

87039

FILE COPY

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



JAN 8 2013

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ESTHER KIA'AINA
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

December 24, 2012

Mr. Gary Gill, Acting Director
Office of Environmental Quality Control
Department of Health, State of Hawaii
235 S. Beretania Street, Room 702
Honolulu, Hawai'i 96813

RECEIVED
12 DEC 24 P 2:47
OFFICE OF ENVIRONMENTAL QUALITY CONTROL

Dear Mr. Gill:

Under the provisions of Act 172 (12), the Department of Land & Natural Resources Hawaiian Islands Humpback Whale National Marine Sanctuary has determined at the outset that an environmental impact statement is required for our Management Plan Review situated at areas including submerged lands throughout the State of Hawaii. A completed Bulletin Publication Form, a summary of the proposed action, a description of current sanctuary boundaries, and a map of current sanctuary boundaries are enclosed (with a copy of the same sent via electronic mail to oeqc@doh.hawaii.gov).

Pursuant to the requirements of Section 11-200-3, Hawaii Administrative Rules, and Section 11-200-15, Hawaii Administrative Rules, we request that you publish notice of this statutory determination in the next available periodic bulletin (Environmental Notice) for the public to submit comments to the Department of Land & Natural Resources Hawaiian Islands Humpback Whale National Marine Sanctuary during the statutory thirty-day consultation period.

If there are any questions, please contact Elia Herman at 808-587-0106.

Sincerely,

WILLIAM J. AILA, JR.

Enclosures: (1) Completed Bulletin Publication form, (2) EISPN

cc: Hon. Neil Abercrombie
Governor of Hawaii (accepting authority)

**AGENCY ACTIONS
SECTION 343-5(B), HRS
PUBLICATION FORM (JULY 2012 REVISION)**

Project Name Intent To Prepare An Environmental Impact Statement and Management Plan for the Hawaiian Islands Humpback Whale National Marine Sanctuary

Island: All

District: All

TMK: All

Permits: N/A

Proposing/Determination Agency: Department of Land & Natural Resources

Contact: Elia Herman, 1151 Punchbowl St. Rm 330, Honolulu, HI 96826, 808-587-0106

(Address, Contact Person, Telephone)

Consultant: N/A

(Address, Contact Person, Telephone)

Status (check one only):

DEA-AFNSI

Submit the proposing agency notice of determination/transmittal on agency letterhead, a hard copy of DEA, a completed OEQC publication form, along with an electronic word processing summary and a PDF copy (you may send both summary and PDF to oeqchawaii@doh.hawaii.gov); a 30-day comment period ensues upon publication in the periodic bulletin.

FEA-FONSI

Submit the proposing agency notice of determination/transmittal on agency letterhead, a hard copy of the FEA, an OEQC publication form, along with an electronic word processing summary and a PDF copy (send both summary and PDF to oeqchawaii@doh.hawaii.gov); no comment period ensues upon publication in the periodic bulletin.

FEA-EISPN

Submit the proposing agency notice of determination/transmittal on agency letterhead, a hard copy of the FEA, an OEQC publication form, along with an electronic word processing summary and PDF copy (you may send both summary and PDF to oeqchawaii@doh.hawaii.gov); a 30-day consultation period ensues upon publication in the periodic bulletin.

Act 172-12 EISPN

Submit the proposing agency notice of determination on agency letterhead, an OEQC publication form, and an electronic word processing summary (you may send the summary to oeqchawaii@doh.hawaii.gov). NO environmental assessment is required and a 30-day consultation period upon publication in the periodic bulletin.

DEIS

The proposing agency simultaneously transmits to both the OEQC and the accepting authority, a hard copy of the DEIS, a completed OEQC publication form, a distribution list, along with an electronic word processing summary and PDF copy of the DEIS (you may send both the summary and PDF to oeqchawaii@doh.hawaii.gov); a 45-day comment period ensues upon publication in the periodic bulletin.

FEIS

The proposing agency simultaneously transmits to both the OEQC and the accepting authority, a hard copy of the FEIS, a completed OEQC publication form, a distribution list, along with an electronic word processing summary and PDF copy of the FEIS (you may send both the summary and PDF to oeqchawaii@doh.hawaii.gov); no comment period ensues upon publication in the periodic bulletin.

