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National Oceanic and Atmospheric Administration

15 CFR Part 922

Proposed Expansion, Regulatory Revision and New Management Plan for  
the Hawaiian Islands Humpback Whale National Marine Sanctuary;  
Proposed Rules

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****15 CFR Part 922**

[Docket No. 140207122-4122-01]

RIN 0648-BD97

**Proposed Expansion, Regulatory Revision and New Management Plan for the Hawaiian Islands Humpback Whale National Marine Sanctuary**

**AGENCY:** Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

**ACTION:** Proposed rule.

**SUMMARY:** The National Oceanic and Atmospheric Administration (NOAA) is proposing to expand the boundaries and scope of Hawaiian Islands Humpback Whale National Marine Sanctuary (HIHWNMS or sanctuary), amend the regulations for HIHWNMS, change the name of the sanctuary, and revise the sanctuary's terms of designation and management plan. The purpose of this action is to transition the sanctuary from a single-species management approach to an ecosystem-based management approach. A draft environmental impact statement and draft revised management plan have been prepared for this proposed action. NOAA is soliciting public comment on the proposed rule, draft environmental impact statement, and draft revised management plan.

**DATES:** Comments on this proposed rule will be considered if received by June 19, 2015.

**ADDRESSES:** You may submit comments on this document, identified by NOAA-NOS-2015-0028, by any of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov/#!docketDetail;D=NOAA-NOS-2015-0028](http://www.regulations.gov/#!docketDetail;D=NOAA-NOS-2015-0028), click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.

- **Mail:** Hawaiian Islands Humpback Whale National Marine Sanctuary, NOAA/DKIRC, 1845 Wasp Blvd., Bldg. 176, Honolulu, HI 96818, Attn: Malia Chow, Superintendent.

**Instructions:** Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NOAA. All comments received are a part of the public record and will generally be posted for public

viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NOAA will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

**FOR FURTHER INFORMATION CONTACT:**

Malia Chow, Superintendent, Hawaiian Islands Humpback Whale National Marine Sanctuary at 808-725-5901 or [hihwmanagementplan@noaa.gov](mailto:hihwmanagementplan@noaa.gov).

Copies of the draft environmental impact statement and proposed rule can be downloaded or viewed on the Internet at [www.regulations.gov](http://www.regulations.gov) (search for docket # NOAA-NOS-2015-0028) or at <http://hawaiihumpbackwhale.noaa.gov>. Copies can also be obtained by contacting the person identified under **FOR FURTHER INFORMATION CONTACT**.

**SUPPLEMENTARY INFORMATION:** Public hearings will be held in the following locations at the locales and times indicated:

**(1) Hale'iwa, HI (O'ahu)**  
*Date:* April 27, 2015.  
*Location:* Sunset Beach Recreation Center.  
*Address:* 59-540 Kamehameha Highway, Hal'eiuwa, HI 96712.  
*Time:* 5:30 p.m.-8:30 p.m.

**(2) Honolulu, HI (O'ahu)**  
*Date:* April 28, 2015.  
*Location:* Honolulu Waldorf School.  
*Address:* 350 Uluu Street, Honolulu, HI 96821.  
*Time:* 5:30 p.m.-8:30 p.m.

**(3) Kihei, HI (Maui)**  
*Date:* April 29, 2015.  
*Location:* Kihei Youth Center.  
*Address:* 131 S. Kihei Road, Kihei, HI 96753.  
*Time:* 5:30 p.m.-8:00 p.m.

**(4) Lahaina, HI (Maui)**  
*Date:* April 30, 2015.  
*Location:* Kaunoa Senior Center.  
*Address:* 788 Pauoa St., Lahaina, HI 96761.  
*Time:* 5:00 p.m.-7:30 p.m.

**(5) Kaunakakai, HI (Moloka'i)**  
*Date:* May 1, 2015.  
*Location:* Lanikeha Community Center.  
*Address:* 2200 Farrington Ave., Kaunakakai, HI 96748.  
*Time:* 4:00 p.m.-6:30 p.m.

**(6) Lāna'i City, HI (Lāna'i)**  
*Date:* May 2, 2015.

*Location:* Lāna'i High and Elementary School.

*Address:* 555 Fraser Avenue, Lāna'i City, HI 96763.

*Time:* 9:30 a.m.-12:00 p.m.

**(7) Kilauea City, HI (Kaua'i)**

*Date:* May 4, 2015.

*Location:* Kilauea Elementary School Cafeteria.

*Address:* 2440 Kolo Road, Kilauea, HI 96754.

*Time:* 5:30 p.m.-8:30 p.m.

**(8) Ni'ihau, HI \***

*Date:* May 5, 2015.

*Location:* Ni'ihau School Cafeteria.

*Address:* Puuwai Village, Ni'ihau, HI 96769.

*Time:* 10:00 a.m.-1:00 p.m.

\* Please note that due to limited access to the island this is not a public meeting. This meeting is for people residing on and landowners of Ni'ihau Island.

**(9) Lihu'e, HI (Kaua'i)**

*Date:* May 6, 2015.

*Location:* King Kaumuali'i Elementary School Cafeteria.

*Address:* 4380 Hanama'ulu Road, Lihu'e, HI 96766.

*Time:* 5:30 p.m.-8:30 p.m.

**(10) Kailua-Kona, HI (Hawai'i)**

*Date:* May 7, 2015.

*Location:* Kealakehe High School Cafeteria.

*Address:* 74-5000 Puohulihuli Street, Kailua-Kona, HI 96740.

*Time:* 5:30 p.m.-8:00 p.m.

**I. Introduction****1. Hawaiian Islands Humpback Whale National Marine Sanctuary**

The Hawaiian Islands Humpback Whale National Marine Sanctuary (HIHWNMS or sanctuary) covers approximately 1,031.4 square nautical miles (1,366 square miles) of federal and state waters in the Hawaiian Islands. The sanctuary lies within the shallow warm waters surrounding the main Hawaiian Islands which are a nationally significant marine environment. The area is a diverse and unique ecosystem with marine resources including coral reefs, highly endangered Hawaiian monk seals, three species of sea turtles, marine species endemic to this area such as monk seals, corals, and seagrasses, and 25 species of cetaceans including humpback whales. This area constitutes one of the world's most important humpback whale habitats. The warm, calm waters in this area are used by humpback whales for breeding, calving, and nursing. The waters in this area also contain a number of cultural

and historical resources including those reflecting native Hawaiian traditions and uses. The area supports fishing activities, and is also a destination for visitors worldwide who come for whale watching, diving, and other ocean-related activities in the sanctuary waters. Congress designated the sanctuary in 1992 through the Hawaiian Islands National Marine Sanctuary Act (HINMSA, Subtitle C of the Oceans Act of 1992, Pub. L. 102–587), which declared that the purposes of the sanctuary were to (1) protect humpback whales and their 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 Act and the National Marine Sanctuaries Act (NMSA); and (4) provide for the identification of marine resources and ecosystems of national significance for possible inclusion in the sanctuary.

The sanctuary is co-managed by NOAA and the State of Hawai'i (State) through a compact agreement that was signed in 1998 which clarifies the relative jurisdiction, authority, and conditions of the NOAA-State partnership for managing the sanctuary. The Hawaii Department of Land and Natural Resources (DLNR) serves as the lead agency for the State's co-management of the sanctuary.

## 2. Need for Action

When Congress designated the HIHWNMS in 1992, it mandated NOAA to provide for the identification of marine resources and ecosystems of national significance for possible inclusion in the sanctuary. The current management plan review process seeks to carry out this mandate. Started in 2010, the sanctuary management plan review provided an opportunity to: Consider the value of marine ecosystems, assess existing threats and protections to these valuable resources; and determine where NOAA can provide added value to the resource management efforts provided by the state and other federal agencies.

NOAA believes that an ecosystem-based, rather than single-species based, management approach for HIHWNMS would provide sanctuary management with the platform to begin to evaluate and potentially address the full suite of resource management issues currently faced by marine resources in the main Hawaiian Islands. By focusing on the biological, physical, and human components of a healthy marine environment, an ecosystem-based management approach in the sanctuary would be more comprehensive and

inclusive of all aspects of the marine ecosystem than the current single species approach. Humpback whales and their habitat are an essential component of the marine ecosystem in Hawai'i and the sanctuary would continue to support current humpback whale management programs, but would also engage in research, resource protection, education, community engagement, and education for other areas and issues of the sanctuary environment.

This management approach is also consistent with Native Hawaiians' management practices, which have traditionally used a holistic approach to conserve both land and marine resources. Native Hawaiians also view natural and cultural resources as being interrelated and, that all biological resources are culturally significant. NOAA recognizes the importance of including Native Hawaiian knowledge and practices in the management framework of the sanctuary and intends to incorporate the sustainable use of natural and cultural resources into its management planning. In addition, the sanctuary management plan and regulations will strive to accommodate traditional uses and achieve sustainable cultural practices.

## 3. History of the Management Plan Review Process

### History

During the 2002 management plan review (MPR), NOAA received comments from the general public requesting that HIHWNMS, consistent with section 2304(b) of the HINMSA, consider the conservation and management of marine resources in addition to humpback whales and their habitat. In response, NOAA included a goal in the HIHWNMS 2002 management plan to "identify and evaluate resources and ecosystems for possible inclusion in the sanctuary". NOAA followed up by conducting an assessment of living marine resources and maritime heritage resources within the sanctuary, including human population trends, past and current threats, existing management authorities, and conservation needs. The assessment report was shared with then Governor Linda Lingle in 2007 who publicly expressed her support for NOAA to consider protecting additional marine species within the sanctuary.

Between April 2009 and July 2010, NOAA conducted a series of meetings and workshops to solicit public input on the inclusion of additional marine resources into sanctuary management and raise awareness about the

management plan review process. These events were conducted formally and informally across the State of Hawai'i on all the main islands.

### Public Scoping Process

NOAA formally initiated the public scoping process on July 14, 2010, by publishing a notice of intent in the **Federal Register** (75 FR 40759) and informing the public that NOAA was initiating a review of its management plan and regulations and preparing an environmental impact statement (EIS). In August 2010, NOAA held ten public scoping meetings in communities across Hawai'i. In total, 12,375 public comments, including two petitions with a total of 12,019 signatures, were received over the 90-day public comment period (July to October 2010).

Many people commended HIHWNMS for their active role in promoting the conservation of humpback whales and their habitat, but suggested that NOAA consider expanding the scope of sanctuary management to conserve additional marine species and habitats. Other comments identified the need to address anthropogenic threats to the marine environment including pollution, offshore development, and climate change. The public also identified opportunities and recommendations for HIHWNMS to:

- Improve and expand upon enforcement, management effectiveness, and marine animal assessment and response;
- better integrate Native Hawaiian cultural resources and maritime heritage resources into sanctuary management and planning;
- emphasize ocean literacy programs; and
- update research programs, regulations, and sanctuary boundaries.

Comments were submitted by agencies, organizations, elected officials and community members from throughout Hawai'i, the U.S. mainland and elsewhere. NOAA documented all comments received during the public comment period as part of the administrative record; the comments are available online at [www.regulations.gov](http://www.regulations.gov).

In response to many of these comments, this proposed rule proposes several changes to the HIHWNMS regulations and boundaries as described below in the "Summary of the Regulatory Amendments." The environmental effects of these proposed changes are analyzed in a DEIS published concurrently with this proposed rule. NOAA has also developed an associated draft management plan describing sanctuary management activities in research,

resource protection and education. NOAA is seeking public comment on the proposed rule, DEIS, and draft management plan, which are available at [http://hawaiihumpbackwhale.noaa.gov/management/management\\_plan\\_review.html](http://hawaiihumpbackwhale.noaa.gov/management/management_plan_review.html) or may be obtained by contacting the individual listed under the heading **FOR FURTHER INFORMATION CONTACT**.

## II. Summary of the Regulatory Amendments

### 1. Change Focus of Management From Single Species to Ecosystem

NOAA is proposing to amend § 922.180(a)–(b) to reflect the inclusion of other marine resources in the resource protection mission of the proposed ecosystem-based sanctuary. Similarly, NOAA is proposing to remove the current species-based definition of “sanctuary resource” and “habitat” in § 922.182, which currently only includes humpback whales and their habitat in the definition of sanctuary resource. The definition that would then apply to the sanctuary would be the existing definition presented in the regulations for all national marine sanctuaries at § 922.3.

This national definition for sanctuary resource is: “any living or non-living resource of a National Marine Sanctuary that contributes to the conservation, recreational, ecological, historical, research, educational, or aesthetic value of the Sanctuary, including, but not limited to, the substratum of the area of the Sanctuary, other submerged features and the surrounding seabed, carbonate rock, corals and other bottom formations, coralline algae and other marine plants and algae, marine invertebrates, brine-seep biota, phytoplankton, zooplankton, fish, seabirds, sea turtles and other marine reptiles, marine mammals and historical resources (15 CFR 922.3).” In a separate rulemaking NOAA has proposed to update this national definition to add cultural resources to the definition of sanctuary resources (78 FR 5998). Upon completion of that separate national rulemaking the updated definition of sanctuary resources would then apply to all national marine sanctuaries.

### 2. Add New Areas to the Sanctuary Boundary

NOAA is proposing to expand the current boundaries to include five additional areas in the sanctuary, adding 192.6 total square nautical miles (255 square miles) to the sanctuary bringing the total area to 1,224 square nautical miles (1,621 square miles).

Under this action, NOAA is proposing to: (1) Extend the sanctuary boundary on the north shore of O‘ahu west to include waters adjacent to the Ali‘i Beach Park; (2) extend the sanctuary boundaries on the north shore of Kaua‘i east to include waters adjacent to the Pila‘a ahupua‘a; (3) extend the sanctuary boundaries on the north shore of Kaua‘i west to include waters adjacent to the Hā‘ena ahupua‘a; (4) include the waters around the island of Ni‘ihau, southwest of Kaua‘i; and (5) modify the southern boundary of Penguin Bank and Maui Nui to simplify the convolutions of the current boundary where the approximation of the 100-fathom (182.8 meter) isobaths is too intricate for enforcement and to include additional important habitat. Ahupua‘a are a system of traditional Hawaiian land division extending from the upland to the sea or watershed boundary. NOAA is also proposing a technical correction to the seaward boundary of the full sanctuary to include latitude/longitude coordinates approximating the 100-fathom (182.8 meter) isobaths and where needed the three nautical mile line to define the boundary, which would result in minor modification to the overall area estimate of the sanctuary.

The proposed boundary changes were selected through a public process to identify and assess marine areas that could more effectively complement current management authorities or enhance natural and cultural resource value. Collectively, these new areas capture a greater diversity of habitats and biological resources than currently protected by HIHWNMS. Inclusion of these areas within the sanctuary system would provide additional regulatory protection, resources for management, and improved public awareness of their natural and cultural resource value. The technical correction addresses the current seaward boundary of the sanctuary which is defined as following the historic 100-fathom (182.8 meter) isobaths. NOAA proposes to modernize the boundary by employing a textual description coupled with a table of latitude/longitude coordinates that approximates the 100-fathom (182.9 meter) isobath. The correction is being made to clarify the boundary for paper and electronic nautical charts, to provide a more accurately defined boundary for use by ships using GPS technology, and to improve enforceability. The technical change is not intended to add any additional area to the sanctuary and is distinct from the five new areas being proposed for addition to the sanctuary. The harbors

currently excluded from the sanctuary boundaries continue to be excluded. Those harbors are Kawaihae Boat Harbor & Small Boat Basin on Hawai‘i; Kaunapau Harbor and Manele Harbor on Lāna‘i; Lahaina Boat Harbor and Mā‘alaea Boat Harbor on Maui; Hale o Lono Harbor and Kaunakakai Harbor on Moloka‘i; and Kuapa Pond (Hawai‘i Kai) and Hale‘iwa Harbor on O‘ahu. The proposed boundary changes for the five new areas are described in more detail below.

