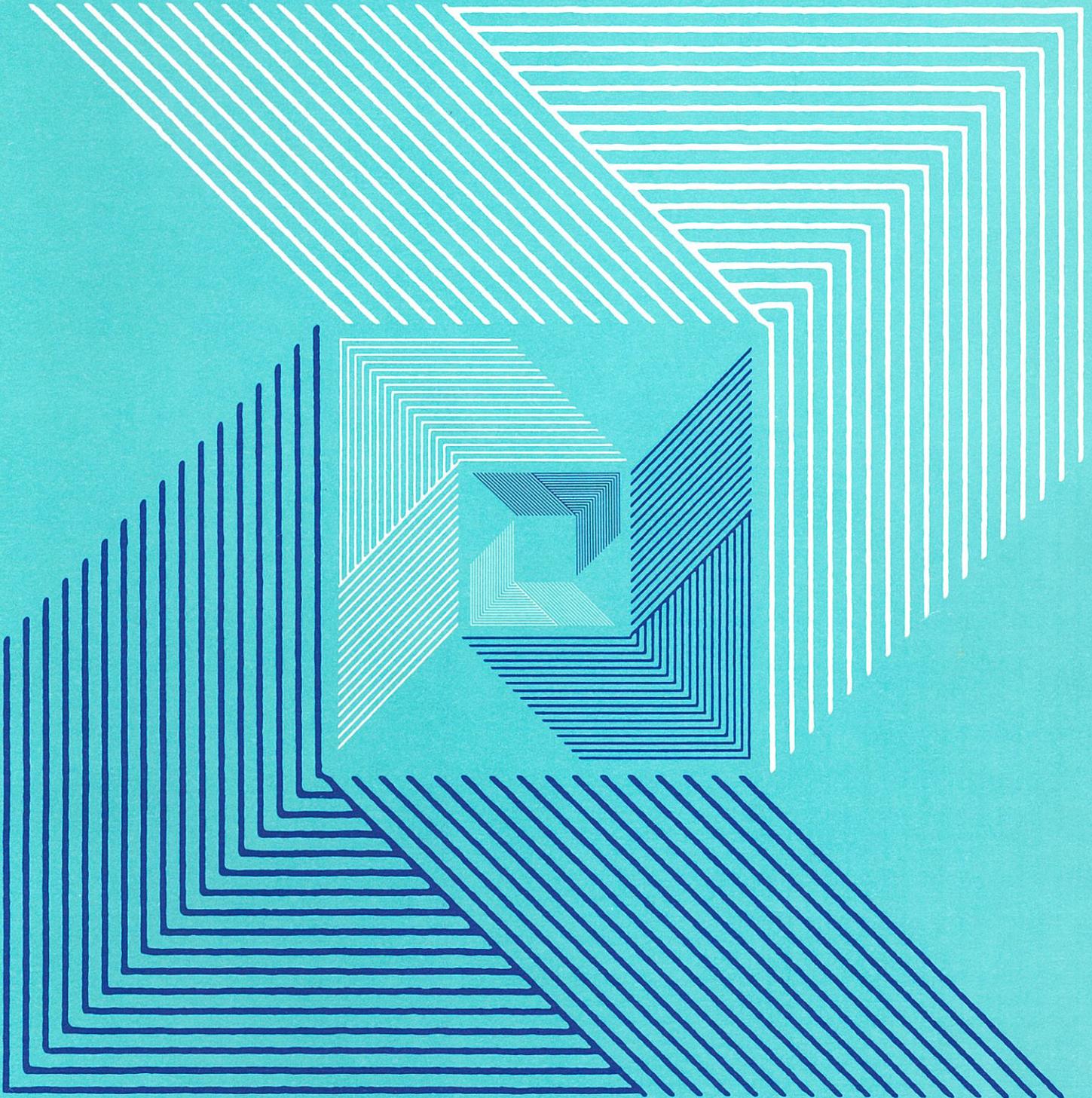


AUDIT REPORT NO. 76-1

FEBRUARY 1976

# MANAGEMENT AUDIT OF THE RECREATIONAL BOATING PROGRAM

A REPORT TO THE GOVERNOR AND THE LEGISLATURE OF THE STATE OF HAWAII



SUBMITTED BY THE LEGISLATIVE AUDITOR OF THE STATE OF HAWAII

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**LEGISLATIVE AUDITOR  
STATE CAPITOL  
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**MANAGEMENT AUDIT OF THE  
RECREATIONAL BOATING PROGRAM**

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and the  
Legislature of the State of Hawaii**

**Submitted by the  
Legislative Auditor of the State of Hawaii**

**Audit Report No. 76—1**

**February 1976**



## FOREWORD

Over the past three to four decades, a statewide recreational boating program has evolved out of the commercial harbors operations of the Territory and State of Hawaii. The program had its origins at the Ala Wai Boat Harbor at Waikiki, which was the first facility developed exclusively for recreational boating and which remains today the largest small boat harbor in the State. In recent years a statewide system with small boat harbors on every major island has been created, and the construction, maintenance, and operation of small boat harbors constitute to a significant degree the major element of the program. The program has also been expanded to include other activities, such as boating registration, boating safety and education, and the construction, maintenance, and operation of launching ramps for land-based small boats which do not require small boat harbors for mooring.

In the evolution and growth of the recreational boating program, numerous problems have emerged concerning the administration and focus of the program. Important among these have been questions as to how the program should be financed and the responsiveness of the department of transportation to the needs and desires of boaters in carrying out the program. A central issue has been the degree to which user fees (i.e., charges imposed upon boaters) should be used to support the program. Another key issue is whether or not certain uses are permissible within state small boat harbors, such as permanently living aboard a boat moored in one of these harbors or operating a boat out of a state small boat harbor for commercial purposes. Jurisdictional questions have been a further complicating factor.

Taking cognizance of these problems, the legislature through House Resolution No. 415, House Draft No. 1, of 1974, requested the legislative auditor "to conduct an examination of the financial and management practices, policies, and procedures of the harbors division with emphasis on the small boat harbors program." This report presents the results of our audit.

We wish to acknowledge the cooperation and assistance extended to our staff by the agencies contacted during the course of the audit and by the numerous other individuals and boaters interviewed as part of the project.

Clinton T. Tanimura  
Legislative Auditor  
State of Hawaii

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**PART I**

**INTRODUCTION AND BACKGROUND**

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## Chapter 1

# INTRODUCTION

This is a report on our audit of the State's ocean-based recreational boating program. It was conducted pursuant to House Resolution No. 415, H.D. 1, 1974, which requested this office "to conduct an examination of the financial and management practices, policies, and procedures of the harbors division with emphasis on the small boat harbors program."

### Objectives of the Audit

The objectives of the audit were:

1. To assess the effectiveness of the organization for and management of the State's recreational boating program.
2. To evaluate the efficacy of the method of financing the recreational boating program and the basis for and level of fees and charges imposed under the program.
3. To determine the quality and accuracy of the financial statements and reporting mechanism of the department of transportation with respect to the recreational boating program.

### Scope of the Audit

Although House Resolution No. 415 was concerned mainly with small boat harbors, this report in its subject matter coverage is slightly broader. Small boat harbors, their construc-

tion, financing, and maintenance, are only a part of what is commonly known as the ocean-based recreational boating program. To the extent necessary, this report touches on the other aspects of the recreational boating program.

Included in this report is a report on the audit of the books and accounts of the department of transportation relating to the recreational boating program. This financial audit covers the period July 1, 1973 to June 30, 1974. Although the report on the financial aspects is limited to this period, the remainder of this report describes the situation as it existed through December of 1975.

### Organization of the Report

This report is submitted in five parts. Part I contains this introduction and some background information. Part II is concerned with the organization for and management of the recreational boating program. Part III deals with financing the recreational boating program in general and small boat harbor construction, operation, and maintenance in particular. It also discusses the nature, quality, appropriateness, and sufficiency of the variety of fees imposed under the program. Part IV contains the result of our financial audit of the books and records of the department of transportation concerning the recreational boating program. Part V contains the responses of the agencies affected by our findings and recommendations contained in this report.

## Terminology

As used in this report, "recreational boating" refers to the whole of the recreational

boating program of which small boat harbors are a part. The abbreviation "DOT" refers to the department of transportation, and the abbreviation "DLNR" refers to the department of land and natural resources.

## Chapter 2

### BACKGROUND

In the first chapter we noted that small boat harbors are a part of the ocean-based recreational boating program. In this chapter, we describe the general characteristics of this recreational boating program and examine the function of small boat harbors within the program.

#### Hawaii's Boating Fleet

"Recreational boats," as that term is used in this report, are primarily those that are required to be registered with the State. They are, with minor exceptions, generally those that are under the minimum size for documentation by the U.S. Coast Guard.<sup>1</sup>

As of December 31, 1973, state-registered boats numbered 12,049. Seventy-six percent of the boats are land-based (i.e., trailer boats which are stored on land, at home or otherwise, when not in use). The remainder are water-based (i.e., wet-stored boats which are berthed at small boat harbors when not in use). In terms of physical characteristics, 92 percent are very small, under 26 feet, and 76 percent are motor-propelled. In terms of use, some 93 percent are devoted to pleasure. A few boats are used for commercial purposes, primarily fishing but including tour operations and charters. (These boats which are used for commercial purposes are included in this report because they often use the small boat harbors.)

#### Recreational Boaters

Boaters use their craft for satisfying a wide variety of tastes. To some, a boat is a vehicle to get to and from fishing grounds; to others, it is a power source for towing skiers; to still others, it is a means of gaining access to the environment of the open sea. An extensive inquiry into the use of trailer boats made for the year 1970 by a consulting firm revealed an overwhelming preference for fishing (80 percent, including commercial fishing) with significant interest in diving, skiing, and sailing. Similar data for wet-stored boats are not available. It is safe to assume that fishing is a prominent use, but probably ocean cruising and sailing are of greater importance to users of wet-stored boats than to the users of trailer boats.

The number of persons who use small boats is not precisely determinable. The harbors division estimates that about four persons are involved for every boat. In gross estimate, then, perhaps 50,000 persons in Hawaii can be considered boaters. This number probably represents habitual boaters and not those who are only occasional boaters. However, the fact remains that only a small fraction of Hawaii's population boats regularly. Like their vessels,

<sup>1</sup>Craft with five tons or more net burden are eligible for Coast Guard documentation. About 500 such vessels are home-ported in Hawaiian waters, a few of which use the small boat harbors.

Hawaii's boaters are somewhat conspicuous by their small numbers. Indeed, in terms of number of participants, boating ranks well down among the various forms of outdoor recreation. Hawaii's Statewide Comprehensive Outdoor Recreation Plan (SCORP) contains statistics concerning recreational participation in the years 1970 and 1971. No data are shown for "boating" as such, but "fishing from boats" places twentieth, with about 5 percent of the population indicating participation. This is to be compared with "beachgoing, sunbathing," which was first (33 percent); swimming, second (31 percent); fishing from shores and piers, sixth (15 percent); beach camping, fourteenth (7 percent); and surfing, sixteenth (6 percent). If the boat fishing percentage is increased to include non-fishing activities from boats, boating still is only competitive with camping and surfing and far behind the other three.

Another way of looking at the matter is in terms of the number of occasions individuals have to participate in various activities. This method gives weight to the habits as well as the number of participants. SCORP estimates that, during 1970-71, total annual occasions to participate included:

|                             |            |
|-----------------------------|------------|
| Sea swimming . . . . .      | 17 million |
| Beachgoing . . . . .        | 15 million |
| Shore or pier fishing . . . | 6 million  |
| Surfing . . . . .           | 4 million  |

There are no comparable figures for boating, but an approximation may be made by multiplying the number of small boats in Hawaii in 1970-71 (8400) times the number of persons in each boat (4), times an estimated number of trips per year (35).<sup>2</sup> This procedure yields an annual total of just over 1.1 million. In terms of the 1973 boat population (12,000), the estimate would be about 1.7 million. Even if the boating participation estimate is revised upward because the estimate is unaccountably low, boating can be seen as a distant fifth in terms of water-based recreation in Hawaii.

## Physical Facilities for Boating

Unlike for other types of water recreation activities, a good deal of effort needs to be expended in developing physical facilities to make the waters of Hawaii accessible and useful to the small boater. The physical facilities developed to accommodate small boaters are of two principal kinds: small boat harbors and launching ramps.

**Small boat harbors.** There are 30 boat harbors in Hawaii at present, of which 21 are operated by the harbors division of the state department of transportation (DOT), 1 by the state department of land and natural resources (DLNR), 3 by the federal government, and 5 by private clubs. Information relating to the number of berths at the various harbor locations is shown below in table 2.1. Altogether, the harbors have berthing facilities for 2554 boats. The State operates approximately 71 percent (1825) of the berths. Ten percent (261 berths) are privately operated, practically in conjunction with state harbors; 7 percent (174 berths) are operated by the federal government; and 12 percent (294 berths) at Kaneohe and Hawaii Kai are privately operated facilities. Some 57 percent (1044) of the state-operated berths are piers or catwalks, while the balance (781) are wire moorings, buoys, and the like.

Another significant feature is that state harbors on Oahu have proportionately many more catwalk and pier berths than do those on other islands. This is attributable to the dominant role that Ala Wai plays in the whole system. It was the first constructed and the first improved, and is by far the largest today. As well as being more convenient for and thus preferred by boaters, catwalks and piers are more expensive to build and maintain than other types of mooring facilities, such as buoys and underwater wires.

<sup>2</sup>Trailer boat launchings averaged 30+ per year in 1970, derived from Koebig and Koebig, *Statewide Boat Launching Facilities Master Plan*, November 1972.

Table 2.1  
Small Boat Berthing Capacities  
By Island and Operating Agency, 1974

| Island                   | No. of harbors | Berths operated by State |                |                 | Berths operated by others | % berths operated by State |
|--------------------------|----------------|--------------------------|----------------|-----------------|---------------------------|----------------------------|
|                          |                | Catwalks and piers       | Other moorings | Total           |                           |                            |
| Oahu                     |                |                          |                |                 |                           |                            |
| Waikiki . . . . .        | 3              | 641                      | 70             | 711             | 156 <sup>a</sup>          | 82.0                       |
| Keehi Lagoon . . . . .   | 2              | 209                      | 132            | 341             | 80 <sup>a</sup>           | 81.0                       |
| Other Oahu . . . . .     | 8              | 58                       | 175            | 233             | 468 <sup>b</sup>          | 33.2                       |
| Total Oahu . . . . .     | 13             | 908                      | 377            | 1,285           | 704                       | 64.6                       |
| Hawaii . . . . .         | 8              | 15                       | 210            | 225             | -                         | 100.0                      |
| Maui . . . . .           | 2              | 44                       | 110            | 154             | -                         | 100.0                      |
| Molokai . . . . .        | 1              | 2                        | 41             | 43              | -                         | 100.0                      |
| Lanai . . . . .          | 1              | 23                       | -              | 23              | -                         | 100.0                      |
| Kauai . . . . .          | 5              | 52                       | 43             | 95 <sup>c</sup> | 25 <sup>d</sup>           | 79.2                       |
| Total off Oahu . . . . . | 17             | 136                      | 404            | 540             | 25                        | 95.6                       |
| Grand total . . . . .    | 30             | 1,044                    | 781            | 1,825           | 729                       | 71.6                       |

<sup>a</sup>Yacht clubs operating on property leased by State adjacent to state-operated facilities.

<sup>b</sup>Includes 174 berths operated by federal government at three military base locations, balance at Kaneohe Yacht Club (200) and Hawaii Kai Marina (94).

<sup>c</sup>Includes nine berths operated by DLNR at Wailua River Marina.

<sup>d</sup>Operated by concessionaire at Wailua River Marina.

**Launching ramps.** Most of the small boats in Hawaii are land- rather than water-based. For these craft, the primary facility is the launching ramp. Ramps have been provided in many locations on all islands, and a program for developing more is underway at present.

Launching ramps<sup>3</sup> are probably best assessed in terms of their intensity of use, which varies from zero to many thousand launches a year. Table 2.2, drawn from a secondary source,<sup>4</sup> presents the best available information on the number and use of launching ramps. The table

indicates that state-controlled ramps were used for over three-fourths of all launches in 1970, county-controlled ramps provided 14 percent, and ramps at federal and private sites were used for 9 percent of the launches. Since eight new state lanes have been opened on Oahu since 1970, the predominance of public over other lanes is even more marked today.

<sup>3</sup>Launching ramps consist of one or more lanes.

<sup>4</sup>Koebig and Koebig *Statewide Boat Launching Facilities Master Plan*, November 1972.

**Constraints on physical facility development.** The foregoing inventory of facilities indicates that major efforts have been made to construct physical improvements for small boats. However, from the standpoint of small boaters, the existing facilities fall far short of their needs. For example, the number on the waiting lists for berthings at state harbors amounts to 1300. In addition, studies of trailer boaters have indicated that some are deterred from using launching ramps by congestion that occurs at preferred times and in preferred locations.

Although state efforts are continuing to develop needed physical facilities for boaters, these efforts are constrained by two very important factors: (1) suitable and compatible sites for improvements are relatively scarce; and (2) the cost of boating improvements is

relatively high when compared to the cost of improvements for other recreational purposes.

The site problem is aggravated by the fact that the needs are greatest on the island of Oahu where the State's population is concentrated. For instance, of the 1300 on the waiting lists for state berthings, 800 are for berths at Ala Wai alone. In contrast, on Molokai and Lanai, two-thirds of the berths are vacant and some launching ramps are seldom, if ever, used. Yet, it is on Oahu that suitable and compatible sites for improvements are extremely scarce. Then the cost problem is accentuated when one considers that at least some facilities are required on all neighbor islands, even though the demand for such facilities is limited, and the unit costs of construction on the neighbor islands are correspondingly higher than those on the island of Oahu.

Table 2.2  
Number and Percent of Launching Lanes and Launches  
By Island and Operating Authority, 1970

| Island  | Total |          | State-operated facilities |       |                     |       | County-operated facilities |      |          |      | Facilities operated by others <sup>a</sup> |      |          |      |
|---------|-------|----------|---------------------------|-------|---------------------|-------|----------------------------|------|----------|------|--|------|----------|------|
|         |       |          | Lanes                     |       | Launches            |       | Lanes                      |      | Launches |      | Lanes                                      |      | Launches |      |
|         | Lanes | Launches | No.                       | %     | No.                 | %     | No.                        | %    | No.      | %    | No.  | %    | No.      | %    |
| Oahu    | 31    | 128,060  | 15 <sup>b</sup>           | 48.4  | 96,327 <sup>b</sup> | 75.2  | 1                          | 3.2  | 15,098   | 11.8 | 15   | 48.4 | 16,635   | 13.0 |
| Hawaii  | 15    | 21,359   | 12                        | 80.0  | 19,382              | 90.7  | 2                          | 13.3 | 1,849    | 8.7  | 1  | 6.7  | 128      | .6   |
| Maui    | 6     | 9,073    | 4                         | 66.7  | 8,527               | 94.0  | 1                          | 16.6 | 273      | 3.0  | 1  | 16.6 | 273      | 3.0  |
| Molokai | 1     | 750      | 1                         | 100.0 | 750                 | 100.0 | -                          | -    | -        | -    | -  | -    | -        | -    |
| Lanai   | 1     | 701      | 1                         | 100.0 | 701                 | 100.0 | -                          | -    | -        | -    | -  | -    | -        | -    |
| Kauai   | 10    | 23,192   | 7 <sup>c</sup>            | 70.0  | 14,496 <sup>c</sup> | 62.5  | 3                          | 30.0 | 8,696    | 37.5 | -  | -    | -        | -    |
| Total   | 64    | 183,135  | 40                        | 62.5  | 140,183             | 76.5  | 7                          | 10.9 | 25,916   | 14.2 | 17   | 26.6 | 17,036   | 9.3  |

<sup>a</sup>Includes four lanes and 1885 launches at federally operated sites on Oahu, and six lanes and 15,151 launches at privately owned sites.

<sup>b</sup>Includes one lane and 972 launches at DLNR-operated sites at Wahiawa Reservoir.

<sup>c</sup>Includes two lanes and 2119 launches at DLNR-operated sites at Wailua River Marina.

Source: Koebig and Koebig, Hawaii, *Statewide Boat Launching Facilities Master Plan*, 1972.

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**PART II**

**MANAGEMENT OF RECREATIONAL BOATING**

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## Chapter 3

### INTRODUCTION

This part is concerned with the management of the State's recreational boating program in general and the small boat harbors in particular.

Four chapters make up this part of the report. This chapter introduces the subject. Chapter 4 sets forth the framework in which the organizational issues are considered. Chapter 5 is concerned with the organization for the effective administration of the recreational program. Chapter 6 examines how well the DOT is managing the property over which it has statutory jurisdiction.

It will be noted that, other than a chapter on property management, none is devoted to the managerial and operational aspects of the program for recreational boating. The reason for this, as will become evident, is that there is presently no real program for recreational boating. Thus, we had no managerial or operational matters to focus on insofar as recreational boating as a program is concerned. The major activities of the DOT currently consist of constructing and maintaining physical facilities and managing the property (lands and

other natural resources) under its jurisdiction. Managerial and operational problems related to accounting and financing are noted in parts III and IV.

