

dated September 4, 1996, and effective September 16, 1996. Paragraph 6005 is incorporated by reference in 14 CFR 71.1 (61 FR 48403; September 13, 1996). The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E airspace located at Atqasuk, AK, to provide controlled airspace extending upward from 700 feet AGL for aircraft executing instrument landing and departing procedures. The status of Atqasuk Airport will change from VFR to IFR.

The Federal Aviation Administration has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore —(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9D, *Airspace Designations and Reporting Points*, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

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Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

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AAL AK E5 Atqasuk, AK [New]

Atqasuk Airport, AK
(Lat. 70°28'02" N, long. 157°26' 08" W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Atqasuk Airport.

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Issued in Anchorage, AK, on March 21, 1997.

Willis C. Nelson,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 97-7921 Filed 3-27-97; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket Number: 950427120-7006-02]

RIN 0648-AH99

Hawaiian Islands Humpback Whale National Marine Sanctuary

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Final rule; final rule and summary of final management plan implementing the Sanctuary designation.

SUMMARY: NOAA, as required by section 2306 of the Hawaiian Islands National Marine Sanctuary Act (the HINMSA or Act), has developed a comprehensive final management plan and implementing regulations for the Hawaiian Islands Humpback Whale National Marine Sanctuary (the HIHWNMS or Sanctuary). The Sanctuary was designated by Congress in 1992. This document publishes the final Designation Document and final regulations for the Sanctuary, and summarizes the final management plan. The management plan details the goals and objectives, management responsibilities, research and long-term monitoring activities, and interpretive, educational, and resource protection programs for the Sanctuary. The regulations implement the final management plan and govern the conduct of activities consistent with the HINMSA, the National Marine Sanctuaries Act (NMSA), and the

Designation Document for the Sanctuary.

The primary purposes of the Designation Document, final regulations and final management plan are to protect humpback whales and their Sanctuary habitat; to educate and interpret for the public the relationship of humpback whales to the Hawaiian Islands marine environment; to manage human uses of the Sanctuary consistent with the HINMSA and the NMSA; and to provide for the identification of marine resources and ecosystems of national significance for possible inclusion in the Sanctuary.

EFFECTIVE DATES: Congress and the Governor of the State of Hawaii have forty-five days of continuous session of Congress beginning on the day on which this notice is published to review the management plan and regulations before they take effect. After forty-five days, the management plan and regulations automatically become final and take effect, unless the Governor of the State of Hawaii certifies within the forty-five-day period to the Secretary of Commerce that the management plan, regulations, or term thereof is unacceptable. In such case, the management plan, regulation or term cannot take effect in the area of the Sanctuary lying within the seaward boundary of the State of Hawaii. If the Secretary considers that any certification of unacceptability by the Governor will affect the Sanctuary in such a manner that the policy or purposes of the HINMSA cannot be fulfilled, the Secretary may terminate the entire Sanctuary designation. At least 30 days before that termination, the Secretary must submit written notice of the termination to the House Committee on Resources and Senate Committee on Commerce, Science, and Transportation.

A document announcing the effective date of these regulations will be published in the **Federal Register**.

ADDRESSES: The Final Environmental Impact Statement/Management Plan (FEIS/MP) prepared to implement the Sanctuary designation was released on February 18, 1997. Copies of the FEIS/MP are available on request to the Hawaiian Islands Humpback Whale National Marine Sanctuary Office, 726 South Kihei Road, Kihei, Maui, Hawaii 96753; or the Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1305 East-West Highway, SSMC-4, 12th Floor, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT:

Debra Malek, Regional Manager, Pacific Branch, Sanctuaries and Reserves Division, Silver Spring, Maryland, (301) 713-3141, or Allen Tom, On-site Project Specialist, Kihei, Maui, Hawaii, (808) 879-2818 (Maui), (808) 541-3184 (Oahu) or (800) 831-4888 (inter-island toll-free).

SUPPLEMENTARY INFORMATION:**I. Background**

The establishment of a national marine sanctuary in the waters around Hawaii was first considered in 1977, when NOAA received the nomination for a final Humpback Whale National Marine Sanctuary in the waters between the islands of Maui, Molokai, Lanai, and Kahoolawe. Scientists and resource managers, at a workshop convened in December 1977, recommended that a marine sanctuary would be most beneficial for the long-term protection of the endangered humpback whale. Workshop participants concluded that a Sanctuary that encompassed the marine waters around the main Hawaiian islands would provide the greatest protection for humpback whales in the waters off Hawaii. The nomination was placed on NOAA's List of Recommended Areas in October 1979. In accordance with NOAA regulations, NOAA declared the site an "active candidate" for sanctuary designation in March 1982, and public workshops were conducted in Hawaii during April 1982. Both support for a sanctuary and concerns regarding possible regulation of fishing activities and vessel operation were voiced at these meetings. In early 1984, at the request of the State government, NOAA suspended further consideration of the site as a possible national marine sanctuary.

In October 1990, Congress directed NOAA to determine the feasibility of establishing a national marine sanctuary around Kahoolawe Island, the smallest of the eight main Hawaiian islands (Pub. L. 101-515). NOAA's 1992 report to Congress, "Kahoolawe Island National Marine Sanctuary Feasibility Study", found that although it did not appear that large numbers of humpback whales utilize Kahoolawe Island waters, other biological, cultural and historical resources adjacent to Kahoolawe Island merited further investigation as to their possible national significance. The study recommended that additional areas around the Hawaiian Islands be considered as possible components of a multiple-site, multiple-resource national marine sanctuary. In 1992, Congress considered the reauthorization of Title III of the Marine Protection, Research,

and Sanctuaries Act of 1972, as amended, 16 U.S.C. 1431 *et seq.* (MPRSA; also cited as the National Marine Sanctuaries Act). During this time, the State of Hawaii presented testimony at reauthorization hearings citing the need and desirability of designating a Humpback Whale National Marine Sanctuary in the waters around Hawaii. Coupled with the Kahoolawe Feasibility Study, the State's testimony renewed Congressional interest in designation of a national marine sanctuary in Hawaii.

On November 4, 1992, Public Law 102-587 (the Oceans Act), was signed into law. Subtitle A of Title II of the Oceans Act (the National Marine Sanctuaries Program Amendments Act) reauthorized and amended Title III of the MPRSA. Subtitle C of Title II of the Oceans Act, titled the Hawaiian Islands National Marine Sanctuary Act (Act), designated the Hawaiian Islands Humpback Whale National Marine Sanctuary. The Act specified a boundary for the Sanctuary subject to modification by the Secretary of Commerce (Secretary) as necessary to fulfill the purposes for which the Sanctuary was designated, and identified waters around Kahoolawe Island for automatic designation as part of the Sanctuary on January 1, 1996, unless certified by the Secretary as being unsuitable for inclusion in the Sanctuary. The Secretary made such a certification of unsuitability in December 1995, due to the presence of unexploded ordnance in the waters around Kahoolawe and to await the development of the Kahoolawe Island Reserve Commission's (KIRC's) Ocean Management Plan. The HINMSA was amended in 1996 to eliminate the annual finding of suitability by the Secretary, and instead provided a process by which the KIRC could request for the inclusion of the marine waters within three miles of Kahoolawe in the Sanctuary.

Section 2306 of the Act requires the Secretary to develop a comprehensive management plan and implementing regulations following the procedures of sections 303 and 304 of the NMSA (16 U.S.C. 1433 and 1434; these sections set forth designation standards and procedures for designating and implementing the designation of national marine sanctuaries). To meet these requirements, a series of scoping meetings was conducted in March 1993 on each of the main Hawaiian Islands, and in Washington, D.C. During March 1994, additional public meetings were conducted on each of the main Hawaiian Islands to aid the development of a draft management

plan for the Sanctuary. On-site staff also solicited information from Federal, State and county agencies and the public to assist in the development of a draft management plan and proposed implementing regulations. A draft environmental impact statement/management plan (DEIS/MP) and proposed implementing regulations were developed by SRD in partnership with the Hawaii Office of State Planning (now the Office of Planning) pursuant to a memorandum of agreement signed in June 1993. The DEIS/MP and proposed implementing regulations (60 FR 48000, September 15, 1995) were published on September 15, 1995, initiating a 90-day public comment period that ended on December 15, 1995. Over 25 statewide informational meetings were held to assist the public in understanding SRD's preferred alternatives in the DEIS/MP and to answer questions and concerns. SRD also held seven public hearings throughout the main Hawaiian Islands to formally receive comments on the DEIS/MP and proposed implementing regulations. In total, over 250 written and oral comments were received by NOAA during the public comment period.

Issues and concerns raised in the public comments included: Sanctuary boundaries; the waters around Kahoolawe; regulations; fishing; enforcement; management/scope; the Sanctuary Advisory Council (SAC); research; education; native Hawaiians; user fees; funding for the program; socio-economic impacts; need for the Sanctuary; the manner in which the Sanctuary was designated; and Federal presence in State waters. A summary of the significant comments on the proposed regulations and the regulatory elements of the DEIS/MP and NOAA's responses to them follow. Comments are presented and responded to in greater detail in appendix A of the FEIS/MP.

II. Response to Comments**Boundary**

Comment: All boundary alternatives should exempt commercial harbors from the Sanctuary and allow for further expansion of existing harbors. Harbor exemptions should also include approaches and off-shore anchorages.

Response: The Sanctuary boundary excludes major ports, harbors, and small boat basins primarily because they do not constitute humpback whale habitat. Whales tend to avoid such areas because of the number and types of activities that occur within such ports, harbors, and small boat basins (both in and out of the water). Such activities include, but are not limited to, vessel painting,

shore-based boat cleaning, toxic paint releases from moored vessels, and sewage disposal. NOAA has determined that the nature and level of these activities are not appropriate for inclusion within the Sanctuary. By excluding these areas, NOAA will be able to focus Sanctuary management on the long-term protection of other areas that do constitute humpback whale habitat and are less heavily impacted by human activity. The list of excluded ports, harbors and small boat basins can be found at section 945.2 of these regulations. These final regulations add the Ala Wai small boat basin on Oahu to the list of excluded areas. While the Sanctuary regulations do not prohibit the construction of new harbors or the expansion of existing harbors conducted in compliance with a valid Federal or State permit, plans for such development within the Sanctuary will be reviewed by NOAA in order to offer recommendations and comments to ensure that Sanctuary resources are adequately protected. At that time, NOAA will determine whether to revise the Sanctuary boundary to exclude the new or expanded port, harbor or boat basin. Approaches to harbors and offshore anchorages are not excluded from the Sanctuary boundary because these areas are more frequently used by humpback whales and provide an important link between the nearshore and deeper water habitats.

Comment: NOAA should only include those areas on leeward sides of the islands in the Sanctuary boundary since that is where the whales seem to be located.

Response: NOAA disagrees. Humpback whale distribution studies over the last ten years have shown that humpbacks are commonly found in waters less than 100-fathoms throughout the main Hawaiian Islands (windward and leeward). Though distribution studies have shown that humpbacks can be found in greater numbers in leeward areas, they still use windward areas for breeding, calving, and nursing activities. At present, scientists do not fully understand distribution patterns and habitat preference for humpbacks, though it is accurate to say that humpback whales are distributed throughout the main Hawaiian Islands, particularly in waters less than 100-fathoms. Given that humpback whales are very dynamic and swim among the different islands, NOAA has determined that the boundary should include windward and leeward sides of the islands.

Comment: NOAA should adopt a Sanctuary boundary that includes waters around all the main Hawaiian

Islands from the shoreline to the 1000-fathom isobath to better encompass all the whales' habitat.

Response: NOAA recognizes that this boundary alternative would include most if not all the humpback whale habitat in the main Hawaiian Islands, but has concluded that this alternative is far too large for effective management under current and foreseeable financial and staff resources. Most of the area in this boundary alternative is located significantly offshore (e.g., up to 40 miles from each main Hawaiian Island). The dispersion of management activities (e.g., research, enforcement) in these areas would strain the program's ability to effectively manage other nearshore areas of the Sanctuary. Since most human and whale activities and interactions occur in relatively shallow waters (generally less than 100-fathoms), NOAA believes the focus of Sanctuary management efforts would be better placed in these areas. This alternative also fails to consider the importance of U.S. Department of Defense (DOD) military use areas in Hawaii that are essential to national security and defense.

Comment: NOAA should adopt a zoned boundary; an outer boundary around the 1000-fathom isobath (no regulations—advisory only) and an inner boundary constituting the Congressionally-designated boundary.

Response: NOAA disagrees. Although this option would incorporate most humpback whale habitat in the Sanctuary, NOAA believes that such a boundary is too large to effectively manage (see previous response). NOAA believes that a 100-fathom isobath boundary is more manageable since research, education, and other resource protection measures can be focused in those nearshore areas where whales and human activities are more likely to come into conflict. This core 100-fathom boundary is included as the NOAA preferred boundary alternative, excluding DOD military use areas that are essential to national security and defense.

Comment: The shoreline does not need to constitute the Sanctuary's border since whales do not go that close to shore.

Response: The shoreline was chosen as the Sanctuary's inshore boundary because the purpose of the Sanctuary is to protect the humpback whale and its habitat. Humpback whales use the shallow, nearshore areas (less than 100-fathom isobath) around the main Hawaiian Islands for certain reproductive activities (i.e., calving and nursing). The bathymetry around the Hawaiian Islands is variable, with some

adjacent marine areas dropping off steeply very close to shore and, therefore, whales may be found in these areas. Further, impacts to the nearshore waters of humpback whale habitat could impact waters further offshore as well, where whales are also found. The shoreline is also more easily recognized as a definable, uniform inshore boundary than are offshore areas. Finally, a boundary that includes the shoreline also provides more protection for stranded whales or whale carcasses that wash up on shore.

Comment: Define what makes a boundary manageable versus non-manageable. The Statewide boundary is too large for NOAA to effectively manage.

Response: The National Marine Sanctuary Program has 12 different sites, each encompassing unique resources in a defined geographic area. Their sizes range from 0.25 square miles to over 5,000 square miles. Manageability must be looked at on a site-by-site basis taking into account area's size and resources, existing management authorities, accessibility to the site, types and impacts of human uses, suitability for research, monitoring and enforcement activities, and fiscal and staffing resources of the National Marine Sanctuary Program. In selecting a sanctuary boundary, NOAA assesses whether the boundary will facilitate the goals for which the sanctuary was designated and whether it is manageable given resource and practical limitations. NOAA has determined that it can successfully supplement and help coordinate research, long-term monitoring, education, and enforcement programs within a statewide Sanctuary boundary (with certain exceptions) encompassing the waters from the shoreline to the 100-fathom isobath.

Comment: NOAA should adopt the Congressionally designated boundary (Maui County and part of Kauai).

Response: Although Maui County has historically had and continues to have the highest reported concentration of humpback whales, other areas of the State (i.e., Kauai, Oahu, and the Big Island) include important whale habitat used for breeding, calving, and nursing activities. Many different scientific research studies have concluded that humpback whales are primarily distributed within the 100-fathom isobath throughout the main Hawaiian Islands, including Kauai, Oahu, and the Big Island. NOAA believes that a statewide boundary is necessary to provide comprehensive and coordinated management of humpback whales throughout Hawaii, and that the benefits associated with a national marine

sanctuary, including research and educational efforts, and enhanced enforcement of existing laws, should be available to all the islands of the State.

Comment: The expansion of the Sanctuary beyond Maui County is not justified, especially in light of the fact that the military exclusion zones contain high reported concentrations of humpback whales (West Kauai, Oahu). Military areas should not be excluded from the boundary since activities occurring in these areas can impact the whales.

Response: In choosing a boundary for a sanctuary, NOAA must take into consideration many factors, including a area's size, resources, manageability, and the human uses of the area (see earlier response). The Department of Defense (DOD) is a significant ocean user in Hawaii, and many of its activities are essential to our nation's security and defense. NOAA has formally consulted with DOD on their existing military activities and has concluded that they have sufficient resource protection measures within their standard operating procedures to ensure the protection of humpback whales and their habitat. DOD activities remain subject to the provisions of the Marine Mammal Protection Act (MMPA), the Endangered Species Act (ESA), and other laws and regulations relating to water quality. To facilitate DOD military uses, NOAA, in consultation with the State of Hawaii and DOD, determined that the Hawaii Sanctuary boundary should not include certain military use areas in order to support the military's interests and activities now as well as into the future, and to maintain our nation's national security interests.

Comment: NOAA should expand the boundary of the Sanctuary to include waters surrounding the entire State, including the Northwest Hawaiian Islands (NWHI).