#### a. Ni‘ihau and Lehua

NOAA is proposing to incorporate the waters around the island of Ni‘ihau into the sanctuary, including the waters surrounding Lehua Island. The boundary for this area would extend around the islands seaward from the shoreline three nautical miles. The total area of the proposed boundary expansion would be 163.9 square nautical miles (217 square miles). Ni‘ihau is the seventh largest island in the Hawaiian Archipelago and is the westernmost island of the populated Hawaiian Islands. The island has an area of approximately 69.5 square miles (180 square km) and is located approximately 18 miles (29 km) west of the island of Kaua‘i across the Kaulakahi Channel. Uninhabited Lehua Islet lies 0.7 miles (1.1 km) directly north of Ni‘ihau.

Ni‘ihau is the closest of the populated Hawaiian Islands to the Northwestern Hawaiian Islands and is at the interface between the two bioregions, serving as a functional transition zone in the archipelago. The specific biophysical and cultural connectivity dynamics at this interface are of special interest. The coral at Ni‘ihau and Lehua have significantly lower prevalence of coral disease than elsewhere in the populated Hawaiian Islands. The waters around Ni‘ihau and Lehua also have a higher level of fish biomass and a higher number of endemic species than the other populated Hawaiian Islands.

Ni‘ihau is also an important habitat for dolphins, monk seals and humpback whales. The endangered Hawaiian monk seals have a significant presence in Ni‘ihau and Lehua. Lehua Islet is an important monk seal feeding and resting site. Aerial surveys conducted in 2000, 2001, and 2008 documented approximately three times more monk seals on the coastal areas of Ni‘ihau and Lehua than on other islands in the populated Hawaiian Islands. Island-wide surveys of Ni‘ihau have observed between 17 and 69 monk seals at a particular time, higher than any other reported sightings on the populated Hawaiian Islands. Recent research

indicates that the population of monk seals at Ni'ihau may be distinct and do not travel to the Northwestern Hawaiian Islands. Humpback whales have been observed in high numbers near the coast of Ni'ihau, and dolphins and false killer whales populate the waters.

b. Kaua'i

The current sanctuary boundary on the north shore of Kaua'i extends along the shoreline from Kailiu Point eastward to Mokolea Point and seaward to approximately the 100-fathom (182.8 m) isobath. NOAA is proposing to extend the sanctuary boundary in two areas to more closely include the waters of the adjacent ahupua'a.

(i) Hā'ena Ahupua'a

On the north shore of the island of Kaua'i, west of the town of Hanalei, NOAA is proposing to extend the western boundary of the sanctuary to Ke'e Beach and include the waters of the Hā'ena ahupua'a seaward to approximately the 100-fathom (182.8 meter) isobath. The boundary extension would also include the Hā'ena community-based subsistence fishing area (CBSFA) which is currently managed by the State of Hawai'i. The total area of the proposed boundary expansion would be approximately 6 square nautical miles (8 square miles).

(ii) Pīla'a Ahupua'a

NOAA is also proposing to extend the eastern-boundary of the sanctuary on the north shore of Kaua'i to include the waters from Mokolea Point to Kepuhi Point including those of the Pīla'a ahupua'a seaward to approximately the 100-fathom (182.8 meter) isobath. The total area of the proposed boundary expansion would be approximately 3.8 square nautical miles (5 square miles). The proposed sanctuary area would be used to pilot traditional Hawaiian marine resource management approaches along with science-informed management to restore the degraded coral reef ecosystem.

c. O'ahu

The current sanctuary boundary on the north shore of O'ahu extends from Pua'ena Point eastward to Māhie Point and seaward to approximately the 100-fathom (182.8 meter) isobath. With this action, NOAA is proposing to extend the western boundary of the sanctuary from Pua'ena Point to approximately Ali'i Beach Park and seaward to approximately the 100-fathom (182.8 meter) isobath to include the North Shore Surfing Reserve. The designation of the Surfing Reserve in 2010 was part of a state-led effort to acknowledge the

cultural and historic significance of important surf sites in Hawai'i. The proposed sanctuary boundary extension would exclude Hale'iwa Harbor. The total area of the proposed boundary expansion would be approximately 3 square nautical miles (4 square miles).

d. Penguin Bank and Maui Nui

The current sanctuary boundary in the area around Penguin Bank off the southwest shore of Moloka'i and in Maui Nui between the islands of Lāna'i and Kaho'olawe closely approximates the 100-fathom (182.8 meter) isobath. The current boundary in these areas meanders significantly due to the complexity of the seafloor bathymetry, currently making enforcement of sanctuary regulations difficult. As part of a sanctuary-wide effort to modernize the sanctuary boundary by employing a textual description coupled with a table of latitude/longitude coordinates that approximates the 100-fathom (182.8 meter) isobath, NOAA proposes to improve the boundary in these areas by simplifying the convolutions of the current boundary, thus eliminating any potential confusion regarding the location of the boundary due to the complexity of the bathymetry. The new, less intricate boundary will make enforcement less difficult and for Penguin Bank the area is also defined to be inclusive of precious corals, mesophotic corals and monk seal foraging areas. The net result is an addition of approximately 15.9 square nautical miles (21 square miles) to the sanctuary in federal waters.

3. *Change the Name of the Sanctuary*

In recognition of the proposed change to an ecosystem-based approach to management, NOAA is proposing that the sanctuary be renamed "Hawaiian Islands National Marine Sanctuary—Nā Kai 'Ewalu". The phrase "Nā Kai 'Ewalu" means "the eight seas" in Native Hawaiian and refers to the ocean channels between the populated Hawaiian Islands and a Native Hawaiian poetic reference to the Hawaiian Islands themselves. It illustrates the interconnectedness between the ocean, the people of Hawai'i and their communities. Since the current name no longer fits NOAA is proposing a change that communicates both the management approach and a sense of community throughout Hawai'i, recognizing humans as part of the ecosystem.

4. *Approaching a Humpback Whale*

The current sanctuary regulation prohibits 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 MMPA and the ESA. NOAA is proposing to add interception (*e.g.* placing a vessel in the path of an oncoming humpback whale so that the whale changes its behavior), as well as disrupting the normal behavior or prior activity of a whale by any other act or omission, to this existing prohibition.

These proposed changes to the existing humpback whale approach regulation would help to minimize incidences of humpback whale harassment or injury within the sanctuary, reduce adverse behavioral responses, and limit vessel strikes within the sanctuary. NOAA is proposing to apply these changes to the exiting regulation to the entire sanctuary including the proposed new areas of the sanctuary.

5. *Operating an Aircraft Within 1,000 Feet of Humpback Whales*

NOAA is proposing to apply the current overflight prohibition on operating an aircraft within 1,000 feet of humpback whales, to the new proposed areas for the sanctuary.

6. *Taking or Possessing Humpback Whales*

NOAA is proposing to combine the existing prohibitions on take and possession of humpback whales within the sanctuary into one regulation to be consistent with humpback whale take and approach regulations under the Marine Mammal Protection Act (MMPA) and the State of Hawai'i Administrative Rules 13–124 and apply the new proposed regulation to the entire sanctuary including the proposed new areas of the sanctuary.

7. *Interfering With Investigation*

NOAA proposing to apply the current prohibition on interfering with enforcement to the new proposed areas in the sanctuary.

8. *Marking or Defacing Any Signs*

NOAA is proposing to prohibit damaging, removing or displacing any signs, notices, placards, stakes, posts, or other boundary markers related to the sanctuary. NOAA is proposing to apply this to the entire sanctuary including the proposed new areas of the sanctuary.

9. *Removing or Damaging Historical and Cultural Resources*

NOAA is proposing to prohibit removing, damaging, or tampering with any historical or cultural resources within the sanctuary. Cultural heritage

resources found within the sanctuary include traditional Hawaiian fishpond systems, heritage sites related to traditional Hawaiian surfing, and heritage sites related to traditional voyaging and its cultural traditions. It also includes submerged heritage sites related to Native Hawaiian traditions and practices. Maritime heritage resources include shipwreck sites, historic aircraft sites, the remains of landings and dock facilities, and other types of materials.

This proposed prohibition would provide additional protection for maritime heritage resources within the sanctuary and complement existing state and Federal statutes, such as the National Historical Preservation Act and Sunken Military Craft Act. NOAA is proposing to apply these changes to the entire sanctuary including the proposed new areas of the sanctuary.

#### 10. Special Sanctuary Management Areas (SSMAs)

NOAA is proposing to create three Special Sanctuary Management Areas. NOAA is proposing a number of regulations specific to the Special Sanctuary Management Areas at Penguin Bank and the Maui Nui area (both in federal waters outside of 3 nautical miles) and Maunalua Bay (state waters within 3 nautical miles). For a map of these three areas, see the HIHWNMS Web page (<http://hawaiihumpbackwhale.noaa.gov/>). For more information on permit options for the prohibitions described here, see section 12 on Permits and Authorizations. The following regulations would only apply in these three areas:

##### 10a. Taking or Possessing Any Marine Mammal, Sea Turtle, Seabird, ESA Listed Species or HI Listed Species in the SSMAs

As a complement to existing protections, NOAA is proposing to prohibit taking or possessing any marine mammal, sea turtle, seabird, ESA-listed species or Hawai'i Revised Statutes chapter 195D listed species, within or above sanctuary waters in the three SSMAs, with an exception for species authorized by the Marine Mammal Protection Act, the Endangered Species Act, the Migratory Bird Treaty Act (MBTA), the Magnuson Stevens Fishery Conservation and Management Act, or Hawai'i State Law.

##### 10b. Discharging Material Into the SSMAs

NOAA is proposing to modify the current prohibition on discharging or altering any submerged lands by

separating the regulation into two parts, and refining the language for clarity and enforceability. Due to the proposed expanded scope of the sanctuary, NOAA understands that the scope of the application of the prohibition has also expanded. Therefore NOAA is seeking to assess value of the regulation in the SSMAs only instead of applying them sanctuary-wide at this time. With respect to the prohibition on discharging, NOAA is proposing to prohibit discharging or depositing any material or matter into the three SSMAs, except:

- Fish, fish parts, chumming materials or bait used in or resulting from fishing in the sanctuary;
- treated biodegradable effluents incidental to vessel use;
- water generated by routine vessel operations, such as engine exhaust, deck wash down; engine cooling water, clean bilge water or anchor wash; and
- biodegradable materials for traditional ceremonies associated with culturally important customs and usage (e.g. the discharge of leis, paper lanterns).

This prohibition, and its associated exceptions, would also apply to discharge adjacent to these areas, should that discharge subsequently enter and injure a sanctuary resource within the SSMAs. This prohibition will likely enhance water quality in the Penguin Bank and Maui Nui SSMAs, and reduce impacts from pollutants and debris to the biological and physical environment in the Maunalua Bay SSMA. NOAA could use the authorization authority proposed in this rulemaking to evaluate whether to authorize activities that receive a permit from the U.S. Army Corps of Engineers or the State of Hawai'i and include additional conditions for those activities to protect sanctuary resources from activities.

##### 10c. Dredging, Drilling Into or Otherwise Altering the Submerged Lands of the SSMAs

NOAA is proposing to modify the current prohibition on discharging or altering any submerged lands by separating the regulation into two parts, and refining the language for clarity and enforceability. Due to the proposed expanded scope of the sanctuary, NOAA understands that the scope of the application of the prohibition has also expanded. Therefore, NOAA is seeking to assess the value of the regulation in the SSMAs only, instead of applying them sanctuary-wide at this time. With respect to the prohibition on altering any submerged lands, NOAA is proposing to refine the current regulations to prohibit dredging, drilling

into, or otherwise altering in any way submerged lands in the three SSMAs, except:

- Anchoring a vessel on sandy bottom or substrate;
- routine maintenance of docks, seawalls, breakwaters, piers authorized by federal, state or local authorities with jurisdiction;
- the installation and maintenance of navigational aids authorized by federal, state or local authorities with jurisdiction; and
- aquaculture or fishing activities authorized under a permit issued by the State of Hawai'i Department of Land and Natural Resources, State of Hawai'i Department of Health, the U.S. Army Corps of Engineers, or NOAA's National Marine Fisheries Service.

Submerged lands include bottom formations, live rock and coral. There are currently no regulations for any non-precious stony corals, including mesophotic corals, in federal waters of Penguin Bank and the Maui Nui area. The proposed regulation supports and enhances efforts to protect previous corals in the Maui Nui area that have been designated Essential Fish Habitat (EFH) under the Magnuson-Stevens Act. Similarly, the proposed regulation would reduce direct physical and biological damage to coral and other marine habitats in Maunalua Bay.

Under the proposed regulations, NOAA would have the authority to authorize federal, state, or local permits for construction and dredging activities that would otherwise violate the proposed regulations in Maunalua Bay. Under the proposed regulation, any permittee with a pre-existing (at the time of final rule) federal, state, or local permit would need to notify NOAA of the permitted activity. Then the permittee would need to come into compliance with the sanctuary regulations by getting an authorization from NOAA within 1 year of the effective date of the final regulations. See Section 11 below for more information on authorization authority.

##### 10d. Possessing or Using Explosives in the SSMAs

NOAA is proposing to prohibit possessing or using explosives within the SSMAs, with exceptions for explosives used for valid law enforcement purposes.

This proposed prohibition is consistent with the current State of Hawai'i regulations. Currently, the state prohibits the possession and use of explosives in or around fishing areas in state waters within three nautical miles (HAR § 13-75, HRS § 188-23).

#### 10e. Introducing or Releasing Introduced Species in or Into the SSMA

NOAA is proposing to prohibit introducing or otherwise releasing an introduced species into the SSMA, with an exception for species cultivated by aquaculture activities in state waters pursuant to a valid lease, permit, license or other authorization issued by DLNR or NMFS on the effective date of this final regulation. Introduced species can pose a major economic and environmental threat to the living resources and habitats of a sanctuary as well as the commercial and recreational uses that depend on these resources. NOAA understands that not all introduced species will become invasive species; however, national marine sanctuaries are mandated by law to preserve the natural character of national marine sanctuary ecosystems and any proposed alteration of the natural biological community (*e.g.* introduction of a foreign species) is contrary to the purpose of sanctuary designation.

#### 11. Permits and Authorizations

##### 11a. General Permits

NOAA is proposing to add to HIHWNMS regulations the authority to consider permits for the following four activities otherwise prohibited:

- Discharges of material or matter in the Special Sanctuary Management Areas (SSMA);
- discharges of material or matter outside SSMA that may enter and injure;
- disturbance of submerged lands of the SSMA; and
- damaging cultural and maritime resources.

As proposed, NOAA's permitting authority would apply sanctuary-wide only to activities prohibited by the proposed damaging cultural and maritime resources regulation. NOAA would only consider permits for activities prohibited by the proposed regulations for discharge and disturbance of the submerged lands in the SSMA (and are therefore limited to the SSMA).

Similar to other national marine sanctuaries, NOAA is proposing to consider these permits only for the purposes of sanctuary education, research, and management (see the Summary of Regulations below for a specific description of these categories). NOAA is also proposing to add a fourth permit category for actions involving "installation of submarine cables." This permit category would only apply to submarine cable activities otherwise

prohibited in the SSMA (and, therefore, apply only to the SSMA).

To address the above additions to the ONMS general permit authority for HIHWNMS, NOAA would amend regulatory text in the program-wide regulations in sections 922.48 and 922.50 to add references to Subpart Q, as appropriate. NOAA would also add a new section 922.188 in Subpart Q titled "Permit procedures and review criteria." Further, NOAA would add a subparagraph to 922.184 that would specify which general permit categories apply to which prohibited activities.