#### Summary of Findings

Our findings are:

1. The present organization for the administration of the recreational boating program is inadequate. It fails to provide any effective means for coordinating and integrating the various facets of the program.

2. There are failings in the management of property under the control of the DOT. The DOT has under its control property which has not been legally set aside to it; it is managing lands which have long since ceased to be used for the purpose for which they were initially set aside; it is not coordinating its management activities with the DLNR as to those properties over which the DLNR has at least concurrent jurisdiction; and it is deficient in the handling of leases.

## Chapter 4

### A FRAMEWORK FOR ANALYSIS

In this chapter we provide a brief overview of the recreational boating program and the organizational framework for the administration of the program. An explanation of the current situation will be helpful in understanding our comments contained in the succeeding two chapters.

#### The Program

The State of Hawaii, in implementing its planning, programming, and budgeting system, has categorized its governmental activities within 11 principal areas, known as "Level I Programs." Each of these is subdivided into more specific areas in a complex hierarchy of levels until the "lowest level" subprogram is reached. Program planning and budgeting originate at this lowest level. As presently structured, each of the lowest level subprograms usually consists of activities with a common purpose, wholly administered by a single identifiable organizational unit.

The recreational boating program is recognized in this scheme within the Level I program category entitled, "Culture and Recreation." It is included among the "DOT ocean-based outdoor activities" which appears as a Level IV (lowest level) subprogram, thus:

|            |                                    |
|------------|------------------------------------|
| Level I:   | Culture and Recreation             |
| Level II:  | Recreation                         |
| Level III: | Outdoor Activities                 |
| Level IV:  | DOT ocean-based outdoor activities |

The stated objective of the program at each level in this hierarchy is "to enrich the leisure time of people . . . by providing opportunities and facilities for developing and participating" in recreational activities of the kind enumerated. Although the enrichment of people's leisure time is the primary objective, "DOT ocean-based outdoor activities" has a secondary, safety objective, to-wit: "To minimize death, injury, disability and property damage in connection with boating and water recreation."

Technically, "DOT ocean-based outdoor activities" includes, in addition to ocean-based recreational boating, such other activities as surfing, saltwater fishing, and ocean swimming. These other activities are specifically mentioned in the program objective established by the State for "DOT ocean-based outdoor activities." However, a review of the specific things the State says are pursued under this program reveals that probably surfing, saltwater fishing, ocean swimming, and other such activities are not really a part of "DOT ocean-based outdoor activities," and that only recreational boating constitutes the substance of this program. Thus, a description of the "activities performed" contained in the State's budget document lists only the following as constituting the program's major activities: improving and expanding the capacity of existing mooring and launching facilities, construction of new facilities, registration of boats; enforcement of boating laws; administration of marine casualty and investigation program, and conduct of public education in boating safety. The activity that

commands most of the State's attention is improving and expanding the capacity of mooring and launching facilities.

"DOT ocean-based outdoor activities" is not the only Level IV program in the hierarchy described above. It shares the Level IV spot with two other programs: "LNR ocean-based outdoor activities" and "LNR inland-based outdoor activities." It is within the "LNR ocean-based outdoor activities" that such things as surfing, saltwater fishing, and ocean swimming are given emphasis. Thus, the State's budget document mentions the following as the major specific activities of this program: operation and maintenance of existing state beach parks; acquisition, planning and development of additional parks; surveys and inventories of fish species; sport fishermen surveys to obtain estimates of catch and effort; fish-kill investigations; development and maintenance of artificial reefs; and enforcement of fishing laws and regulations.

"LNR inland-based outdoor activities" emphasizes outdoor recreational activities as nature study, hiking, camping, hunting, freshwater fishing, and freshwater boating. Major specific activities include: setting seasons for freshwater fishing and hunting; development of new public hunting and freshwater fishing areas; enforcement of fishing and hunting laws and regulations; constructing trails for hiking, horseback riding, and motorcycling; developing and maintaining trails, family-picnic areas, trail shelters, look-out points; developing trail maps, signs, and informational handouts; and developing, operating, and maintaining park and recreational areas.

### **Organizational Responsibilities**

Recreational boating is an activity that, directly or indirectly, involves several levels of government (federal, state, and county) and various organizational units at each level. Insofar as the State is concerned, the agency with the

primary and major responsibility for the recreational boating program is the department of transportation (DOT). How it has come to have this responsibility is described more fully below. In general, however, the DOT's responsibility for the program has evolved out of its traditional responsibility for the management and control of commercial harbors.

In addition to the DOT, three other state departments have some element of responsibility for recreational boating and related recreational and/or ocean-based activities. The departments are: (1) the department of land and natural resources (DLNR), which is vested with primary authority in the management of public property, ocean resources, and land-based recreation; (2) the department of planning and economic development (DPED), which is involved in general planning; and (3) the department of health (DOH), the responsibilities of which extend to pollution control, sanitary engineering, vector control, and the like. Further, the office of the governor is involved through the marine affairs coordinator and the director of environmental quality control, both of whom are concerned with the development and use of ocean resources and the formulation and implementation of ocean-related pollution control and environmental control policies.

The counties, too, have some responsibility which affect recreational boating. They have primary responsibility in areas of beach maintenance, shoreline setbacks, and recreation in general.

Among the federal agencies, the two that play predominant roles in recreational boating are: (1) the U.S. Army Corps of Engineers, which has general responsibility for all navigable waters in the United States and administers federal harbor improvement projects; and (2) the U.S. Coast Guard, which is charged, among other things, with regulating water-borne activities and controlling navigation. Because of the primacy of federal interests, not only must DOT cooperate with these agencies, it must also in many respects conform to their rules and

standards. Other federal agencies have a less direct effect on recreational boating, but the conservation activities of the Department of Interior, and the evolving ecological and research activities of the Environmental Protection Agency and the Sea Grant program are a part of the framework within which boating programs operate.

### **Development of the State's Recreational Boating Program**

Recreational boating as a state program is of fairly recent origin. It was not until 1965 that recreational boating as a distinct state program first emerged, even though the State's assumption of responsibility for providing harbors for small boats dates back many years. Before 1965, the responsibility for providing small boat harbors was viewed only in the functional sense (to build and maintain harbors) and not in the programmatic sense. It was not considered as being a part of a "program" of the State to promote recreation or otherwise.

This early view of the responsibility for small boat harbors explains in a large part why the recreational boating program responsibility is currently vested in the DOT. DOT has traditionally been vested with the functional responsibility of constructing and maintaining harbors in general. The responsibility for the program or programs that such physical facilities support has almost invariably been vested in some other state agency or agencies (the department of planning and economic development, for instance). In light of the early view taken of the responsibility for small boat harbors and the traditional role of the DOT, it was natural for the DOT to assume the responsibility for constructing and maintaining small boat harbors as small boats came more prominently on the scene. The form of the statute that earlier existed abetted in this assumption of responsibility by the DOT. The statute then in existence vesting responsibility for the construction and maintenance of harbors in the DOT referred to harbors in general. No

distinction was made among various types of harbors or purposes for building and maintaining harbors, although it appears that commercial harbors were primarily what the legislature had in mind. Indeed, with their focus of concern being clearly on commercial harbors, there is no evidence that the drafters of this statute ever contemplated or imagined that the State would assume responsibility to provide small boat harbors on the grand scale which has now evolved.

Recognition of recreational boating as a program in itself and of small boat harbors as being only supportive of the program surfaced in two acts enacted by the legislature in 1965.<sup>1</sup> Act 192 amended the statute on harbors by inserting a new section stating that the purpose of small boat harbors is to promote "recreational boating activities and the landing of fish" and defining "recreational boating activities" to mean "the utilization of watercraft for sports, hobbies or pleasure."

Act 200, denominated as the "Hawaii State Boating Law," made the operation of small boats a part of the recreational boating program. It provided for the establishment of rules and regulations governing registration of small boats and the adoption of standards for boat operation. The reason for the enactment of Act 200 may have been to achieve conformity with federal boating statutes and the practices of most other states, but, nevertheless, it clearly recognized that the regulation of boaters is as much a part of the recreational boating program as is the maintenance of facilities.

<sup>1</sup>In 1936, some distinction between commercial and small boat harbors was drawn. The accounts of the Ala Wai small boat harbors were segregated from the accounts of the commercial harbors. Then in 1947, small boat harbors were separated by law from commercial harbors. However, these early efforts to distinguish small boat and commercial harbors were for administrative convenience only, not because of any recognition of a state program concerning small boat harbors. Thus, for instance, although in 1947 small boat harbors were referred to in an act (Act 95) enacted in that year as those harbors used "primarily for recreational boating and the landing of fish," this classification of small boat harbors was merely to describe the kind of harbors the revenues of which were not to be included as revenues to support the floating of revenue bonds authorized by the act to construct improvements at certain commercial harbors.

Act 180, S.L.H. 1972, further broadened the scope of the recreational boating program by including within it accident investigation, enforcement, and pollution abatement.

Although recreational boating has come to be recognized as a distinct program, the organizational placement for the administration

of this program has not yet been given serious consideration. Inasmuch as the DOT had already assumed the responsibility for the physical facilities, the responsibility for the recreational boating program as such has been routinely given to or assumed by the DOT. In a later chapter, we examine this exercise of responsibility.

## ADMINISTRATION OF RECREATIONAL BOATING

Based on the organizational chart within the harbor division that is shown on the chart below, one of the major functions related to recreational boating is the organizational unit, only the boating branch and the small boat harbor section of each of the district offices concentrate almost exclusively on recreational boating. All other units perform functions related to commercial harbor as well. In summary, the functions concerning recreational boating are outlined below in organizational chart as follows:

- (1) The function of preparing and controlling the boating capital investment budget and supervising the construction of physical facilities (harbor and launching ramps) as judged in the district engineering branch.
- (2) The function of preparing and executing the operating budget and managing the operations of small boat harbors are in the four district offices and their sub-offices small boat harbor section.
- (3) The function of boating registration, boating education and licensing, developing rules and regulations governing water safety and operations of small boats, and general administration of the Harwin Boating Law are in the boating branch.
- (4) The responsibility for the management of the projects used in recreational boating is split among the district offices and

Recreational boating as a state program is primarily carried out by the harbor division of the department of transportation. The district provides a final review of the boating organizational arrangement and an evaluation of the effectiveness of the organization in administering the recreational boating program.

We find in general that the organization for administering the recreational boating program within the DOT is inefficient to do with the program. A mechanism for the various functions related to recreational boating is decidedly lacking. As a result, recreational boating is not being administered in a comprehensive manner. It does seem really to be in charge of the program, and important decisions are not being made on the long term without adequate consideration of the many factors involved.

### Organizational Chart for Recreational Boating

The program for recreational boating is currently administered by the DOT through the organizational structure depicted in chart 2.1. As shown, the responsibility of the DOT (and its district) for recreational boating is carried out primarily by the harbor division.

## Chapter 5

# THE ORGANIZATION FOR ADMINISTRATION OF RECREATIONAL BOATING

Recreational boating as a state program is principally carried out by the harbors division of the department of transportation. This chapter provides a brief overview of the present DOT organizational arrangement and an evaluation of the effectiveness of the organization in administering the recreational boating program.

### Summary of Findings

We find in general that the organization for administering the recreational boating program within the DOT is insufficient to do justice to the program. A mechanism for integrating the various functions related to recreational boating is decidedly lacking. As a result, recreational boating is not now being administered in a comprehensive manner, no one seems really to be in charge of the program, and important decisions are not being made or are being made without adequate consideration of the many factors involved.

### Present Organization for Recreational Boating

The program for recreational boating is currently administered by the DOT through the organizational structure depicted in chart 5.1. As shown, the responsibility of the DOT (and its director) for recreational boating is carried out principally by the harbors division.

Each of the organizational entities within the harbors division that is shown on the chart performs one or more functions related to recreational boating. Of all the organizational units, only the boating branch and the small boat harbors section of each of the district offices concentrate almost exclusively on recreational boating. All other units perform functions related to commercial harbors as well. In summary, the functions concerning recreational boating are scattered among the organizational entities as follows:

(1) The functions of preparing and controlling the boating capital improvements budget and supervising the construction of physical facilities (harbors and launching ramps) are lodged in the division's engineering branch.

(2) The functions of preparing and executing the operating budget and managing the operations of small boat harbors are in the four district offices and their subordinate small boat harbors section.

(3) The functions of boating registration, boater education and licensing, developing rules and regulations governing water safety and operations of small boats, and general administration of the Hawaii Boating Law are in the boating branch.

(4) The responsibility for the management of the property used in recreational boating is split among the district offices and

the division's property management staff. The responsibility is also shared by other departmental offices outside the harbors division and by the DLNR.

In terms of supervision and control, the administrator of the boating branch reports directly to the harbors division chief. The head of each small boat harbors section reports to the district manager and the district manager in turn is directly responsible to the division chief. The administrators of the engineering branch and the staff services office (which includes the property management section) also report directly to the division chief.

One difference should be noted between the small boat harbors section of the Oahu district office and the small boat harbors sections of the other district offices. In the Oahu district, the small boat harbors section is further subdivided into smaller units, one for each small boat harbor on Oahu. This organizational pattern generally is not followed on the neighbor islands although in the Maui district there are harbor attendants specifically assigned to the boat harbors at Maalaea-Lahaina and at Lanai (part-time).

In terms of personnel, the boating branch has five employees, including the administrator. The small boat harbors sections of the district offices have a total of 17.25 positions. Thirteen of the 17.25 positions are allocated to the Oahu district office.

### **Inadequate Management Structure**

The present DOT structure for the administration of the recreational boating program is inadequate. It does not allow for a comprehensive, programmatic approach to recreational boating.

**The inadequacies.** The structure makes no provision for the coordination and integration of the elements of the program and of the efforts of the various units involved in recreational boating, except at the level of the division chief.

Thus, as noted in chart 5.1 with one exception, all lines of responsibility flow directly between the division chief and each operating unit involved in the program. There is no point in the structure below the level of the division chief, for instance, where the efforts of the boating branch can be melded with the efforts of the small boat harbors sections of the district offices, although the efforts of each is related to the other. The only exception is that line which joins the small boat harbors section in each district to the office of the district manager; but the coordination and integration which presumably occur at each district manager's office are only with respect to the day-to-day operations of the small boat harbors within the district, not with respect to recreational boating as a program and not even with respect to the management of *all* small boat harbors within the State.

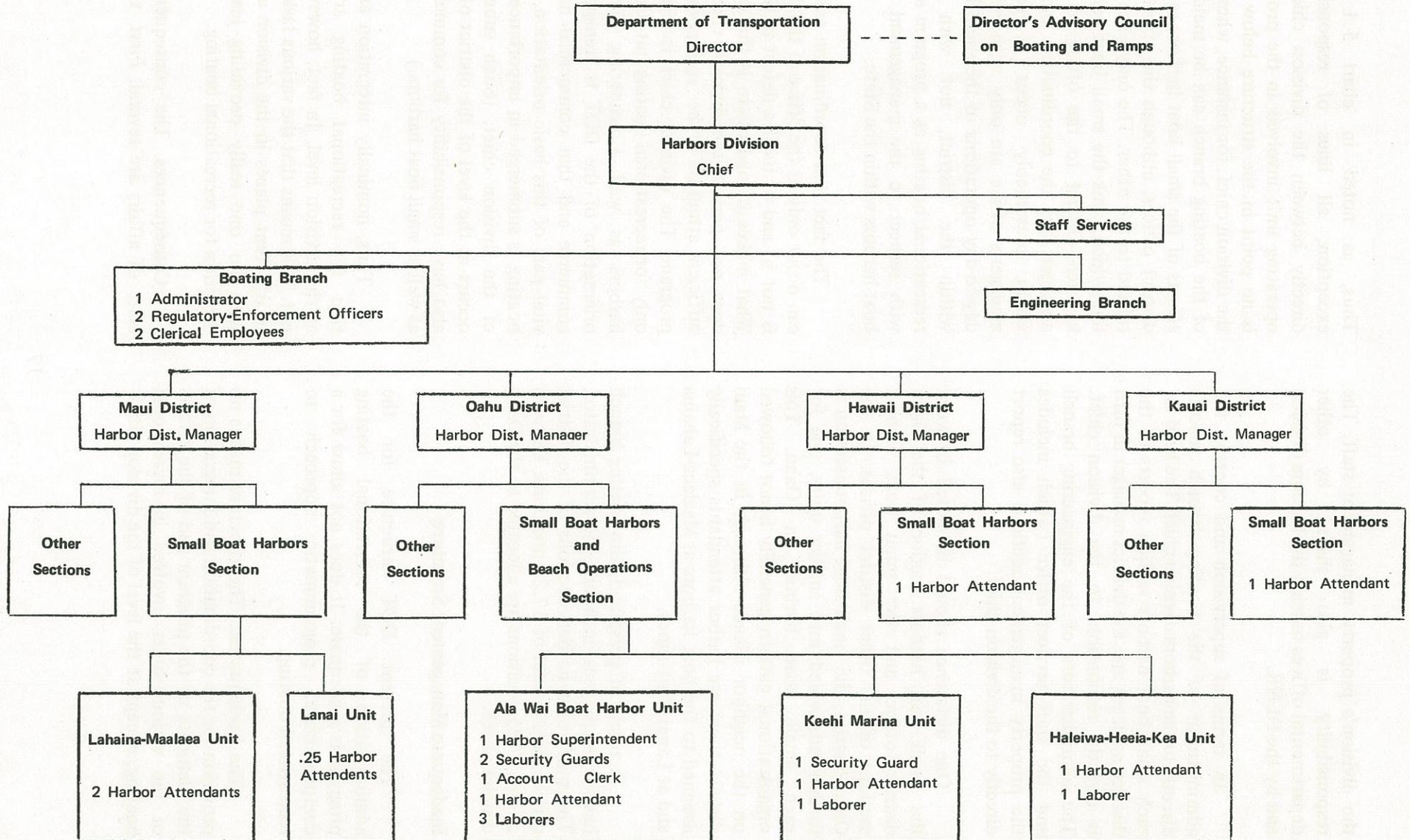
The fact that coordination and integration can occur only at the office of the division chief is not in and of itself a defect in the structure. What makes it inadequate is that the structure does not permit the division chief to devote sufficient attention to the recreational boating program. The division chief is responsible not only for recreational boating but for commercial harbors as well. Considering that the basic orientation of the DOT is transportation and commerce and that commercial harbors are a vital part of this basic orientation, recreational boating is submerged in importance at the level of the division chief. (Such submersion also occurs at the level of the district offices, which also have responsibility for commercial harbors as well as small boat harbors.)

Thus, nominally integration and coordination for recreational boating are occurring at the division level. In fact, however, they are not. This means that the various tasks performed in different places in the division are left loose with no one really providing leadership and direction for recreational boating.

**Consequences.** The consequences of this state of affairs are several. *First*, the DOT has

Chart 5.1

Organization Chart for Recreational Boating  
(As of June 1975)



no real plans or strategy for recreational boating. Thus, one will search in vain for any articulation of the elements that compose the recreational boating program and the direction in which the program is headed. Ordinarily, the budget for the program should contain this information. But, even though many different units within the harbors division have a hand in the financial planning and budget preparation process (i.e., the boating branch, the district offices, the engineering staff, the property management staff, and the fiscal staff), the budget for the program that ultimately evolves is simply a compilation of their efforts, not an integration into a cohesive, comprehensive, internally consistent program plan. There are, for instance, no guidelines as to the relative importance to be attached to the needs of wet-stored boat owners versus the needs of land-based boat owners. For the most part, the budget consists of projections for new and expanded harbor facilities and launching ramps, with no real justification for them in terms of needs, costs, benefits, and the overall objectives of the recreational boating program, and with little or no attention paid to other aspects of the program, such as the safety of boaters.

*Second*, no one is really in charge of recreational boating as a program, and important and basic policy decisions for the area of boating go unresolved or are handled on a delayed, sporadic, and piecemeal basis. Such issues as user charges, live-aboards, policing, and handling complaints and pressures of boaters have plagued the harbors division and the DOT for years. No one in the division (and no one in the DOT) is currently capable of making these decisions on any sound basis. Indeed, the division and the department have vacillated on these and other issues, both in terms of the decisions themselves and who is to make those decisions—so much so that much of the decision-making which should be occurring at the divisional level has gravitated to the departmental level due to frequent interference of departmental officials in divisional matters and numerous reversals of divisional decisions at the departmental level.

The degree to which the administration of the recreational boating program by the harbors division has deteriorated is evidenced by the rise in the power of the director's advisory council on boat harbors and ramps composed of representatives of boaters. Originally, on invitation of the director of transportation, a three-member director's ad hoc committee on boating was set up to advise the director on matters relating to small boat harbors. Subsequently, this group was reorganized into the advisory council and its membership was expanded to 15 persons. It was organized because of the apparent inability of the division to respond to boater dissatisfaction with harbors division services. Since its original organization, the committee has quickly come to assume more than an advisory role. It has come to assume the role of a watchdog and policymaker and to act in a manner all out of proportion to that normally played by an advisory body.