Section 11-200-23
Determination

The accepting authority simultaneously transmits its determination of acceptance or nonacceptance (pursuant to Section 11-200-23, HAR) of the FEIS to both OEQC and the proposing agency. No comment period ensues upon publication in the periodic bulletin.

Section 11-200-27
Determination

The accepting authority simultaneously transmits its notice to both the proposing agency and the OEQC that it has reviewed (pursuant to Section 11-200-27, HAR) the previously accepted FEIS and determines that a supplemental EIS is not required. No EA is required and no comment period ensues upon publication in the periodic bulletin.

Withdrawal (explain)

Summary (Provide proposed action and purpose/need in less than 200 words. Please keep the summary brief and on this one page):

The State of Hawaii co-manages the Hawaiian Islands Humpback Whale National Marine Sanctuary (sanctuary) under the authority of a Compact Agreement with NOAA. The Compact Agreement clarifies the State's continuing authority and jurisdiction over its State waters, submerged lands, and other resources within the sanctuary and establishes provisions with respect to NOAA's collaboration with the State of Hawaii on sanctuary management issues. In 2010, NOAA's Office of National Marine Sanctuaries initiated a review of the sanctuary management plan to evaluate substantive progress toward implementing the goals for the sanctuary, and to make revisions to its management plan and regulations as necessary to fulfill the purposes and policies of the National Marine Sanctuaries Act and the Hawaiian Islands National Marine Sanctuary Act. The management plan review process occurs concurrently with a public process under the National Environmental Policy Act (NEPA). Since that time, the State of Hawaii's Department of Land and Natural Resources has been added as a Joint Lead Agency to the proposed Environmental Impact Statement (EIS) under NEPA. This is a notice of intent to prepare an EIS concurrent with a revised management plan for the sanctuary under the state provisions of the Hawaii Environmental Policy Act (HEPA). By issuing this notice, the State process under HEPA and the Federal process under NEPA will be aligned, and the EIS and concurrent revised management plan for the sanctuary will be put forth as a single document that meets the requirements of both Acts.

Environmental Impact Statement Preparation Notice for the Hawaiian Islands Humpback Whale National Marine Sanctuary Management Plan

Notice of Intent to Prepare an Environmental Impact Statement and Management Plan for the Hawaiian Islands Humpback Whale National Marine Sanctuary

PROPOSING AGENCY:

Department of Land & Natural Resources, address, 1151 Punchbowl St. Rm 330, Honolulu HI 96826, contact, Elia Herman

ACCEPTING AUTHORITY:

Governor of the State of Hawai'i, Neil Abercrombie, address, c/o OEQC, 235 S. Beretania St., Ste. 702, Honolulu, Hawai'i 96813.

BRIEF DESCRIPTION OF PROPOSED ACTION:

The State of Hawaii co-manages the Hawaiian Islands Humpback Whale National Marine Sanctuary (HIHWNMS or sanctuary) under the authority of a Compact Agreement with the National Oceanic and Atmospheric Administration (NOAA) for the Coordinated Management of the Hawaiian Islands Humpback Whale National Marine Sanctuary signed into effect on May 4, 1998. The Compact Agreement clarifies the State's continuing authority and jurisdiction over its State waters, submerged lands, and other resources within the sanctuary and establishes provisions with respect to NOAA's collaboration with the State of Hawaii on sanctuary management issues. In 2010 (75 FR 40759), in accordance with section 304(e) of the National Marine Sanctuaries Act (NMSA), as amended, (NMSA) (16 U.S.C. 1431 et seq.), the Office of National Marine Sanctuaries (ONMS) of NOAA initiated a review of the sanctuary management plan, to evaluate substantive progress toward implementing the goals for the sanctuary, and to make revisions to its management plan and regulations as necessary to fulfill the purposes and policies of the NMSA and the Hawaiian Islands National Marine Sanctuary Act (HINMSA; Title II, Subtitle C, Pub. L. 102-587). The management plan review process occurs concurrently with a public process under the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 et seq.). Since that time, the State of Hawaii's Department of Land and Natural Resources (DLNR) has been added as a Joint Lead Agency to the proposed Environmental Impact Statement under NEPA. This is a notice of intent to prepare an Environmental Impact Statement concurrent with a revised management plan for the sanctuary under the state provisions of the Hawaii Environmental Policy Act (HEPA) and Act 172-12 pursuant to the requirements of Chapter 343 Hawaii Revised Statutes as implemented in Sections 11-200-3 and 11-200-15 of the Hawaii Administrative Rules. By issuing this notice, the State process under HEPA and the Federal process under NEPA will be aligned, and the Environmental Impact Statement and concurrent revised management plan for the sanctuary will be put forth as a single document that meets the requirements of both Acts.