##### 11b. Authorizations

NOAA also proposes to provide HIHWNMS with the authority to consider allowing an otherwise prohibited activity if such activity is specifically authorized by any valid Federal, State, or local lease, permit, license, approval, or other authorization. Authorization authority is intended to streamline regulatory requirements by reducing the need for multiple permits and would apply to all proposed prohibitions at 922.49 Subpart Q. As such, NOAA proposes to amend the regulatory text at 922.49 to add reference to Subpart Q and at 922.184 (HIHWNMS regulations).

##### 11c. Special Use Permits

NOAA proposes to allow the ONMS Director to issue special use permits (SUPs) at HIHWNMS as established by Section 310 of the NMSA. Although SUP authority is established statutorily, NOAA has not exercised this authority at HIHWNMS. In the proposed regulatory changes, NOAA intends to make it clear that the ONMS Director may issue SUPs at HIHWNMS.

SUPs can be used to authorize the conduct of specific activities in a sanctuary if such authorization is necessary (1) to establish conditions of access to and use of any sanctuary resource; or (2) to promote public use and understanding of a sanctuary resource. The activities that qualify for a SUP are set forth in the **Federal Register** (78 FR 25957; May 3, 2013). Categories of SUPs may be changed or added to through public notice and comment. The list of categories subject to the requirements of special use permits is:

1. The placement and recovery of objects associated with public or private events on non-living substrate of the submerged lands of any national marine sanctuary.
2. The placement and recovery of objects related to commercial filming.
3. The continued presence of commercial submarine cables on or

within the submerged lands of any national marine sanctuary.

4. The disposal of cremated human remains within or into any national marine sanctuary.

5. Recreational diving near the USS Monitor.

6. Fireworks displays.

7. The operation of aircraft below the minimum altitude in restricted zones of national marine sanctuaries.

The NMSA places certain requirements on any issuance of a SUP by the ONMS Director. Specifically, it states that the Director:

Shall authorize the conduct of an activity only if that activity is compatible with the purposes for which the sanctuary is designated and with protection of sanctuary resources;

Shall not authorize the conduct of any activity for a period of more than 5 years unless renewed by the Secretary;

Shall require that activities carried out under the permit be conducted in a manner that does not destroy, cause the loss of, or injure Sanctuary resources; and

Shall require the permittee to purchase and maintain comprehensive general liability insurance, or post an equivalent bond, against claims arising out of activities conducted under the permit and to agree to hold the United States harmless against such claims.

The NMSA allows the assessment and collection of fees for the conduct of any activity under a SUP. The fees collected could be used to recover the administrative costs of issuing the permit, the cost of implementing the permit, and the fair market value of the use of sanctuary resources.

#### III. Summary of Proposed Changes to the Sanctuary Terms of Designation

Section 304(a)(4) of the National Marine Sanctuaries Act (NMSA) requires that 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 of Commerce to protect these characteristics.

Pursuant to the NMSA and the HINMSA, the terms of designation of the sanctuary shall be modified pursuant to Sections 303 and 304 of the NMSA and Sections 2305 and 2306 of the HINMSA.

With this proposed rule, NOAA is proposing changes to the HIHWNMS terms of designation, which were previously published in the **Federal**

Register on March 28, 1997 (62 FR 14799). The changes would:

1. Modify the introduction to change the name of the sanctuary to the Hawaiian Islands National Marine Sanctuary—Nā Kai ‘Ewalu, and re-characterize the purpose of the sanctuary as ecosystem-based (rather than single species).

2. Modify Article I. Effect of Designation to change the name of the sanctuary to the Hawaiian Islands National Marine Sanctuary—Nā Kai ‘Ewalu.

3. Modify Article II. Description of the Area to update the boundary description with the new areas NOAA proposes adding to the sanctuary and remove the outdated text pertaining to Kahoolawe Island.

4. Modify Article III. Characteristics of the Area to update information on the abundance of humpback whales found near the Hawaiian Islands.

5. Modify Article IV. Scope of Regulations to update the activities regulated to include the activities covered by the proposed regulations.

6. Modify Article V to update the reference to the NMSA.

The revised terms of designation are proposed to read as follows (new text in bold and deleted text in brackets and *italics*):

DESIGNATION OF THE HAWAIIAN ISLANDS [*HUMPBACK WHALE*] NATIONAL MARINE SANCTUARY—**NĀ KAI ‘EWALU**

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)*], **now called the Hawaiian Islands National Marine Sanctuary—Nā Kai ‘Ewalu (Sanctuary)**. The purposes of the Sanctuary are to:

(1) protect **and conserve the marine ecosystem of the Hawaiian islands including humpback whales, marine turtles and other protected species, [and their] Sanctuary habitat, and historic and cultural resources and values;**

(2) educate and interpret for the public the **value [relationship] of [humpback whales to] the natural, historic and cultural value of the Hawaiian Islands marine environment; and**

(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, **now called the Hawaiian Islands National Marine Sanctuary—Nā Kai ‘Ewalu**. 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) O‘ahu: The sanctuary boundary on the southern shore of O‘ahu is defined by the coordinates provided in table A1 and the following textual description. The boundary begins ENE of Makapu‘u Point roughly 3.2 nautical miles offshore at Point 1. It approximates the 100-fathom (182.8 meter) isobath line extending first clockwise to the SE, then to the SW, and finally to the west to Point 68 in numerical order. From Point 68 the boundary extends NE towards Point 69 until it intersects the tip of the Kapahulu Groin. From this intersection the boundary extends towards Point 70 until it intersects the shoreline. From this intersection the boundary then follows the shoreline eastward around Diamondhead Crater and Maunalua Bay until it intersects the line segment

between Point 71 and Point 72 at the western entrance to the Hawaii Kai Marina. From this intersection the boundary moves towards Point 72 across the entrance to the marina until it intersects the shoreline again. The boundary then follows the shoreline eastward until it intersects the line segment between Point 73 and Point 74 at the eastern entrance to the Hawaii Kai Marina. From this intersection the boundary moves towards Point 74 across the entrance to the marina until it intersects the shoreline again. The boundary then follows the shoreline south around Koko Head and then northward around Pai‘olu‘olu Point, into Hanauma Bay and then back out and around Palea Point. The boundary then continues to follow the shoreline to the NE until it intersects the line between Point 75 and Point 76 at Makapu‘u Point. From this intersection the boundary extends seaward to the NE to Point 76. The sanctuary boundary on the North Shore of O‘ahu is defined by the coordinates provided in table A2 and the following textual description. The boundary extends from Point 1, located roughly 3.3 nautical miles NW of Ali‘i Beach Park in Hale‘iwa, approximating the 100-fathom (182.8 meter) isobath line first to the NE and then to the SE to Point 60 in numerical order roughly 2.5 nautical miles NE of Māhie Point. The eastern edge of the sanctuary extends SW from Point 60 towards Point 61 at Māhie Point (aka Makahonu Point) until it intersects the shoreline. From this intersection the boundary follows the shoreline to the NW around Kahuku Point and then to the SW until it intersects the line segment between Point 62 and Point 63 at the eastern breakwater protecting Haleiwa Harbor. From this intersection the boundary extends towards Point 63 and the western breakwater until it intersects the shoreline again. From this intersection the boundary follows the shoreline to the SW until it intersects the line segment between Point 64 and Point 65 at the southwestern end of Ali‘i Beach Park. From this intersection the sanctuary boundary extends seaward to the NW to Point 65.

(2) Hawai‘i: The sanctuary boundary of Hawai‘i Island is defined by the coordinates provided in table A3 and the following textual description. The boundary begins offshore roughly 0.5 nautical miles west of Keāhole Point at Point 1, and approximates the 100-fathom (182.8 meter) isobath line as it extends northward to Point 102 in numerical order. The northeastern edge of the sanctuary boundary extends from Point 102 south towards Point 103 on



the northern tip of 'Upolu point until it intersects the shoreline. From this intersection, the boundary extends west and then south along the shoreline until it intersects the line segment between Point 104 and Point 105 to the north of Kawaihae Harbor. Kawaihae Harbor is excluded from the sanctuary so the boundary extends across the mouth of the harbor from this intersection towards Point 105 on the outer breakwater of Kawaihae Harbor until it intersects the shoreline. From this intersection the boundary continues south along the shoreline until it intersects the line segment between Point 106 and Point 107 at the westernmost tip of Hawai'i Island (Keāhole Point), west of the southern end of Kona Airport. From this intersection, the boundary extends seaward approximately 0.5 nautical miles west to Point 107.

(3) Ni'ihau: The sanctuary boundary around the island of Ni'ihau (including Lehua Island) is defined by the coordinates provided in table A4 and the following textual description. The landward boundary of Ni'ihau and Lehua is the shoreline. The seaward boundary of Ni'ihau and Lehua is approximately three nautical miles from the shoreline and extends around the islands from Points 1 to 60 in numerical order.

(4) Kaua'i: The sanctuary boundary off the north coast of Kaua'i is defined by the coordinates in table A5 and the following textual description. The boundary begins offshore nearly 3.3 nautical miles WNW of Ka'ilio Point at Point 1 and approximates the 100-fathom (182.8 meters) isobath line as it extends eastward in numerical order to Point 59, approximately 1.5 nautical miles NE of Kepuhi point at roughly the Pila'a/Waipake ahupua'a boundary. The eastern edge of the sanctuary boundary then extends SW from Point 59 towards Point 60 on Kepuhi Point until it intersects the shoreline. From this intersection the sanctuary boundary extends westward along the shoreline of the north coast of Kaua'i, and then continues to follow the shoreline as it extends southward along the eastern shore of Hanalei Bay until it intersects the line segment between Point 61 and Point 62 at approximately the mouth of the Hanalei River. From this intersection the boundary extends towards Point 62 until it intersects the shoreline again. From this intersection the boundary continues to follow the shoreline south around Hanalei Bay and then westward around Ka'ilio Point until it intersects the line between Point 63 and Point 64 at approximately the boundary of the Ha'ena/

Hanakāpi'ai ahupua'a NE of Hanakāpi'ai beach. From this intersection, the boundary extends seaward to the WNW to Point 64.

(5) Maui Nui: The sanctuary boundary of Maui Nui between the islands of Moloka'i, Lana'i, and Maui is defined by the coordinates in table A6 and the following textual description. The boundary begins roughly 3.5 nautical miles west of 'Īlio Point off the northwest tip of Moloka'i at Point 1. The boundary approximates the 100-fathom (182.8 meter) isobath line to the west and south around Penguin Bank and then back to the north and east following the coordinates in numerical order across Kalohi Channel to Point 196 to the NE of Kaena on Lana'i. The boundary then continues to approximate the 100-fathom (182.8 meter) isobath line south around Lana'i and then east crossing the Kealaikahiki Channel and continuing between Kaho'olawe and Molokini to the SE to Point 341 in numerical order roughly 2.2 nautical miles WSW of Hanamania Light on the southern shore of Maui. The boundary then continues ENE towards Point 342 until it intersects the shoreline near the Hanamania Light. At this intersection the boundary follows the shoreline northward to Mā'alaea Bay until it intersects the line segment between Point 343 and Point 344 at the eastern breakwater of the entrance to Mā'alaea Harbor. From this intersection the boundary continues toward Point 344 until it intersects the shoreline at the western breakwater of Mā'alaea Harbor. From this intersection the boundary continues to follow the shoreline SW around McGregor and Papawai Points and then to the NW until it reaches Lahaina Small Boat Harbor. The boundary continues along the shoreline of the outer breakwater of Lahaina Small Boat Harbor until it reaches the northern tip at the intersection of the shoreline and a line between points 345 and 346. From this intersection the boundary extends offshore to the NNW for approximately 25 meters to point 346. The boundary then heads WNW towards point 347 until it intersects the shoreline again. From this intersection the boundary then continues to follow the shoreline northward until it intersects the line between Point 348 and Point 349 at Lipoa Point on the NW tip of Maui. From this intersection the boundary continues to the NNW across the Pailolo Channel through Point 349 and Point 350 to the intersection of the line segment between Point 351 and Point 352 and the shoreline at Cape Halawa on the NE tip of Molokai. From

this intersection the boundary continues to follow the shoreline to the SW and then westward until it intersects the line segment between Point 353 and Point 354 east of Kaunakakai Pier. From this intersection the boundary then continues offshore through Point 354 and Point 355 and towards Point 356 to the west of Kaunakakai Pier until it intersects the shoreline. From this intersection the boundary continues to follow the shoreline westward until it intersects the line segment between Point 357 and Point 358 on the eastern seawall at the entrance to Lono Harbor. From this intersection the boundary continues towards Point 358 across the mouth of the harbor until it intersects the shoreline again. From this intersection the boundary continues to follow the shoreline westward around Lā'au Point, and then continues north until it reaches the intersection of the shoreline with the line segment between Point 359 and Point 360 at 'Īlio Point on the NW tip of Moloka'i. From this intersection the boundary continues seaward to Point 361 west of 'Īlio Point. The landward sanctuary boundary around the island of Lana'i is the shoreline. The boundary follows the western shoreline of the island south from Keanapapa Point until it intersects the line between Point 362 and Point 363 at the breakwater north of Kaumalapau Harbor. The boundary then extends towards Point 363 south of the harbor mouth, excluding Kaumalapau Harbor from the sanctuary, until it intersects the shoreline again. From this intersection the boundary continues to follow the shoreline south around Palaoa Point and then east until it intersects the line between Point 364 and Point 365 at the SE breakwater of Manele Small Boat Harbor. From this intersection the boundary extends across the mouth of the harbor towards Point 365 until it intersects the shoreline again at the NE breakwater, excluding Manele Small Boat Harbor from the sanctuary. From this intersection the boundary continues to follow the shoreline of Lana'i to the NE around Kikoa Point and continues counterclockwise around the island back to Keanapapa Point.

*(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 Kaho'olawe 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

Kaunapali 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 **6,471** [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 **50**[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 **12,000 to 16,000** [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 **may be regulated** [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. Taking or otherwise damaging natural resources;

[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 **any substance**; [; 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.];

#### c. Disturbing the benthic community;

#### d. Removing or otherwise harming cultural or historical resources;

#### e. Operating a vessel;

#### f. Moving, removing, or tampering with any sign or other Sanctuary property;

#### g. Introducing or otherwise releasing an introduced species.

[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 **National Marine Sanctuaries** [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] **Hawai'i**.

#### 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(a) of the NMSA, may be modified only by the procedures outlined in section 304(a) of the NMSA, 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] **Hawai'i**, and approval by the Secretary of Commerce, or his or her designee.

#### HAWAIIAN ISLANDS [HUMPBACK WHALE] NATIONAL MARINE SANCTUARY—NĀ KAI 'EWALU BOUNDARY COORDINATES

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

#### IV. Classification

##### *National Environmental Policy Act*

NOAA has prepared a draft environmental impact statement to evaluate the environmental effects of the proposed rulemaking. Copies are

available at the address and Web site listed in the **ADDRESSES** section of this proposed rule. Responses to comments received on this proposed rule will be published in the final environmental impact statement and preamble to the final rule.

##### *Coastal Zone Management Act*

Section 307 of the Coastal Zone Management Act (CZMA; 16 U.S.C. 1456) requires Federal agencies to consult with a state's coastal program on potential Federal regulations having an effect on state waters. Because the Hawaiian Islands Humpback Whale National Marine Sanctuary encompasses a portion of the Hawai'i State waters, NOAA intends to submit a copy of this proposed rule and supporting documents to the State of Hawai'i Coastal Zone Management Program for evaluation of Federal consistency under the CZMA.

##### *Executive Order 12866: Regulatory Impact*

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

##### *Executive Order 13132: Federalism Assessment*

NOAA has concluded that this regulatory action does not have federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 13132.