The committee has not been content to fulfill the role for which an advisory body is ideally suited—namely, serving as a sounding board for proposed DOT policies and constructive critic of harbors division services. Rather, it has become the initiator of policies and suggestions on everything from the accounting system in use in the harbors division to the organizational arrangements of the division and the qualifications of the division's senior personnel. More than this, it has been an incessant and insistent force promoting the adoption and imposition of its policies and suggestions upon the division. Indeed, in one case—the development of a proposed revision in the schedule of mooring fees—it succeeded in getting support from the top level of the DOT, even though there was only a minimum of input from anyone in the harbors division.

### **An Alternative Organization for Managing the Recreational Boating Program**

The present management structure for recreational boating needs to be changed if the program is to be administered by the State

effectively and in a comprehensive manner. In this section we discuss such possible changes. The alternatives discussed here include the following:

- . Reorganization within the DOT
- . Transfer of program responsibility to the DLNR
- . Transfer of program responsibility to the counties

**Reorganization within the DOT.** If the recreational boating program is to continue to be the responsibility of the DOT, what needs to be done to provide an effective organization for the program is fairly obvious. An organizational entity must be created which will focus exclusively on all aspects of recreational boating.

The present boating branch could potentially be the department's organizational entity charged with full and exclusive responsibility for recreational boating. To date, the boating branch has not been required to do much. This is because it was created with a single purpose in mind—the administration of the boating law and related regulations to conform to federal standards. Thus, its main function to date has been the administration and enforcement of boat registration and boater examination and the formulation of boat operation standards. It has not played a significant role in policy formulation or any other aspect relating to recreational boating. The DOT has underutilized the boating branch. Understandable though the original purpose may have been, the boating branch has been the one agency concerned exclusively with boats and boaters and thus attuned to boating policies as opposed to the quite different, commercial transportation orientation of the rest of the department.

The creation of an entity exclusively responsible for all aspects of recreational boating should be accompanied by a reassignment of the small boat harbors sections from the district

offices, where they are now deeply buried, to the new entity. On Oahu this means that a rather sizeable unit (13 employees, 8 of whom are at Ala Wai) could form the operational nucleus of the recreational boating organization. On the neighbor islands, the few employees assigned to small boat harbor functions (two on Maui, one each on Kauai and Hawaii, and one part-time on Lanai) would be given proper status, thereby giving substance to what is now only paper organizational recognition on the neighbor islands. With proper, centralized supervision, they could become important entities in developing recreational boating programs on the respective islands.

**Transfer of program responsibilities to DLNR.** Reorganizing the DOT internally in the manner described above would bring the recreational boating program into a better focus. However, a fundamental question remains as to whether the program should be situated within the DOT at all.

The principal function of the DOT as a whole is to provide for the transportation of people and goods to and from and within the State. Its orientation is basically economic—that is to support the economic welfare of the people of the State. Its activities are therefore essentially commercial in nature—it promotes interstate and intrastate commerce—and its principal activity is providing transportation facilities, such as piers for the docking and loading and unloading of ocean-going commercial vessels, and miscellaneous services (such as providing harbor pilots and security guards) to facilitate the transaction of commerce at the facilities provided. Its clientele (the people with whom it comes in direct contact) are few in number and are chiefly shipping and stevedoring companies and those otherwise engaged in commerce.

On the surface, it might appear that recreational boating has much in common with the principal function of the DOT, particularly that portion of the function relating to commercial harbor operations. Both recreational

boating and commercial harbor operations are ocean-related and involve the provision of facilities for the docking of water surface vessels. However, this similarity is more apparent than real. In reality, recreational boating does not fit neatly into the primary function of the DOT.

Recreational boating has a recreational, not an economic or commercial, orientation. Thus, the program does not have the direct statewide impact which the commercial activities of the DOT have, but rather is confined to the clients of the program. Further, being recreation-oriented, the program entails much more than simply constructing and maintaining facilities and providing miscellaneous services at such facilities. For instance, it includes safety functions which differ markedly from those applicable to commercial harbor operations. In addition, there are significant differences in the clientele of the commercial harbors and recreational boating programs. In the commercial harbors, the harbors division deals primarily with a limited number of business concerns and there is considerable stability and continuity in the division's relationships with its commercial customers. In the recreational boating field, however, the division must deal with thousands of individual boaters and provide direct services to these many persons. In addition, the composition of the boating population is undergoing constant change.

In light of these differences, even with an internal reorganization of the DOT, the continued housing of the recreational boating program within the DOT is bound to work to the detriment of recreational boating. In the *first* place, recreational boating constitutes but a small part of the activities of the DOT and thus is likely to continue to suffer from inadequate top management attention. *Second*, since the commercial and economic aspects of the DOT heavily emphasize the construction and maintenance of physical facilities, there is likely to be equally heavy emphasis on the construction and maintenance of facilities (small boat harbors) in the recreational boating program, to the neglect of the other aspects of the program.

For these reasons, serious considerations are in order for the transfer of the recreational boating program to the department of land and natural resources where proper emphasis to the recreational boating program as a whole can reasonably be expected.

The DLNR is suggested here because that department already has responsibility for virtually all recreational programs of the State. Indeed, it appears that only the ocean-based recreational boating program is presently outside the scope of responsibility of the DLNR. Freshwater boating (e.g., Wailua River Marina and Wahiawa Reservoir facilities) and even such other outdoor ocean-based recreational activities as surfing, saltwater fishing, and ocean swimming already are within the jurisdiction of the DLNR.<sup>1</sup> The transfer of recreational boating to the DLNR will complete the integration into one agency of all programs involving outdoor activities which are designed "to enrich the leisure time of people." Such integration within a single organizational scheme will facilitate and improve the State's ability to develop adequate recreational policies, determine priorities, and rationally allocate the State's resources among the competing forms of recreation. This is because one agency will be considering and evaluating all forms and all aspects of outdoor recreation, including the widely differing numbers and types of patrons served and unit costs involved in each recreational activity. From such a total perspective, the DLNR will then be able to develop adequate and realistic overall plans based on identified recreational priorities, and will also be in a much better position to avoid conflicts, duplications, and gaps in meeting the recreational needs of the public.

This transfer of boating to the DLNR should also positively affect the operations of the DOT. Rid of the concerns of boating, the department will be able to focus on the important objectives of the State's transportation program.

<sup>1</sup>State of Hawaii, *The Multi-Year Program and Financial Plan and Executive Budget, For the Period 1975-81 (Budget Period 1975-77)*, volume V, page 3185.

Some objections to this transfer, at least to the transfer of the whole recreational boating program, can be anticipated. These objections, however, are not insurmountable. The objections are likely to be centered around the construction and maintenance of the small boat harbors facilities. *First*, it might be said that the harbors division presently possesses the expertise and manpower to handle this function, and that, thus, at least this function should be left with the division. It would appear that the transfer of the responsibility for recreational boating as a whole to the DLNR would not in any way prevent the DLNR from contracting with the DOT for such specialized services, if such were desired.

*Second*, and more important, it might be argued that the transfer of at least the construction and maintenance of the small boat harbors would complicate the funding apparatus. The construction and maintenance of small boat harbors are currently funded, in part, through a special fund consisting of revenues collected from the users of the harbor facilities through user charges (mooring fees, etc.). In contrast, all recreational programs now administered by the DLNR are funded by the State's general fund. In our view, the fact that the construction and maintenance of small boat harbors are funded by a special fund should be no obstacle to the transfer of the entire recreational program to the DLNR. If the special fund is continued, it could be just as easily administered by the DLNR as it now is by the DOT. Indeed, to leave the construction and maintenance of the small boat harbors and the administration of the special fund in the DOT would allow the DOT to program both the construction of such harbors, and the use of the special funds, and to set user rates for the purposes of the fund in a manner that may well run counter to the recreational objectives of the DLNR.

**Transfer to the counties.** Instead of the DLNR, another possible placement of the recreational boating program is with the counties. The county governments already have general responsibility for organized recreation, beach

control, and the activities that take place on beaches. In addition, all counties have provided and now operate one or more launching ramps of which those at Kailua Bay, Oahu, and at Waikaea Canal, Kauai, are extensively used by boaters. Counties also play an active or potential part in boating operations through their general responsibility for public safety, including fire department rescue operations, fireboat operations on Oahu, lifeguard operations on many beaches throughout the State, and police service. Thus, the transfer of the recreational boating program to the counties is a viable option.

However, the transfer of the recreational boating program to the counties probably would make the most sense if it were included in a total transfer of state responsibilities for outdoor recreation to the counties. In other words, perhaps even more important tradeoffs could be achieved if the responsibility for cabins, parks, trails, etc., were also transferred to the counties along with the responsibility for recreational boating. By this means, one level of government would be in a position to consider and evaluate the competing needs and relative costs and benefits of the broad range of outdoor recreational activities which might be made available to the general public.

An important consideration that argues for the transfer of recreation in general to the counties is that recreational benefits are peculiarly individualistic in nature. What pleases some does not necessarily please others. Further, the form of recreation and the amount thereof desired by the people differ from locality to locality and are influenced to some degree by geography and population which differ from county to county. In this respect, recreation differs from education, where the substance, quantity, and quality sought are fairly uniform throughout the State. Recreation, thus, is a program perhaps better fashioned and administered at the county rather than the state level.

A transfer of the recreational boating program (and recreation as a whole) does not

mean no state involvement at all. Considering the State's greater resource capabilities, some state aid is entirely possible. Thus the State might provide the funds for the construction of facilities, indeed might construct the facilities, but the management and operation of such facilities, once constructed, would be the responsibility of the counties.

### **Recommendations**

*We recommend as follows:*

1. *That serious consideration be given by the legislature to the transfer of the entire outdoor recreation program (including the recreational boating program) to the counties.*
2. *That so long as the outdoor recreation program is maintained at the state level, the*

*recreational boating program be transferred to the department of land and natural resources. The transfer should include all boating activities now vested in the boating branch and the small boat harbor sections of the district offices of the harbors division and jurisdiction over and management of property at boat harbor sites, and responsibility for maintaining the fiscal integrity of the boating fund.*

3. *That, if the recreational boating program is to be kept within the department of transportation, the harbors division be reorganized to the end that responsibility for recreational boating activities is vested and centralized in an organizational entity whose sole function would be the administration of the program. To this unit should be assigned all of the present functions of the boating branch and the small boat harbors sections of the district offices.*

## Chapter 6

### PROPERTY MANAGEMENT

The DOT has under its control a considerable amount of public lands and other natural resources ostensibly used in connection with small boat and commercial harbors. The public lands and resources controlled by the DOT include the harbor facilities, surrounding lands, and shorewaters. The DOT's control is not necessarily exclusive with respect to some of the lands and resources; the DLNR also has management responsibilities.

In this chapter we examine the legal basis for the control of these lands and resources by the DOT, the efficacy with which the DOT is managing them, and the relationship that exists between the DOT and the DLNR in the management of some of these lands and resources.

#### Summary of Findings

In summary, we find as follows:

1. Chapter 266, HRS, grants broad authority to the DOT in the control and management of public lands and resources. In light of the state constitutional provisions regarding the State's natural resources, the validity of the scope of the statute is seriously in question.

2. There are parcels of land now managed by the DOT which have not been legally set aside to the DOT for control and management. In addition, there are parcels

which were legally set aside for the DOT to manage, but which are not now being used for the purpose originally intended.

3. The former board of harbor commissioners illegally issued "licenses" rather than "leases" to avoid the statutory limitations on leases.

4. Although the DOT and the DLNR have concurrent jurisdiction over various lands and resources, coordination of the two agencies' efforts has been inadequate and often ineffective. As a result, regulations governing these lands and resources are being frustrated, problems are being left unresolved, and resources are being used in a manner detrimental to the State.

5. The DOT's real property record-keeping system is not adequate for an effective program of property management. As a consequence, the department has been unable to maintain proper control over the properties for which it is responsible.

6. The DOT is failing in some instances to enforce the covenants contained in the leases which it has made.

#### Introduction

The term, "property management," as used in this chapter refers to the activities associated with leasing public lands to or permitting the use of public lands by private groups and in-

dividuals. The importance of property management in the DOT is illustrated by the number and kinds of rental arrangements entered into with respect to the lands and resources under the control of the harbors division of the DOT, either exclusively or in conjunction with the DLNR. Table 6.1 summarizes these arrangements. It indicates the number of rental agreements in force and the amount of revenues derived from them in recent years. As noted, over \$2.5 million in revenues is generated from these agreements. This is nearly one-fourth of all revenues of the harbors division.

### Questionable Legal Basis for Control

The DOT's authority extends not only to public lands but to other natural resources as well. This authority stems from various statutes, the principal one being chapter 266, HRS. As contained in chapter 266, the DOT has the "care and control" and the duty to "control and manage" not only all harbor and waterfront improvements but also shores, shorewaters, navigable streams, and beaches. Chapters 267, 267A, 267B, and 267C, which comprise the Hawaii Boating Law, similarly confer extensive powers of regulation and enforcement in the DOT over natural resources other than public lands used for harbors.

The scope of the statutes is of doubtful constitutionality. The State Constitution in sections 1 and 2 of article X, provides as follows:

**"RESOURCES; CONSERVATION,  
DEVELOPMENT AND USE**

SECTION 1. The legislature shall promote the conservation, development and utilization of agricultural resources, and fish, mineral, forest, water, land, game and other natural resources.

**NATURAL RESOURCES; MANAGEMENT  
AND DISPOSITION**

SECTION 2. The legislature shall vest in one or more executive boards or commissions powers for the management of natural resources owned or controlled by the State, and such powers of disposition thereof as may be authorized by law; but land set aside for public use, other than for a

reserve for conservation purposes, need not be placed under the jurisdiction of such a board or commission.

The mandatory provisions of this section shall not apply to the natural resources owned by or under the control of a political subdivision or a department or agency thereof."

This constitutional provision clearly mandates that the State's natural resources be managed by one or more executive boards or commissions. The only natural resources exempt from this control by one or more boards or commissions are "land set aside for public use."

The DOT is a department headed by a single executive, not a board or commission. Yet, the statutes provide for management by the DOT of such natural resources as shores, shorewaters, and navigable streams. These resources are not "land" and thus are not subject to being "set aside for public use." Thus, to the extent that the statutes provide for management of these resources by the DOT, they appear to be at variance with the Constitution.

The present state of affairs appears to have been the result of an oversight. Before statehood, the State's harbors were under the control of the board of harbor commissioners. Upon achieving statehood, the harbor functions were transferred to the newly created DOT, headed by a single executive. Chapter 266 antedates statehood. Apparently when the DOT was created and the harbor functions transferred to it, chapter 266 was amended merely to substitute the DOT for the board of harbor commissioners with little thought being given to the substantive provisions of chapter 266 and the constitutional limitations on managing the State's natural resources. Subsequently, when chapters 267, 267A, 267B, and 267C were enacted, they were so enacted on the assumption of the validity of chapter 266.

This is not to say that the State was unmindful of article X of the State Constitution. To the contrary, the State was cognizant of the constitutional provisions, for soon after statehood, it codified the State's public land

Table 6.1

**Summary of Rental Revenues and Number of Agreements in Force  
For the Property Management Program of the Harbors Division  
State Department of Transportation  
For Calendar Years 1971 to 1974**

| Year | Annual rental revenues and agreements <sup>a</sup> |                 |                |               |                    |
|------|--|-----------------|----------------|---------------|--------------------|
|      | Permits  | Leases          | Licenses       | Others        | Total <sup>b</sup> |
| 1971 | \$618,653 [122]                                    | \$ 820,071 [58] | \$528,415 [54] | \$37,343 [58] | \$2,004,482 [292]  |
| 1972 | 619,371 [131]                                      | 966,019 [61]    | 564,227 [45]   | 34,798 [52]   | 2,184,415 [289]    |
| 1973 | 701,234 [139]                                      | 1,067,902 [66]  | 619,823 [43]   | 34,961 [57]   | 2,423,920 [305]    |
| 1974 | 722,180 [156]                                      | 1,211,875 [71]  | 621,808 [41]   | 34,526 [57]   | 2,590,389 [325]    |

<sup>a</sup>Bracketed figures represent the average number of agreements in effect for each year.

<sup>b</sup>Does not include income from pipeline tolls or percentage income on gross sales.

Source: State department of transportation, harbors division, property management, "Revenues from Rentals of Land," 1971 through 1974.

laws into chapter 171 (Act 32, S.L.H. 1962) and vested in the DLNR, a department headed by a board, the responsibility of managing all of the State's lands and resources, except "lands set aside under this chapter or prior to the enactment of this chapter." The oversight occurred when the reorganization of the state government was being considered by the State (Act 1, 2nd Special Session 1959).

*Recommendation.* We recommend that the statutes relating to harbors be reviewed, and, to conform to the State Constitution, all references to DOT jurisdiction over public lands and resources, other than lands set aside for public purpose, be deleted.

#### DOT Control of Land Not Properly Set Aside

The above-quoted constitutional provision provides for control of all natural resources of the State by one or more boards or

commissions, except "land set aside for public purpose." In practice, the DOT (which is not headed by a board or commission) controls not only natural resources other than lands but also land which has never been set aside for public purpose. There are over 900,000 square feet (about 20 acres) of such land now managed by the DOT. They are located in various parts of the State. A substantial portion of the land has been under the DOT's jurisdiction for many years, extending beyond 20 years in some cases. One example of such land controlled by the DOT, although not set aside, is that land leased by the Waikiki Water Park at Ala Wai Canal.

The process of setting land aside for public purpose is a simple one. Section 171-11, HRS, sets forth the procedure. Land may be so set aside by executive order. Considering the simplicity of the procedure, if the land in question were indeed required for harbor purposes, there is no reason why the procedure could not have been followed. Yet, for these various parcels, no steps have been taken legally

to place the land under the jurisdiction of the DOT. In part, the failure to take steps to set aside the land may be attributable to the broad language of the statutes, particularly chapter 266, HRS, concerning the authority of the DOT over harbors and waterfront improvements. As noted above, the broad language of the statute was never amended at the time of statehood to bring it into conformance with the land set aside provisions of the State Constitution.

One fiscal implication arises from the management by the DOT of land not set aside. Revenues from set-aside land is a harbors special fund realization, but revenues from non-set-aside land are supposed to be deposited into the general fund. The revenues which are currently being derived from lands managed by, but not set aside to, the DOT are nevertheless being deposited into the special fund and not the general fund.<sup>1</sup> This is illegal, of course. Thus, if lands now controlled by the DOT but not officially set aside are really needed by the DOT in its harbors operation, immediate steps should be taken to have the lands properly set aside.

*Recommendation. We recommend that the DOT initiate action to cause to be officially set aside for its use those public lands which are now under its management and which are being used for public purposes but which have not yet been formally set aside.*

### Questionable Use of Set-Aside Lands

There are numerous parcels of land set aside to the DOT which are no longer being used in conformity with the purposes of the set-asides, but are nevertheless still being managed and controlled by the DOT. These include (1) the submerged land on which is now situated the Hilton Hawaiian Village Hotel pier; (2) Fisherman's Wharf, which is now used by the Spencecliff Corporation for restaurant and parking purposes; (3) pier 11 which is occupied by various commercial tenants unrelated to harbor operations (e.g., real estate firm, advertising company, textile distributor, photographer, and

city and county of Honolulu); and (4) a portion of Kewalo Basin which is occupied by McWayne Marine Supply.

The State Constitution provides for set-asides only for public purposes. The use of land by private entities is not necessarily a use for non-public purpose. For example, the property leased to Matson Navigation Company at pier 2 is nonetheless in use for a public purpose since that lease is an essential part of the operation of the wharf. However, the use of property for restaurant, parking, office, and other commercial endeavors having no essential relationship to harbor or wharf operations is not for a public purpose. These enterprises could just as well be located elsewhere other than on or at the harbor facilities.

The parcels of land not now being used for public purposes should be returned to the DLNR for management. Section 171-11, HRS, provides that "whenever lands set aside for a public purpose . . . are not being utilized for the public purpose stated, the order setting aside lands shall be withdrawn and the lands shall be returned to the department [of land and natural resources]." The continued control of these parcels by the DOT not only deprives the general fund of revenues from leases of these parcels but causes anomalous situations and inconsistent practices in the management of public lands to arise. Note, for example, the following.

In the case of the submerged land on which the Hilton Hawaiian Village Hotel pier is situated, the DOT agreed with the DLNR that the use being made of the property did not conform to the original purpose of the set-aside and that therefore the property should be "managed" by the DLNR. Under this understanding, the lease agreement that the DOT had with Hilton was cancelled and a new revocable permit was issued by DLNR. The revenues from the permit have

<sup>1</sup>In the case of the land leased by the Waikiki Water Park at Ala Wai Canal, this is not a major problem, as the lease rentals are not received in cash anyway—they are offset against a \$12,000 "credit" for improvements made by the tenant.

been and are being deposited by DLNR into the state general fund, despite the DOT's strong objection to this disposition of the revenues and its contention that the revenues should accrue to the harbors special fund. In the case of Fisherman's Wharf, however, the revenues from two parcels of land totaling 15,888 square feet set aside to the DOT but "managed" by the DLNR and leased to Spencecliff Corporation for use as a parking lot are being placed in the special fund and not into the state general fund. The reason for this difference in the treatment of revenues is not apparent.

