I am a citizen or resident of the United States. Except for occasional absences which have not disqualified me for the benefit of section 913(a)(2) of the Internal Revenue Code of 1954, I have been present in the following foreign country or countries, namely, ———, during the period of time which began on ———, 19—.

I expect to be present in a foreign country or countries, except for occasional absences not disqualifying me for the benefit of section 913(a)(2), from the date of this statement until the end of the taxable year in respect of which this statement is executed or, if not for that period, from the date of this statement until the following date within the taxable year, namely, ———, 19—.

On the basis of the facts in my case I have good reason to believe that, with respect to the above period of presence in a foreign country or countries falling within the taxable year, I will satisfy the 510 full-day requirement prescribed by section 913(a)(2).

In the event I become disqualified for the deduction provided by section 913(a)(2) in respect of all or part of the above period of presence in a foreign country or countries falling within the taxable year, I will immediately notify my employer, giving sufficient facts to indicate the part, if any, of the period falling within the year in respect of which I am qualified for the deduction under section 913.

I understand that any reduction in withholding of tax permitted by reason of the furnishing of this statement is not a determination by the district director of internal revenue that any deduction is allowable under section 913.

I declare under the penalties of perjury that this statement has been examined by me and to the best of my knowledge and belief is true and correct.

———————————

(Signature of taxpayer)

Date: ———, 19—.

(c) *Amount of section 913 deduction.*—(1) *In general.* Section 913(a) allows a deduction for certain expenses of living abroad which is the sum of the amounts qualifying under section 913(b). For purposes of this section, a portion of a payment of remuneration may not constitute wages only if the employer has reasonable evidence of the anticipated amount of the employee's deduction allowable under section 913 for the taxable year.

(2) *Statement of amount of section 913 deduction.* The employer may, in the absence of cause for a reasonable belief to the contrary, presume that the anticipated deduction allowable under section 913 for a taxable year is correctly determined (and reasonably evidenced) when the employee properly executes and furnishes to the employer a statement in the following form:

Statement of anticipated deduction under section 913 for calendar year ——— or fiscal year beginning ——— and ending ———.

I anticipate that I will qualify for a deduction under section 913 of the following amounts:

(1) Qualified cost-of-living differential	....
(2) Qualified housing expenses	....
(3) Qualified schooling expenses	....
(4) Qualified home leave travel expenses	....
(5) Qualified hardship area deduction	....
Total section 913 deduction anticipated	....

I understand that the total entered above plus the total reported on any other statements outstanding with other employers, should not exceed my anticipated deduction under section 913 for the year.

I understand that the deduction allowed by section 913 shall not exceed my earned income from sources outside the United States for the portion of the taxable year in which my tax home is in a foreign country, reduced by the sum of—

(a) Any amounts of that earned income which are excluded from gross income under section 119, and

(b) Any amounts of deductions properly allocable to or chargeable against that earned income (whether or not excluded from gross income under section 119), other than the deduction allowed by section 913.

I understand that any reduction in withholding of tax permitted by reason of furnishing this statement is not a determination by the district director of internal revenue that any deduction is allowable under section 913.

I declare under the penalties of perjury that this statement has been examined by me and to the best of my knowledge and belief is true and correct.

———————————

(Signature of taxpayer)

Date: ———, 19—.

(3) *New statement.* The employee may furnish a new statement at any time during the taxable year when the employee reasonably anticipates that the amount of the deduction which will be allowable under section 913 has changed from the previous statement.

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue it with notice and public procedure under subsection (b) of section 553 of title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

JEROME KURTZ,
Commissioner of Internal Revenue.

Approved:

EMIL M. SUNLEY,
Acting Assistant Secretary of the Treasury.

DECEMBER 29, 1978.

[FR Doc. 78-36484 Filed 12-29-78 4:24 pm]

[4910-14-M]

Title 33—Navigation and Navigable Waters

CHAPTER 1—COAST GUARD, DEPARTMENT OF TRANSPORTATION

[CGD 78-74]

PART 117—DRAWBRIDGE OPERATION REGULATIONS

Overpeck Creek, N.J.