DATES: All comments on this notice will be considered if received between January 8, 2013 and February 7, 2013.

COMMENTS:

The sanctuary is co-managed by the State of Hawaii, so all comments submitted in response to the NOAA Notice of Intent to Prepare an EIS and Management Plan issued in the Federal Register in 2010 (75 FR 40759) and all comments collected subsequently by the sanctuary for management plan review are already under full consideration. Comments may be resubmitted in response to this notice; however, this is not required or necessary. A Draft Environmental Impact Statement and Draft Management Plan will be published subsequently with a comment period to follow. Notice of these drafts will be made simultaneously in both the Federal Register and OEQC Bulletin.

All comments received are a part of the public record. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. The State of Hawaii will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, Wordperfect, or Adobe PDF file formats only.

ADDRESSES:

Please provide your email address with your electronic and written comments if possible. Electronic inquiries and comments are preferred and may be sent to:
dlnr.sanctuary@hawaii.gov

All written inquiries and comments may be sent to:

Attn: Sanctuary Management, Department of Land & Natural Resources, Hawaiian Islands Humpback Whale National Marine Sanctuary, 1151 Punchbowl St. Rm 330, Honolulu, HI 96813 or faxed to (808) 587-0115.

FOR FURTHER INFORMATION CONTACT:

Elia Herman, Sanctuary Co-Manager, State of Hawaii, Department of Land and Natural Resources at elia.y.herman@hawaii.gov or (808) 587-0106.

DETERMINATION & REASONS SUPPORTING DETERMINATION:

Under the Hawaiian Islands Humpback Whale National Marine Sanctuary Act (Subtitle C of Public Law 102-587, as amended by P.L. 104-283), the Hawaiian Islands Humpback Whale National Marine Sanctuary (sanctuary) was designated by Congress in 1992 as the 12th national marine sanctuary in the U.S. Its purpose is to protect humpback whales (*Megaptera novaeangliae*) and their habitat in Hawai'i and to educate and interpret for the public the relationship of humpback whales to the Hawaiian Islands marine environment. The Act, as well as the regulations that followed (CFR Title 15, Chapter IX, Part 922, Subpart Q, Sec. 922.180b), stated as an additional purpose the identification of marine resources and ecosystems of national significance for possible inclusion in the sanctuary.

Encompassing 3,548 square kilometers (1,370 square miles) of federal and state waters surrounding the inhabited Hawaiian Islands, the sanctuary extends from the shoreline to the 100-fathom isobath (183-meter or 600 foot depth) and is composed of five separate areas accessible from six of the eight inhabited Hawaiian Islands. The sanctuary's configuration presents unique challenges and opportunities for protecting sanctuary

resources, developing programs, and increasing public awareness of humpback whales and other important issues affecting the marine environment throughout the state.

In 2010, in accordance with Section 304(e) of the National Marine Sanctuaries Act, as amended (NMSA), 16 U.S.C. 1431 et seq., the Office of National Marine Sanctuaries (ONMS) of the National Oceanic and Atmospheric Administration (NOAA) initiated a review of the current management plan to evaluate the substantive progress made toward implementing the goals for the sanctuary, and to make revisions to the plan and regulations as necessary to fulfill the purposes and policies of the NMSA. The proposed revised management plan may involve changes to existing policies and regulations of the sanctuary, as well as determine the future scope and direction of the sanctuary, address current and emerging topics, challenges, and opportunities to better protect and manage the sanctuary's resources and qualities, and consider additional protection for marine and cultural resources of national significance.