Response: NOAA agrees that the boundary of the Sanctuary should be expanded beyond the Congressionally-designated boundary (i.e., Maui County). However, NOAA does not believe that the NWHI should be included within the Sanctuary boundary for a variety of reasons. First, few humpback whales have been reported around the atolls, islands, banks, and reefs of the NWHI. Second, this area is managed as a national wildlife refuge, significantly restricting access to the area, even for research purposes. Finally, the inclusion of these waters, which are remote and difficult to access, could hinder effective resource management efforts in these areas and detract management efforts

from other parts of the main Hawaiian Islands.

Comment: NOAA should expand the boundary of the Sanctuary to include areas of humpback whale habitat throughout the U.S. Exclusive Economic Zone (EEZ).

Response: NOAA does not believe that a Sanctuary encompassing all of the EEZ around Hawaii is necessary or manageable. Most humpback whales can be found within the 100-fathom isobath around the main Hawaiian Islands. An EEZ-sized Sanctuary would expand the Sanctuary to areas that are very remote—hundreds of miles from human population centers. As a result, comprehensive management, including additional research, long-term monitoring, and enforcement demands would significantly strain financial resources and curtail effective management efforts in other areas of the State where both whales and humans are more likely to interact. Regulatory protection offered by the MMPA and the ESA, however, still protects the humpback whale throughout the EEZ around Hawaii.

Comment: NOAA should adopt a boundary that encompasses areas of highest reported concentrations of humpback whales so that the Sanctuary does not include areas where whales are not typically present.

Response: Although this boundary encompasses a series of discrete areas known to be extensively used by humpback whales, it fails to include other important identified areas of the main Hawaiian Islands that humpback whales utilize for transit, courting/mating, breeding, calving, and resting activities. In addition, this boundary does not consider the fact that an increasing whale population will eventually require more space to successfully reproduce, calve, and nurse, and it does not allow for the adequate comprehensive protection of humpback whales and their habitat throughout the Hawaiian range. Finally, this boundary fails to recognize the importance of DOD military use areas and activities that are essential to national security and defense.

Comment: NOAA should adopt as a boundary for the Sanctuary the 100-fathom isobath surrounding all the main Hawaiian Islands including Kaula Rock.

Response: While this boundary accurately reflects the current understanding of humpback whale distribution and habitat use in Hawaii, it fails to recognize the significance of DOD military use areas and activities that are essential to national security and defense. Furthermore, this boundary is slightly larger in scope than

the NOAA preferred boundary, as it includes marine waters surrounding Niihau and Kaula Rock. The inclusion of these waters, which are remote and difficult to access, could hinder effective resource management efforts in these areas and detract management efforts from other parts of the main Hawaiian Islands.

Comment: NOAA should exclude the Big Island from the Sanctuary's boundary because there are not as many whales around the island as in other parts of the State, and the Big Island residents do not want the Sanctuary there.

Response: NOAA has received oral and written comments both in opposition to and in support of the inclusion of the Big Island within the boundary of the Sanctuary. NOAA believes that the waters around the Big Island constitute important habitat for the humpback whale. Research has shown that the northwest portion of the Big Island contains high concentrations of whales. The whales are also known to use other areas around the Big Island for reproduction, calving, and nursing activities as well. NOAA believes that inclusion of the Big Island will help ensure that comprehensive management and protection of humpback whales and their Hawaiian habitat will be applied statewide. NOAA does not believe that the inclusion of the Big Island will result in significant adverse socio-economic impacts on marine users, and that the benefits associated with a national marine sanctuary (including research and educational efforts, and enhanced enforcement of existing laws) would be distributed throughout the main Hawaiian Islands.

Comment: NOAA should include the Big Island in the Sanctuary boundary.

Response: NOAA agrees and the Big Island has been included in the boundary with the exception of harbors, ports and small boat basins (see previous response).

Kahoolawe

Comment: The waters around Kahoolawe could be added to the Sanctuary without the opportunity for public comment. This would be a violation of the NMSA.

Response: The public has had at least two formal opportunities (March 1993 scoping meetings and September–December 1995 public hearings and comment period on the DEIS/MP) to comment on the inclusion of the waters around Kahoolawe in the Sanctuary. In December, 1995, the Secretary of Commerce certified that the waters around Kahoolawe are unsuitable for inclusion in the Sanctuary and,

therefore they are not part of the Sanctuary boundary. In 1996, the HINMSA was amended, in part to provide that should NOAA determine in the future that Kahoolawe waters may be suitable for inclusion in the Sanctuary, NOAA will prepare a supplemental environmental impact statement, management plan, and implementing regulations for that inclusion. This process will include the opportunity for public comment. Further, the Governor would have the opportunity to certify his or her objection to the inclusion, or any term of that inclusion, and if this occurs, the inclusion or term will not take effect. NOAA is committed to providing additional opportunities for public input, and will also seek recommendations and advice from the SAC. In addition, NOAA will work closely with the KIRC and the State concerning the inclusion of Kahoolawe waters in the Sanctuary.

Regulations

Existing Regulations

Comment: Humpback whales are already protected by the MMPA, the ESA, and State regulations. There is no need for additional regulatory protection.

Response: In 1992, Congress enacted the HINMSA, recognizing the important role that the Hawaiian Islands play in the preservation and long-term vitality of the endangered humpback whale. The waters around the Hawaiian Islands constitute essential breeding, calving, and nursing areas for this important national resource, and are subject to damage and to loss of their ecological integrity from a variety of disturbances.

The HINMSA directed NOAA to develop a comprehensive management plan and implementing regulations for the Sanctuary in consultation with appropriate Federal, State, and local government authorities, as well as other interested persons (i.e., marine users and the general public). The purpose of the Sanctuary designation is to promote the comprehensive and coordinated protection of the humpback whale and its habitat, which NOAA has determined can be achieved through research, monitoring, education, and better enforcement of existing regulations.

NOAA reviewed the scientific literature concerning potential impacts to humpback whales and the existing Federal and State regulations and programs designed to protect humpback whales and their habitat, and concluded that no additional independent regulatory prohibitions or restrictions

are needed for their protection at this time. NOAA believes that other coordinating and non-regulatory protection measures are needed, however, to ensure the long-term recovery and vitality of humpback whales and their habitat. While direct regulation is certainly one means of providing protection for resources, NOAA believes that education, research, monitoring, coordination, and better enforcement of existing laws are also necessary to ensure comprehensive protection for humpback whales and their habitat.

NOAA has found that there are adequate existing regulations in place to provide protection of humpback whales and their habitat in Hawaii at this time. However, NOAA, in consultation with other Federal and State agencies, resource managers and researchers, has determined that enforcement of existing authorities needs to be supplemented to provide for greater, coordinated and comprehensive protection of humpback whales and their habitat.

Supplementation will be accomplished by incorporating certain existing restrictions as Sanctuary regulations. Such action will enable the Sanctuary to bring the humpback whale perspective to the application of these existing authorities, and to allow for enforcement mechanisms and, when appropriate, civil penalties to be brought under the NMSA for violations of such authorities.

NOAA also recognizes that existing authorities do not provide the necessary resources for agencies to develop comprehensive and coordinated education, research, monitoring, and enforcement programs to ensure the continued viability of humpback whales and their habitat. Nor do these laws provide the degree of public input into managing these resources as does the NMSA. NOAA has therefore determined that there is a need to supplement these other non-regulatory resource protection management tools, and that the Hawaii Sanctuary can play an integral role in facilitating dialogue and in coordinating with the other Federal, State, and county agencies, and the general public. The Sanctuary Management Plan provides a comprehensive and coordinated regime, that complements existing efforts, to protect, manage, and conserve humpback whales and their habitat in Hawaiian waters so they may be enjoyed by both present and future generations.

Comment: How will the Sanctuary provide more protection for the whales given that they are already protected by existing regulations?

Response: NOAA believes that "protection" encompasses more than regulatory measures. Education, research, monitoring, coordination, and enforcement all contribute to protecting Sanctuary resources. In response to public and agency comments, NOAA is not issuing new, independent Sanctuary prohibitions or restrictions in Hawaii to protect humpback whales and their habitat. Instead, NOAA will essentially incorporate existing regulations to make up the regulatory portion of the Sanctuary management regime (see previous comment). This will increase protection for humpback whales and their habitat in several ways. First, this gives authority for the Hawaii Sanctuary to be a resource management agency that actually "sits at the table" and reviews permit applications for potential harm to Sanctuary resources. The Hawaii Sanctuary has a different and much more focused mission than any of the other agencies in Hawaii inasmuch as its primary concern is to ensure that humpback whales and their habitat are not adversely impacted. Since the Sanctuary is relying on existing regulations, the Sanctuary will not issue independent permits, but will work within the existing permit structures of agencies to ensure that potential impacts to whales are addressed. Memoranda of Understanding (MOUs) with such agencies will detail how the Sanctuary will coordinate in reviewing permit applications.

Second, Sanctuary regulations also provide the necessary authority for the Sanctuary to directly work with Federal and State enforcement agencies to coordinate enforcement of permit violations. Although there are several different Federal and State enforcement entities, all are facing severe financial resource limitations. The Sanctuary can supplement these limited resources and enhance education and outreach efforts to ensure that the public is informed about existing regulations.

Finally, the regulations may provide an added deterrence to potential violators in that the Sanctuary program has a \$100,000 potential maximum civil penalty for persons violating Sanctuary regulations (whale approach and harassment, discharges, and alteration of the seabed). All Sanctuary fines assessed as a result of Sanctuary enforcement actions will, however, be based on a civil penalty schedule developed for the Sanctuary that will be made publicly available.

Non-regulatory features of the Sanctuary that will provide greater protection for humpback whales and their habitat include: the SAC, which

can provide a framework for continuous dialogue between the Sanctuary Manager and resource managers, researchers, educators, enforcement agencies, marine users, and the public; research used to address management-related issues and to answer unknown questions such as how and why whales change their behavior in response to various human disturbances; and proactive efforts to work with existing organizations and marine user groups to produce and disseminate information about how humans can minimize their impacts on humpback whales and their habitat and on the existing laws that protect Sanctuary resources.

Comment: Although Sanctuary program staff have stated that there will be no "new" Sanctuary regulations, doesn't the fact that the Sanctuary is incorporating existing regulations as part of its regulatory structure constitute new regulations? How is this different than the status quo in terms of permits, veto authority over projects, and enforcement?

Response: NOAA is essentially incorporating certain existing Federal and State regulations that protect (directly and indirectly) humpback whales and their habitat into the Sanctuary management regime as Sanctuary regulations. However, the regulations do not impose any new restrictions inasmuch as the regulations only impose the substantive restrictions which were already in place before the designation of the Sanctuary. They do not place any additional prohibitions or restrictions on marine users aside from those that already exist. Nor do the Sanctuary regulations provide authority to require and issue Sanctuary permits. The Sanctuary is developing MOUs with appropriate Federal and State agencies to facilitate the review by the Sanctuary of other agency permit applications for activities that could impact Sanctuary resources, and, if necessary, provide recommendations to the agency considering issuing a permit on ways to prevent, minimize, or mitigate harm to these resources. These would be recommendations only, and the permitting agency ultimately determines whether to include the recommendations as part of its permit conditions. The Sanctuary regulations do not provide the authority for NOAA to veto, deny, or approve permits issued or authorized by these other agencies. The only "new" feature of these regulations would be that if an activity is conducted without a required permit, or in violation of the terms and conditions of an existing permit, such action would be a violation of the Sanctuary regulations. The Sanctuary

would then coordinate with the appropriate Federal or State agency on any necessary enforcement actions. This regime is consistent with the input NOAA received throughout the public process from Federal and State agencies, resource managers, researchers and others regarding the adequacy of existing regulations as they pertain to protection of humpback whales and their habitat in Hawaii.

Comment: The current humpback whale approach regulations are flawed. The Sanctuary should create a "right of safe passage" or show some "intent to harass" so that as the humpback whale populations continue to increase and vessel-whale interaction becomes more common, vessel operators will still be allowed to transit an area without fear of being cited for a violation of an approach regulation.

Response: In 1987, the National Marine Fisheries Service (NMFS) published an interim rule under the ESA (52 FR 44912) establishing a 100-yard approach limit for vessels (or people), a 300-yard vessel approach limit in cow/calf areas, and a 1000-foot overflight limit to provide better protection for humpback whales and to minimize the effects of increasing vessel traffic on humpback whales. A final rule was published by NMFS in January 1995 (60 FR 3775) that retained the 100-yard vessel approach limits and 1000-foot overflight limit, but eliminated the 300-yard cow-calf areas.

NOAA recognizes a difference between approach and proximity to humpback whales, and that whales may approach vessels. The 100-yard approach regulation clearly states that approaching (moving toward) a humpback whale within the prescribed limits is prohibited. A vessel would not ordinarily violate the regulation by inadvertently being inside the 100-yard limit, or if a humpback whale surfaces or approaches within 100 yards of a vessel. NMFS Enforcement agents and the NOAA Office of General Counsel (GC) assess alleged violations on a case by case basis to determine whether an approach has occurred, and whether an enforcement action is warranted. The existing approach regulations appear to have successfully achieved protection for the whale while avoiding enforcement actions for merely being within 100 yards of a whale.

The National Marine Sanctuary Program is incorporating the NMFS approach prohibitions into the Sanctuary management regime. The Sanctuary program cannot independently make changes to regulations promulgated under other authorities (MMPA, ESA, or any other

Federal or State regulation). The Sanctuary program, however, recognizes the concerns of the boating community over the enforcement of these regulations and the potential conflict due to increases in both the whale populations and in boating activities in Hawaii. The Hawaii Sanctuary will help coordinate and facilitate dialogue between concerned boaters and NMFS (Office of Protected Species and Office of Enforcement) and NOAA-GC. In addition, the Sanctuary Management Plan will undergo a formal evaluation after five years, including a determination of the effectiveness of the Sanctuary regulations at protecting Sanctuary resources, and their impacts on marine users.

Comment: The Sanctuary should, in cooperation with boat operators, promote proper disposal of sewage from boat heads, encourage compliance with existing laws, and help implement existing regulations and programs.

Response: NOAA agrees. Water quality is one component of the humpback whale habitat that many people want to see improved and maintained. The Sanctuary can use the expertise available on the SAC and associated working groups to work with the boating community and operators to develop voluntary education programs aimed at achieving proper vessel sewage disposal and compliance with existing regulations. The Sanctuary is also supplementing existing regulations that pertain to discharges or deposits that could affect humpback whales or their habitat by making illegal discharges or deposits a Sanctuary violation.

Future Regulations

Comment: The Sanctuary has not provided a guarantee that there will be no new Sanctuary regulations in the future.

Response: NOAA cannot make the guarantee that future regulations will never be necessary. It is possible that someday resource managers may identify a specific type of activity that could negatively impact Sanctuary resources or create conflicts among other Sanctuary users. While other non-regulatory options would be pursued first, regulation is one type of management tool that NOAA may choose to consider in order to protect Sanctuary resources or minimize user conflict. NOAA could not issue a new regulation, however, without first going through an extensive public review and comment process (see following response). The Governor would also have the opportunity to object to any new Sanctuary regulation as it pertains to State waters.

Comment: Should new regulations be necessary in the future, what is the process?

Response: NOAA must first identify and support that there is a need for a new regulation (e.g., that a Sanctuary resource is being, or could be negatively affected by some activity or that an activity is creating a conflict among Sanctuary users). NOAA would work with other Federal and State resource management agencies, the research community and affected user groups to collect all relevant and available information and scientific data that will be used to more clearly define the problem and identify potential solutions. NOAA will also seek advice and recommendations from the SAC and other resource management agencies prior to initiating any rulemaking.

If after coordinating with existing agencies and the SAC a decision is made to propose a new regulation, NOAA is required to, at a minimum, follow the procedures of the Administrative Procedure Act, requiring that adequate public notice and opportunity for public comment be given for any new regulation. Further, if NOAA proposed a regulation outside of the scope of regulations listed in the Sanctuary Designation Document, NOAA would be legally required to follow the procedures of the designation process, including public review and comment, at least one public hearing, preparation of a Supplemental EIS, and gubernatorial review and non-objection. If the Governor objects, the regulation would not take effect in State waters. Finally, if NOAA proposed to substantively amend an existing regulation, NOAA must provide for public review and comment and, although not legally required to do so, has agreed that if the Governor objects the amendment would not take effect in State waters.