##### *National Historic Preservation Act*

The National Historic Preservation Act (NHPA; 16 U.S.C. 470 *et seq.*) is intended to preserve historical and archaeological sites in the United States of America. The act created the National Register of Historic Places, the list of National Historic Landmarks, and the State Historic Preservation Offices. Section 106 of the NHPA requires Federal agencies to take into account the effects of their undertakings on historic properties, and afford the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment. The historic preservation review process mandated by Section 106 is outlined in regulations issued by ACHP (36 CFR 800). In coordinating its responsibilities under the NHPA, NOAA has solicited for and identified consulting parties, and will complete the identification of historic properties and the assessment of the effects of the undertaking on such properties in scheduled consultations with those identified parties. By this notice NOAA seeks to solicit public input, particularly in regard to the identification of historic

properties within the proposed areas of potential effect. Pursuant to 36 CFR 800.16(1)(1), historic properties includes: "any prehistoric or historic district, site, building, structure or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. The term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria."

##### *Regulatory Flexibility Act*

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification is as follows:

The SBA has established thresholds on the designation of businesses as "small entities". A fish-harvesting business is considered a small business if it has annual receipts not in excess of \$3.5 million (13 CFR 121.201). Sports and recreation businesses and scenic and sightseeing transportation businesses are considered small businesses if they have annual receipts not in excess of \$6 million (13 CFR 121.201). According to these limits, each of the businesses potentially affected by the proposed rule, except those in the commercial marine transportation and submarine cable installation businesses would most likely be small businesses. The analysis presented here is based on limited quantitative information on how much activity occurs within the boundaries of the proposed expansion areas for HIHWNMS, except for commercial fishing operations.

**Methodology.** Due to the lack of quantitative data on the number of businesses directly affected by the proposed regulations and their levels of revenues, costs and profits from their activities in the HIHWNMS expansion area, the assessment here is qualitative.

NOAA analyzed four regulatory alternatives (identified as Alternatives 1–4 in the Draft Environmental Impact Statement). User groups that entail small businesses included commercial fishing operation and recreation-tourism related businesses. Other user groups included in the full regulatory impact review in the DEIS and not included here are research and education, people who receive passive economic use value

from improvements in natural resource qualities/quantities, businesses in offshore energy (namely submarine cable installation) and those firms involved in marine transportation. Firms involved in offshore energy and marine transportation directly affected by the proposed regulations were judged not to be small businesses.

NOAA assessed two types of regulations included in the proposed action (discharges and submerged lands—seabed alterations), which are only proposed to apply to three areas called Special Sanctuary Management Areas (SSMAs) within the HIHWNMS. NOAA also analyzed the impact of all regulations combined. Submarine cable regulations addressed in the full regulatory impact review are not discussed here since that industry is judged not to involve small businesses.

**Discharge Regulations.** Under the proposed rule, NOAA would prohibit discharging or depositing any material or matter into the three SSMAs, with an exception for treated biodegradable effluents incidental to vessel use. Many commercial vessels affected by the proposed regulations are expected to belong to commercial fishing operations and businesses involved in providing guide services in the recreation tourism industry (e.g. charter and party boat fishing operations and whale-watching or other wildlife observation or guide businesses). Boats are already prohibited from discharging untreated effluent in state waters under state law.

Of the three proposed Special Sanctuary Management Areas, Penguin Bank and Maui Nui are active commercial fishing grounds. According to Vessel Management System (VMS) data, only 68 commercial fishing vessels entered the Special Sanctuary Management Areas in the last year. There are 42 permitted commercial boats operating out of Lahaina and all of these boats are using the federal waters of Maui Nui. This information is generally consistent with the information compiled during the Ocean Etiquette trainings and the USCG Marine Safety Office inventory for Maui.

Based on a 2012 survey conducted by the Pacific Islands Fisheries Science Center, there were roughly 170 active charter boat operations in the main Hawai'i Islands, with roughly 100 of these operating out of the big island of Hawai'i. Roughly 55 boats were based in Maui and O'ahu, the islands adjacent to the Special Sanctuary Management Areas. The average charter boat length in Maui and O'ahu was 40 feet and 39 feet, respectively.

Additionally, 99 active tour vessels operate out of Maui County, of which 55

are whale-watching operations. These larger vessels carry dozens of passengers and are typically equipped with a Coast Guard certified Marine Sanitation Device (MSD) that, if properly used, is compliant with the proposed treatment requirement in the Special Sanctuary Management Areas. At a minimum, most of the commercial operators have holding tanks.

There are pump out stations in the major harbors of the Maui Nui area (Lahaina and Mā'alaea), which ensures ease of compliance for boats that only have a holding tank. Furthermore, some tour operators have retrofitted their boats to increase the holding capacity and eliminate the need for discharging at sea.

Taking into account all of the above information, including the relatively modest total number of vessels operating in the Special Sanctuary Management Areas and the high proportion of vessels already equipped with compliant marine sanitation devices, NOAA expects there to be negligible costs from these new regulations.

NOAA expects both the commercial fishing industry and the recreation-tourism industry to receive moderate net benefits from these regulations in the form of improved habitat qualities, which would likely result in increased fish stocks for commercial and recreational fishing. In addition, NOAA expects that the resulting improved habitat qualities would benefit the recreation-tourism industry, which depends upon a healthy and thriving sanctuary ecosystem to support its business. Thus, NOAA expects that the commercial fishing and recreation-tourism industries would experience a net benefit from the discharge regulations. NOAA expects the proposed action to generate a mid-range level of costs with a mid-range level of net benefits compared with all other regulatory alternatives. Land use and development businesses would not be directly affected by the discharge regulations.

NOAA invites public comments from small business owners and members of the public potentially affected by the new discharge regulations to better understand and assess any impact of these proposed regulations.

**Submerged lands — Seabed Alteration Regulations.** Regulations prohibiting disturbances of the seabed in Special Sanctuary Management Areas would impact the commercial fishing industry and the recreation tourism industry. NOAA expects these industries to receive moderate net benefits from these regulations because

of the improvement or maintenance of habitat qualities that these industries depend upon. NOAA also expects businesses in these industries to experience negligible increases in costs of operations because there is no significant anchoring activity in the Special Sanctuary Management Areas. Because of the exceptions, permit, and authorization processes in the proposed action, which may allow for some activities that disturb the seabed, including a proposed submarine cable installation, costs would be expected to be in the mid-range of costs across all alternatives.

All other regulatory amendments to the HIHWNMS regulations proposed in this rulemaking are either technical changes or are not expected to have any measurable impact, economic or otherwise, on the resources and businesses operating in and near the Special Sanctuary Management Areas. Because this action would not have a significant economic impact on a substantial number of small entities, no initial regulatory flexibility analysis was prepared.

Because the impacts of this proposed rule on commercial fishing, recreational tourism, and land use and development businesses are minimal, the Chief Counsel for Regulation certified to the Chief Counsel for Advocacy at SBA that this rulemaking would not have a significant economic impact on a substantial number of small entities.

#### *Paperwork Reduction Act*

ONMS has a valid Office of Management and Budget (OMB) control number (0648–0141) for the collection of public information related to the processing of ONMS permits across the National Marine Sanctuary System. NOAA's proposal to expand HIHWNMS would likely result in an increase in the number of requests for ONMS general permits, special use permits, and authorizations since this action proposes to add general permits and special use permits, certifications, appeals, and the authority to authorize other valid federal, state, or local leases, permits, licenses, approvals, or other authorizations. An increase in the number of ONMS permit requests would require a change to the reporting burden certified for OMB control number 0648–0141. An update to this control number for the processing of ONMS permits would be requested as part of the final rule for sanctuary expansion.

Nationwide, NOAA issues approximately 200 national marine sanctuary permits each year. Of this amount, HIHWNMS is expected to add

4 to 5 permit requests per year. The public reporting burden for national marine sanctuaries permits is estimated to average 1.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information.

Send comments regarding the burden estimate for this data collection requirement, or any other aspect of this data collection, including suggestions for reducing the burden, to NOAA (see ADDRESSES) and by email to *OIRA\_submission@omb.eop.gov*, or fax to (202) 395-7285. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB control number.

#### V. Request for Comments

NOAA requests comments on this proposed rule for by June 19, 2015.

#### VI. References

A complete list of all references cited herein is available upon request (see ADDRESSES section).

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

Administrative practice and procedure, Coastal zone, Historic preservation, Intergovernmental relations, Marine resources, Natural resources, Penalties, Recreation and recreation areas, Reporting and recordkeeping requirements, Wildlife.

Dated: March 13, 2015.

#### W. Russell Callender,

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

Accordingly, for the reasons discussed in the preamble, the National Oceanic and Atmospheric Administration proposes to amend 15 CFR part 922 as follows:

### PART 922—NATIONAL MARINE SANCTUARY PROGRAM REGULATIONS

#### ■ 1. Revise subpart Q to read as follows:

#### Subpart Q—Hawaiian Islands National Marine Sanctuary—Nā Kai ‘Ewalu

##### Contents

§ 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.

§ 922.188 Permit procedures and review criteria.

Appendix A to Subpart Q of Part 922—Hawaiian Islands National Marine Sanctuary—Nā Kai ‘Ewalu Boundary Description and Coordinates of the Lateral Boundary Closures and Excluded Areas.

Appendix B to Subpart Q of Part 922—Special Sanctuary Management Area Boundaries.

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

#### Subpart Q—Hawaiian Islands National Marine Sanctuary—Nā Kai ‘Ewalu

##### § 922.180 Purpose.

(a) The purpose of the regulations in this subpart is to implement the designation of the Hawaiian Islands National Marine Sanctuary—Nā Kai ‘Ewalu 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; and to facilitate all public and private uses of the Sanctuary, to the extent compatible with the primary objective of an ecosystem-based management approach that is inclusive of all aspects of the marine ecosystem emphasizing the biological, physical, and human components of a healthy marine environment, including protecting the humpback whale and its habitat, that are essential components of the marine ecosystem. Public and private uses of the Sanctuary include, but are not limited to, 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 other protected species and their habitat; to contribute to the maintenance of natural assemblages of humpback whales and other protected species for future generations; more specifically 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 for additional protections of the Sanctuary ecosystem resources including for humpback whales and their habitat, as 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 Hawai‘i on any modifications to the regulations contained in this part that pertain to State of Hawai‘i waters. For any modification of the regulations contained in this part that would contribute a change in a term of designation, as contained in the Designation Document for the Sanctuary, the Secretary shall follow the applicable requirements of section 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 Hawai‘i 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) The Hawaiian Islands National Marine Sanctuary—Nā Kai ‘Ewalu (sanctuary) encompasses an area of approximately 1,224 square nautical miles (1,621 square miles) of coastal and ocean waters, and submerged lands thereunder, cutting across the mouths of rivers and streams, surrounding the populated Hawaii Islands as described below. The precise boundary coordinates are listed in Appendix A to this subpart.

(1) O‘ahu: The sanctuary boundary on the southern shore of O‘ahu is defined by the coordinates provided in table A1 and the following textual description. The boundary begins ENE of Makapu‘u Point roughly 3.2 nautical miles offshore at Point 1. It approximates the 100-fathom (182.8 meter) isobath line extending first clockwise to the SE., then to the SW., and finally to the west to Point 68 in numerical order. From Point 68 the boundary extends NE

towards Point 69 until it intersects the tip of the Kapahulu Groin. From this intersection the boundary extends towards Point 70 until it intersects the shoreline. From this intersection the boundary then follows the shoreline eastward around Diamondhead Crater and Maunalua Bay until it intersects the line segment between Point 71 and Point 72 at the western entrance to the Hawaii Kai Marina. From this intersection the boundary moves towards Point 72 across the entrance to the marina until it intersects the shoreline again. The boundary then follows the shoreline eastward until it intersects the line segment between Point 73 and Point 74 at the eastern entrance to the Hawaii Kai Marina. From this intersection the boundary moves towards Point 74 across the entrance to the marina until it intersects the shoreline again. The boundary then follows the shoreline south around Koko Head and then northward around Pai'olu'olu Point, into Hanauma Bay and then back out and around Palea Point. The boundary then continues to follow the shoreline to the NE until it intersects the line between Point 75 and Point 76 at Makapu'u Point. From this intersection the boundary extends seaward to the NE to Point 76. The sanctuary boundary on the North Shore of O'ahu is defined by the coordinates provided in table A2 and the following textual description. The boundary extends from Point 1, located roughly 3.3 nautical miles NW of Ali'i Beach Park in Hale'iwa, approximating the 100-fathom (182.8 meter) isobath line first to the NE and then to the SE to Point 60 in numerical order roughly 2.5 nautical miles NE of Māhie Point. The eastern edge of the sanctuary extends SW from Point 60 towards Point 61 at Māhie Point (aka Makahonu Point) until it intersects the shoreline. From this intersection the boundary follows the shoreline to the NW around Kahuku Point and then to the SW until it intersects the line segment between Point 62 and Point 63 at the eastern breakwater protecting Haleiwa Harbor. From this intersection the boundary extends towards Point 63 and the western breakwater until it intersects the shoreline again. From this intersection the boundary follows the shoreline to the SW until it intersects the line segment between Point 64 and Point 65 at the southwestern end of Ali'i Beach Park. From this intersection the sanctuary boundary extends seaward to the NW to Point 65.

(2) Hawai'i: The sanctuary boundary of Hawai'i Island is defined by the coordinates provided in table A3 and

the following textual description. The boundary begins offshore roughly 0.5 nautical miles west of Keāhole Point at Point 1, and approximates the 100-fathom (182.8 meter) isobath line as it extends northward to Point 102 in numerical order. The northeastern edge of the sanctuary boundary extends from Point 102 south towards Point 103 on the northern tip of 'Upolu point until it intersects the shoreline. From this intersection, the boundary extends west and then south along the shoreline until it intersects the line segment between Point 104 and Point 105 to the north of Kawaihae Harbor. Kawaihae Harbor is excluded from the sanctuary so the boundary extends across the mouth of the harbor from this intersection towards Point 105 on the outer breakwater of Kawaihae Harbor until it intersects the shoreline. From this intersection the boundary continues south along the shoreline until it intersects the line segment between Point 106 and Point 107 at the westernmost tip of Hawai'i Island (Keāhole Point), west of the southern end of Kona Airport. From this intersection, the boundary extends seaward approximately 0.5 nautical miles west to Point 107.

(3) Ni'ihau: The sanctuary boundary around the island of Ni'ihau (including Lehua Island) is defined by the coordinates provided in table A4 and the following textual description. The landward boundary of Ni'ihau and Lehua is the shoreline. The seaward boundary of Ni'ihau and Lehua is approximately three nautical miles from the shoreline and extends around the islands from Points 1 to 60 in numerical order.

(4) Kaua'i: The sanctuary boundary off the north coast of Kaua'i is defined by the coordinates in table A5 and the following textual description. The boundary begins offshore nearly 3.3 nautical miles WNW of Ka'ilio Point at Point 1 and approximates the 100-fathom (182.8 meters) isobath line as it extends eastward in numerical order to Point 59, approximately 1.5 nautical miles NE of Kepuhi point at roughly the Pila'a/Waipake ahupua'a boundary. The eastern edge of the sanctuary boundary then extends SW from Point 59 towards Point 60 on Kepuhi Point until it intersects the shoreline. From this intersection the sanctuary boundary extends westward along the shoreline of the north coast of Kaua'i, and then continues to follow the shoreline as it extends southward along the eastern shore of Hanalei Bay until it intersects the line segment between Point 61 and Point 62 at approximately the mouth of the Hanalei River. From this

intersection the boundary extends towards Point 62 until it intersects the shoreline again. From this intersection the boundary continues to follow the shoreline south around Hanalei Bay and then westward around Ka'ilio Point until it intersects the line between Point 63 and Point 64 at approximately the boundary of the Ha'ena/Hanakāpi'ai ahupua'a NE of Hanakāpi'ai beach. From this intersection, the boundary extends seaward to the WNW to Point 64.

