

Alaskan VOR Federal airways are published in paragraph 6010(b) of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Alaskan VOR Federal airways listed in this document will be published subsequently in the Order.

### The Rule

This action amends part 71 by establishing three VOR Federal airways, V-603, V-617, and V-621 located in the State of Alaska.

Prior to this action there were a number of uncharted nonregulatory routes that used the same routings as these VOR Federal airways. Those nonregulatory routings were used daily by air carrier and general aviation aircraft. The FAA is taking this action to establish these three VOR Federal airways for the following reasons: (1) The conversion of these uncharted nonregulatory routes to VOR Federal airways will add to the instrument flight rules (IFR) airway and route infrastructure in Alaska; (2) pilots will be provided with minimum en route altitudes and minimum obstruction clearance altitudes information; (3) this amendment will establish controlled airspace, thus eliminating some of the commercial IFR operations in uncontrolled airspace; and (4) addition of these routes will improve the management of air traffic operations and thereby enhance safety.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (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—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

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

### § 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

#### Paragraph 6010(b)—Alaskan VOR Federal Airways

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#### V-603 [New]

From Elfee, AK, NDB, 20 AGL; to Dillingham, AK.

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#### V-617 [New]

From Homer, AK; to Johnstone Point, AK.

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#### V-621 [New]

From Barrow, AK, VOR; to Atkasuk, AK, NDB.

\* \* \* \* \*

Issued in Washington, DC, on November 22, 1999.

**Reginald C. Matthews,**

*Manager, Airspace and Rules Division.*

[FR Doc. 99–30889 Filed 11–26–99; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 15 CFR Part 922

[Docket No. 990914255–9255–01]

RIN 0648–AN28

### 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.

**ACTION:** Final rule; effective date and modifications.

**SUMMARY:** Pursuant to the Hawaiian Islands National Marine Sanctuary Act and the National Marine Sanctuaries

Act, NOAA developed the comprehensive final management plan for the Hawaiian Islands Humpback Whale National Marine Sanctuary (HIHWNMS or the Sanctuary). NOAA issued final regulations on March 28, 1997, to implement that plan and govern the conduct of activities within the Sanctuary. Congress and the Governor of the State of Hawaii (Governor) had forty-five days of continuous session of Congress beginning on the day on which the final regulations were published to review those regulations and management plan. After the forty-five day review period, the regulations would become final and take effect, except that any term or terms of the regulations or management plan the Governor certified to the Secretary of Commerce as unacceptable would not take effect in the area of the Sanctuary lying within the seaward boundary of the State.

During the forty-five day review period the Governor submitted to the Secretary of Commerce a certification that implementation of the management plan and certain regulations were unacceptable unless specific amendments were made to the regulations. In response to the Governor's certification, NOAA amended those regulations certified as unacceptable to incorporate the Governor's changes. Consequently, upon their effective date the regulations, as modified by this rule, and management plan, in their entirety, will apply throughout the Sanctuary, including within State waters of the Sanctuary.

This rule amends the regulations published in the March 28, 1997, **Federal Register**, in response to the Governor's certification, and announces the effective date of the regulations. **EFFECTIVE DATE:** The final rule published on March 28, 1997, at 62 FR 14799 as amended by the revision of 15 CFR part 922, subpart Q in this document is effective December 29, 1999.

**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, and the March 28, 1997, **Federal Register** document are available on request to the Hawaiian Islands Humpback Whale National Marine Sanctuary Office, 726 South Kihei Road, Kihei, Maui, Hawaii, 96753; or the Marine Sanctuaries Division (MSD), Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1305 East-West

Highway, SSMC-4, 11th Floor, Silver Spring, Maryland, 20910.

**FOR FURTHER INFORMATION CONTACT:**

Allen Tom, Sanctuary Manager, Kihei, Maui, Hawaii, (808) 879-2818 (Maui), (808) 541-3184 (Oahu) or (800) 831-4888 (inter-island toll-free).

**SUPPLEMENTARY INFORMATION:**

**I. Introduction**

The HIIHWNMS was designated by the Hawaiian Islands National Marine Sanctuary Act (HINMSA; Title II, Subtitle C, Pub. L. No. 102-587) which was signed into law on November 4, 1992. The HINMSA directed the Secretary of Commerce to develop a comprehensive management plan and regulations for the Sanctuary pursuant to sections 303 and 304 of the National Marine Sanctuaries Act (NMSA) (also known as Title III of the Marine Protection, Research, and Sanctuaries Act of 1972), as amended, 16 U.S.C. 1431 *et seq.* The NMSA authorizes the designation of national marine sanctuaries and the development of management plans and regulations for national marine sanctuaries to protect their conservation, recreational, ecological, historical, research, educational, or aesthetic qualities.

The authority of the Secretary to designate national marine sanctuaries and implement designated sanctuaries was delegated to the Under Secretary of Commerce for Oceans and Atmosphere by the Department of Commerce, Organization Order 10-15, § 3.01(x) (Jan. 26, 1996). The authority to administer the other provisions of the NMSA was delegated to the Assistant Administrator for Ocean Services and Coastal Zone Management of NOAA by NOAA Circular 83-38, Directive 05-50 (Sept. 21, 1983, as amended).

**II. Forty-five Day Review Period Under the National Marine Sanctuaries Act and Hawaiian Islands National Marine Sanctuary Act**

NOAA published final regulations on March 28, 1997, (62 FR 14799) to implement the HIIHWNMS management plan and govern the conduct of activities within the HIIHWNMS. Under the NMSA and HINMSA, Congress and the Governor had forty-five days of continuous session of Congress beginning on the day on which the final regulations were published to review the terms of designation (i.e., management plan and regulations). After forty-five days, the regulations would become final and take effect, except that any term or terms the Governor certified within the forty-five day period to the Secretary of

Commerce as unacceptable would not take effect in the area of the Sanctuary lying within the seaward boundary of the State. The following discusses the Governor's actions during the forty-five day period and corresponding modifications to the final regulations made by NOAA in response to those actions.

*Certification by the Governor of Hawaii*

On June 5, 1997, during the forty-five day review period under the NMSA and HINMSA, the Governor of the State of Hawaii certified by letter to the Secretary of Commerce that implementation of the management plan and certain regulations were unacceptable in State waters. However, the management plan and regulations certified as unacceptable would be acceptable if NOAA amended the regulations and the intergovernmental Compact Agreement (Compact), developed by the State and NOAA, as requested in the Governor's certification letter. NOAA has amended the regulations and the Compact to incorporate the modifications requested by the Governor in his letter. By doing so, the regulations and management plan, as modified, are acceptable to the Governor and, therefore, will apply within State waters of the Sanctuary upon the effective date of these regulations.