Comment: There should be no new regulations unless:

- (i) The need for a new regulation is clearly demonstrated;
- (ii) the disturbance results in loss of humpback whale life;
- (iii) the negative impacts of the activity have been documented and substantiated by legitimate research; and
- (iv) regulations are first approved unanimously by the SAC.

Response: NOAA agrees that there should not be any new sanctuary regulations unless there is a demonstrated need. NOAA will work closely with existing agencies, the SAC, the scientific community, and marine users to identify and clarify any

potential problems before promulgating new regulations. NOAA will make all efforts to collect existing relevant scientific data or provide resources to fund research if necessary to investigate the nature, scope, and cause of such problems.

NOAA does not agree, however, that it should only regulate an activity if the activity is found to kill a humpback whale. NOAA firmly believes that resource protection should be proactive in nature and be responsive to potential problems as they arise—this means acting when the problem is identified and confirmed, rather than waiting until after a death occurs before taking any action.

NOAA fully intends to seek input from the SAC on the scope of any potential problems as well as solutions on how to solve those problems (regulatory and non-regulatory). NOAA views this SAC input, as well as those from other agencies and the public, as extremely important in shaping Sanctuary policy. NOAA disagrees, however, that it must first seek “unanimous approval” by the SAC before it could ever consider issuing a regulation. The SAC is an advisory body whose role is to provide advice and recommendations to the Sanctuary Manager on policy issues, including regulation. Unanimous approval is not necessary and is unrealistic given the broad spectrum of interests represented on the SAC. NOAA will consider the advice and recommendations of the SAC, as well as comments received during the general public comment period on a proposed regulation, to evaluate whether to proceed with promulgating a new regulation.

Comment: The Sanctuary program should develop a more detailed definition of habitat in the regulations to clarify how the Sanctuary will interface with other permitting agencies.

Response: NOAA's humpback whale habitat definition for the Sanctuary was developed to be consistent with those habitat definitions of the MMPA and the ESA. At this time, humpback whale habitat is based on known whale distributions and on those activities and behaviors that occur in these areas. More scientific research is needed to investigate those specific chemical, physical, and biological components of the marine environment that are truly an important or necessary component for humpback whales before a more precise definition can be proposed. This is also the primary reason the Sanctuary is relying on, and only supplementing, other authorities that regulate discharges and alteration of seabed activities.

As noted in an earlier response, the Hawaii Sanctuary is currently developing MOUs with relevant Federal and State agencies to more clearly define the types of permits the Sanctuary would review and specific procedures for Sanctuary review and comment. The draft MOUs are included in Appendix F of the FEIS/MP.

Comment: New regulations are not needed and NOAA should focus on research and education only.

Response: NOAA disagrees. Resource protection is the primary goal of the National Marine Sanctuary Program and NOAA, as a co-manager in partnership with other Federal and State agencies, must be able to provide adequate protection for those resources. NOAA has determined that a national marine sanctuary must have some minimum level of regulation as part of a Sanctuary's management regime, primarily to protect Sanctuary resources. As detailed in earlier responses, additional protection is needed for humpback whales and their habitat, and incorporating certain existing regulations into the Sanctuary management regime adds more protection. Without having a direct role or authority to manage resources of the Sanctuary, NOAA would not be able to fulfill the responsibilities imposed by the HINMSA to comprehensively manage and protect the Sanctuary and its primary resources, the humpback whale and their habitat.

Furthermore, NOAA would be constrained in its ability to expend Sanctuary resources to enhance enforcement of these existing regulations if it did not, at a minimum, incorporate certain existing restrictions as Sanctuary regulations. Such enhanced enforcement is an integral component of the Sanctuary's management regime protective measures, and is consistent with the overall recommendations contained in the Hawaii Ocean Resources Management Plan (ORMP).

Like research and education, regulation and enforcement are management tools necessary to protect Sanctuary resources. Further, additional Sanctuary resources could be wisely spent to enhance existing enforcement efforts by NMFS, the State Department of Health (DOH), or Department of Land and Natural Resources (DLNR). Such enhancement could be in the form of funding for educational materials about what protective regulations currently exist for the humpback whale and its habitat, for convening workshops for ocean users to discuss enforcement activities, or for funding research to determine adequacy of enforcement

actions. Furthermore, the Sanctuary Program is examining the feasibility of funding additional monitoring or enforcement positions within DOH and DLNR.

Comment: NOAA should support compliance with existing regulations.

Response: NOAA agrees, and has identified this alternative as the preferred regulatory alternative. NOAA believes this regulatory alternative will best allow the Sanctuary to fulfill its responsibilities to protect Sanctuary resources without unnecessarily duplicating existing Federal and State agency rules and regulations that provide protection (directly or indirectly) to humpback whales or their habitat. This alternative also addresses the concerns raised regarding additional Sanctuary regulations and permits. The Sanctuary regulations have no requirements to obtain separate Sanctuary permits to conduct otherwise prohibited activities.

Comment: NOAA should not supplement existing regulations because there is a real potential for future and more stringent regulations, and for higher fees, fines, and penalties.

Response: NOAA disagrees. The final Sanctuary regulations are limited in scope to essentially incorporating those existing Federal and State regulations that protect the humpback whale and its habitat. It is impossible for NOAA to predict whether new regulations will ever be needed or if they will be more stringent. The procedures for issuing new regulations, however, will involve broad public input and gubernatorial review (see earlier response).

NOAA has never proposed any mandatory user fees for the Sanctuary. Further, in 1996 the HINMSA was amended, in part, to prohibit NOAA from instituting any user fee under the HINMSA or NMSA for any activity within the Sanctuary or any use of the Sanctuary or its resources. Accordingly, mandatory user fees for the Sanctuary cannot be imposed. The only fees will be those assessed by other Federal, State and county agencies.

To alleviate the public's concern that any violation of a Sanctuary regulation will result in the assessment of the maximum \$100,000 civil penalty, NOAA's Office of General Counsel is developing a civil penalty schedule for the Sanctuary, which will be made publicly available. The civil penalty schedule will identify the ranges of fines that could be assessed for violating Sanctuary regulations, taking into account such factors as number of prior violations and the severity or type of violation.

Comment: NOAA should adopt comprehensive regulations to protect the humpback whale and its habitat. Since the MMPA and ESA are currently being watered down, the Sanctuary should have independent regulations to provide supplemental protection.

Response: While NOAA agrees that a complete suite of independent Sanctuary regulations and permits may provide greater protection for humpback whales, it also recognizes the concerns raised by other Federal, State, and county agencies and marine users regarding duplicative laws and multiple permitting processes. Because this Sanctuary protects the humpback whale and its habitat which are already protected by other Federal and State authority, NOAA has attempted to craft a resource protection plan that does not add unnecessary regulation, permits, or time requirements. As such, NOAA believes that working cooperatively with other agencies will best allow NOAA to achieve its limited resource protection goals while minimizing any adverse impact on other agencies and Sanctuary users. If significant changes to existing authorities occur, NOAA may re-evaluate the Sanctuary regulations to determine whether they should be amended.

Comment: NOAA should adopt strict regulations on marine users and activities to protect humpback whales and their habitat so that it has direct authority to provide more protection for humpback whales and a greater ability to prevent those actions that do harm humpback whales or their habitat.

Response: NOAA disagrees. This regulatory alternative is not presently justified by the available data concerning impacts to humpback whales or their habitat.

Comment: National marine sanctuaries should entail ecosystem based management. NOAA should issue regulations to protect the ecosystem so that it can address the true resource management needs in Hawaii.

Response: NOAA does not agree that all marine resources should be included in the Sanctuary and that comprehensive regulations for ecosystem management be implemented at this time. NOAA is required by the HINMSA to identify other areas and ecosystems of national significance for possible inclusion in the Sanctuary. NOAA agrees that an ecosystem-based Sanctuary should be given more consideration, and has detailed a process in Part V(c) of the final management plan (Sanctuary Resources), that will involve substantial input from the SAC, other agencies, and members of the public prior to

including additional marine resources or ecosystems. This process will clearly identify and clarify what, if any, such resources should be included in the Sanctuary and what role the Sanctuary should take in their management and protection.

Fishing

Comment: The Sanctuary will restrict fishing in Hawaii.

Response: NOAA disagrees. The proposed management plan and regulations for the Sanctuary did not include the regulation of fishing activities. The final management plan and regulations have not changed. Moreover, fishing is not included as an activity listed in the scope of activities in the Designation Document as being subject to regulation. Thus, any regulation of fishing would constitute a change in the term of the designation, as contained in the Designation Document for the Sanctuary, for which the Secretary of Commerce must comply with the applicable requirements of section 304 of the NMSA. Such requirements include providing the Western Pacific Regional Fishery Management Council (WESPAC) with the opportunity to determine if fishing regulations are necessary and if so, to draft such regulations for the Sanctuary. NOAA would also consult with the State and the SAC, as well as the fishing industry to determine an appropriate course of action to address concerns over impacts to Sanctuary resources from fishing activities. Further, NOAA would be required to solicit public comments, conduct at least one public hearing, and prepare a Supplemental EIS. Finally, the Governor of Hawaii would have the ability to review and veto the amendment to the Designation Document and new Sanctuary regulation before it can take effect in State waters.

All fishing activities in Federal waters are managed by WESPAC and NMFS, and in State waters by the DLNR. There is little evidence to indicate that humpback whales extensively feed while in Hawaiian waters (though opportunistic feeding may occur). As such, whales and fishermen do not extensively interact, or at least, at a level necessitating the creation of Sanctuary regulations governing fishing activities. While fishermen, as well as other marine users, are subject to the existing NMFS regulations prohibiting approaches closer than 100-yards, current enforcement data confirms this relatively low level of disturbance as fishermen have never been cited for harassing a whale in Hawaii. In fact, most fishermen fish in areas that do not

have high whale concentrations because of claims that whales scare the fish away.

The Hawaii Sanctuary recognizes the importance of fishing for livelihood and enjoyment in Hawaii. Additionally, the Sanctuary recognizes the importance of protecting Native Hawaiian fishing and gathering rights and will work to ensure these are not unnecessarily impacted by new regulations.

Enforcement and Penalties

Comment: Civil penalties implies an "all or nothing" approach to enforcement. The potential economic consequences of scaring boaters with excessive fines should be noted. The fine structure should be expanded to include degrees of violations, both intentional and unintentional. The inadvertent accident of a well-meaning citizen should not be the grounds for a severe penalty. Who will develop the penalty structure? What public review process will the penalty structure go through. The \$100,000 maximum potential fine is scary to ocean users. The Sanctuary needs to clarify what maximum fines are for certain types of violations.

Response: The civil penalty section of the Hawaii Sanctuary regulations (§922.186) describes the maximum statutory civil penalty, \$100,000, that can legally be assessed for a violation of the NMSA, HINMSA, or any regulation or permit issued under those laws. A civil penalty schedule for the Sanctuary with recommended minimum and maximum penalties will be developed by the NOAA's Office of General Counsel for Enforcement and Litigation with input from the Office of Law Enforcement, in consultation with the Sanctuary program. The schedule will set forth a range of civil penalties that could be assessed for a violation of each Sanctuary prohibition, taking into account aggravating and mitigating factors such as prior violations and the severity of the violation. The civil penalty schedule will be made publicly available and will be similar to other penalty schedules that are presently available for other sanctuary sites (e.g., Key Largo, Looe Key). This schedule should alleviate concerns over the maximum potential penalty being assessed for minor infractions of the law.

Penalties for regulations established under the NMSA are created under civil law and therefore differ from some of those established under other Federal/State jurisdictions within the Sanctuary (those established under criminal law). This will have both positive environmental benefits and overall

positive socioeconomic benefits for the Sanctuary. The resources of the Sanctuary will receive a greater level of protection by providing civil authority to other agencies through cross-deputization. Enforcement of regulations is best facilitated by agencies cross deputizing to enforce civil penalties.

Civil authority and coordinated enforcement under the NMSA have positive socioeconomic impacts on society in general in that there are cost savings to the public when agencies can share authorities and combine human and material resources. The Sanctuary regulations provide supplemental civil penalty options. In some cases, civil may be more appropriate than criminal. In some cases, use of both civil and criminal may be appropriate. The resources can be better protected when there are more options for individuals enforcing the regulations. This, in turn, should lead to greater environmental and socio-economic benefits.

Civil authority lends itself more freely to an educational and interpretive approach to enforcement of regulations in national marine sanctuaries. Simply the message that something is a Sanctuary violation is all that is needed to achieve compliance from the vast majority of Sanctuary users. This concept underscores one of the most important goals of a Sanctuary enforcement program—to obtain through education, voluntary compliance with regulations protecting (directly and indirectly) humpback whales and their habitat.

Many commenters have expressed concern about the discretion of enforcement officers in handling violations. Such discretion is applied on a case-by-case basis and, as a result, most violations are addressed through written or verbal warnings. Civil penalties are recommended by the NOAA-GC enforcement attorney upon completion of an investigation by the enforcement officer and review of the case specifics, and will be guided by the Sanctuary civil penalty schedule.

Comment: The Sanctuary brings the added potential for people to get their vessels seized.

Response: In addition to vessel seizure provisions contained within the ESA, the MMPA, and other fishery, customs, and boater laws, the NMSA also contains provisions that authorize vessel seizure in connection with or as a result of any violation of the NMSA or the implementing regulations for the Hawaii Sanctuary. However, it is unlikely that NOAA would seize someone's vessel for violating the humpback whale approach and

harassment regulations unless seizure is necessary because the violation was particularly egregious, or if there was a risk the violator intended to leave Hawaiian waters.

User Fees

Comment: Mandatory user fees are inevitable if the Sanctuary is adopted, and will be established either by NOAA or by Congress.

Response: NOAA acknowledges the near universal public and agency opposition of "user fees" to fund and manage individual sanctuaries. NOAA did not propose broad-based mandatory user fees in the DEIS/MP. Further, in 1996, the HINMSA was amended, in part, to prohibit NOAA from instituting any user fee under the HINMSA or NMSA for any activity within the Sanctuary or any use of the Sanctuary or its resources. NOAA has clarified references to user fees in the final management plan to eliminate any confusion over this issue.

Comment: The Sanctuary will collect fees through special use permits.

Response: NOAA has not provided for the issuance of special use permits in Hawaii. NOAA has generally only issued special use permits in a few sanctuaries to allow an activity to occur that would otherwise be prohibited by a specific Sanctuary regulation. The Hawaii Sanctuary has not proposed, in either the DEIS/MP or FEIS/MP, issuing independent permits, including special use permits.

Socio-Economic Impacts

Comment: The Sanctuary proposes to incorporate the National Marine Fisheries Service humpback whale approach regulations that were amended in 1994. The Sanctuary should analyze the socio-economic impacts of these 1994 amendments.

Response: The Sanctuary program has no direct jurisdiction over the MMPA or its amendments which were signed into law by Congress in 1994. Congress, in coordination with affected agencies, must consider the environmental and socio-economic impacts of new or modified laws and regulations prior to their enactment. The Sanctuary program is not required to evaluate the socio-economic impacts of the 1994 amendments to the MMPA. However, NOAA has assessed the socio-economic impacts of incorporating the NMFS regulations into the Sanctuary's management regime. Based on the assessment, NOAA has determined that there will be minimal, if any, negative socio-economic consequences associated with incorporation of the regulations into the Sanctuary's

management regime. Part IV of the FEIS/MP discusses socio-economic consequences more in-depth.

Comment: The socio-economic impacts of future regulations has not been clearly articulated in Part IV (the socio-economic impacts analysis section) of the DEIS/MP.

Response: NOAA has not assessed the socio-economic impacts for future regulations because the need or likelihood of such regulation is speculative. NOAA has determined, based on existing information, that no new regulatory prohibitions or restrictions are needed to protect humpback whales and their habitat. NOAA cannot say if new regulations will be needed in the future, how restrictive they will be, or which user groups will be affected.

Comment: Unnecessary Sanctuary regulations and restrictions will have a direct negative-effect on the cost of transporting goods between neighbor islands.

Response: NOAA is not adding any new independent regulatory prohibitions or restrictions to those already in place. Rather, NOAA is essentially incorporating certain regulations already in existence to protect humpback whales and their habitat. For example, the 100-yard humpback whale approach regulations have been in place and enforced by NMFS since 1987. These regulations have not had significant adverse effects on the cost of transporting goods between islands, and could only impact the cost of transporting goods if a vessel captain was in violation of these regulations.

Comment: NOAA should exempt all commercial transport activities from Sanctuary regulations because of negative economic impacts.