(5) Maui Nui: The sanctuary boundary of Maui Nui between the islands of Moloka'i, Lana'i, and Maui is defined by the coordinates in table A6 and the following textual description. The boundary begins roughly 3.5 nautical miles west of 'Īlio Point off the northwest tip of Moloka'i at Point 1. The boundary approximates the 100-fathom (182.8 meter) isobath line to the west and south around Penguin Bank and then back to the north and east following the coordinates in numerical order across Kalohi Channel to Point 196 to the NE of Kaena on Lana'i. The boundary then continues to approximate the 100-fathom (182.8 meter) isobath line south around Lana'i and then east crossing the Kealaikahiki Channel and continuing between Kaho'olawe and Molokini to the SE to Point 341 in numerical order roughly 2.2 nautical miles WSW of Hanamanioa Light on the southern shore of Maui. The boundary then continues ENE towards Point 342 until it intersects the shoreline near the Hanamanioa Light. At this intersection the boundary follows the shoreline northward to Mā'alaea Bay until it intersects the line segment between Point 343 and Point 344 at the eastern breakwater of the entrance to Mā'alaea Harbor. From this intersection the boundary continues toward Point 344 until it intersects the shoreline at the western breakwater of Mā'alaea Harbor. From this intersection the boundary continues to follow the shoreline SW around McGregor and Papawai Points and then to the NW until it reaches Lahaina Small Boat Harbor. The boundary continues along the shoreline of the outer breakwater of Lahaina Small Boat Harbor until it reaches the northern tip at the intersection of the shoreline and a line between points 345 and 346. From this intersection the boundary extends offshore to the NNW for approximately 25 meters to point 346. The boundary then heads WNW towards point 347 until it intersects the shoreline again. From this intersection the boundary then continues to follow the shoreline northward until it intersects the line

between Point 348 and Point 349 at Lipoa Point on the NW tip of Maui. From this intersection the boundary continues to the NNW across the Pailolo Channel through Point 349 and Point 350 to the intersection of the line segment between Point 351 and Point 352 and the shoreline at Cape Halawa on the NE tip of Molokai. From this intersection the boundary continues to follow the shoreline to the SW and then westward until it intersects the line segment between Point 353 and Point 354 east of Kaunakakai Pier. From this intersection the boundary then continues offshore through Point 354 and Point 355 and towards Point 356 to the west of Kaunakakai Pier until it intersects the shoreline. From this intersection the boundary continues to follow the shoreline westward until it intersects the line segment between Point 357 and Point 358 on the eastern seawall at the entrance to Lono Harbor. From this intersection the boundary continues towards Point 358 across the mouth of the harbor until it intersects the shoreline again. From this intersection the boundary continues to follow the shoreline westward around Lā'au Point, and then continues north until it reaches the intersection of the shoreline with the line segment between Point 359 and Point 360 at 'Īlio Point on the NW tip of Moloka'i. From this intersection the boundary continues seaward to Point 361 west of 'Īlio Point. The landward sanctuary boundary around the island of Lana'i is the shoreline. The boundary follows the western shoreline of the island south from Keanapapa Point until it intersects the line between Point 362 and Point 363 at the breakwater north of Kaunalapau Harbor. The boundary then extends towards Point 363 south of the harbor mouth, excluding Kaunalapau Harbor from the sanctuary, until it intersects the shoreline again. From this intersection the boundary continues to follow the shoreline south around Palaoa Point and then east until it intersects the line between Point 364 and Point 365 at the SE breakwater of Manele Small Boat Harbor. From this intersection the boundary extends across the mouth of the harbor towards Point 365 until it intersects the shoreline again at the NE breakwater, excluding Manele Small Boat Harbor from the sanctuary. From this intersection the boundary continues to follow the shoreline of Lana'i to the NE around Kikoa Point and continues counterclockwise around the island back to Keanapapa Point.

#### § 922.182 Definitions.

Other terms appearing 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.*

*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.

*Coral* means but is not limited to species of the Phylum Cnidaria, including all species in the: Class Anthozoa, Subclass Hexacorallia, Order Scleractinia (stony corals); Class Anthozoa, Subclass Hexacorallia, Order Antipatharia (black corals); Class Anthozoa, Subclass Hexacorallia, Order Zoantharia, Family Parazoanthidae (gold coral); Class Anthozoa, Subclass Octocorallia, Order Alcyonacea (soft corals, bamboo coral, pink coral); Class Anthozoa, Subclass Octocorallia, Order Gorgonacea (gorgonians); Class Anthozoa, Subclass Octocorallia, Order Pennatulacea (sea pens); Class Hydrozoa, Subclass Hydroidolina, Order Anthoathecata, Suborder Filifera, Family Stylasteridae (stylasterids)

*Introduced Species* means any species (including, but not limited to, any of its biological matter capable of propagation) that is non-native to the ecosystems of the Sanctuary; or any organism into which altered genetic matter, or genetic matter from another species, has been transferred in order that the host organism acquires the genetic traits of the transferred genes.

*Live Rock* means any Coral, basalt rock, or other natural structure with any living organisms growing in or on the Coral, basalt rock, or structure.

*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 National Marine Sanctuary—Nā Kai 'Ewalu.

*Special Sanctuary Management Areas* means discrete, biologically and/or culturally important areas that help sustain critical marine species and habitats.

*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.

#### § 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 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 these regulations, as identified in the Final Environmental Impact Statement/Management Plan. Paragraphs (a)(1) through (a)(11) 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)(11) 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)(11) 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)(i) Approaching in the Sanctuary, by any means, including by interception (e.g. by placing a vessel or person in the path of an oncoming humpback whale so that the whale surfaces within 100 yards (91.4m) of the vessel or person), within 100 yards (91.4 m) of any humpback whale;

(ii) Causing a vessel or other object to approach within 100 yards (91.4 m) of a humpback whale;

(iii) Disrupting the normal behavior or prior activity of a whale by any other act or omission. A disruption of normal behavior may be manifested by, among

other actions on the part of the whale, a rapid change in direction or speed; escape tactics such as prolonged diving, underwater course changes, underwater exhalation, or evasive swimming patterns; interruptions of breeding, nursing, or resting activities, attempts by a whale to shield a calf from a vessel or human observer by tail swishing or by other protective movement; or the abandonment of a previously frequented area;

(iv) Exceptions:

This paragraph (a)(1) does not apply to any approach is authorized by the National Marine Fisheries Service through a permit issued under 50 CFR part 222, subpart C, General Permit Procedures or through a similar authorization;

(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)(i) Taking or possessing any humpback whales within the Sanctuary except as authorized by the Marine Mammal Protection Act (MMPA), or the Endangered Species Act (ESA);

(ii) Taking or possessing any marine mammal, sea turtle, seabird, Endangered Species Act-listed species or Hawai'i Revised Statutes chapter 195D listed species, within or above the Special Sanctuary Management Areas, except as authorized by the Marine Mammal Protection Act (MMPA); the Endangered Species Act (ESA); the Migratory Bird Treaty Act (MBTA); the Magnuson Stevens Fishery Conservation and Management Act; or Hawai'i State Law.

(4) Discharging or depositing any material or other matter in the Special Sanctuary Management Areas, except:

(i) Fish, fish parts, chumming materials or bait used in or resulting from lawful fishing activities within the Sanctuary, provided that such discharge or deposit is during the conduct of lawful fishing activities within the Sanctuary;

(ii) Biodegradable effluents incidental to vessel use and generated by Type I and II marine sanitation devices approved in accordance with section 312 of the Federal Water Pollution Control Act 33 U.S.C. 1322;

(iii) Water generated by routine vessel operations (e.g., cooling water, deck wash down, and gray water as defined by section 312 of the Federal Water Pollution Control Act 33 U.S.C. 1322) excluding oily wastes from bilge pumping;

(iv) Engine exhaust; or

(v) Discharge of biodegradable materials for traditional ceremonies

associated with culturally important customs and usage (e.g. the discharge of leis, paper lanterns).

(5) Discharging or depositing any material or other matter outside of the Special Sanctuary Management Areas if the discharge or deposit subsequently enters and injures a sanctuary resource within the Special Sanctuary Management Areas.

(6) Dredging, drilling into, or otherwise altering in any way the submerged lands (including natural bottom formations, live rock and coral) within the Special Sanctuary Management Areas, except:

(i) To anchor a vessel on sandy bottom or substrate other than live rock or coral;

(ii) Routine maintenance of docks, seawalls, breakwaters, jetties, or piers authorized by any valid lease, permit, license, approval, or other authorization issued by any Federal, State, or local authority of competent jurisdiction;

(iii) Installation and maintenance of navigational aids by, or pursuant to valid authorization by, any Federal, State, or local authority of competent jurisdiction;

(iv) Activities associated with conducting harbor maintenance in accordance with a federal or state permit issued prior to [EFFECTIVE DATE OF FINAL RULE], including dredging of entrance channels during the time period of one year from the [final rule effective date];

(v) Aquaculture activities authorized under a permit issued by the State of Hawai'i Department of Land and Natural Resources, the State of Hawai'i Department of Health, the U.S. Army Corps of Engineers, or the National Marine Fisheries Service pursuant to applicable regulations under the appropriate fisheries management plan.

(vi) Lawful fishing activities authorized under a permit issued by the State of Hawai'i or the National Marine Fisheries Service pursuant to applicable regulations under the appropriate fisheries management plan.

(7) Possessing or using explosives within the Special Sanctuary Management Areas, except for valid law enforcement purposes.

(8) Introducing or otherwise releasing from within or into the Special Sanctuary Management Areas an introduced species, except species cultivated by aquaculture activities in state or federal waters pursuant to a valid lease, permit, license or other authorization issued by the State of Hawai'i Department of Natural Resources, or the National Marine Fisheries Service in effect on the effective date of the final regulation.



(9) Removing, damaging, or tampering with any historical or cultural resource within the sanctuary.

(10) Marking, defacing, or damaging in any way, or displacing or removing or tampering with any signs, notices, or placards, whether temporary or permanent, or with any monuments, stakes, posts, or other boundary markers related to the Sanctuary including boundary markers related to the Special Sanctuary Management Areas.

(11) 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 paragraph (a) 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 (11) 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).

(c)(1) The prohibitions in this section do not apply to any activity authorized by any lease, permit, license, approval, or other authorization issued after the effective date of regulatory amendments to this section and issued by any Federal, State, or local authority of competent jurisdiction, provided that the applicant complies with 15 CFR 922.49, the Director notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization, and the applicant complies with any terms and conditions the Director deems necessary to protect Sanctuary resources and qualities.

(2) The prohibitions in this section do not apply to activities associated with harbor maintenance including dredging of entrance channels, provided the applicant requests an authorization of a valid federal or state permit from the Director.

(d) The prohibitions in this section do not apply to any activity conducted in accordance with a general permit issued pursuant to § 922.188.

#### § 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 Hawai'i. Emergency regulations shall not take effect in State waters of the Sanctuary until approved by the Governor of Hawai'i.

#### § 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.

#### § 922.188 Permit procedures and review criteria.

(a) *Authority to issue general permits.* The Director may allow a person to conduct an activity that would otherwise be prohibited by this subpart, through issuance of a general permit, provided the applicant complies with:

(1) The provisions of subpart E; and  
(2) The relevant site specific regulations appearing in this subpart.

(b) *Sanctuary general permit categories.* The Director may issue a

sanctuary general permit under this subpart, subject to such terms and conditions as he or she deems appropriate, if the Director finds that the proposed activity falls within one of the following categories:

(1) Research—activities that constitute scientific research on or scientific monitoring of national marine sanctuary resources or qualities;

(2) Education—activities that enhance public awareness, understanding, or appreciation of a national marine sanctuary or national marine sanctuary resources or qualities;

(3) Management—activities that assist in managing a national marine sanctuary; or

(4) Installation of submarine cables—activities that involve the installation of a submarine cable

(c) *Review criteria.* The Director shall not issue a permit under this subpart, unless he or she also finds that:

(1) The proposed activity will be conducted in a manner compatible with the primary objective of protection of national marine sanctuary resources and qualities, taking into account the following factors:

(i) The extent to which the conduct of the activity may diminish or enhance national marine sanctuary resources and qualities; and

(ii) Any indirect, secondary or cumulative effects of the activity.

(2) It is necessary to conduct the proposed activity within the national marine sanctuary to achieve its stated purpose;

(3) The methods and procedures proposed by the applicant are appropriate to achieve the proposed activity's stated purpose and eliminate, minimize, or mitigate adverse effects on sanctuary resources and qualities as much as possible;

(4) The duration of the proposed activity and its effects are no longer than necessary to achieve the activity's stated purpose;

(5) The expected end value of the activity to the furtherance of national marine sanctuary goals and purposes outweighs any potential adverse impacts on sanctuary resources and qualities from the conduct of the activity;

(6) The applicant is professionally qualified to conduct and complete the proposed activity;

(7) The applicant has adequate financial resources available to conduct and complete the proposed activity and terms and conditions of the permit;

(8) There are no other factors that would make the issuance of a permit for the activity inappropriate; and

(9) For the installation of submarine cables, the activity is not required to

meet criterion in § 922.188(c)(5), however, it must be compliant with all applicable permit requirements from the State of Hawai'i prior to consideration of approval for a sanctuary general permit.

**Appendix A to Subpart Q of Part 922—  
Hawaiian Islands National Marine  
Sanctuary—Nā Kai 'Ewalu Boundary  
Description and Coordinates of the  
Lateral Boundary Closures and  
Excluded Areas**

Coordinates listed in this appendix are unprojected (Geographic) and based on the North American Datum of 1983.