The following is the text of the June 5, 1997, letter from the Governor of Hawaii to the Secretary of Commerce.

June 5, 1997.

Dr. D. James Baker,

*Under Secretary and Administrator, National Oceanic and Atmospheric Administration, Herbert C. Hoover Building, Room 5128, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.*

Dear Dr. Baker: This is to inform you that I have agreed to include selected portions of State waters within the boundary of the Hawaiian Islands Humpback Whale National Marine Sanctuary (HIIHWNMS). It is our intention to create a State-Federal partnership with the National Oceanic and Atmospheric Administration (NOAA) for management of the Sanctuary under the provisions of the HIIHWNMS management plan, implementing regulations, and the intergovernmental compact agreement, with certain conditions to be applied to the portions of the Sanctuary within State waters. It is my understanding that if the conditions set forth below are not met, the Sanctuary designation and regulations shall not take effect and become final in State waters.

It is also my understanding that the inclusion of State waters within the Sanctuary boundary does not convey title to the Federal government; nor does the State relinquish authority over any State-owned submerged lands, waters or other State-

owned resources, including the power to lease or otherwise encumber the same.

In accordance with subsection 304(b)(1) of the National Marine Sanctuaries Act, the following terms are certified as unacceptable in state waters:

1. Sanctuary emergency regulations unless and until first approved by the Governor. Accordingly, the following sentence shall be added to section 922.185 CFR as published on March, 28, 1997: "Emergency regulations shall not take effect in Hawaii territorial waters until approved by the Governor of Hawaii."

2. Sanctuary fees for allowed public uses unless first approved by the Governor.

3. Requirements for the State of Hawaii or county governments to provide funding for the implementation of the Sanctuary management plan, regulations, or the intergovernmental compact agreement.

4. Sanctuary fishing regulations in State waters unless established by the Board of Land and Natural Resources.

5. NOAA's Preferred Sanctuary boundary in State waters except the waters:

a. from Kailiu Point eastward to Mokolea Pt. on Kauai;

b. from Puaena point northward to Mahie Point (just south of Kahana Bay) and from the Ala Wai Canal (Diamond Head side) eastward to Makapuu Pt. on Oahu;

c. from Ilio Pt. south and eastward to Cape Halawa on Molokai;

d. from Lipoa Point south to Hanamanioa Lighthouse on Maui;

e. all State waters surrounding Lanai;

f. from Upolu Pt. south to Keahole Pt. on Hawaii.

Accordingly, NOAA shall amend 15 C.F.R. Section 181 and Appendix A to the HIIHWN Sanctuary Regulations to reflect the State Boundary Selected.

6. Implementation of the management plan in its entirety unless the Intergovernmental Compact Agreement includes the following:

a. The Governor shall designate a State employee to serve as an equal partner to work in consultation with the Sanctuary Manager for the oversight of Sanctuary operations. The State of Hawaii and NOAA shall manage the Sanctuary through a cooperative partnership and consult on all management activities throughout the Sanctuary. The intent of this partnership is that the final resolution of any management issues resulting in policy conflicts between the State and NOAA shall be decided by the managing partners consistent with State and Federal laws.

b. The State reserves the right to initiate proposed changes to the management plan, and NOAA, if necessary, shall initiate the Federal rule promulgation process required to make revisions to Sanctuary regulations requested by the State.

c. The goals and objectives of the Sanctuary management plan were developed to complement and coordinate existing management efforts, and, in part, to address some of the objectives and policies contained in the National Marine Fisheries Service (NMFS) Final Recovery Plan (Recovery Plan) for the Humpback Whale. Throughout the implementation of the management plan, therefore, NOAA's Sanctuaries & Reserves

Division in coordination with the State, will consult with NMFS to evaluate the effectiveness of existing management efforts in achieving those objectives and policies, including whether additional measures (e.g., regulations or critical habitat) to protect the humpback whale and its habitat are needed. Prior to making a final decision on whether to designate critical habitat for humpback whales in Hawaii state waters under the Endangered Species Act, NOAA will fully involve and consult with the State.

d. The designation of the Sanctuary does not limit or restrict in any way State or federal government actions to respond to oil or hazardous material spill. The Sanctuary will work within established procedures of the Oceania Regional Response Team for oil or hazardous material spill response and planning.

e. Section 304(e) of the National Marine Sanctuaries Act requires the Secretary of Commerce to review the Sanctuary's Management Plan and implementing regulations every five years, evaluate the substantive progress toward implementing the management plan and goals for the Sanctuary, especially the effectiveness of the site-specific management techniques, and revise the management plan as necessary to fulfill the purposes and policies of the Act. When the Management Plan and implementing regulations for the HIHWNMS are re-evaluated, the Secretary of Commerce will re-propose the management plan and regulations in their entirety and the State of Hawaii will have the opportunity to review the Management Plan and regulations, in their entirety, and indicate if any of all of the terms are unacceptable, in which case the unacceptable terms shall not take effect in State waters.

Accordingly, the following provisions shall be added to 15 CFR section 922.180: "Section 304(e) of the National Marine Sanctuaries Act requires the Secretary to review management plans and regulations every five years, and make necessary revisions. Upon completion of the five year review of the Sanctuary management plan and regulations, the Secretary will re-propose the Sanctuary regulations in their entirety with any proposed changes thereto. The Governor of the State of Hawaii will have the opportunity to review the re-proposed regulations before they take effect and if the Governor certifies such regulations as unacceptable, they will not take effect in State waters of the Sanctuary."

We believe that implementation of the plan provides for balanced protection of Hawaii's endangered State marine mammal and its marine habitat, and advances the state and federal commitment to jointly manage these resources. We look forward to that continuing relationship.

With warmest personal regards,

Aloha,

*Benjamin J. Cayetano.*

cc: Mr. Allen Tom, NOAA

#### *NOAA's Response to Governor's Certification*

In response to the Governor's certification of June 5, 1997, NOAA has amended those regulations certified by the Governor as being unacceptable in

State waters. With the modifications, the entire regulations and management plan are accepted by the Governor and will apply throughout the Sanctuary, including within State waters of the Sanctuary, upon their effective date. The basis and purpose of the changes to the regulations are as follows.

(1) Per item number 1 of the Governor's letter which certified as unacceptable in State waters emergency regulations unless first approved by the Governor, § 922.185 of subpart Q is amended by adding "Emergency regulations shall not take effect in Hawaii State waters until approved by the Governor of Hawaii." This is consistent with the management plan which provides that any new regulation or substantive modification to existing Sanctuary regulations will require the Governor's approval in order to take effect in State waters of the Sanctuary.