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Consolidated Rail Corporation (Conrail) and the New York, Susquehanna and Western Railroad Company, the Coast Guard is changing the regulations governing the two railroad bridges at mile 0.0, Overpeck Creek, to require at least 24 hours notice at all times before the draws need open for the passage of vessels. This change is being made because of limited requests for the opening of these draws. This action will relieve the bridge owner of the burden of having a person constantly available to open the draw.

EFFECTIVE DATE: February 5, 1979.

FOR FURTHER INFORMATION CONTACT:

Frank L. Teuton, Jr., Chief, Drawbridge Regulations Branch (G-WBR/73), Room 7300, Nassif Building, 400 Seventh Street SW., Washington, D.C. 20590 (202-426-0942).

SUPPLEMENTARY INFORMATION: On June 22, 1978, the Coast Guard published a proposed rule (43 FR 26756) concerning this amendment. The Commander, Third Coast Guard District, also published these proposals as a Public Notice dated July 17, 1978. Interested persons were given until July 21, 1978 and August 21, 1978, respectively, to submit comments.

DRAFTING INFORMATION

The principal persons involved in drafting this rule are: Frank L. Teuton, Jr., Project Manager, Office of Marine Environment and Systems, and Mary Ann McCabe, Project Attorney, Office of the Chief Counsel.

DISCUSSION OF COMMENTS

Three comments were received. Two had no objection or no comment. The third letter from the New York, Susquehanna and Western Railroad Company requested that the first bridge across Overpeck Creek be identified as theirs rather than Conrail's and that it be regulated identically with the Conrail bridge next to it. The Coast Guard recognizes the validity of this request and the proposal is amended accordingly.

In consideration of the foregoing, Part 117 of Title 33 of the Code of Federal Regulations is amended by revising § 117.225(f)(1) to read as follows:

§ 117.225 Navigable waters in the State of New Jersey; bridges where constant attendance of draw tenders is not required.

* * * * *

(f) * * *

(1) Overpeck Creek, Consolidated Rail Corporation and New York, Susquehanna and Western Railroad Company drawbridges. The draws of each bridge shall open on signal if at least 24 hours notice is given.

* * * * *

(Sec. 5, 28 Stat. 362, as amended, sec. 6(g)(2), 80 Stat. 937; 33 U.S.C. 499, 49 U.S.C. 1655(g)(2); 49 CFR 1.46(c)(5).)

NOTE.—The Coast Guard has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended, and OMB Circular A-107.

Dated: December 28, 1978.

J. B. HAYES,
Admiral, U.S. Coast Guard Commandant.

[FR Doc. 79-386 Filed 1-3-79; 8:45 am]

[3510-22-M]

Title 50—Wildlife and Fisheries

CHAPTER II—NATIONAL MARINE FISHERIES SERVICE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

HUMPBACK WHALE HARASSMENT IN THE HAWAIIAN ISLANDS AREA

Interpretation

AGENCY: National Oceanic and Atmospheric Administration, National Marine Fisheries Service.

ACTION: Notice of interpretation.

SUMMARY: The National Oceanic and Atmospheric Administration, National Marine Fisheries Service, interprets "taking by harassment" with regard to humpback whales (*Megaptera novaeangliae*) in waters adjacent to the islands of the State of Hawaii for purposes of imposing civil penalties under the Marine Mammal Protection Act of 1972, as amended, and the Endangered Species Act of 1973, as amended (the "Acts"). Those activities which will be presumed to constitute harassment of humpback whales under the Acts are defined.

DATE: This notice is effective on January 4, 1979, and this interpretation will be re-evaluated in April 1979.

COMMENTS: Comments on this interpretation are welcome. All comments should be mailed to: Gerald V. Howard, Regional Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, Calif. 90731. Telephone: 213-548-2575.

FOR FURTHER INFORMATION CONTACT:

Doyle E. Gates, Administrator, Western Pacific Program Office, National Marine Fisheries Service, P.O. Box 3830, 2570 Dole Street, Honolulu, Hawaii 96812. Telephone: 808-946-2181.

