit filed against Pacific Whale Foundation in 2005 blames a near drowning on the nonprofit’s negligence.

According to the lawsuit, Melvin Hume and his family booked a tour with the foundation to snorkel at Molokini on Oct. 1, 2005. But within minutes of going in the water, Hume nearly drowned.

His daughter, Margaret McCannary, watched as the crew on the Pacific Whale Foundation pulled her unconscious father on board the vessel. Other guests on the tour were able to provide emergency medical treatment and restart his heart and breathing.

Hume had no history of heart problems before going on the snorkeling trip. But within three weeks of the incident in Maui’s tropical waters, the California resident suffered a massive stroke and died.

The lawsuit alleges that his death was partly caused by his near-drowning experience on the Molokini trip. It blames Pacific Whale Foundation for failing to properly train its employees, who didn’t adequately supervise Hume in the water. It was a windy day and the seas were rough, and the staff on the vessel failed to
worn in one of those conditions, according to the lawsuit.

The case was dismissed in 2008 with undisclosed settlement terms. Pacific Whale Foundation denied all the allegations, and noted in the lawsuit that the risk of injury associated with snorkeling in the open ocean was disclosed or obvious to the plaintiffs who voluntarily participated in the activity.

The nonprofit remains among the most popular tour companies in Hawaii, receiving a “certificate of excellence” from TripAdvisor, which has become the go-to place for many travelers to read about and review tour safes, hotels, and more. The foundation has consistently earned good reviews on the site, and the nonprofit also has a positive reputation among many in the community for its conservation work.

And while online sites like TripAdvisor or Yelp can include customer reviews pointing to problems, Hawaii’s former Honolulu safety director, thinks there needs to be something akin to a “good housekeeping seal of approval” some sort of official rating or advisory system that lets people check on the safety record of an operator.

"It’s sort of like selecting your doctor," Howe said. "Do you know what your doctor’s outcomes have been?"

Disclosure: Alan Honig is reporter Nathan Eagle’s father-in-law.

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