(2) Item 2 of the Governor's certification certified as unacceptable in State waters Sanctuary user fees unless first approved by the Governor. However, by law NOAA is precluded from instituting any user fees under the HINMSA or NMSA for any activity within the Sanctuary or any use of the Sanctuary or its resources. Consequently, no amendment to the Sanctuary regulations is necessary. By law, the term "user fee" does not include any fee authorized by section 310 of the NMSA (Special Use Permits); any gift or donation received under section 311 of the NMSA; or any monetary or in-kind contributions under section 316 of the NMSA.

(3) Item 3 of the Governor's certification certified as unacceptable in State waters requirements for the State of Hawaii or County governments to provide funding for the implementation of the management plan, regulations or Intergovernmental Compact Agreement. No changes were made to the regulations as regards this item of the Governor's certification because there is no regulatory component necessary for its implementation. There is no mandate in the management plan for the State or counties to provide funding for the Sanctuary. Further, as stated in the March 28, 1997, **Federal Register** document, the final regulations contain no Federal mandates and therefore are not subject to the Unfunded Mandates Reform Act of 1995.

(4) Per item number 4 of the Governor's letter which certified as unacceptable in State waters Sanctuary fishing regulations unless established by the State of Hawaii's Board of Land and Natural Resources, NOAA amended § 922.184 of subpart Q by adding a new paragraph (c) to read "Any Sanctuary fishery regulations shall not take effect

in Hawaii State waters until established by the State Board of Land and Natural Resources." The Governor's certification did not specify a particular regulation to be amended, but NOAA determined that an appropriate place for such provision is in the Sanctuary specific regulations at a new § 922.184(c) of subpart Q. Again, this provision is consistent with the portion of the management plan that provides that any new regulation must be approved by the State (Governor) in order to take effect in State waters of the Sanctuary.

(5) Per item number 5 of the Governor's letter which certified as unacceptable in State waters NOAA's preferred Sanctuary boundary, except the waters:

- a. from Kailiu Point, eastward to Mokolea Point on Kauai;
- b. from Puaena Point northward to Mahie Point (just south of Kahana Bay) and from the Ala Wai Canal (Diamond Head side) eastward to Makapuu Point on Oahu;
- c. from Ilio Point south and eastward to Cape Halawa on Molokai;
- d. from Lipoa Point south to Hanamanioa Lighthouse on Maui;
- e. all State waters around Lanai;
- f. from Upolu Point south to Keahole Point on Hawaii;

NOAA has amended § 922.181 and Appendix A to subpart Q to reflect the modified final Sanctuary boundary to accommodate the Governor's requested changes and to clarify boundary end points. The following list summarizes the changes made, in consultation with the state, to NOAA's preferred alternative boundary listed in the final management plan and regulations. Unless otherwise stated, the boundary goes from the shoreline to the 100 fathom (600 feet) isobath.

#### *Kauai*

The location of the western boundary point (Kailiu Point) remains unchanged. The eastern boundary point was changed from Makahuena Point to Mokolea Point to reflect the Governor's letter. Both Hanamaulu Bay and Nawiliwili Harbor were removed from the excluded harbors list since they are no longer physically located within the Sanctuary boundary.

#### *North Oahu*

No changes were made to the location of Puaena Point and Mahie Point as identified in the final management plan. However, the final language states from "Puaena Point *eastward* to Mahie Point (just south of Kahana Bay)" using *eastward* instead of *northward* to more

accurately reflect the location of the point.

#### South Oahu

The Governor's letter requested that the Oahu western boundary point start from the Ala Wai Canal (Diamond Head side). Further consultation with the State of Hawaii clarified the location of this point to be at the Kapahulu Groin in Waikiki, which is the intersection of a perpendicular line from where the Ala Wai Canal begins (near Diamond Head) and the ocean. The Ala Wai Small Boat Basin was removed from the excluded harbors list since it no longer is physically located within the Sanctuary boundary. NOAA also generated two closure bounds (see bounds #21 and #22 on Figure 2 in Appendix A to the final rule) to clarify that Kaupa Pond (Hawaii Kai) is not included in the boundary. The original boundary file given to NOAA from the state mistakenly included this area. The two closure bounds were drawn at the outer side of the bridges for the coast highway crossing the two outlets.

#### Maui County (Maui, Molokai, Lanai, Penguin Bank)

The final boundary around Maui County was modified to reflect the Governor's request to include the areas from Cape Halawa, Molokai south and westward to Ilio Point, and from Lipoa Point, Maui south to the Hanamanioa Lighthouse. No changes were made to the boundary around Lanai or Penguin Bank. In consultation with the State of Hawaii, the boundary between Cape Halawa, Molokai and Lipoa Point, Maui (across the deepwater Pailolo Channel) was redrawn as a straight line to simplify the boundary. NOAA generated additional boundary coordinates to construct the boundary around the northeast shore of Kahoolawe. This line follows a 3 nautical mile arc around the island of Kahoolawe, which is not included within the Sanctuary, and intersects the 100 fathom line. NOAA also provided some coordinates for a technical closure correction of the boundary in an area north of Kahoolawe (see bound #11 in Figure 2, Appendix A to the final rule). This is an area of complex bathymetry, where the 100 fathom isobath varies tremendously. NOAA and the State agreed to simplify the boundary in the area by drawing a line across the area, thus eliminating the area of complex bathymetry. This was depicted in both the draft and final environmental impact statements and management plans. Kahului Harbor on Maui was removed from the excluded harbors list since it no longer is

physically located within the Sanctuary boundary.

#### Hawaii (Big Island)

The Sanctuary boundary around the Big Island was modified to reflect the Governor's letter requesting that the boundary start at Upolu Pt. and go south to Keahole Point. Hilo Harbor, Honokohau Boat Harbor, and Keauhou Bay boat harbors were removed from the excluded harbor list since they are no longer physically located within the Sanctuary boundary.

These boundary changes made in response to the Governor's certification are within the range of boundary alternatives contained in the draft and final environmental impact statements/management plans for the Sanctuary, and within the scope of the boundary identified in the final regulations published on March 28, 1997. The list of ports and harbors excluded from the Sanctuary boundary has also been modified according to the revised final Sanctuary boundary.

(6) Per item number 6 of the Governor's letter which certifies as unacceptable in State waters the implementation of the management plan unless the Intergovernmental Compact Agreement and § 922.180 is amended to add a provision regarding a five year review of the management plan and regulations, § 922.180 of subpart Q is amended by adding:

Section 304(e) of the NMSA requires the Secretary to review management plans and regulations every five years, and make necessary revisions. Upon completion of the five year review of the Sanctuary management plan and regulations, the Secretary will repropose the Sanctuary management plan and regulations in their entirety with any proposed changes thereto. The Governor of the State of Hawaii will have the opportunity to review the re-proposed management plan and regulations before they take effect and if the Governor certifies any term or terms of the management plan or regulations as unacceptable, the unacceptable term or terms will not take effect in State waters of the Sanctuary.