Response: NOAA does not agree that commercial transport should be singled out as the only industry that should be exempted from the Sanctuary regulations. The Sanctuary regulations essentially incorporate certain existing restrictions as Sanctuary regulations and do not add independent Sanctuary regulatory prohibitions or restrictions, permits, or approval requirements beyond what is already. Consequently, the Sanctuary will not pose negative socio-economic impacts on the commercial transport industry. Exempting commercial transport activities from the Sanctuary regulations is neither necessary nor consistent with achieving the purposes of the HINMSA. The commercial transport industry has never been cited for whale harassment.

III. Summary of the Final Management Plan

The final management plan for the Hawaiian Islands Humpback Whale National Marine Sanctuary sets forth the Sanctuary's location and provides background information on humpback whales and their habitat, other marine resources located in Hawaii, and human uses of the area. The final management plan describes the resource protection, research and long-term monitoring, education and interpretive programs, and details specific activities to be undertaken in each program. The final management plan also includes a discussion, by program area, of agency roles and responsibilities and a description of Sanctuary administration, including the establishment of a SAC. Major components of the final management plan are summarized below.

Resource Protection

Unlike most other national marine sanctuaries, which are based on protecting and managing a marine ecosystem environment, the only resources included for protection and management under the Sanctuary regime are humpback whales and their habitat. Thus, the highest management priority for the Sanctuary is the long-term protection of the humpback whales and their habitat in Hawaii. In addition to the HINMSA, the humpback whale is specifically protected by two other Federal laws. The humpback whale is listed as an endangered species under the ESA, and is protected under the MMPA, both administered by NOAA's NMFS. As many of the activities affecting humpback whales and their habitat are presently regulated or governed by these and other existing Federal, State and county authorities, the Sanctuary management will primarily work with these authorities to ensure comprehensive, complementary, coordinated and more efficient management and protection of humpback whales and their habitat. Sanctuary management will also work with existing Federal and State enforcement entities to coordinate enforcement efforts, develop annual enforcement plans, and respond to public concerns.

The goals and objectives of the Resource Protection Program are designed to reinforce, complement and coordinate existing management and regulatory efforts; fill gaps in existing participation and awareness in protecting humpback whales and their habitat; address some of the problems,

objectives and policies identified in the Hawaii Ocean Resource Management Plan (1991), the NMFS Final Recovery Plan for the Humpback Whale (1991), and other programs, such as point and non-point source pollution control measures as they relate to the protection of the humpback whale's Hawaiian habitat. Because the only resources included for protection and management under the Sanctuary regime—humpback whales and their habitat—already are protected, directly and indirectly, by a number of other laws (e.g., ESA, MMPA, Clean Water Act, Rivers and Harbors Act, and the Coastal Zone Management Act), the Sanctuary will reinforce these existing management regimes without adding to current regulatory and administrative requirements.

To fulfill the statutory mandate of providing long-term protection for the population of humpback whales and their Sanctuary habitat, the Resource Protection Program has the following objectives and strategies:

- (1) Coordinate and complement policies and procedures among the agencies sharing regulatory responsibility for the protection and management of humpback whales and humpback whale habitat within the Sanctuary (Sanctuary habitat), primarily with NMFS, and also with other various Federal, State and county agencies of competent jurisdiction;
- (2) Develop and issue Sanctuary regulations only as necessary to reinforce and complement existing efforts and fill gaps in existing authorities for the protection and management of humpback whales and their Sanctuary habitat;
- (3) Complement coordination among appropriate Federal, State and county authorities to enhance enforcement of existing laws that fulfill Sanctuary goals;
- (4) Encourage participation by interested agencies and the public in the development of procedures to address specific management concerns (e.g., research, long-term monitoring, enforcement, education, and emergency-response programs);
- (5) Promote public awareness of, and voluntary compliance with, Sanctuary regulations and objectives and other authorities in place that protect humpback whales and their Sanctuary habitat, through education and interpretive programs stressing resource sensitivity and wise use of the marine environment;
- (6) Utilize research and monitoring results and other scientific data from resource management agencies and researchers to develop effective,

comprehensive resource protection strategies and improve management decision-making; and

(7) Facilitate all public and private uses of the Sanctuary (including uses of Hawaiian natives customarily and traditionally exercised for subsistence, cultural, and religious purposes) consistent with the primary objective of protection of the humpback whales and their Sanctuary habitat.

Research and Long-Term Monitoring Program

Effective management of the Sanctuary's resources requires the development and implementation of a responsive Sanctuary research and long-term monitoring program. The primary goals of the Research and Long-Term Monitoring Program are to improve our understanding of humpback whales and their habitat requirements; identify, address and resolve specific management concerns; establish a long-term ecological monitoring program with respect to humpback whales and their habitat; coordinate and facilitate information exchange among the various researchers and institutions, agencies, and the general public; and enhance the public's participation in resource stewardship. Other research priorities will pertain to identifying and assessing additional marine resources and ecosystems of national significance for possible inclusion in the Sanctuary.

The Research and Long-Term Monitoring Program will be part of the overall effort to implement portions of the NMFS Final Recovery Plan for the Humpback Whale and other long-term protection plans for humpback whale habitat (e.g., Hawaii Ocean Resource Management Plan). The specific objectives for the Sanctuary Research and Long-Term Monitoring Program are to:

(1) Improve the present understanding of humpback whales' vital life rates (age at sexual maturity, pregnancy rates, calving intervals, mortality and age-specific mortality), abundance, distribution, movement, behavior, and interrelationships with their Hawaiian habitat;

(2) Characterize the marine environment to establish baseline parameters for identifying, detecting and monitoring natural- and human-induced changes to humpback whales and their habitat, and to identify research needs and gaps;

(3) Establish a coordinating framework and procedures for identifying, selecting and sponsoring research projects to ensure that the research topics are responsive to management concerns and that research

results contribute to improved management decisionmaking in the Sanctuary;

(4) Develop a long-term ecological monitoring program to detect and determine the cause or causes of future changes and trends in the vital parameters and the important habitat components of the humpback whale population that winters in the Hawaiian Islands;

(5) Develop a data and information management system for tracking and integrating new information into an evolving understanding of humpback whales and their habitat; and

(6) Encourage information exchange among all researchers, organizations and agencies undertaking humpback whale and habitat related research in the Sanctuary and elsewhere to promote more informed management and decisionmaking.

(7) Facilitate the process to evaluate marine resources, in addition to humpback whales and their habitat, for possible inclusion in the Sanctuary.

Education and Interpretation Program

The primary goals of the Education and Interpretation Program are to improve public awareness and understanding of the humpback whale and its habitat; enhance knowledge of the Sanctuary's purposes, goals and resource protection strategies; facilitate responsible human uses within the Sanctuary consistent with the primary objective of protection of the humpback whale and its habitat; encourage public participation; and facilitate information exchange among the various environmental educators and interpreters, researchers, agencies, and the general public. Particular focus will be placed on projects which interpret for the public the relationship of humpback whales to the Hawaiian Islands marine environment, as well as educating the public about native Hawaiian traditions and uses as they relate to Hawaii's marine environment.

On-site visitor programs will be instituted consisting of making available printed materials describing the Sanctuary for distribution at statewide government offices, marine recreation businesses, marinas, whalewatching vessels, humpback whale interpretive centers, libraries, schools, airports, harbors and other local establishments. The Sanctuary headquarters, located in Kihei, Maui, and other visitor and information centers located throughout Hawaii will be used to inform visitors about the Sanctuary, humpback whales and their habitat, and Hawaii's marine environment.

The specific objectives of the Sanctuary Education and Interpretation Program are to:

(1) Enhance public awareness, understanding and appreciation of humpback whales and their habitat;

(2) Create public awareness of the National Marine Sanctuary Program, the Hawaiian Islands Humpback Whale National Marine Sanctuary, and other humpback whale conservation groups and organizations;

(3) Establish a coordinating framework and procedures for identifying, selecting and sponsoring education projects to ensure that the education topics are responsive to management concerns and that the education products contribute to greater understanding and appreciation of the Sanctuary, humpback whales and the broader Hawaiian Islands marine environment;

(4) Encourage information exchange among all persons, organizations and agencies undertaking environmental education and research activities in the Sanctuary;

(5) Establish a user-friendly Data/Information Center for the location of information and research results pertaining to Sanctuary resources and management information; and

(6) Establish cooperative education programs with native Hawaiian groups to educate people about native Hawaiian traditions, culture, uses and religion as they relate to Hawaii's unique marine environment.

Sanctuary Administration

Depending on the resources available to the Sanctuary, staffing will include a Sanctuary manager, administrative assistant, research coordinator, education coordinator, and one or more enforcement/interpreter personnel. Staff will be distributed among the Sanctuary's headquarters, other satellite offices located on other islands, and/or within other agencies. Arrangements may be made among various levels of government agencies and private sector organizations through cooperative agreements or memoranda of understanding to provide personnel and/or resources to carry out the duties associated with the research and education coordinator positions. On-site activities will be coordinated through cooperative arrangements and/or specific memoranda of understanding between NOAA's SRD and other Federal, State, and county agencies, and non-governmental organizations, as appropriate.

A twenty-five member SAC has been established pursuant to section 315 of the NMSA (16 U.S.C. 1445a) to enable

agencies, interested groups, and individuals to provide advice and recommendations on the management of the Sanctuary. The SAC consists of a balanced representation of marine user groups affected by Sanctuary designation, including Federal and State authorities, Native Hawaiian groups, fishing interests, commercial whalewatching industry, boating industry, environmental interests, researchers, education groups, and members of the community. The SAC acts in an advisory capacity to the Sanctuary Manager and will be helpful in the development of annual operating plans and reports by providing to the Sanctuary Manager advice and recommendations on education, outreach, research, long-term monitoring, resource protection and revenue enhancement priorities. The SAC will play an instrumental role in advising the Sanctuary Manager on the identification of marine resources and ecosystems of national significance for possible inclusion in the Sanctuary through a process outlined in Part 4(c) of the final management plan. The SAC works in concert with the Sanctuary Manager by keeping her or him informed about issues of concern throughout the Sanctuary, offering recommendations on specific issues, and advising the Manager in achieving the goals of the Sanctuary program within the context of Hawaii's marine programs and policies.

In order to function efficiently in an advisory capacity and incorporate the different concerns from all the main Hawaiian Islands, the SAC may form subcommittees that correspond to the main Sanctuary management areas of education, research, resource protection, regulations/enforcement, revenue enhancement, and others as necessary. Additional subcommittees may be formed to provide recommendations to the SAC on the identification and assessment of other marine resources and ecosystems of national significance for possible inclusion into the Sanctuary. Technical working groups may also be formed to provide informational or technical assistance on specific issues. To ensure county representation, the SAC would have one seat for each of the four counties (Kauai, Honolulu, Maui and Hawaii Big Island).

IV. Final Designation Document and Implementing Regulations

The terms of designation include the geographic area included within the Sanctuary; the characteristics of the area that give it conservation, recreational, ecological, historical, research, educational, or aesthetic value; and the

types of activities that will be subject to regulation by the Secretary to protect these characteristics. The terms of designation may be modified only by those procedures provided in section 304 of the NMSA. Thus, the terms of designation serve as a constitution for the Sanctuary. In the case of this statutorily designated Sanctuary, many of the terms of designation are contained in the HINMSA. The final Designation Document follows:

Final Designation Document for the Hawaiian Islands Humpback Whale National Marine Sanctuary

On November 4, 1992, President Bush signed into law the Hawaiian Islands National Marine Sanctuary Act (HINMSA or Act; Subtitle C of the Oceans Act of 1992, Pub. L. 102-587) which designated the Hawaiian Islands Humpback Whale National Marine Sanctuary (HIHWNMS or Sanctuary).

The purposes of the Sanctuary are to:

- (1) protect humpback whales and their Sanctuary habitat;
- (2) educate and interpret for the public the relationship of humpback whales to the Hawaiian Islands marine environment;
- (3) manage human uses of the Sanctuary consistent with the designation and Title III of the Marine Protection, Research and Sanctuaries Act, as amended (MPRSA; also cited as the National Marine Sanctuaries Act or NMSA), 16 U.S.C. § 1431 *et seq.*; and
- (4) provide for the identification of marine resources and ecosystems of national significance for possible inclusion in the Sanctuary.

Article I. Effect of Designation

Section 2306 of the HINMSA requires the Secretary to develop and issue a comprehensive management plan and implementing regulations to achieve the policy and purposes of the Act, consistent with the procedures of sections 303 and 304 of the NMSA. Section 304 of the NMSA authorizes the issuance of such regulations as are necessary and reasonable to implement the designation, including managing and protecting the conservation, recreational, ecological, historical, research, educational and aesthetic resources and qualities of the Hawaiian Islands Humpback Whale National Marine Sanctuary. Section 1 of Article IV of this Designation Document lists activities subject to regulation which are those activities that may be regulated on the effective date of the regulations, or at some later date in order to implement the Sanctuary designation.

Article II. Description of the Area

The HINMSA identified a Sanctuary boundary but authorized the Secretary to modify the boundary as necessary to fulfill the purposes of the designation. The Sanctuary boundary was modified by the Secretary to encompass the submerged lands and waters off the coast of the Hawaiian Islands extending seaward from the shoreline, cutting across the mouths of rivers and streams,—

- (1) To the 100-fathom (183 meter) isobath adjoining the islands of Maui, Molokai and Lanai, including Penguin Bank, but excluding the area within three nautical miles of the upper reaches of the wash of the waves on the shore of Kahoolawe Island;
- (2) To the deep water area of Pailolo Channel from Cape Halawa, Molokai, to Nakalele Point, Maui, and southward;
- (3) To the 100-fathom (183 meter) isobath around the island of Hawaii;
- (4) To the 100-fathom (183 meter) isobath from Kailiu Point eastward to Makahuena Point, Kauai; and
- (5) To the 100-fathom (183 meter) isobath from Puaena Point eastward to Mahie Point, and from the Ala Wai Canal eastward to Makapuu Point, Oahu.

Excluded from the Sanctuary boundary are the following commercial ports and small boat harbors:

Hawaii (Big Island)

Hilo Harbor
Honokohau Boat Harbor
Kawaihae Boat Harbor & Small Boat Basin
Keauhou Bay

Oahu

Ala Wai Small Boat Basin

Kauai

Hanamaulu Bay
Nawiliwili Harbor

Lanai

Kaumalapau Harbor
Manele Harbor

Maui

Kahului Harbor
Lahaina Boat Harbor
Maalaea Boat Harbor

Molokai

Hale o Lono Harbor
Kaunakakai Harbor

As specified at sections 2305(b) of the HINMSA, on January 1, 1996, the area of the marine environment within 3 nautical miles of the upper reaches of the wash of the waves on the shore of Kahoolawe Island was to become part of the Sanctuary, unless during the 3

month period immediately preceding January 1, 1996, the Secretary certified in writing to Congress that the area was not suitable for inclusion in the Sanctuary. The Secretary made such a certification in December 1995. As such, the waters surrounding Kahoolawe are not included in the Sanctuary. The HINMSA was amended in 1996 to allow the Kahoolawe Island Reserve Commission (KIRC) to request inclusion of the marine waters three miles from Kahoolawe in the Sanctuary. Upon receiving a request from the KIRC, should NOAA determine that Kahoolawe waters may be suitable for inclusion in the Sanctuary, NOAA will prepare a supplemental environmental impact statement, management plan, and implementing regulations for that inclusion. This process will include the opportunity for public comment. Further, the Governor would have the opportunity to certify his or her objection to the inclusion, or any term of that inclusion, and if this occurs, the inclusion or term will not take effect.

Article III. Characteristics of the Area That Give It Particular Value

The Hawaiian Islands comprise an archipelago which consist of eight major islands and 124 minor islands, with a total land area of 6,423 square miles, and a general coastline of 750 miles. The central North Pacific stock of endangered humpback whales, the largest of the three North Pacific stocks, estimated to be at approximately 10% of its pre-whaling abundance, uses the waters around the main Hawaiian Islands for reproductive activities including breeding, calving and nursing. The warm, calm waters around the main Hawaiian Islands provide protective environments required for such activities. Of the known wintering and summering areas in the North Pacific used by humpback whales, the waters around the main Hawaiian Islands maintain the largest seasonally-resident population; approximately 2,000 to 3,000 humpback whales use these waters. The proximity to shore helps support an active commercial whalewatch industry, which is supported annually by millions of visitors who either directly or indirectly enjoy the Sanctuary waters.