**TABLE A1—COORDINATES FOR O'AHU  
[South Unit]**

Point ID No.	Latitude	Longitude
1	21.32908	-157.59613
2	21.32450	-157.58972
3	21.32370	-157.58183
4	21.31688	-157.57428
5	21.31280	-157.56408
6	21.30933	-157.56160
7	21.30358	-157.55573
8	21.30048	-157.55447
9	21.29697	-157.55477
10	21.29273	-157.55672
11	21.28485	-157.55673
12	21.28198	-157.55822
13	21.27330	-157.57037
14	21.26792	-157.57482
15	21.26257	-157.58341
16	21.26286	-157.58604
17	21.26233	-157.58793
18	21.25687	-157.59453
19	21.25527	-157.59808
20	21.25498	-157.60996
21	21.25599	-157.61382
22	21.25854	-157.61889
23	21.25950	-157.62353
24	21.25787	-157.62687
25	21.25896	-157.63431
26	21.25771	-157.63925
27	21.25701	-157.64764
28	21.25579	-157.65214
29	21.25488	-157.65769
30	21.25691	-157.66220
31	21.25535	-157.66722
32	21.25736	-157.67633
33	21.25591	-157.68225
34	21.25648	-157.68615
35	21.25622	-157.68892
36	21.25365	-157.69587
37	21.25401	-157.69999
38	21.25209	-157.70641
39	21.24458	-157.70903
40	21.24200	-157.70882
41	21.23830	-157.71003
42	21.23592	-157.71225
43	21.23203	-157.71399
44	21.23090	-157.71620
45	21.23209	-157.72239
46	21.23484	-157.72541
47	21.23959	-157.72534
48	21.24323	-157.72720
49	21.24570	-157.73037
50	21.24606	-157.73490
51	21.24458	-157.73833

**TABLE A1—COORDINATES FOR  
O'AHU—Continued  
[South Unit]**

Point ID No.	Latitude	Longitude
52	21.24385	-157.74535
53	21.24427	-157.75741
54	21.24269	-157.76264
55	21.23895	-157.76426
56	21.23835	-157.76540
57	21.23856	-157.77153
58	21.23560	-157.78076
59	21.23745	-157.78753
60	21.23676	-157.79062
61	21.23317	-157.79489
62	21.23236	-157.79925
63	21.23336	-157.80369
64	21.23895	-157.81154
65	21.24343	-157.81909
66	21.24480	-157.82470
67	21.24832	-157.83465
68	21.25341	-157.84288
69*	21.27112	-157.82373
70*	21.27148	-157.82268
71*	21.28530	-157.71885
72*	21.28508	-157.71852
73*	21.28152	-157.71197
74*	21.28117	-157.71132
75*	21.31080	-157.64947
76	21.32908	-157.59613

**TABLE A2—COORDINATES FOR O'AHU  
[North Unit]**

Point ID No.	Latitude	Longitude
1	21.62572	-158.15605
2	21.62698	-158.15253
3	21.63018	-158.14882
4	21.63263	-158.14758
5	21.63618	-158.14782
6	21.63775	-158.14707
7	21.64018	-158.14055
8	21.64092	-158.13853
9	21.64902	-158.12817
10	21.65185	-158.12633
11	21.65637	-158.12540
12	21.65833	-158.12413
13	21.68600	-158.10347
14	21.69572	-158.09703
15	21.71565	-158.07783
16	21.71713	-158.07477
17	21.72210	-158.06985
18	21.72628	-158.06348
19	21.73272	-158.05730
20	21.74755	-158.02945
21	21.74943	-158.01910
22	21.75342	-158.00808
23	21.75387	-158.00223
24	21.75268	-157.99743
25	21.75442	-157.99265
26	21.75487	-157.98272
27	21.75328	-157.96552
28	21.74898	-157.94772
29	21.74438	-157.93785
30	21.74428	-157.93470
31	21.73860	-157.92523
32	21.73230	-157.90733
33	21.72945	-157.90263
34	21.72307	-157.89587
35	21.71758	-157.89490

**TABLE A2—COORDINATES FOR  
O'AHU—Continued  
[North Unit]**

Point ID No.	Latitude	Longitude
36	21.71525	-157.89268
37	21.70803	-157.89025
38	21.70027	-157.89058
39	21.69265	-157.88755
40	21.68493	-157.88752
41	21.68057	-157.88633
42	21.67202	-157.88228
43	21.66358	-157.88037
44	21.66267	-157.87958
45	21.65977	-157.87975
46	21.64427	-157.87622
47	21.64232	-157.87615
48	21.63667	-157.87812
49	21.62942	-157.88288
50	21.62860	-157.87927
51	21.63042	-157.87293
52	21.62833	-157.86775
53	21.62230	-157.86168
54	21.61802	-157.85973
55	21.61662	-157.85815
56	21.60818	-157.85312
57	21.60318	-157.85148
58	21.60112	-157.84863
59	21.60057	-157.84235
60	21.59228	-157.83485
61*	21.56008	-157.86468
62*	21.59652	-158.10447
63*	21.59665	-158.10623
64*	21.59032	-158.11052
65	21.62572	-158.15605

**TABLE A3—COORDINATES FOR HAWAI'I**

Point ID No.	Latitude	Longitude
1	19.72820	-156.07070
2	19.74638	-156.08033
3	19.75238	-156.08583
4	19.76020	-156.08825
5	19.76710	-156.09513
6	19.77235	-156.09770
7	19.77420	-156.09957
8	19.77997	-156.10303
9	19.78632	-156.10583
10	19.79402	-156.10500
11	19.80128	-156.10128
12	19.80793	-156.10138
13	19.81478	-156.10368
14	19.82020	-156.09995
15	19.82643	-156.09878
16	19.82990	-156.09452
17	19.83465	-156.09272
18	19.83825	-156.08903
19	19.84435	-156.08602
20	19.84955	-156.08180
21	19.86100	-156.06607
22	19.86765	-156.06058
23	19.87067	-156.05617
24	19.87792	-156.05047
25	19.88778	-156.03225
26	19.89058	-156.02537
27	19.89310	-156.02333
28	19.89577	-156.01848
29	19.89833	-156.01650
30	19.90100	-156.01283
31	19.90095	-155.99682
32	19.90393	-155.99113

TABLE A3—COORDINATES FOR HAWAI‘I—Continued

Point ID No.	Latitude	Longitude
33	19.91243	-155.98405
34	19.91827	-155.98243
35	19.91887	-155.98158
36	19.91867	-155.97758
37	19.91940	-155.97610
38	19.93102	-155.96323
39	19.93617	-155.95458
40	19.94508	-155.95090
41	19.94813	-155.94660
42	19.95618	-155.93978
43	19.96008	-155.93823
44	19.96837	-155.92900
45	19.97177	-155.92720
46	19.97325	-155.92030
47	19.97715	-155.91145
48	19.97790	-155.90632
49	19.97760	-155.90197
50	19.97928	-155.90040
51	19.98177	-155.89140
52	19.98792	-155.88842
53	19.98618	-155.88500
54	19.98578	-155.88182
55	19.98887	-155.87670
56	19.99193	-155.87428
57	19.99992	-155.87262
58	20.00543	-155.86988
59	20.01147	-155.86885
60	20.01840	-155.86913
61	20.02153	-155.86528
62	20.02522	-155.86618
63	20.02783	-155.86515
64	20.02953	-155.86607
65	20.03335	-155.86462
66	20.04083	-155.86840
67	20.04510	-155.86663
68	20.04722	-155.86658
69	20.05252	-155.86952
70	20.06375	-155.88248
71	20.07272	-155.88863
72	20.07505	-155.89213
73	20.08533	-155.90185
74	20.09967	-155.91227
75	20.11200	-155.91650
76	20.12552	-155.91740
77	20.13142	-155.92098
78	20.13368	-155.92155
79	20.13907	-155.92028
80	20.14232	-155.92040
81	20.14765	-155.92278
82	20.15287	-155.92343
83	20.15903	-155.92648
84	20.16653	-155.92895
85	20.19312	-155.93315
86	20.20423	-155.93768
87	20.21275	-155.93537
88	20.23595	-155.93248
89	20.24477	-155.93230
90	20.24652	-155.93118
91	20.25287	-155.92953
92	20.26058	-155.92368
93	20.26625	-155.92138
94	20.27477	-155.91627
95	20.27647	-155.91430
96	20.27857	-155.90785
97	20.28822	-155.90010
98	20.29183	-155.89487
99	20.29430	-155.88873
100	20.29940	-155.88160
101	20.30082	-155.87262
102	20.29998	-155.85477

TABLE A3—COORDINATES FOR HAWAI‘I—Continued

Point ID No.	Latitude	Longitude
103 *	20.26632	-155.84972
104 *	20.04058	-155.83260
105 *	20.03723	-155.83398
106 *	19.72743	-156.05997
107	19.72820	-156.07070

TABLE A4—COORDINATES FOR NI‘IHAU

Point ID No.	Latitude	Longitude
1	22.07833	-160.09322
2	22.07125	-160.06682
3	22.06053	-160.05058
4	22.04732	-160.04022
5	22.03098	-160.01508
6	22.02058	-160.00642
7	22.00180	-159.99755
8	21.98923	-159.99403
9	21.97612	-159.99393
10	21.96343	-159.99748
11	21.94782	-160.00603
12	21.94007	-160.01277
13	21.93222	-160.02352
14	21.92785	-160.02667
15	21.91240	-160.02077
16	21.89087	-160.01980
17	21.87503	-160.02447
18	21.86247	-160.03313
19	21.85348	-160.04393
20	21.83285	-160.08297
21	21.82932	-160.09280
22	21.82383	-160.12060
23	21.81035	-160.12827
24	21.80100	-160.13682
25	21.79595	-160.13930
26	21.76847	-160.14730
27	21.75925	-160.15167
28	21.74372	-160.16375
29	21.73393	-160.17817
30	21.72868	-160.19583
31	21.72945	-160.21530
32	21.73638	-160.23768
33	21.74675	-160.25835
34	21.75333	-160.26830
35	21.77392	-160.28798
36	21.79732	-160.29788
37	21.81468	-160.30028
38	21.85032	-160.30002
39	21.86553	-160.29553
40	21.87738	-160.28843
41	21.89507	-160.28757
42	21.91643	-160.28028
43	21.92902	-160.27102
44	21.94070	-160.25435
45	21.95347	-160.24342
46	21.96832	-160.23835
47	21.97933	-160.23058
48	21.98935	-160.21923
49	21.99598	-160.20712
50	21.99950	-160.19353
51	21.99963	-160.17980
52	22.00912	-160.17750
53	22.01812	-160.17322
54	22.03043	-160.16303
55	22.03718	-160.15415
56	22.04843	-160.14998
57	22.05858	-160.14325
58	22.06998	-160.13037

TABLE A4—COORDINATES FOR NI‘IHAU—Continued

Point ID No.	Latitude	Longitude
59	22.07723	-160.11288
60	22.07833	-160.09322

TABLE A5—COORDINATES FOR KAUA‘I

Point ID No.	Latitude	Longitude
1	22.23023	-159.64483
2	22.23658	-159.64328
3	22.23943	-159.64090
4	22.24108	-159.63825
5	22.24470	-159.62752
6	22.24473	-159.62460
7	22.24307	-159.61835
8	22.24340	-159.61615
9	22.24463	-159.61438
10	22.25070	-159.61090
11	22.25657	-159.60623
12	22.26618	-159.60690
13	22.27078	-159.60590
14	22.27325	-159.60388
15	22.27597	-159.59985
16	22.28132	-159.58828
17	22.28415	-159.57682
18	22.28480	-159.56468
19	22.28368	-159.55173
20	22.28235	-159.54530
21	22.27953	-159.53727
22	22.27672	-159.53092
23	22.27338	-159.52600
24	22.26862	-159.52285
25	22.25572	-159.51848
26	22.25582	-159.51748
27	22.25715	-159.51645
28	22.26298	-159.51533
29	22.26462	-159.51383
30	22.26633	-159.50630
31	22.26647	-159.50227
32	22.26565	-159.49770
33	22.26370	-159.49392
34	22.25690	-159.48792
35	22.25665	-159.48692
36	22.25698	-159.48538
37	22.26030	-159.48210
38	22.26103	-159.47762
39	22.26042	-159.47528
40	22.25540	-159.46792
41	22.25335	-159.46128
42	22.25257	-159.43648
43	22.25127	-159.43093
44	22.24915	-159.42758
45	22.25142	-159.42245
46	22.25307	-159.40707
47	22.25303	-159.40242
48	22.25098	-159.39485
49	22.25357	-159.39000
50	22.25407	-159.38732
51	22.25332	-159.38345
52	22.24883	-159.37198
53	22.24632	-159.36208
54	22.24883	-159.35590
55	22.24860	-159.35342
56	22.24527	-159.34928
57	22.23777	-159.34528
58	22.23575	-159.34155
59	22.23505	-159.33825
60 *	22.21353	-159.35087
61 *	22.21508	-159.49703

TABLE A5—COORDINATES FOR KAUAI—Continued

Point ID No.	Latitude	Longitude
62 *	22.21378	-159.49672
63 *	22.21132	-159.59522
64	22.23023	-159.64483

TABLE A6—COORDINATES FOR MAUI NUI—Continued

Point ID No.	Latitude	Longitude
60	20.98757	-157.73145
61	20.98167	-157.73470
62	20.96713	-157.73572
63	20.95993	-157.73808
64	20.95725	-157.74017
65	20.95113	-157.75002
66	20.93860	-157.75783
67	20.93642	-157.75822
68	20.92492	-157.75177
69	20.92162	-157.75163
70	20.90925	-157.75475
71	20.90548	-157.75652
72	20.90228	-157.75925
73	20.89710	-157.76182
74	20.89360	-157.76263
75	20.88710	-157.76087
76	20.88213	-157.75663
77	20.87747	-157.74822
78	20.87683	-157.74167
79	20.87448	-157.73667
80	20.87213	-157.73533
81	20.86733	-157.73457
82	20.86332	-157.73522
83	20.85518	-157.73948
84	20.85253	-157.73885
85	20.85070	-157.73525
86	20.84945	-157.72498
87	20.84920	-157.71832
88	20.85037	-157.71212
89	20.85000	-157.70652
90	20.85162	-157.70387
91	20.85670	-157.70343
92	20.86250	-157.69857
93	20.86502	-157.69475
94	20.86575	-157.69173
95	20.86383	-157.68598
96	20.86427	-157.67730
97	20.86502	-157.67523
98	20.87097	-157.66773
99	20.87222	-157.66545
100	20.87347	-157.65898
101	20.87715	-157.65485
102	20.87782	-157.65067
103	20.88127	-157.64455
104	20.88223	-157.64138
105	20.88267	-157.63830
106	20.88217	-157.63645
107	20.88363	-157.63063
108	20.88650	-157.62785
109	20.88775	-157.61990
110	20.89247	-157.61262
111	20.89350	-157.60863
112	20.89658	-157.60333
113	20.90247	-157.58420
114	20.91300	-157.57330
115	20.91492	-157.56742
116	20.91800	-157.56410
117	20.92455	-157.54203
118	20.92668	-157.54018
119	20.92918	-157.53400
120	20.93228	-157.51517
121	20.93332	-157.51258
122	20.93677	-157.51002
123	20.95480	-157.51053
124	20.95687	-157.50825
125	20.96230	-157.50560
126	20.96370	-157.50022
127	20.96297	-157.48638
128	20.96348	-157.47968
129	20.96643	-157.46747

TABLE A6—COORDINATES FOR MAUI NUI—Continued

Point ID No.	Latitude	Longitude
130	20.96768	-157.45805
131	20.96547	-157.44568
132	20.96437	-157.43420
133	20.96467	-157.43267
134	20.96665	-157.41177
135	20.96680	-157.40153
136	20.96775	-157.39682
137	20.97320	-157.36605
138	20.97452	-157.36303
139	20.98998	-157.34743
140	20.99072	-157.32977
141	20.99190	-157.32160
142	20.99507	-157.30917
143	20.99557	-157.30762
144	21.01912	-157.29510
145	21.02553	-157.28297
146	21.02898	-157.26972
147	21.02618	-157.26433
148	21.02597	-157.26192
149	21.02657	-157.25772
150	21.03008	-157.25323
151	21.03068	-157.25138
152	21.03127	-157.24270
153	21.03105	-157.23557
154	21.02877	-157.23173
155	21.02883	-157.23033
156	21.03318	-157.22548
157	21.03473	-157.21687
158	21.03693	-157.21223
159	21.03942	-157.20958
160	21.04333	-157.20678
161	21.05092	-157.20428
162	21.05768	-157.19582
163	21.06085	-157.19302
164	21.06012	-157.18750
165	21.05820	-157.18183
166	21.05783	-157.17373
167	21.05667	-157.16718
168	21.05673	-157.15313
169	21.05122	-157.14150
170	21.05137	-157.13833
171	21.05490	-157.12958
172	21.05658	-157.12333
173	21.05777	-157.11310
174	21.06042	-157.10125
175	21.05923	-157.09455
176	21.05238	-157.08093
177	21.05062	-157.07527
178	21.05040	-157.06997
179	21.05357	-157.06217
180	21.04458	-157.03868
181	21.04128	-157.03603
182	21.03502	-157.03472
183	21.03282	-157.03332
184	21.03023	-157.02985
185	21.02795	-157.02198
186	21.02663	-157.02110
187	21.02207	-157.01955
188	21.01817	-157.01955
189	21.01662	-157.01742
190	21.01463	-157.01638
191	21.00640	-157.01808
192	20.99727	-157.01573
193	20.98770	-157.01522
194	20.98408	-157.01690
195	20.98107	-157.01550
196	20.97945	-157.01595
197	20.97710	-157.01823
198	20.97673	-157.01983
199	20.97555	-157.02418