A corresponding amendment, as well as other amendments to address elements of item 6 of the Governor's letter, have also been made to the Compact Agreement which was signed by the Governor on May 4, 1998. The modification to the regulation essentially codifies the requirement under the NMSA to conduct reviews of Sanctuary management plans and regulations every five years. In the HIHWNMS context, NOAA has determined that at the conclusion of the five year review of the Sanctuary, it will repropose the regulations and

management plan for the Governor's review, similar to the forty-five day review period under the NMSA that preceded this notice.

For clarity, this document publishes the revised Sanctuary specific regulations at 15 CFR part 922, subpart Q in their entirety, which will replace subpart Q as published in the March 28, 1997 **Federal Register** document. Consequently, subpart Q as published in this rule and all remaining regulations in the March 28, 1997, rule shall become effective December 29, 1999.

### III. Summary of the Changes to the Final Regulations at Subpart Q

The following summarizes the Sanctuary regulations at 15 CFR part 922, subpart Q, as modified by this document. Except as noted below, this section remains the same as in the March 28, 1997, **Federal Register** document. With the changes, the final rule published on March 28, 1997, at 62 FR 14799, and the revision of 15 CFR part 922, subpart Q, in this document shall apply throughout the Sanctuary, including within State waters of the Sanctuary, on December 29, 1999.

Section 922.180 sets forth the purpose of the regulations—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. Section 922.180 also describes the five-year review of the management plan and regulations for the Sanctuary.

Section 922.181 and Appendix A to subpart Q set forth the boundary of the Sanctuary. Appendix A provides a text description of the Sanctuary boundary with specific lateral closure points and exclusion areas. The Sanctuary boundary is also depicted in Figures 1–3. Digital files, available in three common formats (ESRI Shape File, MapInfo Tables, and an ASCII Exchange Format) are available from the Sanctuary office in Kihei, Maui, at the address listed above. These digital geographies are the best available representation of the verbal legal delineation and were derived from: the Hawaiian shoreline as supplied by State of Hawaii through the Office of Planning GIS Office, the agreed lateral boundary and exclusion areas, and the 100 fathom

isobath digitized from the following 1:80,000 scale NOAA nautical charts:

- 19327—West Coast of Hawaii (9th ED, 4/29/89),
- 19347—Channels between Molokai, Maui, Lanai, and Kahoolawe (17th ED, 12/13/97),
- 19351—Channels between Oahu, Molokai, and Lanai (8th ED, 7/01/1989),
- 19357—Island of Oahu (20th ED, 9/21/1996), and
- 19381—Island of Kauai (8th ED, 7/17/1993)].

For the portion of the Lanai region of the HIHWNMS west of Chart 19351, [157°42.8' west] the 100 fathom contour was derived from the 1:250,000 chart 19340—*Hawaii to Oahu* (24th ED, 1/09/1993).

All digital geography data have been referenced to WGS84 (NAD83) and have been converted to geographic (latitude and longitude) coordinates.

Section 922.184(c) provides that any Sanctuary fishing regulations will not take effect in State waters until established by the State Board of Land and Natural Resources.

Section 922.185 provides that where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource, or imminent risk of such destruction of, loss of, or injury, any and all activities are subject to immediate temporary regulation, including prohibition. No emergency regulation will take effect in State waters of the Sanctuary until approved by the Governor of Hawaii.

#### IV. Miscellaneous Rulemaking Requirements

Except as noted below, this section remains the same as in the March 28, 1997 **Federal Register** notice.

##### *National Marine Sanctuaries Act*

Section 304 of the National Marine Sanctuaries Act provides that Congress and the Governor have forty-five days of continuous session of Congress beginning on the day on which the final regulations were published to review the terms of designation (i.e., regulations and management plan). After forty-five days, the regulations would become final and take effect, except that any term or terms of the regulations or management plan the Governor certified to the Secretary of Commerce as unacceptable would not take effect in the State waters portion of the Sanctuary. The forty-five day review period began on March 28, 1997, the date the final regulations were published in the **Federal Register**, and concluded on June 6, 1997. During that period the Governor submitted to the Secretary a certification that the management plan and certain regulations were unacceptable unless

specific amendments were made to such regulations. NOAA amended those regulations certified as unacceptable by incorporating the Governor's changes. Consequently, upon their effective date the regulations, as revised by this **Federal Register** document, and management plan, in their entirety, will apply throughout the Sanctuary, including within State waters of the Sanctuary.

##### *Administrative Procedure Act*

The final Sanctuary regulations at 15 CFR part 922, subpart Q, which were promulgated on March 28, 1997, through notice and comment rulemaking, have been amended pursuant to and consistent with the procedures required under the National Marine Sanctuaries Act and Hawaiian Islands National Marine Sanctuary Act. The NMSA and HINMSA provide that during the review period of forty-five day continuous session of Congress, the Governor may certify to the Secretary of Commerce any regulation as unacceptable and, if the Governor so certifies, the regulation shall not take effect in the State waters portion of the Sanctuary. As the changes requested by the Governor and herein made by NOAA are within the scope of the proposed and final rules, additional prior notice and opportunity for public comment are not required by 5 U.S.C. 553. The basis and purpose of the changes to the final regulations requested by the Governor have been set forth above.

##### List of Subjects in 15 CFR Part 922

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

Dated: October 29, 1999.

**Ted Lillestolen,**

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

#### PART 922—NATIONAL MARINE SANCTUARY PROGRAM REGULATIONS

Accordingly, for the reasons set forth above, 15 CFR part 922 is amended by revising subpart Q to read as follows:

##### Subpart Q—Hawaiian Islands Humpback Whale National Marine Sanctuary

- Section
- 922.180 Purpose.
- 922.181 Boundary.
- 922.182 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 Description and Coordinates of the Lateral Boundary Closures and Excluded Areas

**Authority:** 16 U.S.C. 1431 *et seq.* and subtitle C, title II, Pub. L. 102–587, 106 Stat. 5055.

##### Subpart Q—[Revised]

##### § 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) These regulations 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.

(c) Section 304(e) of the NMSA requires the Secretary to review management plans and regulations every five years, and make necessary revisions. Upon completion of the five year review of the Sanctuary management plan and regulations, the Secretary will repropose the Sanctuary management plan and regulations in their entirety with any proposed changes thereto. The Governor of the State of Hawaii will have the opportunity to review the re-proposed management plan and regulations before they take effect and if the Governor certifies any term or terms of such management plan or regulations as unacceptable, the unacceptable term or terms will not take effect in State waters of the Sanctuary.