In sections 2302 (1) and (4) of the HINMSA, Congressional findings state that "many of the diverse marine resources and ecosystems within the Western Pacific region are of national significance," and "the marine environment adjacent to and between the Hawaiian Islands is a diverse and unique subtropical marine ecosystem." In addition, Congress found that the

Sanctuary could be expanded to include other marine resources of national significance. The waters around the Hawaiian Islands contain 24 other species of cetaceans, the highly endangered Hawaiian monk seal, three species of sea turtles and many other marine species endemic to this environment. Coastal Hawaiian waters also support spectacular coral reef ecosystems which provide local people with an abundant source of fish and are a popular dive destination for visitors worldwide. These waters also contain a number of cultural/historical resources, including those reflecting native Hawaiian traditions and uses.

Article IV. Scope of Regulations

Section 1. Activities Subject to Regulation. In order to implement the Sanctuary designation, the following activities are subject to regulation to the extent necessary and reasonable to ensure the protection and management of the characteristics and values of the Sanctuary described above; primarily the protection and management of humpback whales and their Sanctuary habitat. Regulation may include governing the method, location, and times of conducting the activity, and prohibition of the activity, after public notice and an opportunity to comment. If a type of activity is not listed it may not be regulated, except on an emergency basis, unless Section 1 of Article IV is amended by the procedures outlined in section 304(a) of the NMSA. Such activities are:

- a. Approaching, or causing another vessel or object to approach, by any means a humpback whale in the Sanctuary;
- b. Flying over a humpback whale in the Sanctuary in any type of aircraft except as necessary for takeoff or landing from an airport or runway;
- c. Discharging or depositing, from within or from beyond the boundary of the Sanctuary, any material or other matter into, or that enters or could enter the Sanctuary, without, or not in compliance with, the terms or conditions of a required, valid Federal or State permit, license, lease or other authorization;
- d. Drilling into, dredging or otherwise altering the seabed of the Sanctuary; or constructing, placing or abandoning any structure, material or other matter on the seabed of the Sanctuary without, or not in compliance with, the terms or conditions of a required, valid Federal or State permit, license, lease or other authorization;
- e. Taking, removing, moving, catching, collecting, harvesting, feeding, injuring, destroying or causing the loss

of, or attempting to take, remove, move, catch, collect, harvest, feed, injure, destroy or cause the loss of any humpback whale or humpback whale habitat;

f. Possessing within the Sanctuary a humpback whale or part thereof regardless of where taken, removed, moved, caught, collected or harvested; and

g. Interfering with, obstructing, delaying or preventing an investigation, search, seizure or disposition of seized property in connection with enforcement of the HINMSA or NMSA or any regulation or permit issued under the HINMSA or NMSA.

Section 2. Emergencies. Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality; or minimize the imminent risk of such destruction, loss or injury, any activity, including those not listed in Section 1 of this Article, is subject to immediate temporary regulation, including prohibition. If such a situation arises, the Director of NOAA's Office of Ocean and Coastal Resource Management or his or her designee shall seek to notify and consult to the extent practicable with any relevant Federal agency and the Governor of the State of Hawaii.

Article V. Effect on Leases, Permits, Licenses, and Rights

Pursuant to section 304(c)(1) of the NMSA, 16 U.S.C. § 1434(c)(1), no valid lease, permit, license, approval or other authorization issued by any Federal, State, or local authority of competent jurisdiction, or any right of subsistence use or access, may be terminated by the Secretary of Commerce, or his or her designee, as a result of this designation, or as a result of any Sanctuary regulation, if such authorization or right was in existence on the effective date of Sanctuary designation (November 4, 1992).

Article VI. Alteration of This Designation

The terms of designation, as defined under section 304 of the NMSA, may be modified only by the procedures outlined in section 304, including public hearings, consultation with interested Federal, State, and county agencies, review by the appropriate Congressional committees, and review and non-objection by the Governor of the State of Hawaii, and approval by the Secretary of Commerce, or his or her designee.

Hawaiian Islands Humpback Whale National Marine Sanctuary Boundary Coordinates

Appendix A to subpart Q, part 922, 15 CFR sets forth the precise boundary coordinates for the Sanctuary.

End of Final Designation Document

V. Summary of Final Regulations

The final regulations set forth the boundary of the Sanctuary and supplement existing authorities by prohibiting a relatively narrow range of activities that are conducted without, or not in compliance with required, valid authorizations from Federal or State authorities of competent jurisdiction. The final regulations set forth the maximum per-day penalties for violating the NMSA, HINMSA, or any Sanctuary regulation; identify the interagency cooperation requirements under the NMSA; and set forth procedures for administrative appeals.

Organizationally, the final regulations are revised from the proposed regulations in furtherance of the President's Regulatory Reinvention Initiative to, among other things, consolidate duplicative regulatory provisions. Consequently, the new regulations for the most part appear in a new subpart Q to 15 CFR part 922 (15 CFR 922.180–922.187) and in Appendix A to subpart Q. Existing §§ 922.3 and 922.46 of 15 CFR 922 are also applicable to the Sanctuary. In some instances, this rule makes minor revisions to those and other sections of the National Marine Sanctuary Program Regulations at 15 CFR Part 922 to make them meld with the new subpart Q.

The HIHWNMS is unlike most other national marine sanctuaries for a number of reasons. First, while most national marine sanctuaries are designated to protect ecosystem environments, the Congress designated the HIHWNMS primarily to protect the humpback whale and its habitat. These are the only resources included for protection and management under the Sanctuary regime. Second, the humpback whale is directly protected under two other Federal laws; the ESA and MMPA, administered by NOAA's NMFS.

The final regulations reflect the uniqueness of the Sanctuary. For example, with one exception (hindering law enforcement activities) the regulations do not place additional or independent substantive restrictions or prohibitions on activities conducted in the Sanctuary to those already in place under other regulatory authorities. Rather, to protect humpback whales and their Sanctuary habitat the final

regulations essentially rely on and incorporate restrictions or prohibitions already in place under Federal and State authorities that protect, directly and indirectly, humpback whales and humpback whale habitat within the Sanctuary. By essentially incorporating into the Sanctuary regulatory regime restrictions or prohibitions already existing under other authorities greater protection is provided to humpback whales and their habitat. Further, existing restrictions or prohibitions are strengthened because they can be enforced by Sanctuary personnel and are subject to enforcement mechanisms and penalties of the NMSA. Moreover, monies collected as civil penalties under the NMSA will be available to manage and improve the Sanctuary.

The final regulations prohibit the following activities also prohibited under the MMPA or ESA: approaching any humpback whale; operating an aircraft above a humpback whale; and taking or possessing any humpback whale. However, any of these activities could be conducted if permitted or authorized under the MMPA or ESA. Additionally, the final regulations prohibit the following activities conducted without, or not in compliance with, a required Federal or State permit, license, lease or other authorization: discharging or depositing in the Sanctuary any material or other matter; discharging or depositing outside the Sanctuary any material or other matter that subsequently enters the Sanctuary and injures a humpback whale or habitat; and altering the seabed of the Sanctuary. It is important to note that these final regulations prohibit these activities only if a permit, license, lease, or other authorization from a Federal or State authority of competent jurisdiction is required to conduct them and they are conducted without, or not in compliance with, such authorization. The only independent prohibition in the final regulations is interfering with, obstructing, delaying or preventing an investigation, search, seizure or disposition of seized property in connection with enforcement of either the NMSA or HINMSA or any regulation issued under either of those Acts.

Also, unlike the regulations in effect for other sanctuaries, the final regulations do not contain any provision for the issuance of Sanctuary permits or authorizations to conduct an otherwise prohibited activity. Since the regulations essentially incorporate restrictions or prohibitions imposed by other existing authorities, Sanctuary management will recognize permits or other authorizations issued by those authorities to conduct an otherwise

prohibited activity. Sanctuary management will coordinate with NMFS on the issuance of permits or authorizations under the ESA and MMPA, and with other Federal and State agencies that issue discharge or alteration of the seabed permits or other authorizations for activities that could impact humpback whales, or humpback whale habitat within the Sanctuary. Such coordination should eliminate potentially duplicative administrative processes while still allowing the Sanctuary to fulfill its trustee responsibilities to protect and manage humpback whales and humpback whale Sanctuary habitat.

Specifically, the final regulations add a new subpart Q to Part 922, Title 15, Code of Federal Regulations.

Section 922.180 sets forth the purpose of the regulations which is to implement the designation of the HIHWNMS, consistent with the terms of that designation, by regulating a narrow range of activities in order to protect and manage the North Pacific population of humpback whales, and their wintering habitat in the Sanctuary.

Section 922.181 and Appendix A to subpart Q set forth the boundary of the Sanctuary.

Section 922.182 defines various terms used in the regulations. Other terms appearing in these regulations are defined at 15 CFR 922.2 and/or in the Marine Protection, Research and Sanctuaries Act, as amended (33 U.S.C. 1401–1445, and 16 U.S.C. 1431–1445). "Sanctuary resource" is defined as "any humpback whale, or the humpback whale's habitat within the Sanctuary," because these are the only resources included for protection and management under the Sanctuary regime at this time.

Section 922.183 allows all activities except those prohibited by § 922.184 to be undertaken subject to any emergency regulation promulgated pursuant to § 922.185, subject to the interagency cooperation provisions of section 304(d) of the NMSA, 16 U.S.C. 1434(d), subject to the liability established under section 312 of the NMSA, 16 U.S.C. 1443, and subject to all prohibitions, restrictions, and conditions validly imposed by any other authority of competent jurisdiction. Under § 922.183, the regulatory prohibitions in § 922.184 expressly do not apply to military activities conducted by the United States Department of Defense, including combined military activities conducted by DOD and the military forces of a foreign nation, in existence on the effective date of these regulations and as identified and listed in the FEIS/MP for the Sanctuary. Military activities

proposed after the effective date of the regulations would be subject to the regulatory prohibitions unless they are not likely to destroy, cause the loss of, or injure any humpback whale or humpback whale habitat in the Sanctuary, or if after consultation under section 304(d) of the NMSA, the Director of NOAA's Office of Ocean and Coastal Resource Management (OCRM) expressly finds that the regulatory prohibitions do not apply to the military activity. Exemption from the regulatory prohibitions recognizes the importance of DOD military activities in Hawaii to our national security, and should not result in adverse impacts to humpback whales or their Sanctuary habitat. Further, DOD operating procedures require military activities to be conducted in a manner that avoids adverse impacts to humpback whales and requires compliance with applicable authorities already in place to protect humpback whales. Department of Defense military activities remain subject to the statutory requirements of the NMSA (e.g., interagency cooperation provisions of section 304(d), and the liability established by section 312), any emergency regulation promulgated in section 922.185, and all other applicable laws (e.g., ESA, MMPA).

Section 922.184 prohibits a relatively narrow range of activities and thus make it unlawful to conduct them. As discussed above, the Sanctuary is unlike most other national marine sanctuaries in that the only resources that are included for protection and management under the Sanctuary regime are humpback whales and their Sanctuary habitat and those resources are already protected under other laws. Therefore, unlike any other national marine sanctuary, the regulations, with the exception of a prohibition on hindering enforcement activities, do not place additional or independent substantive restrictions or prohibitions on activities conducted in the Sanctuary. Rather, the regulations essentially incorporate restrictions or prohibitions already in place under existing Federal and State authorities that protect, directly or indirectly, humpback whales and humpback whale habitat. Thus, the regulations prohibit certain activities only if they are conducted without, or not in compliance with, a valid Federal or State permit, license, lease or other authorization required to conduct the activity. For example, if a person is discharging any material or matter into the Sanctuary without, or not in compliance with, a required National Pollutant Discharge Elimination System

(NPDES) permit from the Hawaii Department of Health, that person will be in violation of the Sanctuary regulations. Similarly, if a person approaches a humpback whale in the Sanctuary in violation of the MMPA or ESA, that person will also be in violation of the Sanctuary regulations. Reinforcing existing restrictions provides additional protection for humpback whales, and humpback whale habitat in the Sanctuary necessary to achieve the purposes of the designation.

The prohibitions will be applied to foreign persons and foreign-flag vessels in accordance with recognized principles of international law, and in accordance with treaties, conventions, and other agreements to which the United States is a party.

Any of the prohibited activities could be lawfully conducted under these regulations, and therefore not be subject to civil penalties under the NMSA, if the activity is necessary to respond to an emergency threatening life, property, or the environment (not applicable to the prohibitions against interference with law enforcement); or necessary for valid law enforcement purposes. However, while such activity would not be subject to enforcement mechanisms or civil penalties under the NMSA, the emergency exemption in these regulations does not exempt the activity from the underlying prohibition or restriction under other applicable laws and regulations (e.g., MMPA, ESA, and CWA).

The first activity prohibited is approaching, or causing another vessel or object to approach, while in the Sanctuary, by any means, within 100 yards (90 m) of any humpback whale except as authorized under the MMPA and the ESA.

The second activity prohibited is operating any aircraft above the Sanctuary within 1,000 feet (300 m) of any humpback whale except as necessary for takeoff or landing from an airport or runway, or as authorized under the MMPA and the ESA. The exception for takeoff and landing was slightly modified from the proposed rule and the FEIS/MP to clarify its meaning. It previously read "when in any designated flight corridor for takeoff and landing from an airport or runway". However, as designated corridors constantly change due to environmental conditions (e.g., weather), it is clearer to simply state "as necessary for takeoff and landing from an airport or runway."

The intent of the first two prohibitions is to extend protection to humpback whales from harassment or other disturbance from human

approaches by strengthening existing protections under the MMPA and the ESA (50 CFR 222.31(a) (1)-(3)). As prohibitions under the Sanctuary regulations, they are strengthened since they can be enforced by Sanctuary personnel and are subject to enforcement mechanisms and civil penalties under the NMSA. Moreover, monies collected as civil penalties under the NMSA will be available to manage and improve the Sanctuary.

The third activity prohibited is the taking of humpback whales in the Sanctuary, except as authorized under the MMPA and the ESA. As with the first two prohibitions, the intent of this prohibition also is to extend protection to humpback whales from taking, as defined by the ESA and MMPA, by reinforcing the protections afforded under these laws.

The fourth activity prohibited is the possession within the Sanctuary of any living or dead humpback whale or part thereof taken in violation of the MMPA or the ESA (regardless of where taken, moved or removed from). This prohibition is designed to facilitate and supplement enforcement for violations of the MMPA, ESA and Sanctuary regulations.

The fifth activity prohibited is discharging or depositing any material or other matter in the Sanctuary; altering the seabed of the Sanctuary; or discharging or depositing, from beyond the boundary of the Sanctuary, any material or other matter that subsequently enters the Sanctuary and injures any humpback whale or humpback whale habitat; provided that such activity requires a Federal or State permit, license, lease or other authorization, and is conducted (i) without such permit license, lease or other authorization, or (ii) not in compliance with the terms and conditions of such permit, license, lease, or other authorization. Degradation of water quality, sediment quality, and modification of the seabed within the Sanctuary could adversely affect the humpback whale's habitat and, therefore, regulation of discharges and deposits and activities that alter the seabed is necessary. However, this prohibition recognizes that the humpback whale's Hawaiian habitat may not necessarily entail every aspect of the marine environment, and is, therefore, intended to enhance existing protections by supplementing enforcement authority and providing for the application of greater maximum civil penalties under the NMSA against illegal, and potentially harmful, discharge or deposit, or alteration of the seabed activities. Also, this provision

does not prohibit or otherwise regulate discharge or deposit, or alteration of the seabed activities which do not require a Federal or State permit, license, lease or other authorization. Rather, this prohibition only applies in instances when a person is conducting a particular activity without, or not in compliance with, a required Federal or State permit, license, lease or other authorization. This provision helps ensure that general water quality and seabed conditions in the Sanctuary will not degrade. As a result of the ongoing research and long-term monitoring program contained in the management plan for the Sanctuary, information will identify those specific features and qualities of the marine environment that are significant habitat components. Such information will aid the Sanctuary and other relevant Federal, State and county agencies in devising specific management techniques and, if necessary, additional regulations to further protect humpback whale habitat.

The sixth activity prohibited is interference with, obstruction, delay or prevention of any investigation, search, seizure or disposition of seized property in connection with enforcement of the HINMSA or NMSA or any regulation issued under either of those Acts. The intent of this prohibition is to ensure the facilitation of Sanctuary enforcement activities, which enhance resource protection.