Martin B. Hochman, Southwest Regional Counsel, Southwest Regional Office, NOAA Office of General Counsel, 300 South Ferry Street, Room 2020, Terminal Island, Calif. 90731. Telephone: 213-548-2756.

SUPPLEMENTARY INFORMATION: As a result of commercial whaling during the first half of this century, the number of humpback whales (*Megaptera novaeangliae*) in the North Pacific is seriously reduced from former levels. Population levels have declined from an estimated 15,000 in 1905 to a present estimate of 850. Humpback whales received protection in 1966 when the International Whaling Commission placed a prohibition on the commercial taking of them. In 1970, the humpback whale was designated an endangered species under the Endangered Species and Conservation Act of 1969. Humpback whales are now protected by the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Convention on International Trade in Endangered Species of Wild Fauna and Flora, March 3, 1973 (T.I.A.S. No. 8249).

Estimates of the size of the stock of humpback whales that winters in Hawaiian waters range from 336 to 590 animals. This stock is believed to represent approximately 60 percent of the estimated total North Pacific population.

Each year humpback whales begin arriving in the Hawaiian Islands area in late October. Their numbers peak in late January through February and remain fairly constant through mid-March. The whales return each year to the waters inside the 100-fathom curve surrounding the main Hawaiian Islands for the purposes of calving, nursing, and breeding. Their major areas of concentration are Penguin Bank; the waters bounded by the islands of Molokai, Lanai, Maui, and Kahoolawe; and the coastal waters of the island of Hawaii from Kamakamaka Point to Keahole Point. The annual northward migration begins in April, and by early June most of the humpbacks have left the Hawaiian Islands area.

The humpbacks presumably calve and breed in the Hawaiian Islands area because it offers the environmental conditions for calving and nursing most favored by the whales. Activities that force the humpback whales to abandon these breeding grounds may result in a substantially lower recruitment rate for an already severely reduced population.

While in the Hawaiian Islands area, the humpback whales are the subject of commercial photography, whale-watching tours, and scientific research. They are also affected by other human activities such as marine construction, commercial shipping, and turbidity resulting from agricultural activities. There is information that these activities may be adversely affecting the behavior and distribution of humpbacks. The whales appear to be abandoning some areas, and are becoming more difficult to approach in other areas. During the 1940's and 1950's, humpbacks were present between Wailupe and Koko Head on Oahu in numbers observed and recorded during that period by the Wailupe Whale Watch Organization. During the 1975-1976 calving and breeding season, virtually no whales were observed in this area.

Within the past five years, there have been at least nine special television programs and three record albums produced which focus on the humpback whales. This publicity has generated heightened public awareness, which in turn has resulted in a rapid expansion of whale-watching activities. According to reports received by the National Marine Fisheries Service, the number of encounters between whales and boats is increasing. Seminars and workshops are being advertised with the promise that the participants will be able to view humpback whales in their natural habitat, and the opportunity to see a humpback whale is becoming an increasingly important component of Hawaiian Islands tour promotions.

Both the Marine Mammal Protection Act of 1972 and the Endangered Species Act of 1973 prohibit the "taking" of humpback whales. By definition in the statutes, harassment is a form of "taking," although harassment is not separately defined. The Marine Mammal Protection Act of 1972 provides that a civil penalty of not more than $10,000 for each violation may be assessed against any person violating any provision of the statute (16 U.S.C. 1375(a)). The Endangered Species Act of 1973 also provides for civil penalties of up to $10,000 (16 U.S.C. 1540(a)). Both Acts provide for criminal penalties under some circumstances.

Based in part on information developed by the Marine Mammal Commission workshop on humpback whales in July, 1977, and concerns expressed at two public hearings held by the National Marine Fisheries Service in the State of Hawaii in June, 1978, the National Marine Fisheries Service has developed this interpretation of "taking by harassment" to further protect the humpback whale population during its critical breeding and calving period in the Hawaiian Islands area, to define certain activities which will be presumed to constitute harassment of humpback whales under the Marine Mammal Protection Act and the Endangered Species Act, and to afford notice that actions defined in this notice will be subject to civil penalty proceedings under the Acts.