#### **§ 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 from Kaili Point eastward to Mokolea Point, Kauai;

(2) To the 100-fathom (183 meter) isobath from Puaena Point eastward to Mahie Point, and from the Kapahulu Groin in Waikiki eastward to Makapuu Point, Oahu;

(3) To the 100-fathom (183 meter) isobath from Cape Halawa, Molokai, south and westward to Ilio Point, Molokai; southwestward to include Penguin Banks; eastward along the east side of Lanai; to the waters seaward of the three nautical mile limit north of Kahoolawe, to the Hanamanoia Lighthouse on Maui, and northward along the shoreline to Lipoa Point, Maui;

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

(5) To the 100-fathom (183 meter) isobath from Upolu Point southward to Keahole Point, Hawaii.

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

#### *Hawaii (Big Island)*

Kawaihae Boat Harbor & Small Boat Basin

#### *Lanai*

Kaumalapau Harbor, Manele Harbor

#### *Maui*

Lahaina Boat Harbor  
Maalaea Boat Harbor

#### *Molokai*

Hale o Lono Harbor  
Kaunakakai Harbor

#### *Oahu*

Kuapa Pond (Hawaii Kai)

(c) The coordinates of the lateral extents of each boundary area within the Sanctuary boundary appear 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 Pub. L. 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 of this part. 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 § 922.183 are all classes of military activities, internal or external to the Sanctuary, that are being or have been conducted before the effective date of these regulations, as identified in the Final Environmental Impact Statement/Management Plan. Paragraphs (a)(1) through (a)(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 these regulations are also included as allowed activities under the first sentence of paragraph (a) of this § 922.183. Paragraphs (a)(1) through (a)(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 (a)(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 § 922.183 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 (a)(5) of this § 922.184 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 (a)(5) of this § 922.184, 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).

(c) Any Sanctuary fishery regulations shall not take effect in Hawaii State waters until established by the State Board of Land and Natural Resources.

#### **§ 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. Emergency regulations shall not take effect in State waters of the Sanctuary until approved by the Governor 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 these regulations 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 Description and Coordinates of the Lateral Boundary Closures and Excluded Areas.**

Appendix A provides a text and pictorial (see Figures 1–3) description of the Sanctuary boundary with specific lateral closure points and exclusion areas. The lateral extents (bounds) of each boundary area are closed by straight lines defined by at least two points. It may be necessary to extend these lines beyond the defining points to intersect the actual 100 fathom contour or the shoreline. Each point corresponds to a bounds number indicated in Figure 2. Digital files of the Sanctuary boundary (available in three common formats, ESRI Shape File, MapInfo Table, and an ASCII Exchange Format) are available from the Sanctuary office in Kihei, Maui, at the address listed above or by calling (808) 879–2818. These digital geographies are the best available representation of the verbal legal delineation and were derived from: the Hawaiian shoreline as



supplied by State of Hawaii through the Office of Planning GIS Office, the NOAA and State of Hawaii agreed upon lateral boundary and exclusion areas, and the 100 fathom isobath digitized from the following 1:80,000 scale NOAA nautical charts-19327—West Coast of Hawaii (9th ED, 4/29/89),

19347—Channels between Molokai, Maui, Lanai, and Kahoolawe (17th ED, 12/13/97),

19351—Channels between Oahu, Molokai, and Lanai (8th ED, 7/01/1989),

19357—Island of Oahu (20th ED, 9/21/1996), and

19381—Island of Kauai (8th ED, 7/17/1993)].

For the portion of the Lanai region of the HIHWNMS west of Chart 19351, [157°42.8' west] the 100 fathom contour was derived

from the 1:250,000 chart 19340—Hawaii to Oahu (24th ED, 1/09/1993).

All digital geography data have been referenced to WGS84 (NAD83) and have been converted to geographic (latitude and longitude) coordinates.

#### **Sanctuary Boundary**

A. As defined by the specific lateral boundaries in B, and except for excluded areas described in paragraph C 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 (see Figure 1):

1. To the 100-fathom (183 meter) isobath from Kailiu Point eastward to Mokolea Point, Kauai;

2. To the 100-fathom (183 meter) isobath from Puaena Point eastward to Mahie Point, and from the Kapahulu Groin in Waikiki eastward to Makapuu Point, Oahu;

3. To the 100-fathom (183 meter) isobath from Cape Halawa, Molokai, south and westward to Ilio Point, Molokai; southwestward to include Penguin Banks; eastward along the east side of Lanai; to the waters seaward of the three nautical mile limit north of Kahoolawe, to the Hanamanoia Lighthouse on Maui, and northward along the shoreline to Lipoa Point, Maui;