Section 922.185 authorizes the immediate temporary regulation, including prohibition, of any activity where necessary to prevent or minimize the destruction of, loss of, or injury to any humpback whale or humpback whale Sanctuary habitat, or minimize the imminent risk of such destruction, loss or injury. If such a situation arises, the Director would seek to notify and consult with potentially affected Federal agencies and the Governor of Hawaii prior to taking such action.

Section 922.186 sets forth the maximum statutory civil penalty per day for violating the NMSA, HINMSA or any Sanctuary regulation at \$100,000. Each day of a continuing violation constitutes a separate violation. This section also establishes the right of any person subject to a Sanctuary enforcement action to appeal pursuant to applicable procedures in 15 CFR Part 904.

Section 922.187 implements the consultation with NOAA requirements of section 304(d) of the NMSA, 16 U.S.C. 1434(d), as it pertains to the Sanctuary. Any proposed Federal agency action internal or external to the Sanctuary, including private activities authorized by licenses, leases, or

permits, that is likely to destroy, cause the loss of, or injure any Sanctuary resource, in this case the humpback whale or its Sanctuary habitat, is subject to consultation with the Director. The Federal agency proposing the action is required to determine whether the activity is likely to destroy, cause the loss of, or injure a humpback whale or humpback whale Sanctuary habitat at the earliest practicable time, but no later than 45 days before final approval of the action, unless a different schedule is agreed upon by the Federal agency and the Director. However, should SRD obtain information that a Federal agency action is likely to destroy, cause the loss of, or injure any Sanctuary resource, SRD would notify the Federal agency in writing that it believes section 304(d) applies, and the reasons why. SRD and NMFS have developed an MOU specifying internal agency coordination and cooperation with respect to consultations required under section 304(d) of the NMSA and section 7 of the ESA for Federal activities that may affect humpback whales or their Sanctuary habitat. In essence, the MOU ensures that consultations will be conducted through one NOAA point of contact, NMFS, to streamline the consultation processes under the NMSA and ESA for consultations pertaining to humpback whales or their habitat.

VI. Miscellaneous Rulemaking Requirements

Executive Order 12866: Regulatory Impact

This action has been determined to be not significant for purposes of Executive Order 12866.

Regulatory Flexibility Act

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this final rule will not have a significant economic impact a substantial number of small entities as follows:

The National Oceanic and Atmospheric Administration, as required by section 2306 of the HINMSA [the Hawaiian Islands National Marine Sanctuary Act], has developed a comprehensive final management plan and implementing regulations for the Hawaiian Islands Humpback Whale National Marine Sanctuary (the HIHWNMS or Sanctuary). The Sanctuary was designated by Congress in 1992. The preamble to the final rule publishes the final Designation Document and summarizes the final management plan. The management plan details the goals and objectives, management responsibilities, research and long-term monitoring activities, and

interpretive, educational, and resource protection programs for the Sanctuary.

The primary purposes of the Designation Document, final regulations and final management plan are to protect humpback whales and their Sanctuary habitat; to educate and interpret for the public the relationship of humpback whales to the Hawaiian Islands marine environment; to manage human uses of the Sanctuary consistent with the HINMSA and the NMSA [the National Marine Sanctuaries Act]; and to provide for the identification of marine resources and ecosystems of national significance for possible inclusion in the Sanctuary.

The final regulations implement the final management plan and govern the conduct of activities consistent with the HINMSA, the NMSA, and the Designation Document for the Sanctuary. The regulations allow all activities to be conducted in the Sanctuary other than a relatively narrow range of prohibited activities. However, the prohibitions primarily only repeat existing Federal and State regulations (such as existing NOAA whale approach prohibitions) that protect (directly and indirectly) humpback whales and their habitat and which were in place before the designation of the Sanctuary. They impose no new substantive restrictions (other than of a "housekeeping" nature such as prohibiting anyone from interfering with a Sanctuary enforcement officer) on any person or entity and thus should have no significant economic impact on any person or entity. Accordingly, a Regulatory Flexibility Analysis has not been prepared.

Paperwork Reduction Act of 1980

This rule does not contain collection of information requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act (Pub. L. 96-511).

Executive Order 12612

A Federalism Assessment (FA) was prepared for the draft management plan and proposed implementing regulations. The FA concluded that all were fully consistent with the principles, criteria, and requirements set forth in sections 2 through 5 of Executive Order 12612, Federalism Considerations in Policy Formulation and Implementation (52 FR 41685, Oct. 26, 1987). Copies of the FA are available upon request from the Office of Ocean and Coastal Resource Management at the address listed above.

National Environmental Policy Act

In accordance with section 304(a)(2) of the NMSA (16 U.S.C. 1434(a)(2)) and the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370(a)), a DEIS and FEIS have been prepared for the implementation of the designation and the proposed regulations. As required by section 304(a)(2) of the NMSA, the DEIS and FEIS include the resource

assessment report required by section 303(b)(3) of the NMSA (16 U.S.C. 1433(b)(3)), maps depicting the proposed boundary of the designated area, and the existing and potential uses and resources of the area. Copies of the FEIS are available upon request to the Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management at the address listed above.

Executive Order 12630

This final rule will not have any takings implications within the meaning of Executive Order 12630 because it does not appear to have an effect on private property sufficiently severe as to effectively deny economically viable use of any distinct legally potential property interest to its owner or to have the effect of, or result in, a permanent or temporary physical occupation, invasion, or deprivation.

Unfunded Mandates Reform Act of 1995

This final rule contains no Federal mandates (under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA)) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of section 202 and 205 of the UMRA.

List of Subjects in 15 CFR Part 922

Administrative practices and procedure, Coastal zone, Education, Environmental Protection, Marine resources, Natural Resources, Penalties, Recreation and recreation areas, Reporting and recordkeeping requirements, Research.

Federal Domestic Assistance Catalog Number 11.429, Marine Sanctuary Program

Dated: March 21, 1997.

David L. Evans,

Acting Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

Accordingly, for the reasons set forth above, 15 CFR part 922 is amended as follows:

PART 922—NATIONAL MARINE SANCTUARY PROGRAM REGULATIONS

1. The authority citation for Part 922 continues to read as follows:

Authority: 16 U.S.C. 1431 *et seq.*

2. Section 922.1 is revised as follows:

§ 922.1 Applicability of regulations.

Unless noted otherwise, the regulations in subparts A, D and E apply to all twelve National Marine Sanctuaries for which site-specific regulations appear in subparts F through

Q, respectively. Subparts B and C apply to the site evaluation list and to the designation of future Sanctuaries.

3. Section 922.40 is revised to read as follows:

§ 922.40 Purpose.

The purpose of the regulations in this subpart and in subparts F through Q is to implement the designations of the twelve National Marine Sanctuaries for which site specific regulations appear in subparts F through Q, respectively, by regulating activities affecting them, consistent with their respective terms of designation in order to protect, preserve and manage and thereby ensure the health, integrity and continued availability of the conservation, ecological, recreational, research, educational, historical and aesthetic resources and qualities of these areas. Additional purposes of the regulations implementing the designation of the Florida Keys and Hawaiian Islands Humpback Whale National Marine Sanctuaries are found at §§ 922.160, and 922.180, respectively.

4. Section 922.41 is revised to read as follows:

§ 922.41 Boundaries.

The boundary for each of the twelve National Marine Sanctuaries covered by this part is described in subparts F through Q, respectively.

5. Section 922.42 is revised to read as follows:

§ 922.42 Allowed Activities.

All activities (e.g., fishing, boating, diving, research, education) may be conducted unless prohibited or otherwise regulated in subparts F through Q, subject to any emergency regulations promulgated pursuant to §§ 922.44, 922.111(c), 922.165, or 922.186, subject to all prohibitions, regulations, restrictions, and conditions validly imposed by any Federal, State, or local authority of competent jurisdiction, including Federal and State fishery management authorities, and subject to the provisions of section 312 of the Act. The Assistant Administrator may only directly regulate fishing activities pursuant to the procedure set forth in section 304(a)(5) of the NMSA.

6. Section 922.43 is revised to read as follows:

§ 922.43 Prohibited or otherwise regulated activities.

Subparts F through Q set forth site-specific regulations applicable to the activities specified therein.

7. Section 922.44 is revised to read as follows:

§ 922.44 Emergency Regulations.

Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality, or minimize the imminent risk of such destruction, loss, or injury, any and all such activities are subject to immediate temporary regulation, including prohibition. The provisions of this section do not apply to the Cordell Bank, Florida Keys and Hawaiian Islands Humpback Whale National Marine Sanctuaries. See §§ 922.111(c), 922.165, and 922.186, respectively, for the authority to issue emergency regulations with respect to those sanctuaries.

8. Part 922 is amended by adding a new subpart Q immediately following subpart P as follows:

Subpart Q, Part 922—Hawaiian Islands Humpback Whale National Marine Sanctuary

Sec.

922.180 Purpose.

922.181 Boundary.

922.181 Definitions.

922.183 Allowed activities.

922.184 Prohibited activities.

922.185 Emergency regulations.

922.186 Penalties; appeals.

922.187 Interagency cooperation.

Appendix A to Subpart Q—Hawaiian Islands Humpback Whale National Marine Sanctuary Boundary Coordinates

Authority: Sections 302, 303, 304, 305, 306, 307, 310, and 312 of the National Marine Sanctuaries Act (NMSA) (16 U.S.C. 1431 *et seq.*), and sections 2304, 2305, and 2306 of the Hawaiian Islands National Marine Sanctuary Act (HINMSA), Pub. L. 102-587.

§ 922.180 Purpose.

(a) The purpose of the regulations in this subpart is to implement the designation of the Hawaiian Islands Humpback Whale National Marine Sanctuary by regulating activities affecting the resources of the Sanctuary or any of the qualities, values, or purposes for which the Sanctuary was designated, in order to protect, preserve, and manage the conservation, ecological, recreational, research, educational, historical, cultural, and aesthetic resources and qualities of the area. The regulations are intended to supplement and complement existing regulatory authorities; to facilitate to the extent compatible with the primary objective of protecting the humpback whale and its habitat, all public and private uses of the Sanctuary, including uses of Hawaiian natives customarily and traditionally exercised for subsistence, cultural, and religious purposes, as well as education, research, recreation, commercial and military

activities; to reduce conflicts between compatible uses; to maintain, restore, and enhance the humpback whale and its habitat; to contribute to the maintenance of natural assemblages of humpback whales for future generations; to provide a place for humpback whales that are dependent on their Hawaiian Islands wintering habitat for reproductive activities, including breeding, calving, and nursing, and for the long-term survival of their species; and to achieve the other purposes and policies of the HINMSA and NMSA.

(b) The regulations in this subpart may be modified to fulfill the Secretary's responsibilities for the Sanctuary, including the provision of additional protections for humpback whales and their habitat, if reasonably necessary, and the conservation and management of other marine resources, qualities and ecosystems of the Sanctuary determined to be of national significance. The Secretary shall consult with the Governor of the State of Hawaii on any modification to the regulations contained in this part. For any modification of the regulations contained in this part that would constitute a change in a term of the designation, as contained in the Designation Document for the Sanctuary, the Secretary shall follow the applicable requirements of sections 303 and 304 of the NMSA, and sections 2305 and 2306 of the HINMSA.

§ 922.181 Boundary.

(a) Except for excluded areas described in paragraph (b) of this section, the Hawaiian Islands Humpback Whale National Marine Sanctuary consists of the submerged lands and waters off the coast of the Hawaiian Islands seaward from the shoreline, cutting across the mouths of rivers and streams, —

(1) To the 100-fathom (183 meter) isobath adjoining the islands of Maui, Molokai and Lanai, including Penguin Bank, but excluding the area within three nautical miles of the upper reaches of the wash of the waves on the shore of Kahoolawe Island;

(2) To the deep water area of Pailolo Channel from Cape Halawa, Molokai, to Nakalele Point, Maui, and southward;

(3) To the 100-fathom (183 meter) isobath around the Island of Hawaii;

(4) To the 100-fathom (183 meter) isobath from Kailiu Point eastward to Makahuena Point, Kauai; and

(5) To the 100-fathom (183 meter) isobath from Puaena Point eastward to Mahie Point and from the Ala Wai Canal eastward to Makapuu Point, Oahu.

(b) Excluded from the Sanctuary boundary are the following commercial ports and small boat harbors:

Hawaii (Big Island)

Hilo Harbor
Honokohau Boat Harbor
Kawaihae Boat Harbor & Small Boat Basin
Keauhou Bay

Oahu

Ala Wai Small Boat Basin

Kauai

Hanamaulu Bay
Nawiliwili Harbor

Lanai

Kaumalapau Harbor
Manele Harbor

Maui

Kahului Harbor
Lahaina Boat Harbor
Maalaea Boat Harbor
Molokai
Hale o Lono Harbor
Kaunakakai Harbor

(c) The precise boundary of the Sanctuary appears in appendix A of this subpart Q.

§ 922.182 Definitions.

(a) *Acts* means the Hawaiian Islands National Marine Sanctuary Act (HINMSA; sections 2301–2307 of Public Law 102–587), and the National Marine Sanctuaries Act (NMSA; also known as Title III of the Marine Protection, Research, and Sanctuaries Act (MPRSA), as amended, 16 U.S.C. 1431 *et seq.*).

Adverse impact means an impact that independently or cumulatively damages, diminishes, degrades, impairs, destroys, or otherwise harms.

Alteration of the seabed means drilling into, dredging, or otherwise altering a natural physical characteristic of the seabed of the Sanctuary; or constructing, placing, or abandoning any structure, material, or other matter on the seabed of the Sanctuary.

Habitat means those areas that provide space for individual and population growth and normal behavior of humpback whales, and include sites used for reproductive activities, including breeding, calving and nursing.

Military activities means those military activities conducted by or under the auspices of the Department of Defense and any combined military activities carried out by the Department of Defense and the military forces of a foreign nation.

Sanctuary means the Hawaiian Islands Humpback Whale National Marine Sanctuary.

Sanctuary resource means any humpback whale, or the humpback whale's habitat within the Sanctuary.

Shoreline means the upper reaches of the wash of the waves, other than storm or seismic waves, at high tide during the season of the year in which the highest wash of the waves occurs, usually evidenced by the edge of vegetation growth, or the upper limit of debris left by the wash of the waves.

Take or taking a humpback whale means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect or injure a humpback whale, or to attempt to engage in any such conduct. The term includes, but is not limited to, any of the following activities: collecting any dead or injured humpback whale, or any part thereof; restraining or detaining any humpback whale, or any part thereof, no matter how temporarily; tagging any humpback whale; operating a vessel or aircraft or doing any other act that results in the disturbing or molesting of any humpback whale.

(b) Other terms appearing in the regulations in this subpart are defined at 15 CFR 922.3, and/or in the Marine Protection, Research, and Sanctuaries Act, as amended, 33 U.S.C. 1401 *et seq.*, and 16 U.S.C. 1431 *et seq.*

§ 922.183 Allowed activities.

(a) All activities except those prohibited by § 922.184 may be undertaken in the Sanctuary subject to any emergency regulations promulgated pursuant to § 922.185, subject to the interagency cooperation provisions of section 304(d) of the NMSA [16 U.S.C. 1434(d)] and § 922.187 of this subpart, and subject to the liability established by section 312 of the NMSA and § 922.46. All activities are also subject to all prohibitions, restrictions, and conditions validly imposed by any other Federal, State, or county authority of competent jurisdiction.

(b) Included as activities allowed under the first sentence of paragraph (a) of this section are all classes of military activities, internal or external to the Sanctuary, that are being or have been conducted before the effective date of the regulations in this subpart, as identified in the Final Environmental Impact Statement/Management Plan. Paragraphs (a) (1) through (5) of § 922.184 do not apply to these classes of activities, nor are these activities subject to further consultation under section 304(d) of the NMSA.

(c) Military activities proposed after the effective date of the regulations in this subpart, are also included as allowed activities under the first sentence of paragraph (a) of this section.

Paragraphs (a) (1) through (5) of § 922.184 apply to these classes of activities unless—

(1) They are not subject to consultation under section 304(d) of the NMSA and § 922.187 of this subpart, or

(2) Upon consultation under section 304(d) of the NMSA and § 922.187 of this subpart, NOAA's findings and recommendations include a statement that paragraphs (a)(1) through (5) of § 922.184 do not apply to the military activity.

(d) If a military activity described in paragraphs (b) or (c)(2) of this section is modified such that it is likely to destroy, cause the loss of, or injure a Sanctuary resource in a manner significantly greater than was considered in a previous consultation under section 304(d) of the NMSA and § 922.187 of this subpart, or if the modified activity is likely to destroy, cause the loss of, or injure any Sanctuary resource not considered in a previous consultation under section 304(d) of the NMSA and § 922.187 of this subpart, the modified activity will be treated as a new military activity under paragraph (c) of this section.