TABLE A6—COORDINATES FOR MAUI NUI

Point ID No.	Latitude	Longitude
1	21.22380	-157.31272
2	21.21938	-157.31378
3	21.20960	-157.31750
4	21.19332	-157.33268
5	21.18093	-157.35280
6	21.17182	-157.37275
7	21.16902	-157.38062
8	21.16815	-157.38555
9	21.16502	-157.39072
10	21.16172	-157.40372
11	21.15897	-157.41582
12	21.15757	-157.42950
13	21.15815	-157.48270
14	21.15992	-157.49052
15	21.15977	-157.49598
16	21.16400	-157.51087
17	21.16420	-157.51713
18	21.16250	-157.52100
19	21.15935	-157.52552
20	21.14960	-157.54817
21	21.14587	-157.55430
22	21.13998	-157.56070
23	21.13005	-157.56862
24	21.12538	-157.57398
25	21.12152	-157.58915
26	21.12010	-157.59217
27	21.11398	-157.60032
28	21.11063	-157.61628
29	21.10790	-157.62245
30	21.10395	-157.62590
31	21.10122	-157.62655
32	21.09598	-157.62547
33	21.09000	-157.62688
34	21.08793	-157.62815
35	21.08638	-157.64073
36	21.08667	-157.64747
37	21.08440	-157.65763
38	21.08087	-157.65977
39	21.07898	-157.65933
40	21.07202	-157.65358
41	21.07042	-157.65293
42	21.06740	-157.65387
43	21.06593	-157.65628
44	21.06712	-157.66142
45	21.06480	-157.66490
46	21.05858	-157.66980
47	21.04922	-157.67460
48	21.04823	-157.67893
49	21.04197	-157.68637
50	21.03627	-157.68960
51	21.03428	-157.69402
52	21.02722	-157.69850
53	21.02428	-157.70122
54	21.02362	-157.70432
55	21.02553	-157.70895
56	21.02268	-157.71652
57	21.01285	-157.71805
58	20.99600	-157.72255
59	20.99253	-157.72507

TABLE A6—COORDINATES FOR MAUI  
NUI—Continued

Point ID No.	Latitude	Longitude
200	20.97438	-157.02595
201	20.96178	-157.03588
202	20.94892	-157.05282
203	20.94023	-157.06210
204	20.93478	-157.07343
205	20.92853	-157.07895
206	20.92522	-157.08462
207	20.92205	-157.08578
208	20.91807	-157.08542
209	20.91182	-157.08727
210	20.90468	-157.08793
211	20.89902	-157.09013
212	20.89622	-157.09013
213	20.88202	-157.08462
214	20.87450	-157.07998
215	20.86427	-157.07152
216	20.85168	-157.05885
217	20.84647	-157.05157
218	20.84462	-157.04532
219	20.84433	-157.03795
220	20.84300	-157.03280
221	20.83932	-157.02625
222	20.83248	-157.01757
223	20.82192	-157.01188
224	20.79377	-157.00950
225	20.77772	-157.00940
226	20.77303	-157.00873
227	20.76695	-157.00653
228	20.76258	-157.00627
229	20.75048	-157.00143
230	20.74437	-156.99613
231	20.73483	-156.98978
232	20.73038	-156.98588
233	20.72995	-156.98367
234	20.72655	-156.97945
235	20.72133	-156.97505
236	20.71268	-156.96152
237	20.71115	-156.95765
238	20.71073	-156.94107
239	20.70910	-156.93135
240	20.71043	-156.92313
241	20.70872	-156.90960
242	20.70872	-156.90348
243	20.70570	-156.88575
244	20.70790	-156.88125
245	20.71742	-156.87293
246	20.72425	-156.86528
247	20.72860	-156.86423
248	20.73072	-156.86198
249	20.73190	-156.85750
250	20.73430	-156.85262
251	20.74113	-156.84095
252	20.74228	-156.83092
253	20.74180	-156.82460
254	20.74467	-156.82188
255	20.74553	-156.81897
256	20.74390	-156.81242
257	20.73865	-156.80897
258	20.73578	-156.80897
259	20.73258	-156.81285
260	20.73162	-156.81298
261	20.73018	-156.81117
262	20.73072	-156.80515
263	20.73440	-156.79635
264	20.73440	-156.79377
265	20.73277	-156.79140
266	20.73233	-156.79100
267	20.72818	-156.79143
268	20.72568	-156.78875
269	20.72268	-156.77808

TABLE A6—COORDINATES FOR MAUI  
NUI—Continued

Point ID No.	Latitude	Longitude
270	20.72253	-156.76680
271	20.72077	-156.76490
272	20.71900	-156.76422
273	20.71513	-156.76518
274	20.71360	-156.76490
275	20.71278	-156.76380
276	20.71140	-156.75772
277	20.71307	-156.74668
278	20.71230	-156.74228
279	20.71150	-156.67635
280	20.71097	-156.67578
281	20.71102	-156.67300
282	20.70915	-156.67110
283	20.71078	-156.66870
284	20.70685	-156.66297
285	20.70728	-156.65585
286	20.70332	-156.64777
287	20.70265	-156.64542
288	20.70337	-156.64260
289	20.69858	-156.63638
290	20.69645	-156.63420
291	20.69583	-156.63433
292	20.69423	-156.61873
293	20.69538	-156.61478
294	20.69342	-156.61248
295	20.69113	-156.60780
296	20.69045	-156.60747
297	20.68873	-156.60913
298	20.68735	-156.60832
299	20.68663	-156.60253
300	20.68497	-156.60053
301	20.67722	-156.59785
302	20.67115	-156.59112
303	20.66143	-156.58503
304	20.65910	-156.58480
305	20.65642	-156.58662
306	20.65585	-156.58633
307	20.65537	-156.58447
308	20.65312	-156.58217
309	20.65337	-156.57010
310	20.65083	-156.55297
311	20.64968	-156.54895
312	20.64765	-156.54352
313	20.64352	-156.53553
314	20.63307	-156.52033
315	20.62652	-156.51245
316	20.62168	-156.50818
317	20.61412	-156.50335
318	20.60713	-156.49718
319	20.59948	-156.49223
320	20.60063	-156.48987
321	20.60027	-156.48925
322	20.59627	-156.49012
323	20.59472	-156.48835
324	20.59463	-156.48693
325	20.59660	-156.48332
326	20.59640	-156.48128
327	20.59423	-156.47673
328	20.59567	-156.47567
329	20.59970	-156.47500
330	20.60118	-156.47580
331	20.60418	-156.47960
332	20.60553	-156.47990
333	20.60627	-156.47863
334	20.60623	-156.47563
335	20.60750	-156.47080
336	20.60188	-156.46703
337	20.59798	-156.46570
338	20.58188	-156.46357
339	20.57773	-156.45373

TABLE A6—COORDINATES FOR MAUI  
NUI—Continued

Point ID No.	Latitude	Longitude
340	20.57488	-156.45112
341	20.57272	-156.44752
342*	20.58308	-156.41192
343*	20.79025	-156.51013
344*	20.79033	-156.51097
345*	20.87173	-156.67920
346	20.87192	-156.67931
347*	20.87229	-156.67855
348*	21.02445	-156.63918
349	21.07042	-156.66362
350	21.08872	-156.67335
351*	21.15802	-156.71095
352*	21.15843	-156.70948
353*	21.08595	-157.02030
354	21.07737	-157.02810
355	21.08035	-157.03287
356*	21.08802	-157.02589
357*	21.08465	-157.24863
358*	21.08382	-157.24965
359*	21.22350	-157.25400
360*	21.22442	-157.25400
361	21.22380	-157.31272
362*	20.78593	-156.99232
363*	20.78308	-156.99152
364*	20.74253	-156.88680
365*	20.74317	-156.88740

**Note:** The coordinates in the table above marked with an asterisk (\*) are not a part of the sanctuary boundary. These coordinates are landward reference points used to draw a line segment that intersects with the shoreline.

#### Appendix B to Subpart Q of Part 922— Special Sanctuary Management Area Boundaries

Coordinates listed in this appendix are unprojected (Geographic) and based on the North American Datum of 1983.

##### B.1 Maunaloa Bay Special Sanctuary Management Area

The Maunaloa SSMA extends throughout the sanctuary waters in Maunaloa Bay south of Oahu and is defined by the coordinates in table B1 and the following textual description. Point 1 of the SSMA boundary is located roughly 1.3 nautical miles SE of Kūpikipiki'ō Point (Black Point) on the sanctuary boundary. From Point 1 the SSMA boundary extends along the sanctuary boundary to the east to Point 21 roughly 0.5 nautical miles south of Kawaihoa Point, Koko Head. From Point 21 the SSMA boundary extends towards Point 22 until it intersects the shoreline. From this intersection the boundary follows the shoreline to the west around Kawaihoa Point and north around Maunaloa Bay until it intersects the line segment between Point 23 and Point 24 at the eastern entrance to Hawaii Kai Marina. From this intersection the boundary moves towards Point 24 across the entrance to the marina until it intersects the shoreline again. The boundary then follows the shoreline westward until it intersects the line segment between Point 25 and Point 26 at the western entrance to the Hawaii Kai Marina. From this intersection the boundary moves towards Point 26 across the entrance to the marina until it intersects the shoreline again. The

boundary then follows the shoreline westward continuing around Maunalua Bay until it intersects the line segment between Point 27 and Point 28 at Kūpikipikiʻō Point (Black Point). From this intersection the boundary extends seaward to the SE to Point 28.

TABLE B1—COORDINATES FOR MAUNALUA BAY

Point ID No.	Latitude	Longitude
1	21.23560	-157.78076
2	21.23856	-157.77153
3	21.23835	-157.76540
4	21.23895	-157.76426
5	21.24269	-157.76264
6	21.24427	-157.75741
7	21.24385	-157.74535
8	21.24458	-157.73833
9	21.24606	-157.73490
10	21.24570	-157.73037
11	21.24323	-157.72720
12	21.23959	-157.72534
13	21.23484	-157.72541
14	21.23209	-157.72239
15	21.23090	-157.71620
16	21.23203	-157.71399
17	21.23592	-157.71225
18	21.23830	-157.71003
19	21.24200	-157.70882
20	21.24458	-157.70903
21	21.25209	-157.70641
22*	21.25964	-157.70717
23*	21.28117	-157.71132
24*	21.28152	-157.71197
25*	21.28508	-157.71852
26*	21.28530	-157.71885
27*	21.25545	-157.79180
28	21.23560	-157.78076

**Note:** The coordinates in the table above marked with an asterisk (\*) are not a part of the sanctuary boundary. These coordinates are landward reference points used to draw a line segment that intersects with the shoreline.

**B.2 Penguin Bank Special Sanctuary Management Area**

The Penguin Bank SSMA extends throughout the federal waters of the Penguin Bank area southwest of Molokaʻi and is defined by the coordinates in table B2 and the following textual description. The SSMA boundary begins roughly 3.3 nautical miles west of ʻIlio Point off the northwest tip of Molokaʻi at Point 1 at the intersection of the sanctuary boundary and the three nautical mile line. From Point 1 the SSMA boundary follows the sanctuary boundary to the SW and then back around Penguin Bank to the NE to Point 158 located at the intersection of the sanctuary boundary and the three nautical mile line to the SSW of Lono Harbor on Molokaʻi. From Point 158 the SSMA boundary approximates the three nautical mile line extending west and then north to Point 185 west of northwest tip of Molokaʻi.

TABLE B2—COORDINATES FOR PENGUIN BANK

Point ID No.	Latitude	Longitude
1	21.21938	-157.31378
2	21.20960	-157.31750
3	21.19332	-157.33268
4	21.18093	-157.35280
5	21.17182	-157.37275
6	21.16902	-157.38062
7	21.16815	-157.38555
8	21.16502	-157.39072
9	21.16172	-157.40372
10	21.15897	-157.41582
11	21.15757	-157.42950
12	21.15815	-157.48270
13	21.15992	-157.49052
14	21.15977	-157.49598
15	21.16400	-157.51087
16	21.16420	-157.51713
17	21.16250	-157.52100
18	21.15935	-157.52552
19	21.14960	-157.54817
20	21.14587	-157.55430
21	21.13998	-157.56070
22	21.13005	-157.56862
23	21.12538	-157.57398
24	21.12152	-157.58915
25	21.12010	-157.59217
26	21.11398	-157.60032
27	21.11063	-157.61628
28	21.10790	-157.62245
29	21.10395	-157.62590
30	21.10122	-157.62655
31	21.09598	-157.62547
32	21.09000	-157.62688
33	21.08793	-157.62815
34	21.08638	-157.64073
35	21.08667	-157.64747
36	21.08440	-157.65763
37	21.08087	-157.65977
38	21.07898	-157.65933
39	21.07202	-157.65358
40	21.07042	-157.65293
41	21.06740	-157.65387
42	21.06593	-157.65628
43	21.06712	-157.66142
44	21.06480	-157.66490
45	21.05858	-157.66980
46	21.04922	-157.67460
47	21.04823	-157.67893
48	21.04197	-157.68637
49	21.03627	-157.68960
50	21.03428	-157.69402
51	21.02722	-157.69850
52	21.02428	-157.70122
53	21.02362	-157.70432
54	21.02553	-157.70895
55	21.02268	-157.71652
56	21.01285	-157.71805
57	20.99600	-157.72255
58	20.99253	-157.72507
59	20.98757	-157.73145
60	20.98167	-157.73470
61	20.96713	-157.73572
62	20.95993	-157.73808
63	20.95725	-157.74017
64	20.95113	-157.75002
65	20.93860	-157.75783
66	20.93642	-157.75822
67	20.92492	-157.75177
68	20.92162	-157.75163
69	20.90925	-157.75475
70	20.90548	-157.75652

TABLE B2—COORDINATES FOR PENGUIN BANK—Continued

Point ID No.	Latitude	Longitude
71	20.90228	-157.75925
72	20.89710	-157.76182
73	20.89360	-157.76263
74	20.88710	-157.76087
75	20.88213	-157.75663
76	20.87747	-157.74822
77	20.87683	-157.74167
78	20.87448	-157.73667
79	20.87213	-157.73533
80	20.86733	-157.73457
81	20.86332	-157.73522
82	20.85518	-157.73948
83	20.85253	-157.73885
84	20.85070	-157.73525
85	20.84945	-157.72498
86	20.84920	-157.71832
87	20.85037	-157.71212
88	20.85000	-157.70652
89	20.85162	-157.70387
90	20.85670	-157.70343
91	20.86250	-157.69857
92	20.86502	-157.69475
93	20.86575	-157.69173
94	20.86383	-157.68598
95	20.86427	-157.67730
96	20.86502	-157.67523
97	20.87097	-157.66773
98	20.87222	-157.66545
99	20.87347	-157.65898
100	20.87715	-157.65485
101	20.87782	-157.65067
102	20.88127	-157.64455
103	20.88223	-157.64138
104	20.88267	-157.63830
105	20.88217	-157.63645
106	20.88363	-157.63063
107	20.88650	-157.62785
108	20.88775	-157.61990
109	20.89247	-157.61262
110	20.89350	-157.60863
111	20.89658	-157.60333
112	20.90247	-157.58420
113	20.91300	-157.57330
114	20.91492	-157.56742
115	20.91800	-157.56410
116	20.92455	-157.54203
117	20.92668	-157.54018
118	20.92918	-157.53400
119	20.93228	-157.51517
120	20.93332	-157.51258
121	20.93677	-157.51002
122	20.95480	-157.51053
123	20.95687	-157.50825
124	20.96230	-157.50560
125	20.96370	-157.50022
126	20.96297	-157.48638
127	20.96348	-157.47968
128	20.96643	-157.46747
129	20.96768	-157.45805
130	20.96547	-157.44568
131	20.96437	-157.43420
132	20.96467	-157.43267
133	20.96665	-157.41177
134	20.96680	-157.40153
135	20.96775	-157.39682
136	20.97320	-157.36605
137	20.97452	-157.36303
138	20.98998	-157.34743
139	20.99072	-157.32977
140	20.99190	-157.32160