BACKGROUND:

Condition Report

In preparation for management plan review, the sanctuary produced a Hawaiian Islands Humpback Whale National Marine Sanctuary 2010 Condition Report. The Condition Report provides a summary of resources, with a specific focus on humpback whales in the sanctuary, pressures on those resources, the current condition and trends, and management responses to the pressures that threaten the integrity of the marine environment. Specifically, the Condition Report includes information on the status and trends of water quality, habitat, living resources and maritime archaeological resources and the human activities that affect them. The report serves as a supporting document for the Management Plan Review Process. An electronic copy of the final Hawaiian Islands Humpback Whale National Marine Sanctuary 2010 Condition Report is available to the public on the Internet at: <http://sanctuaries.noaa.gov/science/condition/welcome.html> or it can be accessed from the HIHWNMS Web site at: <http://hawaiihumpbackwhale.noaa.gov/>.

Public Engagement

The NOAA Notice of Intent to prepare an Environmental Impact Statement pursuant to NEPA was published in July, 2010 and was followed by a 90-day official comment period, during which time sanctuary staff received over 12,000 submissions from a broad constituency representing agencies, organizations, elected officials, and interested citizens from Hawaii as well as elsewhere in the United States and around the world. Input was received through letters, faxes, emails, voicemails and individual comments during the state-wide public scoping meetings. Prior to the publication of the Notice of Intent, public information meetings were held in collaboration with the State of Hawaii in April and May, 2010. In August, 2010, additional Public Scoping meetings were held in collaboration with the State of Hawaii to gather further information from the public. A Public Scoping Report

and further information about these meetings is available on the sanctuary website at: http://hawaiihumpbackwhale.noaa.gov/management/mpr_documents.html.

The Sanctuary Advisory Council (council) working groups have developed management recommendations to address priority issues identified during a 90-day public scoping period that was held in summer of 2010. These recommendations do not reflect the endorsement of any individuals or agencies but are a result of a process by the working groups which synthesized multiple sources of information and collectively developed and produced these reports. Based on information received from the 90-day public scoping period, the council created nine Working Groups to address the following priority issues: Climate Change, Ecosystem Protections, Enforcement, Humpback Whale Protections, Maritime Heritage, Native Hawaiian Culture, Ocean Literacy, Offshore Development, and Water Quality Working group reports were presented to the full council for their review and approval at the January 17&18, 2012 meeting. The council voted to forward all recommendation reports to sanctuary management. The recommendations do not reflect the view of the sanctuary, the State of Hawaii, or the National Oceanic and Atmospheric Administration. The Recommendation Reports from each of these Working Groups are available on the sanctuary website at: http://hawaiihumpbackwhale.noaa.gov/management/working_group_reports.html.

The sanctuary continues to engage with agencies, the public, and other stakeholders as part of management plan review. Any comments previously received through scoping, advisory council recommendations, and other public engagement on management plan review are already under consideration by the State of Hawaii as co-manager of the sanctuary and need not be resubmitted as part of the HEPA process. This notice indicates that the sanctuary will fulfill the requirements of HEPA in conjunction with the requirements of NEPA pursuant to 40 CFR §1506.2.

Sanctuary Boundaries

The current Hawaiian Islands Humpback Whale National Marine Sanctuary boundaries are described in 15 CFR § 922.181 below.

§ 922.181

Boundary.

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

- (1) To the 100-fathom (183 meter) isobath from Kailiu Point eastward to Mokolea Point, Kauai;
- (2) To the 100-fathom (183 meter) isobath from Puaena Point eastward to Mahie Point, and from the Kapahulu Groin in Waikiki eastward to Makapuu Point, Oahu;
- (3) To the 100-fathom (183 meter) isobath from Cape Halawa, Molokai, south and westward to Ilio Point, Molokai; southwestward to include Penguin Banks; eastward along the east side of Lanai; to the waters seaward of the three nautical mile limit

north of Kahoolawe, to the Hanamanoia Lighthouse on Maui, and northward along the shoreline to Lipoa Point, Maui;

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

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

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

Hawaii (Big Island)

Kawaihae Boat Harbor & Small Boat Basin

Lanai

Kaumalapau Harbor, Manele Harbor

Maui

Lahaina Boat Harbor

Maalaea Boat Harbor

Molokai

Hale o Lono Harbor

Kaunakakai Harbor

Oahu

Kuapa Pond (Hawaii Kai)

(c) The coordinates of the lateral extents of each boundary area within the Sanctuary boundary appear in Appendix A of this subpart Q.

HAWAIIAN ISLANDS HUMPBACK WHALE NATIONAL MARINE SANCTUARY