(e) If a proposed military activity subject to section 304(d) of the NMSA and § 922.187 of this subpart is necessary to respond to an emergency situation and the Secretary of Defense determines in writing that failure to undertake the proposed activity during the period of consultation would impair the national defense, the Secretary of the military department concerned may request the Director that the activity proceed during consultation. If the Director denies such a request, the Secretary of the military department concerned may decide to proceed with the activity. In such case, the Secretary of the military department concerned shall provide the Director with a written statement describing the effects of the activity on Sanctuary resources once the activity is completed.

§ 922.184 Prohibited activities.

(a) The following activities are prohibited and thus unlawful for any person to conduct or cause to be conducted.

(1) Approaching, or causing a vessel or other object to approach, within the Sanctuary, by any means, within 100 yards of any humpback whale except as authorized under the Marine Mammal Protection Act, as amended (MMPA), 16 U.S.C. 1361 *et seq.*, and the Endangered Species Act, as amended (ESA), 16 U.S.C. 1531 *et seq.*;

(2) Operating any aircraft above the Sanctuary within 1,000 feet of any humpback whale except as necessary for

takeoff or landing from an airport or runway, or as authorized under the MMPA and the ESA;

(3) Taking any humpback whale in the Sanctuary except as authorized under the MMPA and the ESA;

(4) Possessing within the Sanctuary (regardless of where taken) any living or dead humpback whale or part thereof taken in violation of the MMPA or the ESA;

(5) Discharging or depositing any material or other matter in the Sanctuary; altering the seabed of the Sanctuary; or discharging or depositing any material or other matter outside the Sanctuary if the discharge or deposit subsequently enters and injures a humpback whale or humpback whale habitat, provided that such activity:

(i) Requires a Federal or State permit, license, lease, or other authorization; and

(ii) Is conducted

(A) Without such permit, license, lease, or other authorization, or

(B) Not in compliance with the terms or conditions of such permit, license, lease, or other authorization.

(6) Interfering with, obstructing, delaying or preventing an investigation, search, seizure or disposition of seized property in connection with enforcement of either of the Acts or any regulations issued under either of the Acts.

(b) The prohibitions in paragraphs (a)(1) through (5) of this section do not apply to activities necessary to respond to emergencies threatening life, property or the environment; or to activities necessary for valid law enforcement purposes. However, while such activities are not subject to paragraphs (a)(1) through (5) of this section, this paragraph (b) does not exempt the activity from the underlying prohibition or restriction under other applicable laws and regulations (e.g., MMPA, ESA, and CWA).

§ 922.185 Emergency regulations.

Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource, or to minimize the imminent risk of such destruction, loss, or injury, any and all activities are subject to immediate temporary regulation, including prohibition. Before issuance of such regulations the Director shall consult to the extent practicable with any relevant Federal agency and the Governor of the State of Hawaii.

§ 922.186 Penalties; appeals.

(a) Pursuant to section 307 of the NMSA, each violation of either of the Acts, or any regulation in this subpart

is subject to a civil penalty of not more than \$100,000. Each such violation is subject to forfeiture of property or Sanctuary resources seized in accordance with section 307 of the NMSA. Each day of a continuing violation constitutes a separate violation.

(b) Regulations setting forth the procedures governing the administrative proceedings for assessment of civil penalties for enforcement reasons, issuance and use of written warnings, and release or forfeiture of seized property appear at 15 CFR part 904.

(c) A person subject to an action taken for enforcement reasons for violation of the regulations in the subpart or either of the Acts may appeal pursuant to the applicable procedures in 15 CFR part 904.

§ 922.187 Interagency Cooperation.

Under section 304(d) of the NMSA, Federal agency actions internal or external to a national marine sanctuary, including private activities authorized by licenses, leases, or permits, that are likely to destroy, cause the loss of, or injure any sanctuary resource are subject to consultation with the Director. The Federal agency proposing an action shall determine whether the activity is likely to destroy, cause the loss of, or injure a Sanctuary resource. To the extent practicable, consultation procedures under section 304(d) of the NMSA may be consolidated with interagency cooperation procedures required by other statutes, such as the ESA. The Director will attempt to provide coordinated review and analysis of all environmental requirements.

APPENDIX A TO SUBPART Q—HAWAIIAN ISLANDS HUMPBACK WHALE NATIONAL MARINE SANCTUARY BOUNDARY COORDINATES

Points	Latitude (deg, min, sec)	Longitude (deg, min, sec)
Kauai		
1	22,13,37	159,34,57
2	22,16,42	159,36,4
3	22,17,13	159,35,16
4	22,17,25	159,34,34
5	22,17,15	159,33,2
6	22,16,59	159,32,3
7	22,16,34	159,31,31
8	22,15,47	159,31,19
9	22,15,41	159,31,5
10	22,16,14	159,30,37
11	22,16,6	159,29,46
12	22,15,50	159,29,20
13	22,15,52	159,28,32
14	22,15,31	159,27,54
15	22,15,25	159,27,17

APPENDIX A TO SUBPART Q—HAWAIIAN ISLANDS HUMPBACK WHALE NATIONAL MARINE SANCTUARY BOUNDARY COORDINATES—Continued

Points	Latitude (deg, min, sec)	Longitude (deg, min, sec)
16	21,52,0	159,22,56
17	21,59,17	159,18,25
18	21,58,42	159,18,51
19	21,58,28	159,18,56
20	21,58,10	159,18,54
21	21,58,4	159,18,32
22	21,57,5	159,18,41
23	21,56,43	159,19,4
24	21,56,13	159,19,39
25	21,55,29	159,20,36
26	21,54,48	159,21,12
27	21,54,1	159,21,27
28	21,53,45	159,21,46
29	21,53,27	159,22,14
30	21,53,1	159,22,32
31	21,52,44	159,22,37
32	21,52,13	159,22,49
33	21,51,45	159,23,18
34	21,51,43	159,23,50
35	21,51,49	159,24,26
36	21,51,53	159,24,48
37	21,51,51	159,25,12
38	21,51,42	159,25,41
39	21,51,15	159,25,58
40	21,50,57	159,26,15
41	21,52,17	159,26,48
42	22,12,53	159,18,4
43	22,15,26	159,26,20
44	22,15,11	159,25,52
45	22,15,18	159,24,50
46	22,15,22	159,24,10
47	22,15,21	159,22,53
48	22,15,6	159,22,34
49	22,15,6	159,21,54
50	22,15,7	159,21,23
51	22,14,30	159,20,55
52	22,14,18	159,20,31
53	22,14,22	159,19,54
54	22,13,21	159,18,43
55	22,12,31	159,17,46
56	22,12,18	159,17,17
57	22,11,14	159,17,5
58	22,10,29	159,16,42
59	22,9,57	159,16,25
60	22,9,25	159,15,42
61	22,8,34	159,15,39
62	22,0,15	159,18,48
63	22,7,4	159,16,37
64	22,6,17	159,16,31
65	22,5,51	159,16,13
66	22,5,4	159,16,47
67	22,4,18	159,17,32
68	22,3,32	159,17,28
69	22,3,15	159,17,23
70	22,2,56	159,17,33
71	22,2,48	159,17,48
72	22,2,33	159,18,4
73	22,2,16	159,18,24
74	22,1,57	159,18,46
75	22,1,51	159,19,11
76	22,1,26	159,19,24
77	22,0,59	159,19,8
78	22,0,49	159,18,54
79	22,0,0	159,18,47
80	21,59,40	159,18,27

APPENDIX A TO SUBPART Q—HAWAIIAN ISLANDS HUMPBACK WHALE NATIONAL MARINE SANCTUARY BOUNDARY COORDINATES—Continued

Points	Latitude (deg, min, sec)	Longitude (deg, min, sec)
Oahu (North)		
1	21,36,22	158,6,37
2	21,38,41	158,8,39
3	21,39,1	158,8,7
4	21,39,24	158,7,44
5	21,39,43	158,7,44
6	21,40,12	158,7,27
7	21,40,27	158,7,38
8	21,40,45	158,7,21
9	21,40,46	158,6,56
10	21,41,7	158,6,41
11	21,41,29	158,6,16
12	21,41,44	158,6,13
13	21,42,55	158,5,13
14	21,43,54	158,3,58
15	21,44,22	158,3,22
16	21,45,3	158,2,0
17	21,45,15	158,1,19
18	21,45,34	158,0,20
19	21,37,14	157,51,34
20	21,45,34	157,59,17
21	21,45,34	157,58,37
22	21,45,29	157,57,34
23	21,44,55	157,56,18
24	21,44,33	157,55,30
25	21,44,13	157,54,40
26	21,43,33	157,53,45
27	21,41,34	157,53,12
28	21,38,36	157,52,38
29	21,37,54	157,53,3
30	21,37,48	157,52,38
31	21,35,47	157,50,11
32	21,33,48	157,51,58
33	21,37,50	157,52,10
34	21,36,43	157,50,54
Oahu (South)		
1	21,15,38	157,51,1
2	21,14,18	157,42,17
3	21,14,9	157,42,46
4	21,13,27	157,43,13
5	21,13,31	157,43,47
6	21,14,44	157,43,59
7	21,14,47	157,44,24
8	21,14,35	157,44,54
9	21,14,34	157,45,32
10	21,14,11	157,46,52
11	21,14,14	157,47,35
12	21,13,55	157,47,58
13	21,14,0	157,48,28
14	21,14,29	157,48,53
15	21,14,40	157,49,34
16	21,15,0	157,50,16
17	21,15,25	157,50,51
18	21,15,50	157,51,14
19	21,17,8	157,50,54
20	21,18,50	157,39,6
21	21,19,53	157,36,4
22	21,19,34	157,35,6
23	21,18,55	157,34,21
24	21,18,47	157,33,53
25	21,17,52	157,33,21
26	21,17,36	157,33,32
27	21,17,3	157,33,32
28	21,16,34	157,34,3
29	21,15,52	157,34,46

APPENDIX A TO SUBPART Q—HAWAIIAN ISLANDS HUMPBACK WHALE NATIONAL MARINE SANCTUARY BOUNDARY COORDINATES—Continued

Points	Latitude (deg, min, sec)	Longitude (deg, min, sec)
30	21,15,56	157,35,19
31	21,15,20	157,35,44
32	21,15,13	157,36,0
33	21,15,22	157,36,57
34	21,15,33	157,38,20
35	21,15,21	157,38,51
36	21,15,20	157,40,5
37	21,15,23	157,40,53
38	21,14,56	157,42,6
Maui		
1	20,51,18	157,44,40
2	20,52,9	157,44,16
3	20,52,37	157,44,38
4	20,52,47	157,45,24
5	20,53,38	157,46,3
6	20,55,27	157,45,21
7	20,56,22	157,45,43
8	20,57,2	157,45,17
9	20,57,36	157,44,31
10	20,59,2	157,44,19
11	20,59,54	157,43,33
12	21,1,19	157,43,14
13	21,1,45	157,42,11
14	21,2,56	157,42,2
15	21,3,7	157,41,32
16	21,3,3	157,40,43
17	21,4,2	157,39,39
18	21,4,49	157,39,57
19	21,5,16	157,39,30
20	21,5,9	157,38,21
21	21,5,20	157,37,59
22	21,5,52	157,37,54
23	21,6,48	157,36,30
24	21,7,34	157,35,24
25	21,8,11	157,33,41
26	21,8,56	157,33,1
27	20,57,10	157,33,16
28	20,56,33	157,33,42
29	20,55,10	157,33,45
30	20,53,29	157,37,14
31	20,51,57	157,40,53
32	20,51,40	157,42,12
33	20,50,56	157,42,54
34	20,58,18	157,22,27
35	21,0,19	157,19,45
36	21,1,25	157,18,43
37	21,1,7	157,19,36
38	21,0,44	157,20,30
39	21,0,0	157,19,0
40	20,59,29	157,19,28
41	20,59,29	157,20,57
42	20,59,55	157,21,29
43	21,0,38	157,21,26
44	21,0,23	157,21,57
45	21,0,16	157,22,41
46	21,0,28	157,23,29
47	21,0,26	157,24,32
48	21,0,3	157,25,23
49	20,59,24	157,25,20
50	20,58,53	157,25,47
51	20,58,50	157,26,21
52	20,58,22	157,25,22
53	20,58,49	157,23,17
54	20,58,43	157,21,50
55	20,58,11	157,23,46

APPENDIX A TO SUBPART Q—HAWAIIAN ISLANDS HUMPBACK WHALE NATIONAL MARINE SANCTUARY BOUNDARY COORDINATES—Continued

Points	Latitude (deg, min, sec)	Longitude (deg, min, sec)
56	20,57,56	157,26,49
57	20,57,59	157,28,30
58	20,57,51	157,29,44
59	20,57,25	157,31,42
60	20,56,32	157,29,51
61	20,56,1	157,29,56
62	20,55,54	157,31,46
63	21,17,9	157,17,24
64	21,9,41	157,31,30
65	21,9,58	157,30,9
66	21,9,58	157,29,39
67	21,9,29	157,28,36
68	21,9,33	157,27,5
69	21,10,2	157,23,53
70	21,10,51	157,21,43
71	21,12,41	157,19,17
72	21,14,54	157,18,44
73	21,16,42	157,18,25
74	21,17,13	157,16,13
75	21,16,35	157,14,39
76	21,16,2	157,13,14
77	21,3,36	157,10,57
78	21,3,41	157,11,50
79	21,3,13	157,12,22
80	21,2,25	157,12,51
81	21,2,7	157,13,43
82	21,1,51	157,14,11
83	21,1,59	157,14,37
84	21,1,56	157,15,12
85	21,1,36	157,16,5
86	21,1,42	157,17,0
87	21,1,16	157,17,27
88	21,0,51	157,18,8
89	21,0,59	157,18,35
90	21,3,21	157,3,59
91	20,53,46	157,5,35
92	20,54,59	157,5,28
93	20,55,29	157,5,31
94	20,56,31	157,4,8
95	20,56,58	157,3,32
96	20,57,37	157,2,45
97	20,58,22	157,2,7
98	20,58,40	157,1,28
99	20,59,26	157,1,14
100	21,0,24	157,1,25
101	21,1,15	157,1,30
102	21,1,50	157,1,59
103	21,2,20	157,2,19
104	21,3,0	157,3,4
105	21,3,6	157,4,51
106	21,3,41	157,6,17
107	21,3,9	157,8,46
108	21,3,29	157,10,22
109	21,15,48	157,11,4
110	21,15,27	157,9,24
111	21,15,2	157,8,29
112	21,14,23	157,6,12
113	21,13,56	157,5,10
114	21,13,55	157,4,25
115	21,13,47	157,4,1
116	21,13,7	157,3,25
117	21,13,38	157,2,54
118	21,13,35	157,1,42
119	21,13,1	157,1,2
120	21,13,10	157,0,15
121	21,12,43	156,59,54
122	21,13,22	156,59,8

APPENDIX A TO SUBPART Q—HAWAIIAN ISLANDS HUMPBACK WHALE NATIONAL MARINE SANCTUARY BOUNDARY COORDINATES—Continued

Points	Latitude (deg, min, sec)	Longitude (deg, min, sec)
123	21,13,46	156,58,25
124	21,13,14	156,57,40
125	20,49,18	157,1,5
126	20,44,4	156,48,49
127	20,43,18	156,45,48
128	20,43,44	156,46,17
129	20,43,41	156,47,27
130	20,44,42	156,48,49
131	20,44,23	156,49,38
132	20,44,23	156,51,9
133	20,43,37	156,51,54
134	20,44,19	156,47,48
135	20,43,6	156,52,31
136	20,42,16	156,53,12
137	20,42,39	156,54,43
138	20,42,47	156,56,25
139	20,42,54	156,57,39
140	20,43,56	156,59,6
141	20,45,16	157,0,3
142	20,46,37	157,0,48
143	20,47,38	157,0,40
144	20,50,43	157,2,39
145	20,51,53	157,4,27
146	20,52,31	157,4,58
147	21,12,49	156,43,45
148	21,11,36	156,53,20
149	21,12,38	156,56,44
150	21,12,1	156,56,8
151	21,12,7	156,55,3
152	21,12,5	156,54,17
153	21,11,36	156,54,2
154	21,12,3	156,52,56
155	21,11,48	156,52,6
156	21,12,7	156,51,38
157	21,11,40	156,51,34
158	21,11,59	156,50,44
159	21,12,30	156,49,55
160	21,12,26	156,49,26
161	21,12,15	156,48,37
162	21,12,22	156,47,56
163	21,11,52	156,47,27
164	21,12,34	156,46,42
165	21,13,16	156,45,40
166	21,13,32	156,45,3
167	21,13,1	156,44,26
168	21,12,30	156,43,4
169	21,11,56	156,42,56
170	21,12,11	156,41,58
171	21,11,59	156,41,5
172	21,11,13	156,39,51
173	21,10,31	156,39,30
174	21,8,6	156,40,32
175	21,7,8	156,40,11
176	20,36,4	156,29,59
177	20,38,57	156,34,30
178	20,39,50	156,35,32
179	20,40,33	156,36,5
180	20,41,22	156,36,34
181	20,42,5	156,36,54
182	20,42,12	156,38,0
183	20,42,51	156,39,38
184	20,43,14	156,41,1
185	20,43,33	156,42,11
186	20,44,11	156,42,31
187	20,43,52	156,43,25
188	20,41,22	156,42,31
189	20,41,3	156,43,0