Further, in the case of Fisherman's Wharf, the two parcels "managed" by the DLNR lie next to another parcel, 20,000 square feet in size, which is also leased to Spencecliff Corporation. But this lease is by the DOT and not DLNR. The implication here is that the DLNR should "manage" the two parcels because they no longer are conforming, but that the DOT should continue managing the third 20,000 square foot lot because it is conforming. However, the Spencecliff Corporation also uses the 20,000 square foot parcel for a parking lot. Indeed, the 20,000 square foot lot and the two parcels are used together as one parking lot and the line that separates the two is discernible only to surveyors. Why the 20,000 square foot lot and the other two parcels should be managed separately is not clear at all. The use of the 20,000 square foot lot is just as nonconforming as the use of the two parcels.

The differing management of the 20,000 square foot lot and the other two parcels also presents an unexplainable result in terms of the amount of rentals collected. The DOT-managed parcel is leased for \$.075/sq. ft./month rental, while the DLNR-managed two parcels are being leased for \$.03/sq. ft./month. The difference in the rates is causing a revenue loss of \$8575 per year.

At pier 11, there is an even more anomalous situation. Here, a building on the pier houses an advertising company, a real estate firm, a textile distributor, a photographer, and

an office of the city and county of Honolulu. All of these tenancies are managed by the DOT, except one. The tenancy of the advertising company is managed by the DLNR under an agreement between the DOT and the DLNR. This difference in the management of the tenancies is puzzling. Obviously, by agreeing to permit the tenancy of the advertising firm to be managed by the DLNR, the DOT recognized that the use of the premises for advertising business departs from the purpose for which the premises were initially set aside to the DOT. But, the businesses of the other tenants are just as nonconforming as that of the advertising firm. They serve no public purpose. The result is that a small portion of a building is being managed by the DLNR while the rest of it is being managed by the DOT. This makes no sense at all.

The obvious solution to all of these strange arrangements is to withdraw all lands set aside to the DOT which are not in fact being used for harbor purposes.

*Recommendation.* We recommend that the DOT and the DLNR take steps to withdraw from the management control of the DOT all public lands previously set aside for management by the DOT which are no longer being used for public purposes directly related to DOT operations.

#### **Questionable Legality of Certain Land Dispositions**

A major problem appears to exist with respect to the legality of some of the land agreements in effect. There are three major tenancies at Ala Wai Yacht Harbor (Waikiki Yacht Club, Hawaii Yacht Club, and Ala Wai Marine, Ltd.) that are based on "licenses" rather than leases. All of these licenses were awarded by the former board of harbor commissioners before statehood, and all of them for unusually long periods of time, ranging from 39 to 51 years. Although the record is not clear after so long a time, it appears that the device was used in

preference to leases in order to avoid the restrictions on leases then in effect. At that time, land leases were limited to 21 years and were not renewable. Furthermore, Hawaii's land laws could be amended only with the concurrence of the U.S. Congress, so the obvious limitations placed upon commercial tenants by the law could not be conveniently changed.

The problem, however, was incompletely solved by resorting to "licenses." A land license was and is defined in the statutes as "a privilege granted by the government for the occupation of land for certain special purposes, such as the cutting and removal of timber, the removal of soil, sand, gravel or stone" (section 99-1, RLH 1955, section 171-1, HRS). The uses to which the property was put in the cases cited above clearly do not fall within such definition. Therefore, it is clear that, although called "licenses," the agreements were actually leases, because the language and provisions of each license coincide with those typically employed in leases. The period of each agreement, however, clearly exceeded that for which leases could be entered into. In other words, in striving to legitimize transactions by using licenses, the board succeeded only in entering into apparently illegal leases.

The question now is what, if anything, is to be done about the licenses. One possible solution would be to cancel them and to make such other adjustments in reimbursement for improvements and interruption of business as might be appropriate. This was, in fact, recommended by a deputy attorney general as far back as 1964 in the case of the Waikiki Yacht Club. As a matter of reality, however, this solution would appear both unduly harsh and hopelessly uneconomic. Further, many other such "licenses" exist on harbor property, including some of the most valuable and highly improved parcels in the State and involving commercial endeavors. It would appear impossible to evict the yacht clubs without at the same time evicting other holders of such licenses, including (as an example) Bumble Bee Sea Foods from the tuna cannery. Moreover,

the DOT has not, as far as our inquiry shows, entered into any new licenses of this kind since it took control of harbor property in 1961, and certainly not since 1962 when Act 32 substantially rewrote the land laws and provided for reasonable conditions for leasing public lands.

It is suggested that, given all the extenuating circumstances attendant the original issuance, plus the good faith performance under the agreements by both the State and the tenants, the present licenses be permitted to run their course. At the same time, it should be clearly understood that no renewal will be considered other than on a legal leasing basis, either by auction or by negotiation as provided by law.

*Recommendation.* We recommend that currently existing illegal "licenses" be permitted to run their course, provided no renewals will be allowed other than on a legal basis.

### Uncoordinated Management of Properties

By reason of the public land laws, lands not set aside for public purpose to the DOT and natural resources in general are subject to management by the DLNR. However, as noted, some of these lands and resources are also managed by the DOT. In addition, some parcels of land, although set aside to the DOT are also nonetheless managed by the DLNR through agreement.

In these areas of joint jurisdiction, the DOT and the DLNR do not always work together, resulting in the frustration of DOT and DLNR regulations and delays in the resolution of problems. Examples follow.

**Issuance of shoreline construction permits.** Although submerged lands can be set aside to other agencies, including the DOT, shorewaters are not subject to being set aside and the DLNR is generally responsible for their management. Nonetheless, the DOT exercises some authority

over shorewater areas under the existing statute. Under section 266-16, HRS, the DOT has authority to issue permits for construction in shoreline waters. This authority has been exercised since 1949 when harbor matters were under the jurisdiction of the board of harbor commissioners. By the early 1960's, a practice had developed that resulted in the permittee receiving dual privileges. Upon payment of a fee, the permittee was given permission to construct a pier, outfall, or other structure. He was at the same time charged a "private use tariff" which conferred some undefined tenancy upon him and which was collected as, and considered in all respects to be, a lease rental for the submerged lands involved. The standard charge for the "private use" of submerged lands was one-half cent per square foot per month, and the charge for shorewater construction permits varied (and still varies) in amounts ranging from \$40.07 per month for the Kaneohe Yacht Club to \$.50 per month for a 100 square foot pier.

The DLNR's authority over shorewater and shoreline use was first conferred in 1962 with the passage of Act 32 which included submerged lands in the definition of public lands. Since this act, the DLNR has adopted regulations for granting use permits in conservation districts, which include all shorelines. Under the regulations, applicants for shoreline construction must obtain a use permit from DLNR.

It is not entirely clear as to when these changes were made, but with the adoption of the regulations by DLNR, DOT dropped its requirement for the payment of "private use tariffs" by applicants for construction permits, and the revenue, if any, from the submerged lands has come to be recognized as being payable to DLNR except in those cases where permits issued by the DOT remain in effect and payments continue to be made to the DOT boating special fund. These changes apparently were made in recognition that submerged lands were now public lands. However, these changes did not affect the requirement that applicants

for construction of facilities in shorewaters must secure a construction permit from DOT.

The situation today is that an applicant must secure two permits—one from the DOT for construction and another from the DLNR for use of the shorewaters. The procedure as it has evolved is substantially as follows: (1) application for construction is made to DOT; (2) upon approval the application becomes a permit, but with the condition that further approval must be obtained from DLNR; (3) if not already done, DOT advises the applicant that he must get a use permit from DLNR; (4) DOT sends a copy of the approved application to DLNR; (5) DLNR approves both permits through board action; and (6) DLNR issues a revocable permit for the submerged lands occupied by the structure.

This procedure appears simple and workable enough. Unfortunately, it works only on occasion. Neither the DOT nor the DLNR appears particularly concerned about ensuring that the approval of both agencies is secured before construction in shorewaters is allowed. If proper coordination between the DOT and the DLNR existed, the records of each regarding applications received and permits issued should coincide—that is, the records should reveal approximately the same number of applications and permits issued for both construction (DOT) and use (DLNR) (disregarding the time lag implicit in the flow of documents from one agency to the other). As shown in table 6.2, however, this is not the case.

Table 6.2 shows that, during the period examined, only 40 percent of the private construction permittees seem even to have applied for use permits, and that only one rental agreement was entered into out of 53 construction and 14 use permits issued. There is also a reverse aspect of the two-permit system that is not shown in the table. During the same time period, DLNR issued 11 private and 23 public use permits for shorewater installations, none of which have corresponding shorewater construction permits.

Table 6.2

**Shorewater Construction Permits  
Conservation District Use Applications  
And Permits and Rental Agreements Issued  
January 1, 1972 Through May 31, 1975**

|                                   | Private<br>applicants | Public<br>applicants | Total |
|-----------------------------------|-----------------------|----------------------|-------|
| Construction permits issued – DOT | 53                    | 43                   | 96    |
| Use applications received –DLNR   | 21                    | 12                   | 33    |
| Use permits issued – DLNR         | 14                    | 12                   | 26    |
| Rental agreements executed – DLNR | 1                     | N.A.                 | 1     |

There may be some cases in which these discrepancies are explainable—although no explanation has been provided by employees of the two departments, most of whom expressed total surprise at the statistics. Even so, the differences are so large as to indicate that much, and probably most, recent shorewater construction has been done without obtaining all of the appropriate permits.

What the system of shorewater construction and use permits requires is a major modification. In the first place, the process is gone about in the wrong sequence. Use should be approved first—thus assuring that the prime question of stewardship of natural resources is answered. The DOT should refuse to accept an application for a construction permit unless accompanied by a valid use permit and should confine itself to those technical matters of construction, navigation, and the like, in which it is presumed to be expert. If it does this, there would be no reason for DLNR to approve the construction permit. Upon approval of the construction permit by DOT, DLNR should issue a revocable permit for the land, and construction itself should not be permitted to start until the revocable permit is issued. This three-step system, each step starting only upon completion of the preceding one, is simple, direct, and seems the only way to avoid

overlooking or ignoring the requirements of both the DOT and the DLNR.

It will be recalled that in other parts of this report we have recommended the transfer of boating activities to DLNR and the management of all non-set-aside lands by the DLNR. If this is accomplished, the actual issuing of shoreline construction permits will devolve upon the board, but it may be desirable to use the harbors division as the reviewing and recommending agency with respect to them. To do so would retain the expertise of the division in technical matters if needed while concentrating in one agency responsibility for the entire gamut of permits, privileges, and tenure, the dispersion of which has surely contributed to the deplorable situation of today.

***Recommendation.** We recommend that the process for the issuance of shorewater construction and use permits be revised so that the requirements of both the DOT and the DLNR may be fully met. In particular, we recommend that the process be modified so that conservation district use permits, shorewater construction permits, and revocable land permits are issued in that sequential order.*

**Enforcement of shorewater requirements.** Given the statistics in table 6.2, there are

probably many illegal structures in Hawaii's shorewaters today. Indeed, the DOT itself estimates that there are about 200 apparently illegal structures in existence on the island of Oahu. With respect to these structures, the only way to correct the situation is to go from place to place, identify the structures, and compel the occupants to apply for and receive after-the-fact permits or to remove the structures altogether. However, as in the case of processing applications for permits, little coordination occurs between the DOT and the DLNR in inspecting for violations and in promptly enforcing the requirements of both the DOT and DLNR when violations are uncovered. Note the following classic case.

In October 1969, the DOT noted that a small boat mooring was being installed in an area off the Outrigger Canoe Club without any permit being issued authorizing the construction. Upon being informed by the DOT of the illegality of the construction, the club which was installing the mooring requested a lease of the area from the DOT, probably not knowing that the DLNR would have been the appropriate lessor. DOT, without referring this request to DLNR, on August 26, 1970, issued a belated construction permit. Had there been a coordination of efforts between the DOT and the DLNR, the matter would have been referred to the DLNR before the issuance of the construction permit by the DOT. As it turned out, the DLNR, when it learned about the construction on October 25, refused to issue a use permit and the then chairman of the board "requested" the club to remove the facilities. The matter stood there for well over three years. On January 10, 1974, the fact that the facilities had not been removed, again came to the attention of the DLNR. The chairman of the board by letter dated March 26, 1974, renewed his request for the removal of the facilities and advised the club that the area would be inspected in about 30 days to determine compliance with the request. Nothing happened, and six months later the board again took cognizance of the problem. This time it granted the club a 90-day extension from October 24 within

which to work the problem out. The DOT, having initially issued the construction permit without conferring with the DLNR, was determined to secure some means of saving the constructed facilities. On January 21, 1975, it came up with a plan which involved the setting aside of the property to the DOT. In relaying this plan to the board, the director of DOT asked that the removal order of the DLNR be held in abeyance until the plan could be activated. On July 11, 1975, the board of land and natural resources finally approved the mooring use, subject to several conditions, including the payment of \$17,500 for seven years' use of the area concerned.

Nearly six years elapsed since the problem first arose before it was resolved. Such a delay is unjustifiable. Better coordination of efforts between the DOT and the DLNR could have avoided such unnecessary delay.

*Recommendation.* We recommend that a procedure for the enforcement of regulations concerning construction in shorewaters be developed by the DOT and DLNR such that the efforts of both are coordinated and the structures that are now illegally in place may be made to conform to regulations.

**Lease negotiations.** Although in all instances leases to premises must be executed by the DLNR by virtue of its general authority over public lands and resources whether or not the public lands have been set aside for public purposes, the DOT becomes involved in lease negotiations because of its assumed role over a variety of harbor and harbor-related lands. In these lease negotiations, the DOT and the DLNR are not always in harmony, and often the differences between the two agencies result in inconclusive action for long periods of time, to the detriment of the State and lessees.

In the case of a boat and fishing club on Maui, the club holds a tenancy for the purpose of "clubhouse and supporting or related facilities for a boat and fishing club" under a ten-year lease approved by the board of land and

natural resources in January 1971. Lease rental is \$1040 per annum for boat and fishing club use only, with reservation by the State of the right to charge more if the parcel is used for "any related or supporting use as approved by the State." The club has a subtenant who operates a bar and a restaurant on the premises. For years, the question of whether this subtenancy is permissible and, if so, what the additional charges should be has been left unresolved due to the inability of the DOT and the DLNR to get together on the matter.

Some light can be shed on how the present untenable situation arose by examining the records on the execution of this lease. The DOT first proposed a lease of the premises to be let on competitive bidding in May 1970. The proposal described the premises as that "Harbor parcel currently used for restaurant, bar, and fishing club" containing an area of 15,990 square feet and stated the purpose of the lease as "operation of restaurant, bar, supporting facilities and parking area open to the general public and a clubhouse for a fishing club." It proposed that the rental be \$3000 per annum, plus 5 percent of the gross sales from restaurant and bar operations. The proposal was approved by the board of land and natural resources on May 8, 1970, but a lease in that form never was actually executed.

In September, DOT made a resubmittal of the lease proposal to the board. This submittal had several significant differences from the one already approved: (1) the area was slightly enlarged to 16,044 square feet; (2) the purpose was rephrased to put club use first: "clubhouse and supporting facilities for a boat and fishing club with the right to operate a restaurant, bar and parking area open to the general public"; (3) the lease rental was drastically reduced from \$3000 a year plus a percentage of the gross to \$250 per year, with the State reserving the right to change it in the event the property were subleased; and (4) bidders were restricted to "a bonafide boat and fishing club in existence at the time."

The reasons for these drastic changes are not stated in the documents made available to us, but it is clear that the board "deferred" action on the proposal. In its notification of the board's action to the club which now holds the lease to the premises, the DOT stated that "They [the board] made specific objection to the right of the successful bidder to operate a restaurant and bar."

A few months later, the present lease form was submitted to and approved by the board. This document omits all references to a restaurant and bar, confining itself to "supporting or related facilities." In October 1973, the DOT proposed that the tenant be permitted to sublease the premises for bar and restaurant purposes. This proposal was redrafted in February 1974, and a sublease in the form proposed was executed by the tenant and subtenant. The sublease was not dated, however, as consent of DLNR to the sublease was still needed. To date, such consent has not been forthcoming, and as far as can be determined, it is being withheld because the board of land and natural resources still refuses to agree to the bar and restaurant use. In the meantime, however, with the knowledge and consent of the DOT, the subtenant has been permitted to operate his bar and restaurant. The subtenant is operating a business without any legal document allowing the operations and from which activities the State is deriving nothing.

Immediate action, of course, is needed to decide once and for all whether the subtenant's occupancy is going to be allowed under the lease and, if so, what increase in the lease rental there should be to compensate the State adequately. If it is not so decided, then the club should be instructed to terminate the arrangement, and if the arrangement is not terminated in accordance with that directive, the lease should be cancelled entirely for nonpermitted use. However, so long as the DOT and the DLNR take conflicting positions on the matter, as they apparently are, the problem will never be resolved, to the detriment of the State.

*Recommendation. We recommend that the DOT and the DLNR resolve their differences as rapidly as possible, and in the case of the Maui fishing club, in the absence of agreement, the subtenant arrangement be terminated.*

### **Inadequate Record System**

The property records in the harbors division are maintained in a manner that makes it difficult for the division to account for all of the property under its control. The records are not kept on the basis of an appropriate inventory. They are keyed to tenants rather than according to parcels of property. That is, there is no master list of property; rather, there is a list of tenants with a description of the land leased or occupied by each. Without a master inventory of the parcels, it is easy to lose track of the parcels. It is difficult to tell which properties are occupied and which are vacant. In at least two cases, major harbor property continued to be occupied for years without any formal lease before they were discovered. During that time the occupant enjoyed the use of the land and had access to some harbor utilities at no cost. In the case of one occupancy at Keehi Lagoon, the facts were not discovered until 1974, although nearly 20,000 square feet had been occupied as far back as 1961. One of the major contributing factors to this indefensible situation was the lack of a property-based record system.

The primary element of such a system is adequate maps, and such maps do not exist today. There are sketches of some properties and reproductions of tax maps in certain cases, but the harbors division needs maps of its own properties, drawn to adequate and consistent scale, and depicting every square foot of property for which the division is responsible. These maps should be separate from, but tied into, the tax key map system. Tax key numbers should be noted on harbor maps or a separate harbor numbering system could be used if it would contribute to efficient management. In the latter case, the system should be correlated with the tax key maps by a cross index.

Using the maps as a basis, there should then be created a master property file, maintained in parcel number sequence. This file could show any appropriate information, such as tenancies, lease termination dates, or other data, but the one essential is that it should relate primarily to real property. Once set up on a complete basis, the file should change only if parcels are consolidated or divided. Vacancies can be easily determined and checked and upcoming changes in occupancy can be easily identified. In the case of multiple occupancies, subordinate property records should be kept and related to floor numbers, room numbers, or whatever would be most appropriate. Given a record of this kind, and given the existence of other subordinate records cross-indexed to the master property record, there should be no problem of "lost" or "forgotten" properties and there should be an improvement in the entire property management operation.

*Recommendation. We recommend that the DOT property inventory records be improved by preparation of adequate maps to assure completeness and by basing the entire record system on real property designations rather than on tenancies or other criteria.*

### **Failure to Enforce Land Agreements**

Like any landlord, the harbors division is sometimes faced with the failure of tenants to perform their obligations under tenancy agreements. Occasionally, there is an outright refusal to pay rent; sometimes tenants continue to occupy the premises even after the agreed-to time to vacate. In such cases, there is little that can be done short of filing suit. In other cases, however, vigorous and timely action by the division can prevent a problem from arising. The division, unfortunately, has not always been alert and has on occasion failed to take such timely actions.

An example of the lack of vigorous and timely action involved a building at Ala Wai which was rented for administrative offices and

club use. Soon after taking over the premises, the tenant in effect subleased most of them to a school but continued to renew its revocable permit for the originally approved use. The harbors division called this to the tenant's attention as early as December 5, 1967, but it was not until 1975 that steps were taken to compel the tenant to execute an official sublease. On the basis of the sublease, the board

of land and natural resources passed on the acceptability of the use and substantially increased the rent paid to the State. It is not known why it took so many years to complete so ordinary a transaction.

*Recommendation. We recommend that the DOT exert prompt and vigorous action to enforce the terms of the rental agreements.*



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**PART III**

**FINANCING RECREATIONAL BOATING**

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## Chapter 7

### INTRODUCTION

Presently, the recreational boating program is financed in part through the boating special fund created by statute. This boating special fund and the method of financing the recreational boating program are the subjects of this part. It focuses particular attention on financing the construction and maintenance of small boat harbors.

#### Summary of Findings

In general, our findings include the following:

1. Financing of the entire recreational boating program through the boating special fund (or any special fund for that matter) is highly questionable. It would appear that recreational boating, like other state recreational programs, ought to be financed through the state general fund, except for that part of the program concerned with the construction and maintenance of small boat harbors. In the case of the construction and maintenance of small boat harbors, conceptually at least, those who moor their boats in the harbors ought to bear the full responsibility for the costs of the construction, operation, and maintenance of the harbors.

2. The concept of general fund funding of the recreational boating program, other than that aspect concerned with the construction, operation, and maintenance of small boat harbors, makes inappropriate the placement of

some revenues into the fund which are now being paid into the fund because the revenues are derived from sources which are not directly relevant to recreational boating or because no direct relationship exists between the revenues collected and the uses made of, or benefits derived from, the revenues.

3. Although boaters who moor their boats in the state small boat harbors ought to pay for all costs of constructing and maintaining the harbors, some practical considerations indicate that state general fund support, particularly with respect to capital improvements, may be necessary.