NOTICE OF INTERPRETATION OF "TAKING BY HARASSMENT" IN REGARD TO HUMPBACK WHALES IN THE HAWAIIAN ISLANDS AREA

AUTHORITY: Marine Mammal Protection Act of 1972, as amended, 16 U.S.C. 1361 *et seq.*, and the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*

I. This notice applies to persons subject to the jurisdiction of the United States under the Marine Mammal Protection Act of 1972, as amended, and the Endangered Species Act of 1973, as amended, in waters adjacent to the islands of the State of Hawaii extending to 200 nautical miles.

II. Activities authorized by scientific research permits (see 50 CFR 220) are governed by the terms of the permits, including the requirement that permit holders are required to display triangular yellow pennants while engaging in permitted activities in these waters.

III. Each of the following activities is presumed to constitute "harassment" with respect to humpback whales under the Marine Mammal Protection Act of 1972, 16 U.S.C. 1362(3) and 1372(a), and the Endangered Species Act of 1973, 16 U.S.C. 1532(14) and 1538(a):

A. *Aircraft:* Approaching a humpback whale by flying lower than 1000 feet while within a horizontal distance of 300 yards from the humpback whale. "Flying" includes hovering, circling, or buzzing.

B. *Vessels, swimmers, and divers:*

1. In calving and breeding grounds—Approaching within 300 yards of a humpback whale, or herding or driving a humpback whale from any distance, in the following calving and breeding grounds (see map):

a. Lanai—all waters within two miles of the mean high water line from Kaena Point east by southeast, passing Halepalaoa Landing and Kikoa Point, to Kamaiki Point;

b. Maui—all waters inshore from a line drawn from Hekili Point at Olowalu southeast to Puu Olai.

2. In all areas subject to this notice other than the calving and breeding grounds described above—

a. Approaching within 100 yards of a humpback whale;

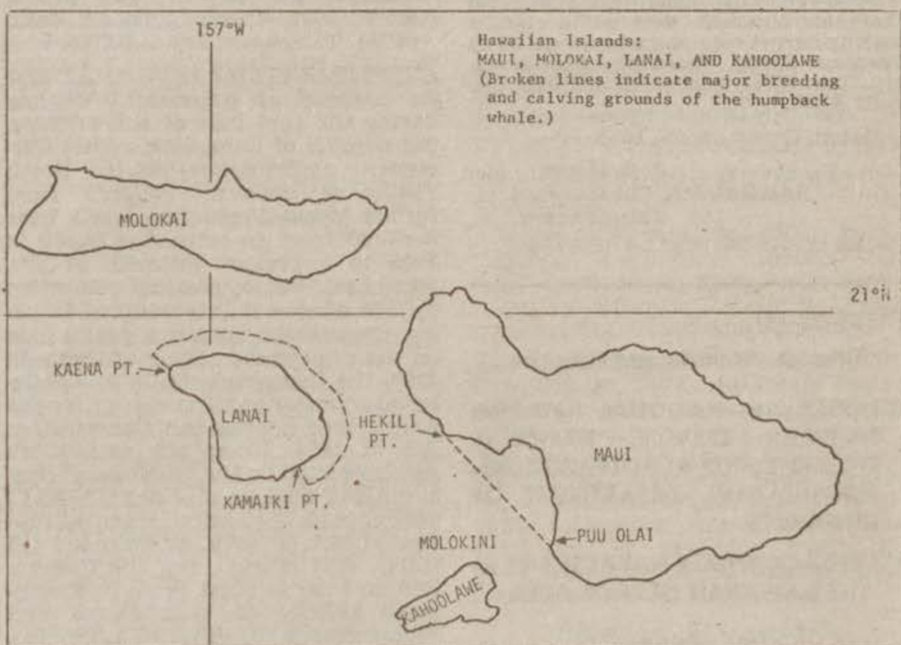
b. Traveling faster than a humpback whale, or the slowest whale in a group of whales, while between 100 and 300 yards of the whale or whales;

c. Multiple changes in vessel speed while between 100 and 300 yards of the whale;

d. Separating a whale from a calf;

e. Herding or driving whales.