4. To the deep water area of Pailolo Channel from Cape Halawa, Molokai, to Lipoa Point, Maui, and southward;

5. To the 100-fathom (183 meter) isobath from Upolu Point southward to Keahole Point, Hawaii.

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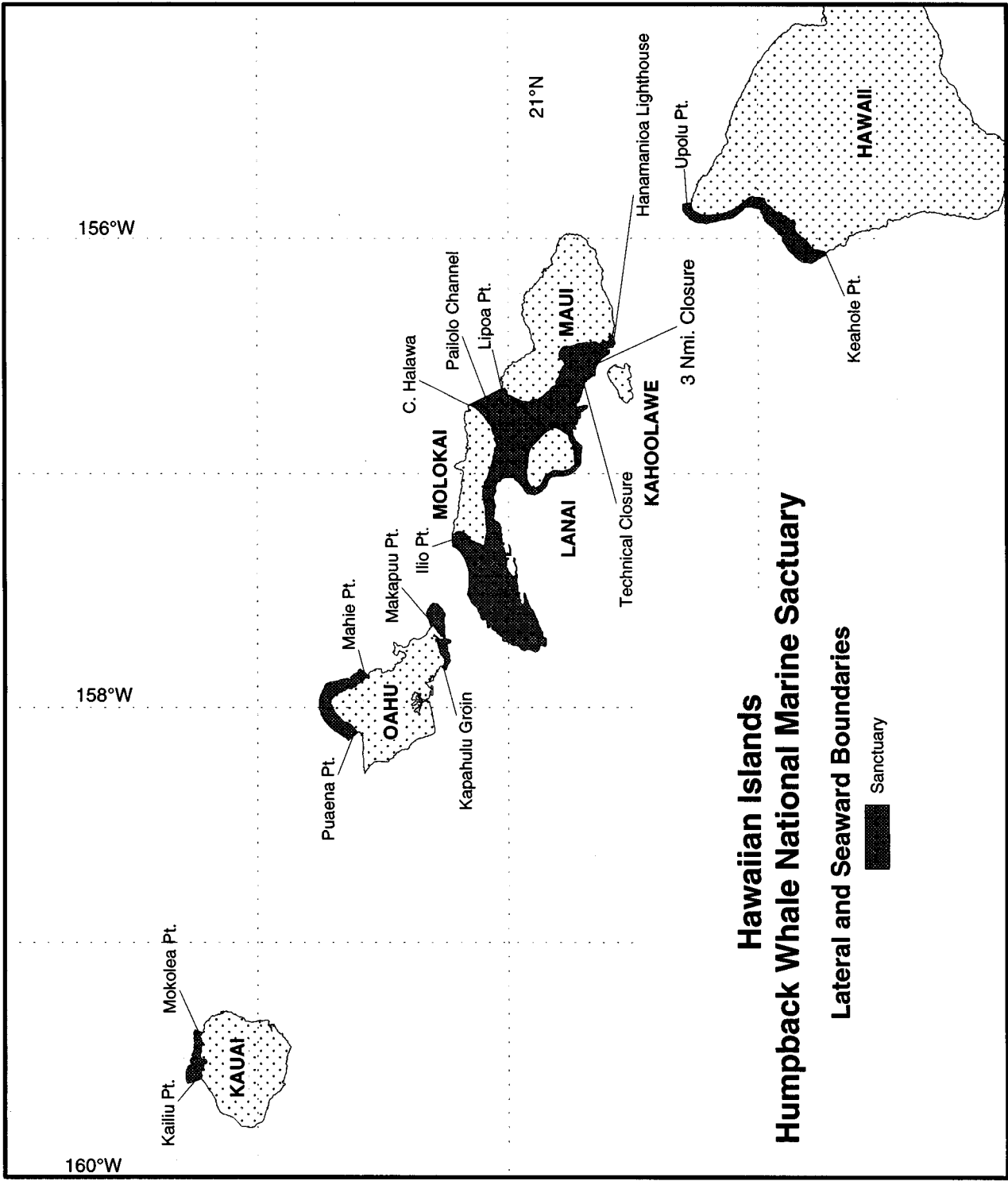