4. No adequate conceptual framework currently exists for assessing mooring charges in the small boat harbors. As a result, the DOT has had considerable difficulty in recent years in trying to establish new rates.

5. There are numerous boaters who permanently or for long durations occupy their boats moored in small boat harbors as places of habitation. Many are doing so without having obtained a permit allowing such occupancy. Under the present statute, there is considerable room to debate whether living aboard is permissible or impermissible.

6. There is currently no rational basis for setting fees charged those who use their boats for purposes of habitation. Economic, social, and other benefits that inure to such boaters are not currently reflected in the rates.

7. There are serious doubts that the State today is securing the optimum level of revenue from property leased to others in and

around small boat harbors. The boating special fund is currently not receiving that portion of the state fuel tax to which it is entitled.

## Chapter 8

### A FRAMEWORK FOR ANALYSIS

A brief review of the costs of the recreational boating program and the funding for the program is provided in this chapter. The information contained here furnishes a backdrop for the discussions contained in the subsequent chapters of this part.

#### Costs of the Boating Program

The costs of the recreational boating program are of two kinds: operating and capital improvement costs. Although the available financial data may be somewhat unreliable for years prior to 1973-74, the total cost for both operating and capital improvements in the period 1965 to 1973 averaged about \$1.4 million per year, of which about \$1 million was for CIP.

**Operating costs.** The total operating expenditure, as audited, in fiscal year 1973-74 was \$897,093, including \$53,773 for capital improvements financed by cash. About 54 percent of the operating costs were for personal services, and a substantial portion of the remainder for repair and maintenance of the physical facilities.

The trends in operating expenditures are presented in table 8.1. The figure for 1973-74 noted in the table (\$658,692) differs from that set forth in the paragraph above. This is because the figure in the above paragraph is the audited figure and includes the amount spent for capital improvements financed by cash, whereas the

figure in table 8.1 is from an expenditure statement of the harbors division. The latter figure has been used in the table to ensure consistency with the figures shown for years before 1973-74. The figures for years before 1973-74 are also from the expenditure statement of the harbors division for those years. The harbors division has not included amounts for cash CIP as part of the expenditures in its statement. It has also excluded as expenditures year-end encumbrances (which in 1973-74 amounted to \$134,481) and expenditures made from federal aid funds.

Table 8.1 also presents the projections of operating costs for the years 1974-1977 made by the harbors division. The projections do not exactly correspond with either the approved budget for 1975-77 or the appropriations for that biennium. They are used here, however, as being the financial expression of harbors division operating plans at the time of the audit.

The large increases proposed in forthcoming years are attributable to three factors: (1) major small boat harbor maintenance projects have been deferred in the last year or two and a substantial catchup campaign is now planned amounting to \$650,000 in the 1975-77 biennium; (2) a one-third increase in staff is contemplated to increase enforcement efforts and clerical support on Oahu and to staff new or developing harbors on the neighbor islands; and (3) more complete compensation of the commercial harbor fund

Table 8.1

Operating Expenditures, Recreational Boating Program  
By Year, 1965-74 Actual; 1974-77 Estimated

| Fiscal Year   | Amount     |
|---------------|------------|
| 1965-66 ..... | \$ 183,579 |
| 1966-67 ..... | 262,662    |
| 1967-68 ..... | 394,884    |
| 1968-69 ..... | 309,797    |
| 1969-70 ..... | 356,165    |
| 1970-71 ..... | 426,051    |
| 1971-72 ..... | 415,437    |
| 1972-73 ..... | 398,254    |
| 1973-74 ..... | 658,692    |
| 1974-75 ..... | 764,000    |
| 1975-76 ..... | 1,510,000  |
| 1976-77 ..... | 1,387,000  |

for services rendered to boating is anticipated. In addition, a small amount is budgeted for amortization of capital improvements, but this is not reflected in the estimates shown in table 8.1.

Analysis of the expenditure data indicates that boating is a relatively high-cost activity compared with other forms of recreation. Using the actual operating costs for 1973-74 (\$843,320), unit costs work out to about \$70 per registered boat, or \$17 per regular boater. More significantly, perhaps, if a total of 2,000,000 boating experiences are estimated for the year, the cost would be \$.42 per experience. Even using the expenditure figure reported by the harbors division, the cost would be \$.33 per experience. By contrast, the parks division of DLNR estimates a cost of \$.11 per visit to beach parks and \$.08 per visit to inland parks.

The contrast is even more striking if the small boat harbors portion of the program is isolated from the rest of the program for separate consideration. Thus, of the total operating costs in 1973-74, approximately \$696,000 could be attributed to the operation and maintenance of small boat harbors. These harbors, in turn, served only about 20 percent

of the total boats registered, or about 2400 boats. On this basis, costs for operating small boat harbors in 1973-74 would work out to about \$290 per boat, or \$72 per boater, or \$2 per boating experience. Even if the number of boaters and the number of experiences were substantially higher for wet-stored boats than for land-based boats, unit costs for the boat harbors portion of the program would be much higher than for other aspects of recreational boating or for other forms of recreation.

The projected future increases in expenditures will increase the unit costs. Operating costs are projected to go up about 76 percent between 1974 and 1977. But in the executive budget, the manhours of participation are estimated to rise during this period by only 11 percent. If a similar increase (11 percent) in overall boating experiences is estimated, the cost per experience would go to \$.62 by 1977.

**Capital improvements costs.** The costs of capital improvements have far exceeded operating costs over the past decade. Financial data on capital improvements are available for the period going back as far as 1961, but the usefulness of the data is limited in terms of providing readily accessible detailed information either on a project basis or on a year-by-year basis. As a result, we have had to work within the constraints of available data. Nevertheless, it is believed that the information contained in this report is sufficiently accurate in terms of the total magnitude of the cost of capital improvements. Since 1961 about \$12 million have been allotted from the general obligation (G.O.) bond fund, plus an indeterminate (though probably minor) amount from cash. Table 8.2 shows G.O. bond fund allotments for boating from 1961 through 1974, and the gross estimates for 1975 through 1981 as presented in the multiyear program plan.

The projections for 1975-1981 represent what the harbors division plans to expend to increase the physical facilities for boating. Various planning studies have found boating facilities in Hawaii to be insufficient.

**Table 8.2**  
**General Obligation Bond Fund Allotments and**  
**Projected Amounts for Boating Facilities**  
**(In thousand dollars)**

|  |                  |
|--|------------------|
| <i>1961-74</i>   |                  |
| Total appropriations for boating facilities .....                        | \$23,124         |
| Total amount unallotted at June 30, 1974 .....                           | 11,124           |
|  | <hr/>            |
| Total amount allotted at June 30, 1974 .....                             | <u>\$ 12,000</u> |
| <br>   |                  |
| <i>1975-81</i>   |                  |
| Total amount projected in multi-year<br>program and financial plan ..... | <u>\$29,321</u>  |

### The Boating Special Fund

Since July 1971, the operating costs of the recreational boating program have been paid from the boating special fund created by Act 93, S.L.H. 1971. (Capital improvements, however, have continued to be financed almost entirely through general obligation bonds. The boating fund has not reimbursed the state general fund for the debt service cost of these bonds.) The act as initially enacted provided for the payment from this special fund of "the cost of maintenance and operation of properties under the control and management of the department of transportation which are used principally for recreation and the landing of fish." The scope of the act was broadened in 1972 (Act 180, S.L.H. 1972), such that today the boating special fund supports a variety of activities, not just property "used principally for recreation and the landing of fish." As presently codified, section 266-20, HRS, reads as follows:

"Sec. 266-20 Boating program; payment of costs of administration. The cost of administering a comprehensive boating program including the cost of (1) operating and maintaining properties under the control and management of the department of transportation which are used principally for recreation or the landing of fish; (2) improving boating safety; (3) operating a vessel registration and boating casualty investigation and reporting system; (4) enforcing boat harbor, navigation, shore waters and beach laws and

regulations; (5) abating air and water pollution related to small craft, and (6) other boating program activities shall be paid from the boating special fund; provided, if funds collected from the foregoing operations and other sources are insufficient to meet all such costs general fund appropriation may be used to augment the boating special fund, for the purposes thereof."

Although section 266-20 mentions only operations and maintenance with respect to the costs of "properties under the control and management of" the DOT, section 266-19, relating to the setting of fees, includes the cost of amortizing capital improvements among the costs that may be covered by the revenues collected from the fees.

Deposited into this special fund are revenues from several different sources. Various statutory provisions provide for the deposit of these revenues into the boating special fund.

**Status of the fund.** As of July 1, 1974, the boating fund had an unencumbered balance of \$284,673. This balance was the result of two years of substantial surpluses followed by one year of deficit. Table 8.3 shows the historical development of the fund and projects its status through the end of fiscal year 1976-1977.

The table reflects considerable fluctuation in the financial history of the fund. The large surplus estimate for 1974-75 is based on a cutback in maintenance and, in part, on the anticipated adoption of higher mooring rates during the year. Primarily, however, it is the result of an estimated increase of more than \$142,000 in fuel tax revenues over the preceding year.

The projections point to a diminution in the fund during the 1975-77 biennium, attributable largely to a doubling of expenditures over the current rate proposed for the biennium. A deficit is projected even with a major, contemplated revenue increase. Half of the projected revenue increase for the biennium is attributable to higher mooring rates, which have yet to be authorized.

**Table 8.3**  
**Schedule Summarizing Revenues, Expenditures, and**  
**Fund Balance of the Boating Special Fund**  
**1971-74 (Actual) and 1974-77 (Estimated)**

| Fiscal year          | Revenue              | Expenditures         | Surplus<br>[deficit] | Fund Balance         |           |
|----------------------|----------------------|----------------------|----------------------|----------------------|-----------|
|                      |                      |                      |                      | Beginning            | Ending    |
| 1971-72              | \$ 585,249           | \$ 478,794           | \$106,455            | \$ --                | \$106,455 |
| 1972-73              | 704,778              | 378,689              | 326,089              | 106,455              | 432,544   |
| 1973-74              | 749,222 <sup>b</sup> | 897,093 <sup>c</sup> | [147,871]            | 432,544              | 284,673   |
| 1974-75 <sup>a</sup> | 932,000              | 764,000              | 168,000              | 285,000 <sup>d</sup> | 453,000   |
| 1975-76 <sup>a</sup> | 1,245,000            | 1,510,000            | [265,000]            | 453,000              | 188,000   |
| 1976-77 <sup>a</sup> | 1,277,000            | 1,387,000            | [110,000]            | 188,000              | 78,000    |

<sup>a</sup>All data for 1974-77 estimated by harbors division.

<sup>b</sup>Includes \$30,884 of the unrequired amount from the previous year's encumbrances.

<sup>c</sup>Includes \$53,773 of expenditures for capital improvements.

<sup>d</sup>Rounded to conform with rounded data available for subsequent years.

**Sources of boating revenues.** Table 8.4 sets forth a summary of the sources of the revenues which are deposited into the boating special fund, including the amounts derived from each in fiscal year 1973-74 and estimated for 1974-75.

A review of the table indicates that charges to boaters are, and no doubt will remain, the largest single source of revenue. The table shows, however, a decline in the relative contribution of this source in 1974-75. The principal reason for this decline is the several-fold increase in fuel tax revenue expected in 1974-75.<sup>1</sup> If and when the planned increases in mooring fees are put into effect, and as new harbors are placed in operation, the relative contribution of charges to boaters will probably increase.

Another main source of revenue is proceeds from the rental and use of property. This source is relatively stable with regard to amount and likely to remain so unless major changes are made in the properties the revenue of which accrues to boating. Federal aid likewise is expected to remain at about its present level, unless changes are made in federal legislation or formulas governing it.

<sup>1</sup>The increase in the contribution of fuel tax revenues to the total revenues as shown in this table is, if anything, understated. The revenue amount noted in the table from this source is a somewhat conservative estimate of the harbors division. Fuel taxes are paid by boaters but are not exactly user charges as they are not imposed by the DOT, and would be payable whether or not any boating facilities existed. The amount payable into the special boating fund is determined by a formula which apportions fuel taxes collected between the highway and boating funds. The dramatic increase for 1974-75 is the result of the use of a more realistic formula and an increase in gas consumption over the previous year when consumption was reduced due to the world "fuel crisis." Future increases are to be expected, especially with an increase in the fuel tax rate.

Table 8.4  
Boating Fund Revenue Sources and Legal References

| Revenue source                                      | Legal authorization          | Level set by  | Accrued proceeds (000 \$) |              |                           |              | Explanation by revenue source  |
|---|------------------------------|---|---------------------------|--------------|---------------------------|--------------|--|
|   |                              |   | FY 1973-74<br>(actual)    |              | FY 1974-75<br>(estimated) |              |  |
|   |                              |   | Amt.                      | %            | Amt.                      | %            |  |
| <i>Charges and fees to boaters</i>                  |                              |   |                           |              |                           |              |  |
| Mooring charges                                     | Sec. 266-17, HRS             | DOT regulation  | 349                       | 47.5         | 379                       | 40.7         | Charges for mooring in state harbors                                     |
| Residence charges                                   | Sec. 266-17, HRS             | DOT regulation  | 31                        | 4.2          | 31                        | 3.3          | Additional charge for living aboard moored boats                         |
| Boat registration fees                              | Ch. 267, HRS                 | Statute   | 43                        | 5.8          | 48                        | 5.2          | Fee for registration of self-propelled small boats                       |
| Other fees and charges                              | Sec. 266-17, HRS             | DOT regulation  | 18                        | 2.5          | 22                        | 2.3          | Service charges, utility charges, shower privileges, sale of water, etc. |
| <b>Total charges and fees to boaters</b>            |                              |   | <b>441</b>                | <b>60.0</b>  | <b>480</b>                | <b>51.5</b>  |  |
| <i>Revenues other than charges to boaters</i>       |                              |   |                           |              |                           |              |  |
| Property rental and use                             | Secs. 266-17 and 171.11, HRS | Rental agreements and parking fees                    | 221                       | 30.0         | 232                       | 24.9         | Rental and fees for use of state land in small boat harbor areas         |
| Fuel tax  | Sec. 248.8, HRS              | Tax rate by statute, allocation to boating by formula | 38                        | 5.2          | 185                       | 19.8         | Tax on estimated fuel consumption by small boats                         |
| Federal aid   | Federal law                  | Federal formula                                       | 35                        | 4.8          | 35                        | 3.8          | Assistance under Boat Safety Act of 1971                                 |
| <b>Total revenue, other than charges to boaters</b> |                              |   | <b>294</b>                | <b>40.0</b>  | <b>452</b>                | <b>48.5</b>  |  |
| <b>Total, all sources</b>                           |                              |   | <b>735</b>                | <b>100.0</b> | <b>932</b>                | <b>100.0</b> |  |

## Chapter 9

### FINANCING SMALL BOAT HARBORS: SOME PRELIMINARY ISSUES

One of the most troublesome issues confronting the DOT today is the matter of mooring fees to be paid by the users of berths at small boat harbors. Over the past several years, various attempts have been made to implement a new schedule of fees. These attempts, however, have not resulted in the establishment of a new schedule satisfactory to all parties concerned.

In the next chapter, we deal directly with this problem of setting mooring fees. Before doing so, however, we believe it to be essential that some basis be laid for the discussion contained in that chapter. Indeed, it appears that the current controversy over mooring fees exists because the parties involved have not clearly established the conceptual base for determining what the mooring fees ought to be. This chapter provides that conceptual base.

#### Summary of Findings

The existing boating special fund is inadequately conceived. By statute, the boating special fund is intended to support the various aspects of recreational boating, including the small boat harbor facilities. We find in general that:

1. A special fund is inappropriate as a funding mechanism for the recreational boating program, except for that portion of the program relating to the construction, maintenance, and operation of small boat harbor facilities.

2. The revenues from certain sources are inappropriately being included in the boating special fund.

3. There is room for state subsidization (participation) in funding a portion of the costs of small boat harbor facilities, even though, conceptually, the users of the facilities ought to be responsible for all costs associated with the construction, maintenance, and operations of the facilities.

#### Appropriateness of the Boating Special Fund

The 1971 establishment of the boating special fund was not the first time a special fund was created for recreational boating. Four years after the small boat program was first recognized as an appropriation item in 1947, the legislature established a "small boat harbor maintenance fund" for the purpose of paying for "the cost of maintenance and operations of properties...used principally for recreation and the landing of fish." (Act 239, S.L.H. 1951.) However, in 1959, this special fund was abolished upon the recommendation of Public Administration Service, a consultant hired to review the status and structure of all special funds then in existence. Public Administration Service recommended abolition on the grounds that the small boat harbor operation did not constitute either an "enterprise" or a "peripheral activity." It was not an enterprise because it

was not self-supporting (that is, the fund was not paying for capital improvements), and it was not peripheral because recreational boating was an accepted part of the then Territory's program. In 1970, another consultant hired by the State, while agreeing with Public Administration Service's premises, nevertheless recommended the re-creation of a special fund because the small boat activity was one where user revenues could be logically related to the level of service provided the boaters. That being the case, he reasoned, the partial support afforded to the program by users was best accounted for separately, using the device of a special fund. Upon his recommendation, the current boating special fund was established in 1971.

It is clear that there are, and probably will be, continuing differences of opinion as to whether a special fund is appropriate for recreational boating. In our view, a special fund is appropriate, but not for the whole of recreational boating. It is appropriate only with respect to small boat harbor facilities.

A special fund is a means of accounting for particular revenues that are dedicated to a particular purpose. Thus the appropriateness of a special fund is determined by the relative need or desirability to dedicate particular revenues to a particular purpose.

Whether a particular purpose needs or should be supported by the dedication of particular revenues is ascertained on the basis of a number of factors. The presence of the following favors such dedication and the establishment of a special fund to account for the dedicated revenues:

(1) the activities or services encompassed within the particular purpose benefit directly and almost exclusively an identifiable clientele (apart from the public at large) such that the benefiting clientele can reasonably be expected to pay for all or a major part of the costs of the activities or services rendered and

(2) a reasonable relationship can be established and maintained between the charges to be paid for by the benefiting clientele and the level of activities or services provided. In such a situation, of course, the charges imposed on the benefiting clientele are the revenues that are dedicated to the purpose of the activities or services.

This is not to say that revenues totally unrelated to a particular purpose could not be dedicated. For instance, particular tax revenues, such as fuel taxes, could be dedicated to a purpose unrelated to the subject of taxation. This is so because by definition, a special fund is a fund, the revenues of which, however and wherever acquired, are set aside for a specified purpose. However, the point that is being made here is that where the factors enumerated above are present, a strong case is made for a special fund since a natural source of revenue that could be dedicated is manifested—the charges imposed on the benefiting clients.

The case for a special fund is strengthened when the activities or services rendered are in nature similar to those activities or services rendered by a private enterprise or are activities or services at the periphery of accepted governmental responsibility where avoidance of burdening the general taxpayer for the costs of the activities or services rendered is desirable.

In the sections that follow, we note the presence of the factors described above in that aspect of recreational boating concerned with small boat harbor facilities, but observe that as to recreational boating as a whole, there is little justification for continuing a special fund.

**General-fund funding for recreational boating.** Initially when the boating special fund was established, it was solely for paying for the cost of maintaining and operating "properties" under the control and management of the DOT "used principally for recreation and the landing of fish." As worded, the use of the special fund was limited to the maintenance and operation of small boat harbor facilities. A year after the

creation of the special fund, the use to which the special fund could be put was broadened to include all aspects of recreational boating, including vessel registration, enforcement of regulations relating to navigation and shorewaters, accident investigation and reporting, and "other boating program activities."

The inclusion of all aspects of recreational boating within the activities to be funded by the boating special fund was probably the result of tradition and habit, rather than of any deliberate consideration of the theoretical basis for such inclusion. Historically, the commercial harbor operations administered by the DOT have been funded through the harbors special fund, and commercial harbor operations have always included all activities related to commercial shipping under the jurisdiction of the DOT. Given this tradition, it was natural to accord the same treatment to the boating special fund—that is, to cause all activities related to recreational boating under the jurisdiction of the DOT to be funded by the boating special fund.

There is, however, a vast difference between commercial shipping activities and recreational boating activities. All commercial shipping activities under the jurisdiction of the DOT are related directly to the operations of the commercial harbors. There are few, if any, commercial shipping activities that occur independently of the commercial harbors. This is not the case with recreational boating. There are recreational boating activities, such as boating safety, vessel registration, and education, that occur independently of small boat harbors. These activities affect not only the users of small boat harbors but others as well (i.e., owners of land-based boats). Thus, treating recreational boating activities in the same way as commercial shipping activities is inappropriate. Requiring all commercial shipping activities to be funded through the harbors special fund may logically be argued, but equally logical argument cannot be made for funding all recreational boating activities through a boating special fund.