TABLE B2—COORDINATES FOR PENGUIN BANK—Continued

Point ID No.	Latitude	Longitude
141	20.99507	-157.30917
142	20.99557	-157.30762
143	21.01912	-157.29510
144	21.02553	-157.28297
145	21.02898	-157.26972
146	21.02618	-157.26433
147	21.02597	-157.26192
148	21.02657	-157.25772
149	21.03008	-157.25323
150	21.03068	-157.25138
151	21.03127	-157.24270
152	21.03105	-157.23557
153	21.02877	-157.23173
154	21.02883	-157.23033
155	21.03318	-157.22548
156	21.03473	-157.21687
157	21.03693	-157.21223
158	21.03942	-157.20958
159	21.03807	-157.22824
160	21.03587	-157.23534
161	21.03443	-157.24328
162	21.03422	-157.25383
163	21.03594	-157.26426
164	21.04060	-157.27854
165	21.04294	-157.29650
166	21.04342	-157.30569
167	21.04481	-157.31271
168	21.04893	-157.32567
169	21.05564	-157.33776
170	21.06479	-157.34835
171	21.07731	-157.35771
172	21.08558	-157.36150
173	21.09584	-157.36398
174	21.10581	-157.36422
175	21.11550	-157.36240
176	21.12477	-157.35857
177	21.13269	-157.35324
178	21.14126	-157.35083
179	21.15314	-157.34602
180	21.16897	-157.33692
181	21.17781	-157.33065
182	21.18854	-157.32154
183	21.19845	-157.30977
184	21.20836	-157.31292
185	21.21938	-157.31378

approximately the intersection of the Maui three nautical mile line and the sanctuary boundary line NW of Lipoa Point on Maui. From Point 30, the SSMA boundary curves southwest and then southeast approximating the three nautical mile line west and south of the Maui coastline until it intersects the Kaho'olawe three nautical mile line and the sanctuary boundary WNW of Molokini between Maui and Kaho'olawe at Point 87. From Point 87 the SSMA boundary briefly approximates the Kaho'olawe three mile line extending west to Point 90 at the intersection of the three nautical mile line north of the coastline of Kaho'olawe and the sanctuary boundary. From Point 90, the SSMA boundary extends west along the sanctuary boundary across the Kealaikahiki Channel until it intersects the Lana'i three nautical mile line SE of Kamaiki Point at Point 133. From Point 133 the SSMA boundary extends north and then NW to the east of Lana'i to Point 161 at the intersection of the Lana'i three nautical mile line and the sanctuary boundary NW of Pohakuloa Point on Lana'i. From Point 161 the SSMA boundary then follows the sanctuary boundary north across the Kalohi Channel until it intersects with the Moloka'i three nautical mile line at Point 175 south of Kaunakakai on Moloka'i.

TABLE B3—COORDINATES FOR MAUI NUI

Point ID No.	Latitude	Longitude
1	21.03023	-157.02985
2	21.03049	-157.02138
3	21.02705	-157.00787
4	21.02346	-157.00062
5	21.02127	-156.99402
6	21.01712	-156.97004
7	21.01445	-156.96069
8	21.00991	-156.93421
9	21.00547	-156.91735
10	20.99932	-156.90155
11	20.99696	-156.89138
12	20.99586	-156.87167
13	20.99663	-156.86473
14	20.99893	-156.85595
15	20.99884	-156.84286
16	21.00206	-156.82933
17	21.00980	-156.81031
18	21.01616	-156.80073
19	21.01808	-156.78962
20	21.02005	-156.78311
21	21.02869	-156.76519
22	21.03652	-156.75394
23	21.04036	-156.74628
24	21.04407	-156.74093
25	21.05202	-156.73280
26	21.06728	-156.71150
27	21.08102	-156.69629
28	21.08312	-156.68590
29	21.08871	-156.67334
30	21.07042	-156.66361
31	21.06248	-156.67605
32	21.05499	-156.68365
33	21.05109	-156.69316
34	21.04752	-156.69903
35	21.04327	-156.70435
36	21.03575	-156.71112
37	21.02408	-156.71747
38	21.01320	-156.72087
39	21.00803	-156.72176

TABLE B3—COORDINATES FOR MAUI NUI—Continued

Point ID No.	Latitude	Longitude
40	20.98584	-156.73247
41	20.97786	-156.73546
42	20.96520	-156.74238
43	20.95575	-156.74497
44	20.94800	-156.74578
45	20.94098	-156.74854
46	20.93456	-156.75000
47	20.91471	-156.75057
48	20.90157	-156.74803
49	20.88914	-156.74198
50	20.87936	-156.74188
51	20.86963	-156.74032
52	20.86037	-156.73677
53	20.85463	-156.73336
54	20.84464	-156.72480
55	20.83061	-156.71496
56	20.82338	-156.70795
57	20.81548	-156.69811
58	20.80430	-156.69025
59	20.79795	-156.68372
60	20.79212	-156.67581
61	20.78533	-156.67177
62	20.77577	-156.66422
63	20.76699	-156.65388
64	20.76102	-156.64148
65	20.75919	-156.63461
66	20.75725	-156.62101
67	20.75108	-156.61012
68	20.74827	-156.60341
69	20.74598	-156.59654
70	20.74409	-156.58607
71	20.73787	-156.57521
72	20.73108	-156.56518
73	20.72588	-156.55239
74	20.72436	-156.54448
75	20.72389	-156.53404
76	20.72499	-156.52123
77	20.72788	-156.50927
78	20.71633	-156.50584
79	20.70620	-156.50062
80	20.69323	-156.49907
81	20.68368	-156.49924
82	20.68075	-156.51493
83	20.67829	-156.52150
84	20.67322	-156.53047
85	20.66401	-156.54055
86	20.65861	-156.54451
87	20.64968	-156.54895
88	20.65083	-156.55297
89	20.65337	-156.57010
90	20.65312	-156.58217
91	20.65537	-156.58447
92	20.65585	-156.58633
93	20.65642	-156.58662
94	20.65910	-156.58480
95	20.66143	-156.58503
96	20.67115	-156.59112
97	20.67722	-156.59785
98	20.68497	-156.60053
99	20.68663	-156.60253
100	20.68735	-156.60832
101	20.68873	-156.60913
102	20.69045	-156.60747
103	20.69113	-156.60780
104	20.69342	-156.61248
105	20.69538	-156.61478
106	20.69423	-156.61873
107	20.69583	-156.63433
108	20.69645	-156.63420
109	20.69858	-156.63638

**B.3 Maui Nui Special Sanctuary Management Area**

The Maui Nui Special Sanctuary Management Area (SSMA) extends throughout the federal waters of the Maui Nui area between Maui, Moloka'i and Lana'i and is defined by the coordinates in table B3 and the following textual description. Point 1 of the SSMA boundary is located at approximately the intersection of the Moloka'i three nautical mile line and the sanctuary boundary south of Kaunakakai on Moloka'i near the Kalohi Channel. From Point 1, the SSMA boundary extends eastward approximating the three nautical mile line south of the Moloka'i coastline to Point 29 in numerical order at approximately the intersection of the Moloka'i three nautical mile line and the sanctuary boundary line that extends across Pailolo Channel from Cape Halawa on Moloka'i to Lipoa Pt. on Maui. From Point 29, the SSMA boundary extends southeast to Point 30 at

TABLE B3—COORDINATES FOR MAUI NUI—Continued

Point ID No.	Latitude	Longitude
110	20.70337	-156.64260
111	20.70265	-156.64542
112	20.70332	-156.64777
113	20.70728	-156.65585
114	20.70685	-156.66297
115	20.71078	-156.66870
116	20.70915	-156.67110
117	20.71102	-156.67300
118	20.71097	-156.67578
119	20.71150	-156.67635
120	20.71230	-156.74228
121	20.71307	-156.74668
122	20.71140	-156.75772
123	20.71278	-156.76380
124	20.71360	-156.76490
125	20.71513	-156.76518
126	20.71900	-156.76422
127	20.72077	-156.76490
128	20.72253	-156.76680
129	20.72268	-156.77808
130	20.72568	-156.78875
131	20.72818	-156.79143
132	20.73233	-156.79100
133	20.73277	-156.79140
134	20.74336	-156.78335
135	20.75400	-156.77792
136	20.76659	-156.76785
137	20.78643	-156.75726
138	20.79940	-156.75340
139	20.81653	-156.75192
140	20.83137	-156.75336
141	20.84395	-156.75769
142	20.85576	-156.76497
143	20.86235	-156.77027
144	20.87463	-156.77687
145	20.88903	-156.78849
146	20.90091	-156.80067
147	20.91454	-156.81671
148	20.92819	-156.83095
149	20.93291	-156.83751
150	20.94170	-156.84610
151	20.95280	-156.86190
152	20.96241	-156.88264
153	20.96897	-156.90386
154	20.97007	-156.91505
155	20.97363	-156.93338
156	20.97388	-156.96004
157	20.97771	-156.97295
158	20.97947	-156.98352
159	20.97955	-156.99051
160	20.97670	-157.01397
161	20.97673	-157.01983
162	20.97710	-157.01823
163	20.97945	-157.01595
164	20.98107	-157.01550
165	20.98408	-157.01690
166	20.98770	-157.01522
167	20.99727	-157.01573
168	21.00640	-157.01808
169	21.01463	-157.01638
170	21.01662	-157.01742
171	21.01817	-157.01955
172	21.02207	-157.01955
173	21.02663	-157.02110
174	21.02795	-157.02198
175	21.03023	-157.02985

**§ 922.48 National Marine Sanctuary permits—application procedures and issuance criteria.**

(a) A person may conduct an activity prohibited by subparts F through O, and Q, if conducted in accordance with the scope, purpose, terms and conditions of a permit issued under this section and subparts F through O, and Q, as appropriate. For the Florida Keys National Marine Sanctuary, a person may conduct an activity prohibited by subpart P if conducted in accordance with the scope, purpose, terms and conditions of a permit issued under § 922.166. For the Thunder Bay National Marine Sanctuary and Underwater Preserve, a person may conduct an activity prohibited by subpart R in accordance with the scope, purpose, terms and conditions of a permit issued under § 922.195.

(b) Applications for permits to conduct activities otherwise prohibited by subparts F through O, and Q, should be addressed to the Director and sent to the address specified in subparts F through O, and Q, or subpart R, as appropriate. An application must include:

(1) A detailed description of the proposed activity including a timetable for completion;

(2) The equipment, personnel and methodology to be employed;

(3) The qualifications and experience of all personnel;

(4) The potential effects of the activity, if any, on Sanctuary resources and qualities; and

(5) Copies of all other required licenses, permits, approvals or other authorizations.

(c) Upon receipt of an application, the Director may request such additional information from the applicant as he or she deems necessary to act on the application and may seek the views of any persons or entity, within or outside the Federal government, and may hold a public hearing, as deemed appropriate.

(d) The Director, at his or her discretion, may issue a permit, subject to such terms and conditions as he or she deems appropriate, to conduct a prohibited activity, in accordance with the criteria found in subparts F through O, and Q, or subpart R, as appropriate. The Director shall further impose, at a minimum, the conditions set forth in the relevant subpart.

(e) A permit granted pursuant to this section is nontransferable.

(f) The Director may amend, suspend, or revoke a permit issued pursuant to this section for good cause. The Director may deny a permit application pursuant to this section, in whole or in part, if it

is determined that the permittee or applicant has acted in violation of the terms and conditions of a permit or of the regulations set forth in this section or subparts F through O, and Q, subpart R or for other good cause. Any such action shall be communicated in writing to the permittee or applicant by certified mail and shall set forth the reason(s) for the action taken. Procedures governing permit sanctions and denials for enforcement reasons are set forth in subpart D of 15 CFR part 904.

■ 3. Revise § 922.49 to read as follows:

**§ 922.49 Notification and review of applications for leases, licenses, permits, approvals, or other authorizations to conduct a prohibited activity.**

(a) A person may conduct an activity prohibited by subparts L through R of the part, if such activity is specifically authorized by any valid Federal, State, or local lease, permit, license, approval, or other authorization issued after the effective date of Sanctuary designation, or in the case of the Florida Keys National Marine Sanctuary after the effective date of the regulations in subpart P, provided that:

(1) The applicant notifies the Director, in writing, of the application for such authorization (and of any application for an amendment, renewal, or extension of such authorization) within fifteen (15) days of the date of filing of the application or the effective date of Sanctuary designation, or in the case of the Florida Keys National Marine Sanctuary the effective date of the regulations in subpart P, whichever is later;

(2) The applicant complies with the other provisions of this section;

(3) The Director notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization (or amendment, renewal, or extension); and

(4) The applicant complies with any terms and conditions the Director deems reasonably necessary to protect Sanctuary resources and qualities.

(b) Any potential applicant for an authorization described in paragraph (a) of this section may request the Director to issue a finding as to whether the activity for which an application is intended to be made is prohibited by subparts L through R, as appropriate.

(c) Notification of filings of applications should be sent to the Director, Office of Ocean and Coastal Resource Management at the address specified in subparts L through R of this part, as appropriate. A copy of the application must accompany the notification.

(d) The Director may request additional information from the

■ 2. Revise § 922.48 to read as follows:



applicant as he or she deems reasonably necessary to determine whether to object to issuance of an authorization described in paragraph (a) of this section, or what terms and conditions are reasonably necessary to protect Sanctuary resources and qualities. The information requested must be received by the Director within 45 days of the postmark date of the request. The Director may seek the views of any persons on the application.

(e) The Director shall notify, in writing, the agency to which application has been made of his or her pending review of the application and possible objection to issuance. Upon completion of review of the application and information received with respect thereto, the Director shall notify both the agency and applicant, in writing, whether he or she has an objection to issuance and what terms and conditions he or she deems reasonably necessary to protect Sanctuary resources and qualities, and reasons therefor.

(f) The Director may amend the terms and conditions deemed reasonably necessary to protect Sanctuary resources and qualities whenever additional information becomes available justifying such an amendment.

(g) Any time limit prescribed in or established under this § 922.49 may be extended by the Director for good cause.

(h) The applicant may appeal any objection by, or terms or conditions imposed by, the Director to the Assistant Administrator or designee in accordance with the provisions of § 922.50.

■ 4. Revise section § 922.50 to read as follows:

**§ 922.50 Appeals of administrative action.**

Except for permit actions taken for enforcement reasons (see subpart D of 15 CFR part 904 for applicable procedures), an applicant for, or a holder of, a National Marine Sanctuary permit; an applicant for, or a holder of, a Special Use permit issued pursuant to section 310 of the Act; a person

requesting certification of an existing lease, permit, license or right of subsistence use or access under § 922.47; or, for those Sanctuaries described in subparts L through R, an applicant for a lease, permit, license or other authorization issued by any Federal, State, or local authority of competent jurisdiction (hereinafter appellant) may appeal to the Assistant Administrator:

(a) The granting, denial, conditioning, amendment, suspension or revocation by the Director of a National Marine Sanctuary or Special Use permit;

(b) The conditioning, amendment, suspension or revocation of a certification under § 922.47; or

(c) For those Sanctuaries described in subparts L through R, the objection to issuance of or the imposition of terms and conditions on a lease, permit, license or other authorization issued by any Federal, State, or local authority of competent jurisdiction.

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