Figure 1

B. Lateral Closure Bounds for the Hawaiian Islands Humpback Whale National Marine Sanctuary Boundary (see Figure 2).

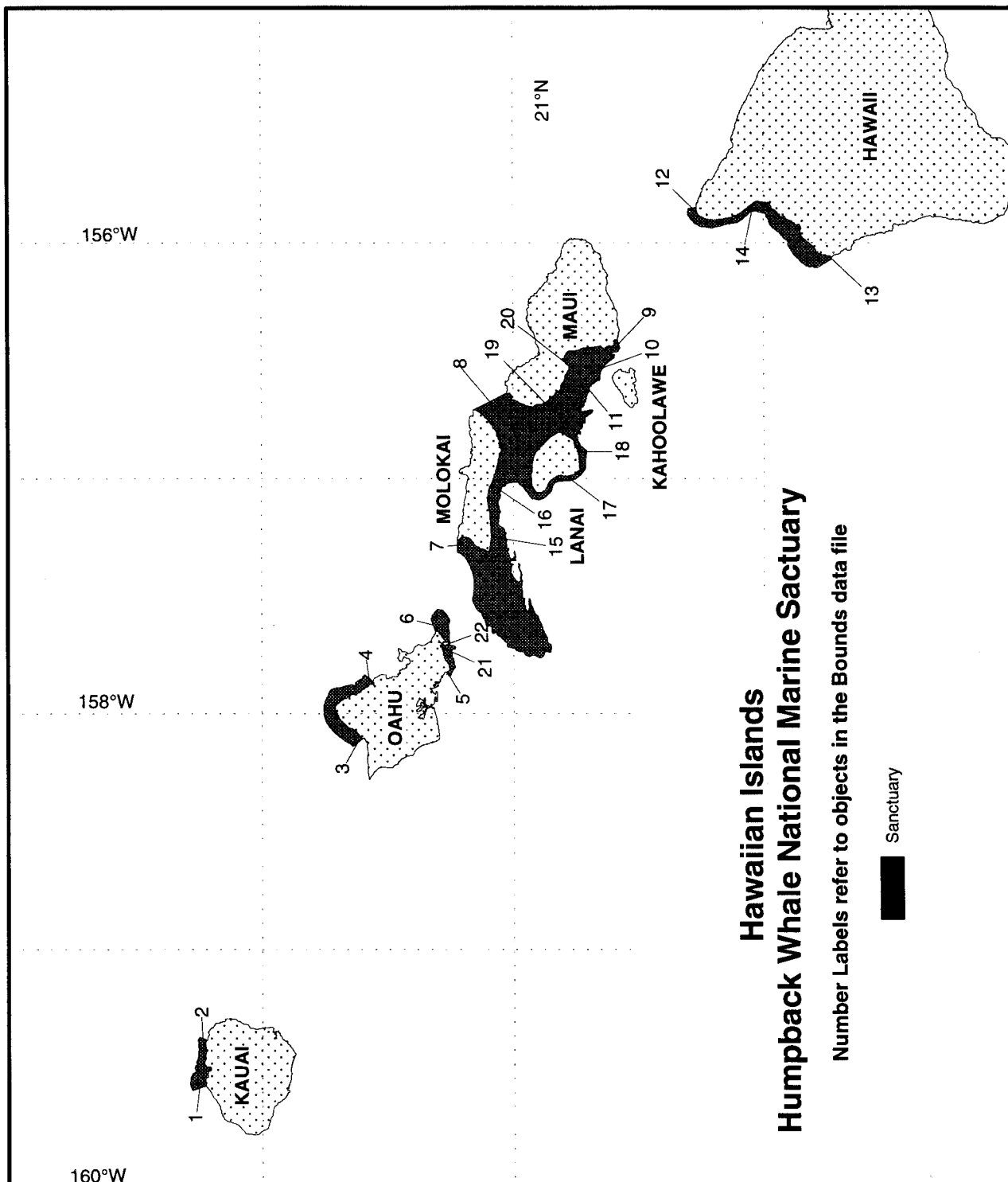


Figure 2

Bound No. (Fig. 2)	Geographic name	No. of points	Latitude	Longitude
1 .....	Kailiu Pt., Kauai .....	2	22°13'24.7"	–159°34'52.2"
			22°16'33.5"	–159°35'59.4"
2 .....	Mokolea Pt., Kauai .....	2	22°13'29.9"	–159°22'55.8"
			22°14'55.4"	–159°22'19.3"
3 .....	Puaena Pt., N. Oahu .....	2	21°38'24.6"	–158°8'26.0"
			21°36'8.4"	–158°6'24.5"
4 .....	Mahie Pt., N. Oahu .....	2	21°33'37.3"	–157°51'51.9"
			21°35'32.2"	–157°50'5.5"
5 .....	Kapahulu Groin, S. Oahu .....	3	21°15'5.7"	–157°50'27.5"
			21°16'6.1"	–157°49'25.7"
			21°16'6.2"	–157°49'23.8"
6 .....	Makapuu Pt., S. Oahu .....	2	21°18'39.6"	–157°38'56.7"
			21°19'44.7"	–157°35'46.1"
7 .....	Ilio Pt, Molokai .....	2	21°13'25.7"	–157°18'45.8"
			21°13'27.0"	–157°15'14.4"
8 .....	Pailolo Channel, C. Halawa to Lipoa Pt. ....	2	21°1'29.8"	–156°38'22.0"
			21°9'29.5"	–156°42'37.2"
9 .....	Hanamanoia Lighthouse, Maui .....	2	20°34'21.8"	–156°26'51.1"
			20°34'58.4"	–156°24'45.2"
10 .....	3 Nmi. closure around Kahoolawe .....	51	20°35'58.1"	–156°29'32.0"
			20°35'59.9"	–156°29'33.0"
			20°36'3.9"	–156°29'35.5"
			20°36'6.6"	–156°29'36.9"
			20°36'16.3"	–156°29'43.1"
			20°36'25.7"	–156°29'49.9"
			20°36'34.6"	–156°29'57.3"
			20°36'39.9"	–156°30'2.2"
			20°36'43.8"	–156°30'5.5"
			20°36'50.8"	–156°30'12.1"
			20°36'59.0"	–156°30'16.5"
			20°37'8.7"	–156°30'22.7"
			20°37'18.1"	–156°30'29.5"
			20°37'27.0"	–156°30'36.8"
			20°37'35.5"	–156°30'44.8"
			20°37'43.4"	–156°30'53.4"
			20°37'50.9"	–156°31'2.4"
			20°37'56.4"	–156°31'10.0"
			20°37'59.0"	–156°31'13.2"
			20°38'6.0"	–156°31'22.7"
			20°38'8.6"	–156°31'26.8"
			20°38'10.8"	–156°31'29.9"
			20°38'17.2"	–156°31'39.9"
			20°38'18.9"	–156°31'43.0"
			20°38'23.4"	–156°31'48.4"
			20°38'30.3"	–156°31'58.0"
			20°38'36.6"	–156°32'7.9"
			20°38'42.4"	–156°32'18.3"
			20°38'43.4"	–156°32'20.5"
			20°38'46.4"	–156°32'25.9"
			20°38'51.5"	–156°32'36.7"
			20°38'56.0"	–156°32'47.7"
			20°38'59.8"	–156°32'59.1"
			20°39'3.0"	–156°33'10.7"
			20°39'4.0"	–156°33'15.7"
			20°39'4.4"	–156°33'17.0"
			20°39'5.3"	–156°33'21.1"
			20°39'6.8"	–156°33'28.7"
			20°39'8.6"	–156°33'40.7"
			20°39'8.9"	–156°33'44.4"
			20°39'9.7"	–156°33'49.6"
			20°39'10.1"	–156°33'53.8"
			20°39'11.0"	–156°34'0.3"
			20°39'12.1"	–156°34'12.4"
			20°39'12.5"	–156°34'24.4"
			20°39'12.4"	–156°34'25.4"
			20°39'12.6"	–156°34'30.5"
			20°39'12.2"	–156°34'42.6"
			20°39'11.8"	–156°34'47.7"
			20°39'11.7"	–156°34'48.9"
			20°39'11.3"	–156°34'55.8"
11 .....	Technical Closure .....	2	20°41'39.2"	–156°37'7.5"
	North of Kahoolawe .....		20°41'45.0"	–156°38'3.6"

Bound No. (Fig. 2)	Geographic name	No. of points	Latitude	Longitude
12 .....	Upolu Pt., Hawaii (Big Island) .....	2	20°16'5.3"	– 155°51'0.5"
			20°17'59.9"	– 155°51'17.2"
13 .....	Keahole Pt., Hawaii (Big Island) .....	2	19°43'39.6"	– 156°3'42.7"
			19°43'41.5"	– 156°4'14.5"

C. Excluded Ports and Harbors Bounds (see Figure 3).

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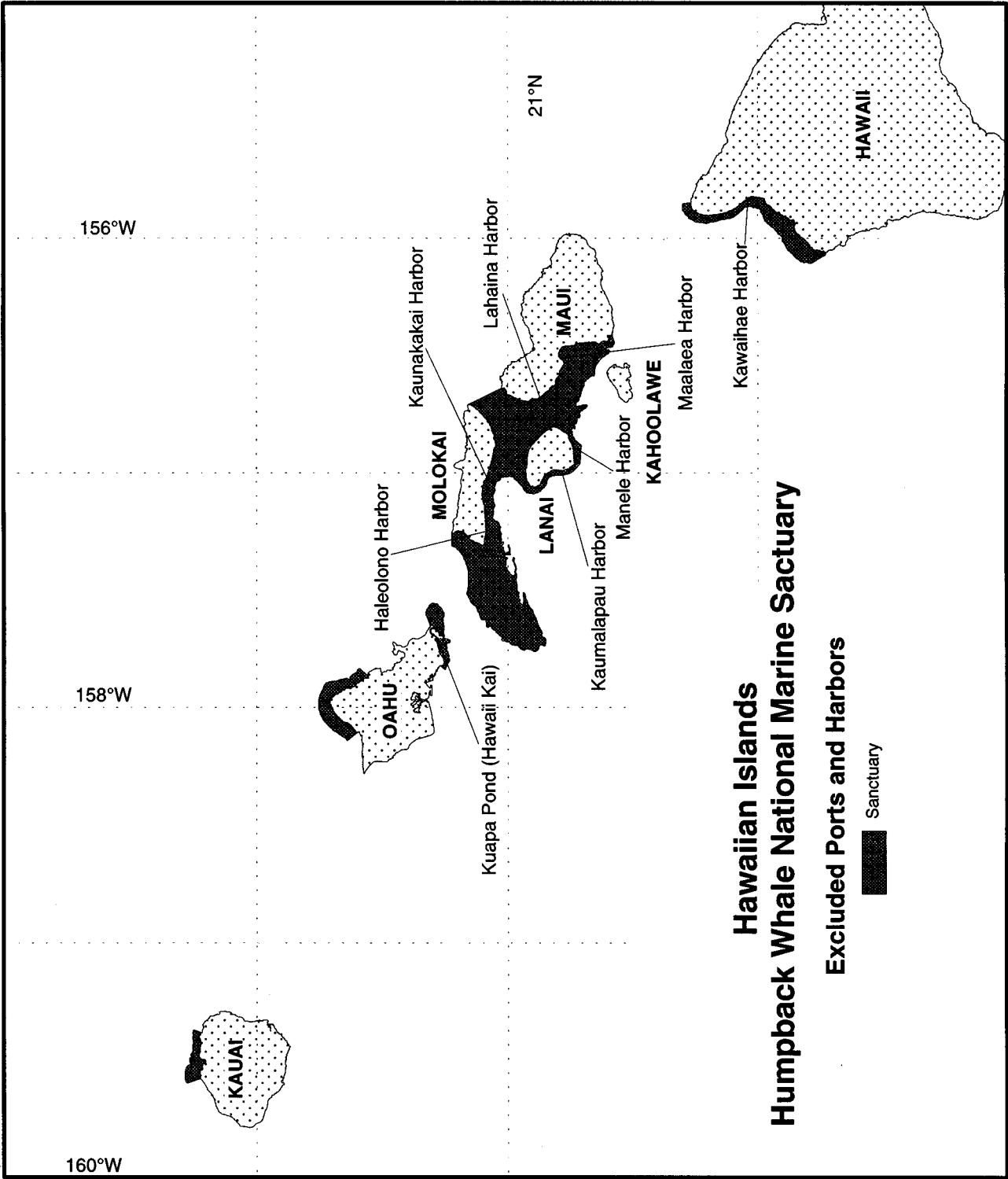