Recreational boating is but one of several recreational programs in the State. Other state recreational programs include camping, hiking, and picnicking. Except for recreational boating, however, none of these other recreational programs is funded through a special fund. They are all funded by the state general fund. There are cogent reasons for funding these recreational programs from the general fund. They are an accepted governmental responsibility. Recreational boating (except for small boat harbor facilities for reasons noted below) is no different from these other recreational programs. To require recreational boating to be specially funded may result in discrimination either for or against this form of recreation. In any event, to require recreational boating to be specially funded is to deny the State the opportunity to view recreational boating in the context of the entire recreational program of the State. Funding recreational boating through the general fund would place it on equal footing with the other state recreational programs, cause it to compete with other recreational programs for funding, and enable comparisons between and among all recreational programs to be made in light of their respective costs and benefits. In summary, placing recreational boating on the same funding base as other recreational programs would permit the State to formulate better integrated and more comprehensive goals and programs in the recreational field.

One further observation is pertinent here. By making the entire recreational boating program dependent on the special fund causes those aspects of the program unrelated to small boat harbors to be submerged. The primary activity currently in recreational boating is the construction and maintenance of physical facilities. Submergence of non-boat-harbor aspects of the program is indicated by the fact that very little attention currently is being given to boating safety and education, and by the fact that small boat harbor operations consume over 80 percent of the funds for recreational boating while serving only about 20 percent of the boaters. Also, there has been considerable lag in constructing launching ramps which

serve about 80 percent of the boaters. Given the chief orientation of the DOT, the construction and maintenance of physical facilities will continue to be given emphasis, and the bulk of the funds in the boating special fund will continue to be geared to such physical facilities. Making the recreational boating program subject to general fund financing would assist in highlighting those aspects of recreational boating which are now submerged.

**Special fund for harbor facilities.** Although a special fund for recreational boating as a whole does not appear appropriate, a special fund appears useful and desirable with respect to that portion of recreational boating which is concerned with small boat harbor facilities. Indeed, small boat harbor facilities are particularly amenable to funding through a special fund.

The population that directly benefits from the small boat harbors is that group of boaters who wet-store their boats. The group is limited in number. There are no more than 10,000 of these boaters. Viewing small boat harbors as being primarily facilities in which to moor small boats when not in use, the benefits that spill over onto those outside this limited number are miniscule, if they exist at all. Not only is the population that benefits small in number, but it is essentially unchanging in composition. Each user is assigned a berth to which he has continuing, exclusive use for years. This is unlike the state cabins which are used for only short periods of time and are thus capable of accommodating numerous users, although the number of cabins is limited. Finally, the use to which the small boat harbors are put is peripheral to the principal purpose or enjoyment of recreational boating; namely, the act of sailing or going out to sea in a boat. Small boat harbors are places where boats are stored when not in use. This again makes the use of small boat harbors different from the use of other recreational physical facilities, such as cabins, hiking trails, and parks where the use of the facilities in and of itself constitutes the essence of the recreational activity which the facilities serve.

In short, small boat harbors serve primarily to provide boat storage facilities for a very limited number of boaters.

Under these circumstances it is reasonable to expect the users of small boat harbors to pay for the facilities provided. Small boat harbors are similar to automobile parking facilities that are constructed for the convenience of users. The users of such parking facilities can and should be expected to finance the cost of constructing, maintaining, and operating the facilities. This, at least, is what is attempted in privately run, off-street parking facilities. A special fund in this instance makes sense, for the charges paid by users can be and are directly related to the level of services provided.

The view expressed here contemplates (at least conceptually) that the users of small boat harbors should pay for *all* costs of constructing, maintaining, and operating the harbor facilities. In a subsequent section we explore whether the state general fund should pay for some of the costs of constructing, maintaining, and operating small boat harbor facilities. There we conclude that the general fund probably should bear a portion of the construction costs of small boat harbors. However, that conclusion does not vitiate the concept that the users should pay for all of the costs. Any funding by the general fund, if made at all, should be viewed as a subsidy to assist the users. The purpose of using the special fund for this program is to highlight the relationship that should exist between user fees and the costs of the small boat harbor operations. This relationship would be blurred, if not lost altogether, should the small boat harbor activities be funded by the general fund.

***Recommendation.*** *We recommend that the recreational boating program, except for the construction, maintenance, and operation of small boat harbor facilities, be funded by the state general fund. The small boat harbor activities relating to the construction, operation, and maintenance of facilities should be funded through a special fund.*

## **Inappropriateness of Inclusion of Non-User Revenues in the Boating Special Fund**

Once it is recognized that the users of small boat harbors should be solely responsible for the payment of the costs associated with the construction, operation, and maintenance of the facilities dedicated primarily to their use, the question arises as to what sorts of charges should be levied on the users, the revenues of which might then be appropriately deposited in the special fund.

Currently, revenues from a variety of sources are placed into the boating special fund. Of these, only the revenues from mooring fees, residence fees, and miscellaneous charges in harbors are clearly related to small boat harbors operations and thus properly included in a special fund for small boat harbor construction and maintenance. The revenues from other sources are not. Indeed, even if the boating special fund could be justified to support not only the small boat harbors but recreational boating as such, the appropriateness of inclusion of these other revenues in the boating special fund is highly questionable, for there is little, if any, direct relationship between the revenues collected from these sources and the level of services rendered. These other sources of revenues are property rentals, fuel taxes, vessel registration fees, and federal aid funds.

**Revenues from use of property.** About 30 percent of boating fund revenues are generated by rental and use of property adjacent to or associated with the small boat harbors. In fiscal year 1973-74, these revenues amounted to \$221,319 derived from about 35 land rental agreements plus \$78,013 in parking fees. The preponderance of revenue-producing property is on Oahu. All the parking fees and 60 percent of the land rentals are generated at Ala Wai, with most of the remainder of land rentals coming from one large lease at Keehi.

The dedication of property revenues to the boating fund is patterned after the similar dedication of commercial harbor property

revenues to the harbor special fund. Despite a certain surface similarity, however, the situation is entirely different in the two cases. The shore properties at commercial harbors are typically integral parts of the various enterprises that use the harbors. Warehouse space, pipeline easements, or passenger facilities are as essential to successful operations as the wharves themselves. In the case of small boat harbors, with some exceptions (marine service stations are one), the use of these properties has little or nothing to do with small boat harbor operations. For that matter, it has nothing to do with recreational boating itself. It just happens that there are valuable properties near the small boat harbors. Excellent examples are the parking area leased to Spencecliff Corporation for the Tahitian Lanai restaurant and the driveway access afforded to Kaiser Hospital.

Thus, the revenues from property rentals should not be included in the special fund for small boat harbors, but should rather be deposited into the state general fund.

**Revenues from fuel taxes.** Revenues to the boating fund from liquid fuel taxes were a minor part of the whole during fiscal year 1973-74, as they amounted to only \$37,756, or some 5 percent. The potential from this source is, however, much greater. It is estimated to be \$185,000 for FY 1974-75, which would be 20 percent of the total estimated revenue. As will be seen later in this report, even the higher figure for 1974-75 by no means exploits this source to its potential as identification of the amount of fuel tax derived from marine uses in the past has been done in a piecemeal manner and has resulted in unaccountably low payments into the boating special fund.

A large part of the marine fuel tax collections is derived from dry-stored boats. A university of Hawaii study conducted in 1973<sup>1</sup> estimated that 19 percent of the fuel taxes paid in 1972 were paid by 3962 boats under 16 feet

<sup>1</sup>Hawaii experiment station, college of tropical agriculture, university of Hawaii, *Marine Fuel Consumption and Tax Payments by Hawaii Boatowners*, Departmental Paper 18.

in length and 58 percent by 3797 boats between 16 and 25.9 feet in length. In that year, there were 7896 land-based boats registered in the State of which it was estimated 6988 were other than "sail only." (Estimate derived by reducing the number of boats by the statewide percentage of "sail only.") On the assumption that all of the boats under 16 feet were land-based, and the remaining 3020 land-based boats were in the 16-26-foot class, or 80 percent of the class total, we calculated that at least 65 percent of the marine fuel taxes were paid by trailer boaters in 1972  $(.19 + (.58 \times .80) = .65)$ . If this percentage still holds true, and there is no reason to suppose that it does not, depositing the marine fuel taxes into the special fund dedicated exclusively or primarily to small boat harbor activities would do an injustice to the owners of land-based boats. Since the owners of both wet-stored and land-based boats are included in all aspects of recreational boating other than small boat harbors and since there are cogent arguments for funding recreational boating from the state general fund as are other kinds of recreational boating, it seems only appropriate that marine fuel taxes be deposited into the state general fund.

Under the program differentiation being made here, activities undertaken to support and encourage the recreational use of dry-stored boats—such as the construction and operation of boat launching ramps—would be a general fund responsibility. Such facilities and services for dry-stored boats are not significantly different from facilities and services provided to other forms of recreation out of the general fund. For example, there is no exclusivity of use of launching ramps; like most other recreational facilities, they are available on a first-come, first-served basis. As dry-stored boat owners are the primary source of marine fuel taxes, it would seem highly appropriate to make the marine fuel taxes general fund realizations at the same time that dry-stored boating is made a general fund responsibility.

Even if the boating fund were to be kept to support not only the small boat harbors, but the

entire recreational boating program, the deposit of the fuel tax revenues into the fund is inappropriate. The conceptual rationale for depositing taxes derived from the sale of fuel used in boats to the boating fund is no better and perhaps slightly worse than that which underlies the deposit of other fuel taxes in the airport or highway funds. In the latter cases, taxes have historically been used as a base for revenue bonds, which requires their segregation; in the case of boating, no such bonds exist or are contemplated, and diversion of tax proceeds to a special fund has little theoretical justification. The dedication of the tax actually amounts to a use of the State's taxing power for a special purpose and is, therefore, a limitation on the budgeting-appropriation system of allocating state resources. Under the existing arrangement, real distortions can occur. For example, dry-stored boat owners pay 65 percent or more of the marine fuel taxes and constitute 80 percent of all boaters, but receive relatively little attention relative to the users of the small boat harbors.

**Revenues from boat registration fees.** Fees are charged all owners who register their boats as required by the boating law. In fiscal year 1973-74, these fees amounted to \$43,000. If a special fund is set up only for the purpose of constructing and maintaining small boat harbors, the deposit of these fees into the special fund would, as in the case of fuel tax revenues, discriminate against the owners of land-based boats who do not use the harbor facilities.

Even under the present situation where the boating special fund is used to support not only the small boat harbors, but the recreational boating program as a whole, the deposit of these fees into the boating special fund is without justification. The boat registration fees are in all respects similar to other kinds of registration fees, such as for automobiles. Assessing such fees is an exercise of the police power of the State, and its principal rationale is that a registration system is necessary for regulatory purposes. Being a regulatory device, depositing the fees in the boating fund is merely a matter of habit.

There is no real relationship between the revenues received and the level of service rendered. The rates are fixed by law. The present schedule is somewhat complex, but modest in amounts. A 40-foot boat only pays \$10 for an original registration and \$9 per year for renewals. These rates have been set purely as a matter of judgment, not on the basis of the services rendered.

**Revenues from federal aid.** Federal aid to the boating program is received under the federal Boat Safety Act of 1971 for the purpose of furthering boating safety. This source currently amounts to around \$40,000 per year, or around 5 percent of total revenue. As long as Hawaii adheres to the requirements for federal aid this source will probably continue. No major change in the level of federal aid is anticipated in the immediate future. As these funds are for the purpose of promoting boating safety, there is no reason for their inclusion in a special fund set up for the purpose of constructing and maintaining small boat harbors or even for their inclusion in the present boating special fund. It would appear more appropriate to make them general fund realizations.

*Recommendation. We recommend that the special fund for the construction, maintenance, and operation of small boat harbor facilities consist only of the revenues derived from charges imposed on the users of the facilities.*

### **Self-Sufficiency**

The mere fact that the users of small boat harbors ought to pay for all costs of constructing, maintaining, and operating small boat harbors does not mean that the State could not or should not contribute toward the payment of some of these costs. There are times and circumstances when state participation in the payment of costs, otherwise the responsibility of others, is justified. Even under the present boating special fund arrangement, there is statutory recognition of possible state participation. Thus section 266-20, HRS,

provides that "if funds collected from...operations and other sources are insufficient to meet all...costs general fund appropriation may be used to augment the boating special fund."

**Basis for state participation.** Recreational boating is recognized by the State as a program for which it has responsibility. It is included in the State's program structure. Small boat harbors is a part of and supports this recreational boating program. Boating itself implies access to boats, and small boat harbors assist in some degree to providing such access. Thus, although small boat harbors directly benefit only the actual users of the harbors who are small in number, the State's interest in promoting recreational boating provides a sufficient basis for state participation in paying for the costs of the small boat harbors. There are ample precedents of state financial support for activities which contribute to overall state objectives, even though basic responsibility for the financial support of such activities lies elsewhere. For instance, the State has subsidized in the past such activities as museums and symphony orchestras, even though private in nature. The State's interest in promoting the culture and the arts has served as ample justification for such subsidies.

State participation is further justified on the ground that the small boat harbors, although of direct benefit to only a limited number of users, are nonetheless the property of the State. They continue to have value for many years and can serve successive generations of users. Thus the State has some degree of interest in the construction, maintenance, and operations of small boat harbors.

**Probable inability of small boat harbors to be supported by users alone.** Conceptual justification aside, there is a practical reason why the State should perhaps participate in paying for the costs of small boat harbors, at least for the time being. The realities of the existing situation suggest that small boat harbors probably could not be supported by the users

alone at this time without causing financial strain on the part of the users.

Under the present boating special fund arrangement, the annual revenues have been sufficient to cover all annual operating costs,<sup>2</sup> but not capital improvements costs. Almost all of the capital improvements costs have been met through the issuance of general obligation bonds, with no reimbursement from the special boating fund for the debt service charges for these bonds.

Of course, under the present arrangement, the special boating fund includes revenues from property rentals, fuel taxes, boat registration, and federal aid as well as revenues from charges imposed on the actual users of the harbors themselves (i.e., mooring charges and residence fees). Also, the fund pays for not only the costs of maintaining and operating small boat harbors, but for the costs of other activities associated with recreational boating (e.g., safety and education). We have recommended that a special fund be maintained, but only for the purpose of paying for the costs of small boat harbors, not the costs of other recreational boating activities. We also recommended that revenues from property rentals, fuel taxes, boat registration, and federal aid be deposited not in the special fund but into the state general fund. In this connection, we noted that even if the special boating fund is continued for the purpose of paying for the costs of other recreational boating activities as well as the small boat harbors, as is now the case, the inclusion of the revenues from these sources in the revenues of the fund is inappropriate.

If, in accordance with our recommendation, the revenues from property rentals, fuel taxes, boat registration, and federal aid are excluded from the revenues of the recommended special fund or the present boating special fund, the fund would not have sufficient annual revenues to pay for all of the annual operating costs, which the boating special fund is currently meeting, unless rates are increased substantially. This is so even if the

special fund does not have to bear the costs of activities not directly relating to small boat harbors. The revenues from property rentals, fuel taxes, boat registration, and federal aid account for about one-half of the current revenues of the boating special fund. (They accounted for 46 percent in fiscal year 1973-74 and an estimated 54 percent in fiscal year 1974-75.) This means that the current charges related directly to the use of small boat harbors, i.e., mooring fees, would need to be at least doubled for the revenues of the fund to cover the current level of annual operating expenditures—from the present \$.15 per foot of length of boat or berthing space per month for the least desirable berths (in-harbor moorings) and \$.78 per foot of length of boat or berthing space per month for the best berths (Ala Wai and Keehi piers), assuming the same number of berth spaces that exists presently at the harbors. We estimate that for each \$100,000 in additional revenues required, the mooring charges for the least desirable berths would need to be increased by \$.042 per foot of length of boat or berthing space per month and for the best berths by \$.167 per foot of length of boat or berthing space per month. The calculation here assumes that residence charges (charges assessed to live-aboards) would remain at the current level (i.e., the 1973-74 and 1974-75 level). If the residence charges are increased, the increase in mooring fees would be proportionately decreased.<sup>3</sup>

<sup>2</sup>See table 8.3. In fiscal year 1973-74, the revenues were \$749,222, and the total expenditures \$897,093 (audited figures), for a deficit of \$147,871. This deficit was made up by the surplus that had accumulated in the fund during the fiscal period 1971-73. As shown in table 8.3, in fiscal year 1972-73, revenues were nearly double the expenditures. For fiscal year 1974-75, estimated figures show that revenues again are expected to exceed expenditures by \$168,000. Thus, for the purposes of our discussion here, it can be said that the "current" level of revenues is sufficient to cover the "current" level of expenditures.

<sup>3</sup>The berths at small boat harbors are currently categorized into nine classes, based on relative value or desirability. The rates for each of these classes vary depending on the location of the piers (Ala Wai, Keehi, Heeia-Kea, Haleiwa and Pokai Bay, and neighbor islands). See chapter 10.

The situation outlined above would not change very much if, as we recommend, the expenses of recreational boating activities other than small boat harbors are no longer made the responsibility of the fund. The costs of these other recreational boating activities amount at present to about \$147,000 a year. On the other hand, the situation would indeed change if the level of operating expenditures were to increase in future years as the DOT estimates they would.<sup>4</sup>

If, in addition to the operating costs, the costs of capital improvements were also to be borne by the users of the small boat harbors, as conceptually they should, then the mooring charges would need to be increased even more. Take, for instance, the costs of improvements already in place.<sup>5</sup> As of June 30, 1974, the unamortized balance of general obligation bonds issued by the State for the construction of small boat harbors is estimated to have been approximately \$8 million. If the users were to be required to pay the debt service on account of this principal balance beginning on July 1, 1974 (the debt service paid for by the general fund before July 1, 1974 being considered "written off" by the State), then, assuming a 20-year amortization of the improvements in place and an average interest rate of 4.27 percent for the bonds issued for the improvements,<sup>6</sup> about \$10.5 million would be required for debt service to amortize the balance on the bonds. Assuming that the debt service is to be paid for by the boaters in equal sums over a period of 12 years, the effect would be an increase in the mooring charges of \$.37 per foot of length of boat or berthing space per month for the least desirable berths and \$1.46 per foot of length of boat or berthing space per month for the best berths.

Small boat harbor construction has not come to a halt. As noted in table 8.2, the DOT envisions further construction in future years. The table shows previous authorizations of capital improvement projects which have yet to be allotted of \$11 million, and the department's plans for future authorizations in the amount of \$29 million, or a gross of \$40 million. For every

\$1 million in future capital investments, at an interest rate of 6.25 percent<sup>7</sup> and amortization over 20 years, the average annual debt service would be approximately \$86,000. The effect, of course, would be a further increase in the mooring charges imposed on the users of the small boat harbors.

What the foregoing suggests is that, if the users are required (as they should) to pay for all costs associated with the construction and maintenance of small boat harbors, the user charges (i.e., the mooring fees) would need to be increased considerably. In the short run, existing balances in the boating special fund can be expected to take up some of the slack. By 1977, however, there will be little left in the fund, according to present estimates.

In light of the likely heavy opposition by boaters to any drastic, sudden increases in the user charges, and in light of some public interest that exists in the construction and maintenance of small boat harbors, the State may elect to assist (subsidize) the boaters, at least until the notion of full cost payments by users is gradually but fully implemented. In such a case, the question is the extent and form of such subsidization.

<sup>4</sup>For instance, for fiscal year 1975-76, operating costs are budgeted at \$1,510,000, about twice those incurred in fiscal year 1973-74.

<sup>5</sup>For the purpose of this discussion, the "costs of improvements already in place" represent the total amount of general obligation bond fund allotments on projects authorized by the legislature during the period 1961 to 1973. The total cost of improvements in place as of June 30, 1974 was approximately \$12 million. Of this, at least \$316,000 was on account of launching ramps. Given the manner in which the records on capital improvements costs are maintained by the DOT and considering that legislative appropriations sometimes cover several types of harbor improvements in a single appropriation item, we were unable to segregate the costs associated with navigational and related improvements and in some cases the cost of launching ramps. Under our recommendation, the capital improvements costs of neither the launching ramps nor navigational and related improvements should be the responsibility solely of the users of the small boat harbors.

<sup>6</sup>The average net interest cost of all state general obligation bonds issued between 1961 and 1974 was reported by the department of budget and finance to be 4.27 percent.

<sup>7</sup>The most recent state issues of 20-year general obligation bonds were sold at an average net interest cost of 6.0662 percent.

An excellent case can be made for having the users pay all costs of operating the small boat harbors. Personnel at harbors are entirely involved in service to boaters, and maintenance of facilities is directly to the benefit of boaters and no others. The agency controlling small boat harbors thus can and should be expected to balance the operating budget (increase the user rates to meet operating expenditures or reduce the expenditures to the level of the revenues derived). This does not mean, of course, that on certain occasions, the legislature might not subsidize a part of the operating expenditures. There might be circumstances where to compel the agency to balance its operating budget for small boat harbors might result in excessive or erratic rates. For example, large deferred maintenance costs or one-time outlays for equipment might not be conveniently provided for in the revenue structure. In these situations, if justified, the legislature might conceivably appropriate general fund revenues. However, as a general rule, all operating expenditures should be met by the users themselves.

If state subsidy is to be made, such subsidy is more appropriate in the area of capital improvements than elsewhere. For one thing, the State has been paying the capital costs of small boat harbor facilities for many years. For another, as previously noted, facilities built are state assets, not the property of boaters; they continue to have value for many years and can serve successive generations of users. This is quite different from, say, the salary of a harbor attendant which is gone when paid, or even of the cost of maintenance which is incurred primarily because the facilities are in use.