C. Any other act or omission that substantially disrupts the normal behavioral pattern of a humpback whale is also presumed to constitute harassment. A substantial disruption of a normal behavioral pattern 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 such as swimming away rapidly at the surface; stopping of breeding, nursing or feeding; attempts by a female or her escort to shield a calf from a vessel or a human observer by tail swishing or by other movements to protect a calf; or the abandonment of a previously frequented area.



Dated: December 28, 1978.

WINFRED H. MEIBOHM,
Acting, Executive Director,
National Marine Fisheries Service.

[FR Doc. 79-353 Filed 1-3-79; 8:45 am]

[3510-22-M]

CHAPTER VI—FISHERY CONSERVATION AND MANAGEMENT, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 611—FOREIGN FISHING REGULATIONS

PART 671—TANNER CRAB OFF ALASKA

Final Regulations for 1979

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Extension of effective date of regulations.

SUMMARY: This rule extends the effective date of the Fishery Management Plan (FMP) for Tanner crab off the coast of Alaska and regulations implementing the FMP from December 31, 1978 through October 31, 1979. The regulations are applicable to vessels of the United States and foreign nations fishing for Tanner crab off Alaska.

DATE: The regulations are extended until October 31, 1979.

FOR FURTHER INFORMATION CONTACT:

Harry L. Rietze, Regional Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99807, Telephone: (907) 586-7221.

SUPPLEMENTARY INFORMATION: The FMP for the commercial Tanner crab fishery which was prepared by the North Pacific Fishery Management Council was approved by the Secretary of Commerce (Secretary) and published in the FEDERAL REGISTER (FR) on May 16, 1978 (43 FR 21180). The FMP contained conservation and management measures for both the foreign and domestic Tanner crab fisheries off the coast of Alaska under authority of the Fishery Conservation and Management 1976 Act, as amended, 16 USC 1801 *et seq.* Proposed regulations to implement the plan were published on May 16, 1978 (43 FR 21170 regulating foreign vessels, and 43 FR 21171 regulating vessels of the United States). The FMP was designed to conserve and manage Tanner crab resources off the coast the Alaska during 1978.

On November 8, 1978 (43 FR 52034) an amendment extending the FMP through October 31, 1979 was published for public comment. The amendment made no changes in the management measures or specifications of optimum yield, domestic harvesting capacity or total allowable level of foreign fishing established in the 1978 FMP.

No comments were received on the amendment. No proposed regulations were published because the implementing regulations are unchanged from the regulations applicable to fishing for Tanner crab during 1978. The effect of this action is to repromulgate the 1978 regulations for the period from January 1, 1979 through October 31, 1979.

The regulations for 1979 are effective immediately for the following reasons:

(1) Lack of public comment indicates that the amendment raises no controversial issues;

(2) The regulatory measures imposed are unchanged from 1978, and no time is required to adjust to new requirements; and

(3) U.S. vessels fish for Tanner crab year-round, and the interest of conservation of the resource may be endangered if regulations are allowed to lapse.

The Assistant Administrator for Fisheries has determined that extending the effective date of the FMP and implementing regulations through October 31, 1979.

(1) Is necessary and appropriate to the conservation and management of Tanner crab resources off the coast of Alaska;

(2) Is consistent with the National Standards and other provisions of the Act and other applicable law;

(3) Does not constitute a major Federal action requiring the preparation of an environmental impact statement; and

(4) Does not require the preparation of a regulatory impact analysis under Executive Order 12044.

Because the applicable regulations were published in December 1978, the text is readily available and will not be republished at this time.

50 CFR 611.91 (43 FR 59292, 59320 December 19, 1978) applicable to vessels of foreign nations, and 50 CFR Part 671 (43 FR 57150, December 6, 1978) applicable to vessels of the United States, are extended for the period from January 1, 1979 through October 31, 1979.

Signed in Washington, D.C., this 28th day of December 1978.

WINFRED H. MEIBOHM,
Acting, Executive Director, National Marine Fisheries Service.

[FR Doc. 79-360 Filed 1-3-79; 8:45 am]