

standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the State requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

#### List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, 49 CFR Part 571 is amended as follows:

### PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 of Title 49 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.210 is amended by revising S4.1.1, removing existing S4.1.2, redesignating existing S4.1.3(a) as S4.1.2(a), and revising existing S4.1.3(b) and redesignating it as S4.1.2(b) to read as follows:

#### § 571.210 Standard No. 210, Seat Belt Assembly Anchorages.

\* \* \* \* \*

S4.1.1 Seat belt anchorages for a Type 1 or a Type 2 seat belt assembly shall be installed for each designated seating position for which a Type 1 or a Type 2 seat belt assembly is required by Standard No. 208 (49 CFR 571.208). Seat belt anchorages for a Type 2 seat belt assembly shall be installed for each designated seating position for which a Type 2 seat belt assembly is required by Standard No. 208 (49 CFR 571.208).

#### S4.1.2

\* \* \* \* \*

(b) The requirement in S4.1.1 of this standard that seat belt anchorages for a Type 1 or a Type 2 seat belt assembly shall be installed for certain designated seating positions does not apply to any such seating positions that are equipped with a seat belt assembly that meets the frontal crash protection requirements of S5.1 of Standard No. 208 (49 CFR 571.208).

\* \* \* \* \*

Issued on January 13, 1995.

Ricardo Martinez,  
Administrator.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 222

[Docket No. 950106004-5004-01; I.D. 121494C]

RIN 0648-AB79

### Endangered Fish or Wildlife; Special Prohibitions; Approaching Humpback Whales in Hawaiian Waters

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS issues a rule that prohibits aircraft from approaching closer than 1,000 ft (300 m) to a humpback whale, and prohibits vessels or people from approaching by any means closer than 100 yd (90 m) to a humpback whale in Hawaiian waters. These provisions were contained in an interim rule issued in 1987. The interim rule also identified cow/calf waters and contained provisions concerning approaches to humpback whales in these areas. Section 17 of the Marine Mammal Protection Act Amendments of 1994 terminated the latter provisions. This rule implements the statutory change.

**EFFECTIVE DATE:** January 19, 1995.

**ADDRESSES:** Hilda Diaz-Soltero, Regional Director, Southwest Region, National Marine Fisheries Service, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213.

**FOR FURTHER INFORMATION CONTACT:** Eugene T. Nitta, Protected Species Program Manager, 808-973-2937; Dean Wilkinson, Marine Mammal Division, Office of Protected Resources, 301-713-2322; James H. Lecky, Chief, Protected Species Management Division, 310-980-4015.

#### SUPPLEMENTARY INFORMATION:

##### Background

On November 23, 1987, NMFS published an interim rule (52 FR 44912-44915) regulating the approach to humpback whales in Hawaii (50 CFR 222.31). Paragraph (b) described certain waters as cow/calf waters and specified a minimum approach distance of 300 yd (270 m) to humpback whales in these areas. Section 17 of the Marine Mammal Protection Act Amendments of 1994 (Public Law 103-238) provides that it is legal to approach no closer than 100 yd (90 m) to a humpback regardless of whether the approach is made in waters

designated as cow/calf waters. Section 17(b) of the statute provides:

Subsection (b) of section 222.31 of title 50, Code of Federal Regulations, shall cease to be in force and effect.

This rule implements the statutory provision. The change to the regulations is nondiscretionary and technical in nature.

#### Classification

This final rule has been determined to be not significant for purposes of E.O. 12866. Because this rule implements a statutory determination under which the Agency has no flexibility for implementation, the Assistant Administrator for Fisheries, NOAA, under section 553(b) (B) and (d) of the Administrative Procedure Act (5 U.S.C. 553 *et seq.*) for good cause finds that it is unnecessary to provide notice and public comment on this rule, or to delay for 30 days its effective date. As NMFS is unable to consider alternatives to the statutory mandate, the preparation of an environmental assessment under the National Environmental Policy Act is not required, and none was prepared. Because this rule is being issued as a final rule without prior public comment, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act, and none has been prepared. This final rule is expected to result in no economic costs to the public.

#### List of Subjects in 50 CFR Part 222

Administrative practice and procedure, Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Dated: January 12, 1995.

Charles Karnella,

Acting Assistant Administrator for Fisheries,  
National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR part 222 is amended as follows:

### PART 222—ENDANGERED FISH OR WILDLIFE

1. The authority citation for part 222 continues to read as follows:

Authority: 16 U.S.C. 1531-1543.

2. Section 222.31 is revised to read as follows:

#### § 222.31 Approaching humpback whales in Hawaii.

Except as provided in subpart C (Endangered Fish or Wildlife Permits) of this part it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or to cause

to be committed, within 200 nautical miles (370.4 km) of the Islands of Hawaii, any of the following acts with respect to humpback whales (*Megaptera novaeangliae*):

(a) Operate any aircraft within 1,000 ft (300 m) of any humpback whale; or

(b) Approach by any means, within 100 yd (90 m) of any humpback whale; or

(c) Cause a vessel or other object to approach within 100 yd (90 m) of a humpback whale; or

(d) Disrupt 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.

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