To say that state support is more appropriate in CIP than in operations is not to say the State should necessarily, or even desirably, pay the entire cost. Reference has been made elsewhere in this report to the dilemma presented to the State by the high cost of boating facilities relative to the number of patrons. The point we make here is that state support, to the extent it is afforded, should be in the form of providing facilities.

The amount of state support to be provided in the construction of small boat harbors should be made on a project-by-project basis rather than on any set policy or formula as to the relative contribution to be made by the State *vis-a-vis* the users. That is to say, the State should not adopt as a matter of policy applicable to all small boat harbor capital improvements the practice (1) that the State would pay the debt service from the state general fund on all bonds issued for the construction of harbor facilities with no contribution from the users, or (2) that the users would pay a pre-determined percentage of the debt service charges. Neither approach gives due recognition to the fact that fundamentally the users should be responsible for the costs of the improvements and that state support is a subsidy to the users of harbor facilities. The first approach ignores this fact and the second grossly oversimplifies it.

The project-by-project approach can be fostered by requiring the agency responsible for small boat harbors to submit to the legislature a financial impact statement in any request for funds for harbor facilities. This statement should note the fiscal impact of the requested improvements first on the general fund, if the facilities were to be constructed or the debt service on bonds issued for the facilities were to be paid solely from the general fund, and second, on user revenues, if the facilities were to be constructed or the debt service on bonds issued for the facilities were to be paid solely by the users of harbor facilities. It should contain a recommendation as to how the requested facilities should be financed—the general fund or user revenues, or both. To the extent that the recommended method of financing is the general fund, the statement should associate the cost of the required facilities with the costs of other proposed recreation CIP, setting forth the full costs of each and relating that cost to the number and characteristics of the primary beneficiaries. To the extent the recommended method of financing is user revenues, the estimated effects on users should be clearly identified, including estimates of effects on individual mooring rates.

A presentation of this kind would enable the legislature to see the problem in all its dimensions: as a part of recreation, as a burden to taxpayers, and as a cost to harbor users. The opportunity will exist to require changes in the plans or in financing and, if appropriate, to mandate an increase in user fees. Above all, it will enable the legislature to evaluate the merits of CIP proposals better, inasmuch as the financing and self-sufficiency implications will be apparent. Authorization of projects should include the authorized means of financing, and amortization costs should be included in the appropriate general or special fund budgets, to be paid from the resources available to the respective funds. In this way, decisions on self-sufficiency can be made in accordance with current policies and circumstances. It appears that there is no better way to make them.

This project-by-project review of requested capital improvements obviously cannot be done with respect to facilities already in place, although the bonds issued for the facilities have not yet been fully retired. For these improvements in place, the agency should develop a statement showing accurately the accrued cost of debt service and a recommended plan for paying for them, either through total write-off (equivalent to full general fund support), total amortization from the special fund, or a combination of both. To the extent that the special fund is to be responsible, the impact on rates should be identified and a schedule of payment presented—preferably one with equal annual payments over a stated period. Based on this statement, the legislature can then determine which, if any, of the amortization costs of the harbor facilities already in place should be borne by the users thereof.

In between, there is another group of projects which must be taken into consideration. These are the projects which have already

received legislative authorization but have not yet been initiated—at least in terms of actual construction. As in the case of in-place facilities and proposed future facilities, it would appear that these projects should be carefully reviewed and the legislature should be provided with a financial impact statement indicating how the projects should be financed from this point on.

*Recommendations.* We recommend as follows:

1. *The users of small boat harbors be required to pay for all of the operating costs of the facilities, with occasional general fund assistance in unusual circumstances where such assistance may be rendered on a one-time, short-term basis.*

2. *The State subsidize a part of the cost of constructing small boat harbor facilities, at least for a time. The amount of such subsidy should be determined on a project-by-project basis, in the case of future improvements, and on the basis of the total unamortized costs, in the case of improvements in-place.*

3. *To assist the legislature in determining what amount of capital improvement construction should be subsidized through the state general fund, the agency responsible for small boat harbors be required to submit a financial impact statement. Such a statement, with respect to authorized and future improvements, should show the fiscal impact of the improvements on the state general fund and on user fees, with recommendation as to means of financing (general fund, user fees, or both). With respect to improvements in place, the financial impact statement should show the amount of the unamortized costs of the improvements in total and the impact of such costs on the general fund and user fees, with a recommended method of payment.*

## Chapter 10

### MOORING RATES

In the preceding chapters we concluded that users of small boat harbor facilities should pay for the costs of such facilities. In this chapter we examine mooring charges, particularly those proposed in the more recent past, and suggest a methodology for determining mooring fees.

The term "mooring charges" as used in this chapter relates to the charges imposed on owners of recreational boats which are berthed at the small boat harbors. The charges imposed on commercial boaters who utilize small boat harbors and the charges imposed for the privilege of living on board boats which are berthed at small boat harbors are also "user charges." However, for reasons which will become apparent, charges for commercial uses and residence fees require a separate treatment.

#### Summary of Findings

We find in summary that mooring rates are being sought to be determined without some fundamental policy decisions having first been made. Among the policy decisions which ought to be made are: who pays for what, what treatment is to be accorded recreational boaters *vis-a-vis* commercial boaters who utilize small boat harbors, how the burden of recreational boating is to be distributed among boaters and how the issue of live-aboards is to be resolved. Without a prior resolution of these issues, no mooring rate schedule is likely ever to be satisfactory to the parties concerned.

#### The Present Rate Schedule

The present schedule of mooring charges has been in effect since February 1970. The schedule is complex, having up to nine different berthing categories for each of the following different harbors or groups of harbors: (1) Ala Wai, (2) Keehi, (3) Heeia-Kea, (4) Haleiwa and Pokai Bay, and (5) neighbor island harbors. Although there are the same number of berthing categories for each of the harbors or groups of harbors, the rate for each berthing category differs from one harbor or one group of harbors to another. Generally speaking, the rate for each berthing category is highest for Ala Wai, next highest for Keehi, and so on down to the lowest, which are for the harbors on the neighbor islands. There are exceptions to this rule, however, as evidenced by identical maximum rates at three different locations.

In amounts, the rates range from a low of \$.15 per foot per month for boats moored at owners' buoys in harbor basins on the neighbor islands to a high of \$.78 per foot per month for the best berths at Ala Wai.

The present schedule of mooring charges is modest in absolute amounts by comparison with rates charged at marinas on the Pacific coast, particularly in Southern California. At present, the highest rate in Hawaii is \$.78 per foot of vessel or pier length per month, chargeable for the slip spaces at Ala Wai, Keehi, and Heeia-Kea. By comparison, *American Boating* magazine recently reported that the average of seven

marinas in Southern California is \$2.48 per foot, ranging from \$3.30 down to \$1.52. The same source cites average rates of \$1.38 per foot in the San Francisco-Stockton area, and \$1.23 in Seattle-Portland. For all 14 marinas for which data were given, the average is \$1.89/foot/month—well over twice the Hawaii maximum.

It should be understood that the relatively low rates in Hawaii do not constitute a valid argument for raising them just because they are low. There are several major reasons for this, among which are: (1) facilities and services at west coast harbors may be quite different from those in Hawaii; (2) the economics of Hawaii boating may be considerably different both in terms of total harbor costs and the relative portion of costs borne by boaters; (3) the rates may or may not reflect capital investment; and (4) none of the other marinas is operated as a part of a system, some parts of which are capable of more revenue generation than others. The rate comparison is given here only as an indication that, if exigencies so require, Hawaii boaters could pay considerably more in mooring fees and still be comparatively well-off relative to mainland boaters.

### **Recent Proposal to Adjust Mooring Rates**

Although numerous attempts have been made to adjust the mooring charges, no new rate schedule has been adopted. The most recent proposal was prepared in the first instance by the old ad hoc committee created to advise the director of transportation on small boat harbor matters. It has since been refined by the boating council, the successor to the ad hoc committee. This latest proposal has a fairly high degree of agreement, but formal action to adopt it has not yet been taken.

The proposed new schedule simplifies the rate structure. Three classes of harbors are recognized, rather than five: (1) Ala Wai and Keehi; (2) Haleiwa, Heeia-Kea, Port Allen,

Kaunakakai, Lahaina, Maalaea; and (3) all others. The classifications were developed on the basis of appraisal of facilities and services at the several harbors as reflected in a survey of boaters. There are six categories of berthing (in addition to work docks) recognized for each class of harbors.

Besides simplifying the rate structure, the proposal recognizes four off-Oahu harbors as more than minimal, while assigning Pokai Bay on Oahu to the bottom class. The proposal also introduces a new category—commercial fishing—on which is imposed one-half of the charges which otherwise would be applicable to them. (This element of the plan apparently did not derive from the boating groups.) Considering that commercial fishing from boats operated out of small boat harbors is largely an activity on the neighbor islands, the effect of this is to retain some element of preferential treatment to the users of off-Oahu harbors.

In amounts, the proposed rates range from \$1.00 per foot per month for the best berths at Ala Wai and Keehi to \$.30 for the least desirable berths at class 3 harbors. For each berthing category the proposed rate for class 2 harbors is about 80 percent of class 1, and for class 3 about 60 percent of class 1. The resulting increases over the rates now charged are said by the harbors division to be “about 30 per cent.” While this is true for the highest rate (27 percent), many of the lower rates would go up considerably more than 30 percent. Examples are 78 percent (\$.45 to \$.80) for the best berths at class 2 off-Oahu harbors and 100 percent (\$.15 to \$.30) for the lowest category berth in class 3 harbors other than Pokai Bay. At the other extreme, Heeia-Kea’s best berths would go up by only 2 percent (\$.78 to \$.80).

### **Inadequacy of the Recent Proposal**

A major problem with the proposed rate schedule is that it represents principally a tinkering with fees; it gives insufficient attention to basic policy issues. True, some of the

tinkering is desirable, such as the proposed simplification of the rate structure and the change in emphasis from geographic location of the small boat harbors (Oahu vs. neighbor islands) to the quality of the facilities. However, without a settlement of basic policy questions, the results of any new rate schedule are likely to be less than satisfactory. We note the more pertinent policy issues as follows.

**Who shall pay for what?** One fundamental question is the one discussed at length in the preceding chapter—who should pay for what? In that chapter we observed that, except for mooring fees, none of the sources of revenues now being deposited into the boating special fund can be rationally related to any of the activities the cost of which is paid for by the fund. We further observed that mooring fees can be rationally related only to the construction and maintenance of small boat harbor facilities and not to any of the other activities the cost of which is paid for by the fund. We thus concluded that (1) the users of the small boat harbor facilities, through mooring charges, should be held solely responsible for all costs associated with the construction and maintenance of small boat harbors (with possible state subsidy with respect to a portion of the construction costs), but not for the costs of the other activities; and (2) the other activities should be funded through the state general fund, with all revenues derived from such activities being deposited into the general fund.

The proposed rate schedule gives no evidence that any consideration was given to the question of who should pay for what. It does not appear to recognize that the only rational connection between revenues and the costs of activities included in the boating special fund is the one between mooring fees and the costs of the small boat harbor facilities. Although the existing statutes authorize the deposit into the boating special fund of revenues not only from mooring charges but from other sources as well, and although they provide for the payment from the fund of costs not only as

associated with the construction and maintenance of small boat harbor facilities but also of other activities, this does not mean that the DOT could not recognize a meaningful relationship between the amount of the mooring fees and the costs of constructing and maintaining small boat harbor facilities. Indeed, the very inclusion of revenues from a variety of sources in the boating special fund and the inclusion of the costs of a variety of activities in the expenses to be paid for by the fund make it imperative that such a relationship, between mooring fees and the costs of the small boat harbor facilities, be established. The fairness of the mooring fees, as between and among the users of the facilities, other boaters, and the general taxpayers, would not otherwise be satisfactorily resolved.

In a subsequent section we note how such a relationship between mooring fees and the costs of small boat harbor facilities might be established, even under the present statutory provisions.

**Treatment of recreational users versus commercial users.** The proposed rate structure provides for a 50 percent reduction in mooring rates for commercial fishermen. This appears to favor commercial fishermen over other users of the same facilities. It may well be that a good case can be made for this preferential treatment of commercial fishermen—for example, the need or desirability from the point of view of the economic welfare of the State to strengthen the fishing industry of the State, which is currently in a state of depression. The reason, however, can only be guessed at. There is no clearly articulated policy to support this preferential treatment.

Far more importantly, the treatment of commercial fishermen raises the question, should commercial users as a class be treated differently from recreational users in determining the fees to be paid? It raises a further question, if commercial fishermen are to be accorded a reduction in rates, for whatever reason, on whom should the burden fall to make

up the difference in the revenue between that which would have been realized if no reduction were made and that which results because of the reduction—the other commercial users, recreational users, or the state general fund?

There is something to be said for treating commercial users differently from recreational users. Commercial users are in business to make a profit; recreational boaters derive no profit from the use of state facilities. On the other side of the ledger, commercial users contribute to the economic well-being of the State; recreational boaters benefit only themselves by the use of the harbor facilities. (Commercial users of small boat harbors are, however, quite different from the commercial users—shipping lines, etc.—of commercial harbors. The latter provide an economic lifeline for the State; the former is like any other commercial enterprise doing business in the State.) Given this situation, it would be quite reasonable to treat commercial users of small boat harbors differently from recreational users. The fees charged commercial users could be set in a manner in conformance with prevailing commercial practices. Indeed, at one time, the DOT adopted the practice of charging non-fishing commercial users fees based on the gross income of the users. This practice was terminated when it was pointed out that no authority to impose fees in this manner existed under the DOT rules, and the division refunded the charges collected. Since then no further effort has been made to attempt to deal with commercial users in a manner different from the way in which recreational users are treated.

Any policy adopted concerning commercial users should, of course, apply to all commercial users in the first instance. If justifiable grounds exist, certain commercial users might then be accorded preferential treatment.

If any preferential treatment is accorded any class or group of users, the question of who should assume the burden of paying for the reduction in revenue resulting from that treatment must be addressed. In the case of the preferential treatment given commercial

fishermen in the proposed rate, it would appear that this burden should fall on the state general fund. The reduction in rate granted the fishermen presumably inures to the ultimate economic benefit of the State as a whole. This being so, the assumption of the burden by the state general fund appears to be entirely proper.

The proposed commercial fishing rate, standing by itself, is perhaps the best example of tinkering with rates with little or no consideration being given to the full implication of such rate.

#### **Distribution of responsibility among users.**

Equity among boaters who must bear the burden of paying for the costs of small boat harbor facilities is an important consideration. Here a start was made in the present rate structure when the berths at the various harbors were classified according to the relative quality and desirability of the berths. The proposed rate structure refines the classification by changing the emphasis from geographic location to the quality of the harbors in grouping the various harbors in the State. The theory appears to be to make rates proportionate to the assumed level of benefit received in each classification, regardless of location. There is little doubt that, if this is indeed the objective, the new rules constitute progress toward equity.

However, the proposed rate structure has not fully addressed itself to other equity questions. One of these is whether the total costs of all small boat harbor facilities should be met by the total revenues generated from mooring fees from all harbors or whether the costs of each individual harbor should be met from the revenues generated from mooring fees imposed at that harbor. In essence, the question is: to what extent should each harbor (or classification of harbors) be expected to carry its own weight? Involved in this question is, given the basic premise that all costs of all harbors should be paid for by the users of the facilities, should the burden of paying for these costs be distributed on the basis of costs of services rendered or on the basis of the benefits received?

The answer appears obvious enough. While total costs (however defined) for the system should be met by total revenues, there is little correlation between costs and the revenue potential at any given harbor or the benefits received by particular boaters. The DOT harbors division informally investigated the revenue potential of at least some harbors a few years ago and correctly judged the results as demonstrating that most cannot be expected to pay their own way, at least with respect to capital improvements. This being the case, it is apparent that the only reasonable basis for the distribution of the burden of the users is relative benefits received.

If used rigorously throughout the harbors system, the benefit theory will, of course, produce widely varying revenue amounts at different locations and those amounts will bear little resemblance to the costs involved in individual harbors. The DOT (or at least the authors of the proposed new rates) seems to have adopted this approach, but it is not all that clear that the benefit theory is the policy of the department. There appears to be some reluctance to pursue this policy in full, as evidenced by the extensive efforts which have been made by the ad hoc committee, the advisory council, and the harbors division to ascertain and display detailed cost data for purposes of determining and justifying proposed increases in rates. The reluctance may be attributable to a desire to avoid the full implications of the benefit approach. A clear enunciation of a policy as to whether the benefit theory is indeed to be pursued or the cost of services theory is to be utilized is necessary. Until that is done, the question of how rates are or should be determined will remain open.

**Live-aboards.** The issue of live-aboards is another matter which the proposed rate schedule fails to address. However, it is an issue that needs to be resolved before any mooring rate schedule is adopted. There are two questions concerning live-aboards: *first*, whether live-aboards should be permitted at all and, *second*, if allowed, how the fees for this privilege

should be set. Both of these questions are dealt with in greater depth in a subsequent chapter. However, some observation regarding the second of these questions is necessary for disposition of the question of mooring fees.

Live-aboards are those who live on board their boats moored to berths in small boat harbors. As moorers of boats, they enjoy the same benefits as non-live-aboards who moor their boats to small boat harbor berths. But as live-aboards, they enjoy benefits in addition to the benefits flowing from the mere act of mooring. How should the fees for the enjoyment of these additional benefits be set?

It appears clear that the fees for the privilege of living aboard cannot and should not be related to the costs of constructing and maintaining small boat harbors. The whole purpose of small boat harbors is to provide a place for the wet-storage of small boats. They are not constructed with residence on board in mind. This being the case, the responsibility for the costs of constructing and maintaining small boat harbor facilities must fall on all persons who moor their boats in berths in the harbors. Once this premise is accepted, there is no more cost to be distributed. This means that the fees for the privilege of living aboard boats moored to the berths must be pegged to something other than the costs of constructing and maintaining the harbors. In a subsequent chapter we explore what some of the bases are. For the purposes of this chapter, however, it is pertinent to note that, although the basis for residence fees is something other than the costs of the small boat harbors, nevertheless, the fees that are charged should inure to the benefit of all moorers of boats in the small boat harbors. By this, we mean that the amount collected from residence fees should reduce the total costs that all moorers of small boats ought to pay, with a consequent reduction in the mooring fees.

From all indications, residence fees have always been considered and established in conjunction with mooring charges and not as a

subject conceptually separate and different from mooring charges. Neither the existing nor the proposed rate schedule provides any sound or rational basis for the residence fees prescribed. We think the matter of residence fees should be considered on its own merits and separately from the question of mooring charges. Only to the extent to which residence fees are used to lessen the total burden on small boat harbor users do they need to be related in any way to mooring charges. In this regard, the question of residence fees should be disposed of first.

### **An Approach to Setting Mooring Rates**

In this section we suggest an approach that might be taken in establishing mooring rates for the various small boat harbors. The approach suggested here consists of three phases: (1) the establishment of the basic policies to govern the setting of mooring rates, (2) the determination of the costs of small boat harbor facilities to be borne by the users of small boat harbors as a whole, and (3) the distribution of the costs among the users.

**Policies.** We observed in the preceding section that the proposed new rate schedule suffers from the fact that no policies appear to have been clearly established concerning the setting of mooring fees. At a minimum, policies need to be established in the areas discussed above. *First*, it should be clearly enunciated that the users of small boat harbor facilities are basically responsible for the full costs of constructing and maintaining small boat harbor facilities. User fees and the costs of the facilities are the only fees or charges and costs of activities supported by the boating special fund which can be reasonably and rationally related to one another under existing statutes or under any other circumstances.

*Second*, commercial users should be treated differently from recreational users. Commercial users should be treated as any other commercial enterprises utilizing facilities other than those

owned by them. Such a system as charging commercial users a percentage of their gross income for use of small boat harbor facilities is entirely appropriate. If for purposes of public policy it is deemed desirable to support or encourage particular commercial users of the small boat harbors, then the loss of revenues resulting from any reduction in commercial fees should be borne by the state general fund.

*Third*, the costs of small boat harbors to be borne by the users as a whole, once determined, should be distributed among the users based on the benefit theory. Benefits received are necessarily imprecise, but there seems to be some consensus that the presence or absence of harbor amenities is one thing which can be measured in relative terms as can the varying types of berthings afforded within any given harbor. Further, there is an implicit concept of benefit (admittedly mixed with cost in some cases) in the traditional charging of mooring fees according to length of vessel or length of berthing space. The benefit theory does not admit of differentiation between islands or between areas on islands as such. Either the amenities are there or they are not, and it is assumed that all users profit from their presence and suffer from their absence.

*Fourth*, the fees to be charged for the privilege of living aboard small boats berthed at the small boat harbors should be based on a consideration other than the costs of constructing and maintaining the harbor facilities, but the fees collected might well inure to the benefit of all small boat owners.

**Costs of small boat harbor facilities.** Once policies are established in the foregoing manner, the costs to be borne by small boat owners (that is, recreational boat owners) via mooring fees can be calculated. This calculation involves the following steps.

*Step 1.* Separate the costs, estimated for the period that the mooring fees to be charged are to remain in force, associated with small boat harbor facilities from the

costs estimated for the other aspects of recreational boating. The costs estimated for small boat harbor facilities should in turn be segregated into operating costs and costs to amortize capital improvements. (The costs of any capital improvements to be paid for by cash rather than bonds should be included in the operating costs.)