Figure 3

Bound No. (Fig.2)	Geographic Name	No. of Points	Latitude	Longitude
14 .....	Kawaihae Harbor, Big Island exclusion .....	2	20°2'14.3"	– 155°50'2.5"
			20°2'25.3"	– 155°49'57.7"
15 .....	Haleolono Harbor, Molokai exclusion .....	2	21°5'3.5"	– 157°14'58.6"
			21°5'4.8"	– 157°14'55.2"
16 .....	Kaunakakai Harbor, Molokai exclusion .....	4	21°5'13.9"	– 157°1'35.7"
			21°4'49.2"	– 157°1'58.3"
			21°4'38.5"	– 157°1'41.2"
			21°5'7.4"	– 157°1'15.0"
17 .....	Kaunalapau Harbor, Lanai exclusion .....	2	20°47'9.2"	– 156°59'32.2"
			20°47'1.1"	– 156°59'31.3"
18 .....	Manele Harbor, Lanai exclusion .....	2	20°44'33.2"	– 156°53'12.9"
			20°44'35.2"	– 156°53'14.1"
19 .....	Lahaina Harbor, Maui exclusion .....	2	20°52'18.3"	– 156°40'45.0"
			20°52'18.8"	– 156°40'44.0"
20 .....	Maalaea Harbor, Maui exclusion .....	2	20°47'32.1"	– 156°30'35.0"
			20°47'24.8"	– 156°30'39.6"
21 .....	Western closure Kuapa Pond (Hawaii Kai), Oahu .....	2	21°17'7.0"	– 157°43'7.7"
			21°17'6.5"	– 157°43'7.0"
22 .....	Eastern closure Kuapa Pond (Hawaii Kai), Oahu .....	2	21°16'53.3"	– 157°42'42.7"
			21°16'51.9"	– 157°42'40.3"

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## CONSUMER PRODUCT SAFETY COMMISSION

### 16 CFR Part 1000

#### Statement of Organization and Functions

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Final rule.

**SUMMARY:** The Consumer Product Safety Commission is amending its statement of organization and functions to reflect the division of the Directorate for Epidemiology and Health Sciences into separate directorates for epidemiology and for health sciences.

**EFFECTIVE DATE:** November 29, 1999.

**FOR FURTHER INFORMATION CONTACT:** Joseph F. Rosenthal, Office of the General Counsel, Consumer Product Safety Commission, Washington, D.C. 20207, telephone 301–504–0980.

**SUPPLEMENTARY INFORMATION:** The Commission has separated the former Directorate for Epidemiology and Health Sciences into a separate Directorate for Epidemiology and a separate Directorate for Health Sciences. To reflect this change, § 1000.27 is being revised to remove descriptions of the health sciences functions that have been incorporated in a new § 1000.28. Some editorial changes have also been made. Section 1000.12(c), listing the organizational units reporting to the Assistant Executive Director for Hazard Identification and Reduction, is being revised to separately list the Directorate

for Epidemiology and the Directorate for Health Sciences.

Since this rule relates solely to internal agency management, pursuant to 5 U.S.C. 553(b), notice and other public procedures are not required and it is effective immediately upon publication in the **Federal Register**. Further, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612, and, thus, is exempt from the provisions of the Act.

#### List of Subjects in 16 CFR Part 1000

Organization and functions (government agencies).

Accordingly, part 1000 is amended as follows:

#### PART 1000—[AMENDED]

1. The authority citation for part 1000 continues to read as follows:

**Authority:** 5 U.S.C. 552(a).

2. Paragraph (c) of section 1000.12 is revised to read as follows:

#### § 1000.12 Organizational structure.

\* \* \* \* \*

(c) The following units report directly to the Assistant Executive Director for Hazard Identification and Reduction:

- (1) Directorate for Economic Analysis;
- (2) Directorate for Epidemiology;
- (3) Directorate for Health Sciences;
- (4) Directorate for Engineering Sciences;
- (5) Directorate for Laboratory Sciences.

#### §§ 1000.28 and 1000.29 [Redesignated as §§ 1000.29 and 1000.30]

3. Sections 1000.28 and 1000.29 are redesignated as sections 1000.29 and 1000.30 respectively.

4. Section 1000.27 is revised to read as follows:

#### § 1000.27 Directorate for Epidemiology.

The Directorate for Epidemiology, managed by the Associate Executive Director for Epidemiology, is responsible for the collection and analysis of data on injuries and deaths associated with consumer products. The Directorate has two divisions: the Data Systems Division and the Hazard Analysis Division. The Data Systems Division operates the national data collection systems which provide the data that serve as the basis for the Commission's estimates of the numbers of deaths and injuries associated with consumer products. These data systems include the National Electronic Injury Surveillance System, a nationally representative sample of hospital emergency departments; a death certificate file, which contains data obtained from death certificates on deaths associated with consumer products; and the Injury and Potential Injury Incident file, which contains information on incidents associated with consumer products, based on news clips, medical examiner reports, hotline reports, internet complaints, referrals, etc. The Hazard Analysis Division conducts statistical analysis of these data and conducts epidemiologic studies to estimate the numbers of injuries and deaths associated with various consumer products and to examine factors associated with these injuries and deaths. In addition, staff in