APPENDIX A TO SUBPART Q—HAWAIIAN ISLANDS HUMPBACK WHALE NATIONAL MARINE SANCTUARY BOUNDARY COORDINATES—Continued

Points	Latitude (deg, min, sec)	Longitude (deg, min, sec)
190	20,42,12	156,44,22
191	20,43,2	156,44,43
192	21,0,44	156,18,53
193	21,4,31	156,37,39
194	21,4,31	156,35,32
195	21,3,41	156,33,57
196	21,2,5	156,31,13
197	21,1,4	156,27,27
198	21,1,15	156,22,39
199	21,0,44	156,21,34
200	21,1,0	156,18,8
201	20,33,7	156,23,38
202	20,36,3	156,10,43
203	20,35,46	156,13,13
204	20,35,11	156,14,55
205	20,34,4	156,16,39
206	20,33,28	156,17,29
207	20,33,49	156,19,24
208	20,33,36	156,20,59
209	20,33,18	156,22,7
210	20,35,8	156,27,59
211	20,33,46	156,26,9
212	20,36,27	156,28,24
213	20,36,31	156,28,57
214	20,35,53	156,28,41
215	20,59,43	156,16,25
216	20,58,42	156,13,53
217	20,54,32	156,9,10
218	20,54,21	156,8,16
219	20,53,8	156,6,17
220	20,51,25	156,5,7
221	20,51,5	156,4,18
222	20,50,35	156,3,57
223	20,49,56	156,1,50
224	20,48,43	156,0,52
225	20,48,40	155,59,55
226	20,48,1	155,58,53
227	20,47,34	156,4,45
228	20,47,11	155,58,0
229	20,46,22	155,57,35
230	20,45,24	155,57,23
231	20,44,30	155,57,15
232	20,42,58	155,57,6
233	20,41,38	155,58,20
234	20,40,50	155,59,12
235	20,40,5	155,59,51
236	20,39,35	156,0,54
237	20,38,46	156,1,46
238	20,38,0	156,2,24
239	20,37,37	156,3,23
240	20,37,29	156,5,49
241	20,36,39	156,6,50
242	20,36,21	156,7,54
243	20,35,59	156,8,55
244	20,53,1	157,38,48
245	20,54,7	157,35,43
246	20,56,28	157,32,7
247	20,58,27	157,24,17
248	20,58,3	157,25,19
249	21,3,24	157,7,44
250	20,55,55	157,30,55
251	20,50,44	157,2,9
252	21,1,8	156,24,34
253	20,34,31	156,26,58
254	20,58,12	156,12,43
255	20,52,7	157,40,28
256	20,54,59	157,34,4

APPENDIX A TO SUBPART Q—HAWAIIAN ISLANDS HUMPBACK WHALE NATIONAL MARINE SANCTUARY BOUNDARY COORDINATES—Continued

Points	Latitude (deg, min, sec)	Longitude (deg, min, sec)
Big Island (Hawaii)		
1	19,33,54	156,0,19
2	19,34,42	156,0,33
3	19,35,21	156,0,35
4	19,39,49	156,2,29
5	19,43,34	156,4,26
6	19,46,7	156,5,57
7	19,47,17	156,6,34
8	19,48,3	156,6,19
9	19,48,42	156,6,28
10	19,51,28	156,4,33
11	19,53,15	156,2,25
12	19,55,43	155,58,13
13	19,53,47	156,1,26
14	19,54,6	156,1,1
15	19,54,8	156,0,3
16	19,55,8	155,59,14
17	19,56,11	155,57,41
18	19,56,36	155,57,19
19	19,57,19	155,56,44
20	19,57,56	155,56,18
21	19,58,22	155,55,56
22	19,58,39	155,55,2
23	19,58,45	155,54,36
24	19,58,57	155,54,9
25	19,59,15	155,53,37
26	19,59,31	155,52,58
27	20,0,20	155,52,25
28	20,1,4	155,52,25
29	20,1,36	155,52,4
30	20,2,24	155,52,17
31	20,3,14	155,52,25
32	20,5,50	155,54,44
33	19,20,32	155,53,38
34	19,7,28	155,55,34
35	19,9,6	155,55,49
36	19,9,52	155,55,42
37	19,10,57	155,55,16
38	19,12,49	155,54,28
39	19,13,29	155,54,32
40	19,14,22	155,54,24
41	19,15,2	155,54,24
42	19,16,17	155,54,1
43	19,18,0	155,53,47
44	19,19,22	155,53,49
45	19,22,49	155,54,43
46	19,25,22	155,55,33
47	19,26,21	155,55,39
48	19,27,14	155,56,9
49	19,28,41	155,56,42
50	19,29,1	155,57,14
51	19,29,25	155,58,9
52	19,30,23	155,59,3
53	20,15,49	155,43,33
54	20,13,22	155,56,15
55	20,7,10	155,55,14
56	20,9,21	155,55,44
57	20,12,43	155,56,28
58	20,14,41	155,56,12
59	20,15,34	155,55,53
60	20,16,21	155,55,28
61	20,16,47	155,54,54
62	20,17,42	155,53,56
63	20,18,11	155,52,3
64	20,18,9	155,51,28
65	20,17,41	155,49,45

APPENDIX A TO SUBPART Q—HAWAIIAN ISLANDS HUMPBACK WHALE NATIONAL MARINE SANCTUARY BOUNDARY COORDINATES—Continued

Points	Latitude (deg, min, sec)	Longitude (deg, min, sec)
66	20,16,39	155,45,47
67	20,16,23	155,44,18
68	20,14,44	155,43,7
69	20,14,5	155,42,57
70	20,13,54	155,41,55
71	20,12,57	155,41,28
72	20,12,8	155,40,58
73	20,11,32	155,39,37
74	18,51,25	155,41,26
75	18,52,3	155,41,45
76	18,52,36	155,41,44
77	18,53,23	155,41,35
78	18,54,14	155,41,39
79	18,54,42	155,41,28
80	18,55,42	155,41,27
81	18,56,26	155,41,51
82	18,56,41	155,42,16
83	18,57,0	155,42,41
84	18,57,33	155,43,15
85	18,58,7	155,44,2
86	18,58,14	155,44,49
87	18,58,36	155,45,43
88	18,58,56	155,46,16
89	18,59,32	155,47,7
90	19,0,38	155,48,26
91	19,0,49	155,49,37
92	19,1,9	155,50,36
93	19,1,22	155,51,43
94	19,2,4	155,52,58
95	19,2,39	155,53,14
96	19,3,40	155,53,45
97	19,4,52	155,54,50
98	19,5,51	155,55,4
99	18,52,27	155,40,26
100	18,53,12	155,39,32
101	19,3,35	155,32,20
102	19,12,28	155,21,5
103	19,11,47	155,22,47
104	19,10,38	155,25,12
105	19,9,34	155,26,18
106	19,9,4	155,26,31
107	19,8,29	155,27,44
108	19,8,3	155,29,20
109	19,7,5	155,30,35
110	19,6,29	155,31,20
111	19,5,36	155,32,6
112	19,4,35	155,32,19
113	19,2,52	155,32,48
114	19,1,15	155,34,29
115	19,0,24	155,34,57
116	18,59,29	155,35,28
117	18,58,17	155,35,37
118	19,1,53	155,33,29
119	18,57,6	155,36,16
120	18,56,15	155,36,46
121	18,55,15	155,37,19
122	18,54,31	155,38,32
123	20,4,41	155,21,53
124	20,10,40	155,38,43
125	20,10,23	155,38,3
126	20,9,50	155,37,34
127	20,9,53	155,37,15
128	20,9,23	155,36,14
129	20,8,46	155,34,38
130	20,8,49	155,34,0
131	20,8,13	155,32,46
132	20,8,13	155,31,23

APPENDIX A TO SUBPART Q—HAWAIIAN ISLANDS HUMPBACK WHALE NATIONAL MARINE SANCTUARY BOUNDARY COORDINATES—Continued

Points	Latitude (deg, min, sec)	Longitude (deg, min, sec)
133	20,7,40	155,29,41
134	20,7,6	155,27,29
135	20,6,45	155,26,3
136	20,6,9	155,24,40
137	20,5,29	155,23,10
138	20,3,59	155,20,4
139	19,17,53	155,5,13
140	19,15,52	155,8,36
141	19,14,52	155,10,31
142	19,14,57	155,11,7
143	19,15,4	155,11,39
144	19,14,58	155,11,50
145	19,15,1	155,12,18
146	19,15,15	155,12,55
147	19,15,9	155,13,28
148	19,15,32	155,14,10
149	19,15,31	155,14,55
150	19,15,50	155,15,42
151	19,15,55	155,16,18
152	19,15,29	155,17,1
153	19,15,42	155,17,30
154	19,14,37	155,18,51
155	19,13,55	155,20,10
156	20,3,22	155,18,51
157	20,1,48	155,15,39
158	19,59,17	155,11,13
159	19,58,42	155,10,31
160	19,57,40	155,0,0
161	19,56,17	155,7,57
162	19,55,18	155,6,35
163	19,54,1	155,5,14
164	19,52,12	155,3,54
165	19,51,0	155,3,25
166	19,49,52	155,3,25
167	19,48,56	155,3,5
168	19,45,25	154,58,59
169	19,48,15	155,2,14
170	19,47,49	155,2,33
171	19,47,21	155,2,7
172	19,47,6	155,1,27
173	19,46,37	155,1,0
174	19,46,20	155,0,39
175	19,46,0	154,59,28
176	19,44,37	154,58,34
177	19,44,14	154,58,33
178	19,43,15	154,58,30
179	19,42,40	154,58,9
180	19,41,52	154,58,12
181	19,41,34	154,57,43
182	19,41,13	154,57,17
183	19,40,39	154,57,24
184	19,39,54	154,57,24
185	19,39,27	154,56,58
186	19,39,15	154,56,49
187	19,38,38	154,56,55
188	19,38,17	154,56,58
189	19,37,13	154,56,10
190	19,33,26	154,52,7
191	19,35,24	154,55,6
192	19,34,18	154,53,24
193	19,33,2	154,50,56
194	19,32,35	154,49,4
195	19,31,49	154,48,13
196	19,30,49	154,48,4
197	19,29,42	154,48,23
198	19,28,51	154,48,58
199	19,28,14	154,49,31

APPENDIX A TO SUBPART Q—HAWAIIAN ISLANDS HUMPBACK WHALE NATIONAL MARINE SANCTUARY BOUNDARY COORDINATES—Continued

Points	Latitude (deg, min, sec)	Longitude (deg, min, sec)
200	19,27,52	154,49,57
201	19,27,15	154,50,25
202	19,26,37	154,51,21
203	19,23,48	154,55,11
204	19,22,57	154,56,10
205	19,21,23	154,57,50
206	19,19,34	155,1,22

Ports and Harbor Exclusions

(Points mark outer boundary of harbors)

Ala Wai Harbor (Oahu)

1	21,17,5	157,50,55
2	21,17,2	157,50,34

Hilo Bay (Big Island)

1	19,44,37	155,5,35
2	19,44,44	155,4,40

Honokohau Harbor (Big Island)

1	19,40,23	156,1,50
2	19,40,11	156,1,56

Kawaihae Harbor (Big Island)

1	20,2,25	155,50,12
2	20,2,36	155,50,7

Keauhou Bay (Big Island)

1	19,33,43	155,58,8
2	19,34,2	155,58,9

Kahului Harbor (Maui)

1	20,54,12	156,28,36
2	20,54,13	156,28,28

Lahaina Harbor (Maui)

1	20,52,29	156,40,54
2	20,52,29	156,40,53

Maalea Harbor (Maui)

1	20,47,36	156,30,49
2	20,47,42	156,30,44

Hale o Lono Harbor (Molokai)

1	21,5,15	157,15,8
2	21,5,15	157,15,5

Kaunakakai Harbor (Molokai)

1	21,5,25	157,1,46
2	21,5,0	157,2,8
3	21,4,49	157,1,51
4	21,5,18	157,1,25

Kaumalapau Harbor (Lanai)

1	20,47,12	156,59,41
2	20,47,19	156,59,42

Manele Harbor (Lanai)

1	20,44,46	156,53,24
2	20,44,44	156,53,22

Hanamaula Bay (Kauai)

1	21,59,49	159,20,6
2	22,0,3	159,20,8

Nawiliwili Harbor (Kauai)

1	21,57,3	159,21,3
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APPENDIX A TO SUBPART Q—HAWAIIAN ISLANDS HUMPBACK WHALE NATIONAL MARINE SANCTUARY BOUNDARY COORDINATES—Continued

Points	Latitude (deg, min, sec)	Longitude (deg, min, sec)
2	21,57,29	159,20,20

[FR Doc. 97-7811 Filed 3-27-97; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8711]

RIN 1545-AU82

Intangibles Under Sections 1060 and 338; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to temporary regulations.

SUMMARY: This document contains a correction to final and temporary regulations (TD 8711) which were published in the **Federal Register** on Thursday, January 16, 1997 (62 FR 2267). The temporary regulations relate to the purchase price allocations in taxable asset acquisitions and deemed asset purchases.

EFFECTIVE DATE: February 14, 1997.

FOR FURTHER INFORMATION CONTACT: Brendan P. O'Hara, (202) 622-7530 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations that are the subject of this correction are under section 1060 of the Internal Revenue Code.

Need for Correction

As published, the temporary regulations (TD 8711) contain an error which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the temporary regulations (TD 8711) which are the subject of FR Doc. 97-656 is corrected as follows:

§ 1.1060-1T [Corrected]

On page 2272, column 3, in amendatory "Par. 6.", item 2, line 2, the language "outline of topics entries for

(a)(2), (b)(2)" is corrected to read "outline of topics entries for (a)(2), (d)(2)".

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 97-7945 Filed 3-27-97; 8:45 am]

BILLING CODE 4830-01-U

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2200

Rules of Procedure

AGENCY: Occupational Safety and Health Review Commission.

ACTION: Final rule; extension of sunset provision.

SUMMARY: The Occupational Safety and Health Review Commission has determined that additional time is necessary to properly evaluate the efficacy of its pilot E-Z Trial program. Accordingly, the Review Commission is amending the "sunset" provisions of the Commission's "E-Z Trial" rules to extend the pilot program an additional four months.

EFFECTIVE DATE: March 28, 1997.

FOR FURTHER INFORMATION CONTACT: Earl R. Ohman, Jr., General Counsel, (202) 606-5410.

SUPPLEMENTARY INFORMATION: On August 14, 1995 the Occupational Safety and Health Review Commission published in the **Federal Register** (60 FR 41805) new procedural rules for a pilot program designed to simplify and accelerate adjudication for cases that warrant a less formal, less costly process. Designated "E-Z Trial," the pilot program was to run for one year, terminating on September 30, 1996. A "sunset" provision was inserted into the rules to end the pilot program on that date unless extended by the Commission by final rule published in the **Federal Register**. 29 CFR 2200.201(b). On September 27, 1996 the Commission extended the sunset provision until March 31, 1997 to allow for evaluation of the pilot program (61 FR 50711). During this period, the Commission held forums in which parties and representatives of parties who had participated in E-Z Trial proceedings were given the opportunity to comment on the E-Z Trial process. Their comments, together with the experiences of Commission judges, who have conducted the E-Z Trials, are currently being evaluated by the Commission. To allow for a full evaluation of these comments and experiences, the Commission has