*Step 2.* Determine the level of resources expected during the period that the mooring fees to be charged are to be in force from (1) residence fees, (2) commercial use, and (3) the general fund to make up for any reduction in the rates for commercial users. In addition, so long as the present statutes remain in effect, the level of expected revenues from other sources (property rentals, fuel taxes, vessel registration fees, and federal aid) should be calculated.

*Step 3.* Apply the resources expected from other sources (i.e., property rentals, fuel taxes, vessel registration fees, and federal aid) to the expected costs of activities other than the construction and maintenance of small boat harbors. If the expected revenues from these sources are insufficient to cover all costs of activities other than small boat harbor facilities, the deficiency should be subject to general fund funding pursuant to section 266-20, HRS.

*Step 4.* Apply to or deduct from the estimated costs of constructing and maintaining small boat harbor facilities the expected revenues from (1) residence fees, (2) commercial user fees, and (3) general fund make-up of any revenue loss resulting from any deduction of commercial user fees; and any excess of the expected revenues from other sources (i.e., property rentals, fuel taxes, vessel registration fees, and federal aid) as may be available after applying them to the costs of activities other than the construction and maintenance of small boat harbors.

*Step 5.* Determine what portion, if any, of the estimated operating costs that may be remaining after step 4 deserves general fund support (e.g., costs of large, one-time purchase of equipment or the costs of an exigency). After deducting the amount of the general fund support, if any, calculate the mooring rates necessary to pay for the balance of the expected operating costs.

*Step 6.* Determine (on a project-by-project basis for future capital improvements) what portion of the costs to amortize capital improvements should be subsidized by the state general fund. Deduct this portion from the expected costs to amortize capital improvements and calculate the mooring rates necessary to meet the balance.

*Step 7.* Add the results of steps 5 and 6.

**The distribution.** In calculating the mooring rates (steps 5 and 6 above) and formulating the mooring rate schedule, it is necessary to establish the relative benefits assumed to be derived from different harbors and different berthings and then to convert these relationships into actual fees by assigning dollar amounts to each, such that all taken together will provide the desired amount of revenue. The first of these steps has substantially been done (or appears to have been done) in the proposed mooring fees now under consideration. There is an almost fixed ratio of 1.00: .80: .60 among the three classes of harbors and a consistent ratio among different types of berthings within each class, varying from 1.00 to .25 among the nine berthings recognized.<sup>1</sup> Assuming that the recommended fees represent a consensus of relative benefits, they can easily be converted to benefit ratios ranging from 1.00

<sup>1</sup>There are six major categories which have been recognized, but three of these have subcategories. Thus, there are actually nine types of berthing which are recognized in the proposed rate schedule.

for \$1 fees downward to .25 for minimum berthings.

To assign correct dollar amounts to the various categories is, however, more complex. It involves spreading the costs resulting from steps 5 and 6 above in accordance with the benefit ratios. The number of berths and the length of berths (or boats) in each benefit category complicates the calculation. But these variables are what determine the actual fee to be charged each boater. The variables are most readily allowed for by weighting the benefit ratio of any given category. This is done by multiplying the benefit ratio of each category by the number of berths in the category by the average length of the berths in the category. For example, if a category with a benefit ratio of 1.00 contains 500 berths averaging 30 feet long, a multiple of the three numbers is calculated ( $1.00 \times 500 \times 30$ ), giving 15,000. If a category with a benefit ratio of .50 has 100 moorings and an average berth length of 20 feet, the multiple would be 1000 ( $.50 \times 100 \times 20 = 1000$ ). The percentage of the total revenue (necessary to meet the estimated costs to be paid for through mooring fees) that each category can be expected to produce can then be derived. The percentage of each category would be the multiple of that category over the total multiples of all categories. In the examples given, the category of harbors having the benefit ratio of .50 can be expected to produce one-fifteenth as much revenues as the category of harbors with the benefit ratio of 1.00.

Once the dollar requirements for each category are determined, the computation needs only to be divided by the number of berths and boat lengths to arrive at fee level per boat. This process will yield mooring rates that are as equitable as the original assumptions and, if charged to all berths throughout the year, will produce the desired amount of revenue from the system as a whole. Further refinements such as allowance for vacancies, could be added but the basic principle is correct if it is intended to adhere to the benefit theory and raise any desired amount of revenue.

Using the above method, the ratios derived from the proposed rate schedule, and the best available information as to berthings and boat lengths worked out in the course of this audit, we computed rates for each of the categories of berthing facilities using an assumed revenue requirement of \$805,000. The income from mooring fees under this assumption is considerably higher than the amount of the mooring revenues anticipated in the recently proposed rate structure, which contemplates a deficit budget. The effects of the computation are summarized in table 10.1. Using a revenue requirement of \$805,000, the table indicates what the fees per foot per month would be for particular categories of mooring. Shown also are: (1) the cost effect on each category for each \$100,000 variation in budget requirements and (2) a comparison with fees proposed in the current revision in rates being considered.

The computed rates are not to be considered as recommendations. They are presented here only to give a sense of proportion to the results of the computation. Their level depends entirely on the size of the estimated revenue requirements. And the size in turn depends on the amount to be expected from residence fees, commercial harbor users, and the general fund support to make up the loss in revenues resulting from any policy to reduce the commercial harbor user rates. However, the second column of table 10.1 is perhaps useful as a means of predicting the effect on specific mooring fees for any given change in revenue requirements.

Further, it is not claimed that the computations are precisely accurate, because there may be undetected errors in average boat lengths or the number of berthings in the several categories. That this may be true is indicated by the fact that the harbors division estimates that it will receive \$540,000 revenue from rates that go as high as \$1.00. If applied to the data used in this audit, that revenue estimate would be low. Stated another way, the \$805,000 budget requirement assumed in this study could be achieved under whatever method used by the

Table 10.1  
Summary of Mooring Fee Requirements for Given Revenue Requirements  
And Comparison with Proposed Fees

| Type of mooring <sup>a</sup>                    | Fee/ft/mo @<br>\$805,000<br>requirement | Variation in fees,<br>per \$100,000<br>revenue<br>change<br>(cent/mo) | Fee proposed<br>in rules<br>revision<br>(estimated<br>to produce<br>\$540,000 in<br>annual revenues) |
|---|---|---|--|
| <i>Alongside . catwalk or wharf<sup>b</sup></i> |   |   |  |
| Class 1 harbors . . . . .                       | \$1.34                                  | \$.17   | \$1.00   |
| Class 2 harbors . . . . .                       | 1.07                                    | .13   | .80  |
| Class 3 harbors . . . . .                       | .81                                     | .10   | .60  |
| <i>Bow or stern mooring to pier</i>             |   |   |  |
| On state buoy . . . . .                         | .94 - .74 <sup>c</sup>                  | .12 - .09 <sup>c</sup>  | .70 - .40  |
| Other . . . . .                                 | .74 - .47                               | .09 - .06   | .55 - .35  |
| <i>Bow or stern mooring to shore</i>            |   |   |  |
| On state buoy . . . . .                         | .87 - .54 <sup>d</sup>                  | .11 - .07 <sup>d</sup>  | .65 - .40  |
| Other . . . . .                                 | .67 - .40                               | .08 - .05   | .50 - .30  |
| <i>In harbor basin</i>                          |   |   |  |
| On state cable . . . . .                        | .67 - .47 <sup>e</sup>                  | .08 - .06 <sup>e</sup>  | .60 - .35  |
| Other . . . . .                                 | .54 - .34                               | .07 - .04   | .40 - .25  |
| <i>Skiff moorings . . . . .</i>                 | .67 - .54 <sup>c</sup>                  | .08 - .07 <sup>c</sup>  | .50 - .30  |

<sup>a</sup>Fees for catwalk or wharf moorings shown for each class of harbors; fees for other moorings shown as range from class 1 to class 3 harbors.

<sup>b</sup>Includes two separate categories which have been combined because identical rates have been suggested for both categories.

<sup>c</sup>Class 1 and 2 harbors only; no equivalent moorings identified at class 3 harbors.

<sup>d</sup>Class 1 and 3 harbors only; no equivalent moorings identified at class 2 harbors.

<sup>e</sup>Class 2 and 3 harbors only; no equivalent moorings identified at class 1 harbors.

harbors division only by a top rate of \$1.49, rather than the \$1.34 computed herein. In the absence of better understanding of harbors division procedures, the differences cannot be fully reconciled, but differences in basic statistics are probably partly responsible. If so, a careful census of berths and boats should precede actual use of the recommended methods.

Regardless of these uncertainties, it is believed that the method used herein, if applied to accurate data, will attain the best available spreading of mooring costs among users in accordance with the theory of relative benefits and assuming the validity of the relative benefit factors used.

### Recommendation

*We recommend that mooring fees be determined by following the outline provided in this chapter. As outlined, mooring fees should be set only after the adoption of policies (1) affirming that the costs of construction and maintenance of small boat harbor facilities shall be paid for by the users thereof; (2) determining the basis for setting fees for commercial use of harbors; (3) ascertaining the basis for determining the fees for live-aboards; and (4) affirming that the costs to be borne by recreational boaters shall be distributed among the boaters on the benefit theory. Only after these policies are firmly articulated should the mooring fees be calculated.*

## Chapter 11

### LIVE-ABOARDS AND RESIDENCE FEES

There are today numerous persons who utilize their boats moored in small boat harbors as a place of habitation for long or short periods of time. One of the more prominent issues concerning small boat harbors revolves around these live-aboards. The issue is a two-fold one: *First*, to what extent, if any, is living aboard permitted or should be permitted; and *second*, if permitted, what charges, if any, should the live-aboards pay for the privilege.

In this chapter we discuss this live-aboard issue.

#### Summary of Findings

Our findings, in general, are as follows:

1. Neither the governing statute nor the rules of the DOT are clear as to the extent to which live-aboards are permissible. In addition, the statute as currently worded is difficult to enforce.

2. The charges now being imposed for the privilege of living aboard one's vessel are nominal and not related to the benefits derived from such habitation of one's boat.

#### Live-Aboard Population

Live-aboards may be classified as "legal" and "other" according to whether they have or have not obtained a permit to live aboard from

the DOT. Section 3.22(2) of the small boat harbor rules and regulations promulgated by the DOT provides that: "No person shall live aboard a vessel at the Ala Wai or Keehi Boat Harbor unless he has obtained a Living Aboard Permit issued by the Department." The DOT rules seek to confine live-aboards to Ala Wai and Keehi, for section 3.21(2) of the rules provide that: "No person shall moor any vessel . . . in a State small boat harbor if any person is living aboard," except that (1) a visiting craft may be lived in for up to 30 days if certain conditions are met; and (2) holders of valid live-aboard permits prior to the adoption of the rule may continue their occupancy. According to statements from harbors division personnel, most of those falling within the second exception are found in boats moored at Lahaina.

Enforcement of these rules has been a problem in the DOT. As a result, there are numerous persons who are living aboard their boats without the necessary permits. In the estimate of harbors division personnel, the number of unauthorized live-aboards may exceed 100 for Ala Wai harbor alone, such number including "extra" residents on authorized boats as well as residents of unauthorized boats. The true extent of the illegal live-aboards is unknown. However, some idea as to the extent of the "legal" live-aboards is indicated in table 11.1. The data in table 11.1 were compiled from the DOT's financial records relating to residence fees assessed residential permittees. As noted, about one-fourth of the boats at Ala Wai and Keehi are owned by "legal" live-aboards.

Table 11.1

Selected Characteristics of Boats Moored at Ala Wai and Keehi, June 1974

|               | No. of boats paying mooring fees | Boats with live-aboards |    | No. of persons living aboard |          |
|---------------|----------------------------------|-------------------------|----|------------------------------|----------|
|               |                                  | No.                     | %  | Total                        | Avg/boat |
| Ala Wai . . . | 723                              | 220                     | 30 | 368                          | 1.67     |
| Keehi . . . . | 316                              | 31                      | 10 | 59                           | 1.90     |
| Total . .     | 1039                             | 251                     | 24 | 427                          | 1.70     |

The demand for berths with the privilege of living aboard is increasing. More and more of the persons on the waiting list at Ala Wai and Keehi, where live-aboards are “legally” permitted, are applying for live-aboard status. Of 690 mooring permit applications received during 1974, 362 (over 50 percent) also involved application for the privilege of living aboard once berths are assigned to them. This is nearly twice the percentage of present residents. Because of recent legislative concern over the number of live-aboards, the department has instituted a moratorium on issuing new permits.

**Permissible Habitation of Boats**

Aside from the fact that there are some who are living aboard their boats without having secured a permit from the DOT, the controversy over live-aboards has revolved around the question of whether some or all of those now living aboard their vessels, with or without DOT permits, are doing so in conformance with the state statute. Spinning off from this issue is the question whether any form of living aboard should be allowed as a matter of policy and, if so, in what form.

In the paragraphs that follow, we examine this controversy and note what the possible solutions to the problems might be.

**The controversy.** The controversy over live-aboards stems in a large measure from the present statutory provisions relating to living

aboard boats moored in small boat harbors. The statute in question is section 266–21, HRS, which reads as follows:

“State small boat harbors are constructed, maintained, and operated for the purpose of promoting recreational boating activities and the landing of fish. For the purpose of this section “recreational boating activities” means the utilization of watercraft for sports, hobbies, or pleasure and does not include watercraft whose sole or principal use is for purposes of habitation. To implement these purposes, only vessels capable of being propelled, maneuvered, and navigated with reasonable safety, convenience, and efficiency in the waters surrounding and within the confines of a state small boat harbor, which are used for recreational activities and the landing of fish shall be permitted to moor, anchor, or berth at such harbor or use any of its facilities. The department may prescribe reasonable or necessary rules and regulations, adopted in accordance with chapter 91, to further implement this section.” [Emphasis supplied.]

The term, “habitation,” as used in the statute undoubtedly means “to live on.” But there are differing degrees or forms of “living on board” a boat. There are (1) those who live permanently on board vessels that float but are incapable of being propelled, maneuvered, or navigated safely, conveniently, or efficiently in the waters (houseboats); (2) those who live permanently or for extended periods aboard seaworthy vessels but who rarely, if ever, take such vessels out to sea; (3) those who live permanently or for extended periods aboard their seaworthy vessels but who frequently take them to sea and use them as recreational craft, and (4) those who live aboard their craft for temporary periods, such as vacations, weekends, or on cruises.

On its face, the statute appears to recognize as permissible some form of living aboard, for it excludes from the definition of “recreational activities” only that habitation which constitutes the “sole” or “principal” use of a boat. Habitation that does not constitute the sole or principal use of the boat presumably is permissible. It would appear then that occasionally spending a night or a weekend on a boat which is otherwise frequently taken to sea and used in recreation is allowed under the statute. By the same token, however, the use of a watercraft as a houseboat is clearly impermissible, for by definition, a houseboat is

used solely for the purpose of habitation. Indeed the enactment of section 266-21 in 1965 was aimed primarily at those houseboats that were then present at the Ala Wai boat harbor.<sup>1</sup>

The difficulty is with those forms of living aboard which fall in between houseboat dwellings and occasional overnight or weekend habitation of a boat. The question is, when does habitation become the sole or principal use of a boat? Specifically, does the use of a boat as a permanent place of residence constitute use of the boat solely or principally for the purpose of habitation? At what point beyond a few days does continuous living on board a boat become use of the boat for habitation purpose?

The statute provides no guidance with respect to these questions, and neither do the rules and regulations of the DOT, although the statute provides that the DOT may prescribe rules to further implement the law. Indeed, the rules of the DOT as presently written seem to countenance living aboard so long as it is confined to the Ala Wai and Keehi boat harbors and a permit has been secured for that purpose. The rules do not specify what kind of living aboard is permitted and to what extent one may live aboard his boat without violating the statutory provision about the use of the boat solely or principally for the purposes of habitation.

In the absence of standards or guidelines in the statute and the rules, arguments have been heated on how the law should be applied. Some have argued that the law prohibits the use of a boat as a permanent place of residence—i.e., that the use of a boat as a permanent place of residence constitutes a use of the vessel “solely or principally” for the purposes of habitation. Others have contended that the mere use of the boat as a permanent place of residence does not make habitation the sole or principal use of the boat, but rather that such habitation is incidental to the recreational use of the boat.

This issue, under different circumstances, was twice the subject of opinions by the attorney general. The first, issued in 1974,

simply stated that which is apparent on the face of the statute, that “. . . section 266-21, Hawaii Revised Statutes, impliedly permits live-aboards in State small boat harbors. . . . [I]f the watercraft is not solely or principally used for habitation, such watercraft meeting the other requirements of the section could be permitted to moor or berth at such harbor, [but it is also clear that] . . . watercraft, the sole or principal use of which is for habitation, may not moor or berth in small boat harbors.”<sup>2</sup> However, the second opinion issued in March 1975 added a dimension to the controversy. The opinion stated as follows:

“[Section 266-21 and standing committee report 513] provide essentially that State small boat harbors are restricted to ‘recreational boating activities and the landing of fish.’ Clearly, living aboard does not qualify as the landing of fish. Live-aboards, however, may be considered as ‘recreational boating activity.’ ‘Recreational boating activity’ is defined in HRS 266-21 as ‘the utilization of watercraft for sports, hobbies, or pleasure . . .’ Thus, living aboard may be said to be the utilization of watercraft for ‘pleasure.’”<sup>3</sup>

This second opinion seemingly equates living aboard with recreational use. Whether the legislature intended this effect is open to question. Section 266-21, HRS, attempts to distinguish between habitation and recreation. The statute states that the small boat harbors are to be used for “recreational boating activities,” which include sports, hobbies, and pleasure. At the same time it excludes use of the harbor by vessels that are solely or principally used for habitation. This appears to indicate that the legislature saw a dichotomy between habitation

<sup>1</sup>Dating back to World War II, houseboats of various types moored in the Ala Wai canal, the Ala Wai boat harbor, and adjoining areas. After long and concerted administrative effort, many of the vessels were forced to leave in accordance with legal provisions stating that the State’s small boat harbors were to be maintained and operated “principally for recreation and the landing of fish.” However, in 1965, there were still some houseboats in Ala Wai boat harbor. Section 266-21 was enacted to cope with this problem. Both the senate and house committee reports on the measure made it abundantly clear that under section 266-21, houseboats would have to vacate the small boat harbors.

<sup>2</sup>Attorney general memorandum, LEG 3.2180, March 28, 1974.

<sup>3</sup>Attorney general memorandum, LEG 3.23:05, March 19, 1975.

and the other itemized pursuits. The attorney general's inclusion of living aboard one's watercraft as a form of pleasure removes the dichotomy. Under such an interpretation, it appears that the mere act of living aboard one's vessel constitutes an acceptable use of the harbor. If true, this interpretation appears to be in direct contradiction to the fact that the statute prohibits at least some forms of habitation in the harbors.

**Issue resolution.** The questions concerning live-aboards should be settled once and for all. The existing statute while recognizing some kinds of live-aboards attempts to prohibit such habitation which becomes the sole or principal use of boats moored in the state harbors. This concept embodied in the statute is understandable, but in both interpretation and implementation, the statute poses serious problems. It is difficult, for instance, to articulate when recreational use terminates being the principal use of a boat and when habitation becomes the principal use, particularly when a boat is used both in recreation and as a place of habitation. In enforcement, the problem is no less difficult. Even assuming that a valid permit has been issued by the DOT, how is an inspector to determine whether the provisions of the permit are being violated—to-wit, the use of the boat principally for habitation.

Given this situation, it appears that any resolution of the living-aboard problem must avoid or minimize as much as possible any interpretive and enforcement difficulties. In the paragraphs which follow, we offer some alternative solutions. The parameters of each are noted. However, in no sense are the descriptions intended as a full design of each alternative. Only the broad outlines are presented. For each of these alternatives, of course, a statutory amendment is desirable, if not necessary. Fleshing out the specifics of each alternative can be and should be left to the agency concerned.

In addition to suggesting the alternatives, we make some generalized comments about selection of the preferred alternative.

**1. The alternatives. a. Prohibit all living aboard.** The first option is to prohibit all manner of living aboard boats moored in small boat harbors. This option is the simplest and easiest both in terms of interpretation and enforcement. An outright prohibition of living aboard does not mean, of course, that some, limited exceptions might not be made. For instance, visiting vessels might be permitted to remain in harbor for a limited period with its occupants residing on board during the time that it is in harbor. Further, living aboard might be allowed in cases of emergency—to make emergency repairs, for instance. This option avoids the need for a permit system.

**b. Allow all forms of living aboard.** The second alternative is to allow any boat to be lived on for any duration. This option, like the first, offers simplicity in application and enforcement. There is no need in this case to deal with such hard questions as to whether a particular living on board a boat constitutes the sole or principal use of the boat. The only requirement is that the boat be used for sailing, fishing, and other such recreational purpose as well as for habitation. Habitation in this case is deemed incidental to the purpose of recreation.

The limitations on the availability of on-shore physical facilities (hot showers, sewage holding tanks, etc.) to support the use of boats for habitation purposes and the need to control pollution in surrounding waters would undoubtedly make it impossible for all boats moored in all small boat harbors to be used for habitation. If this be so, then the number of boats which might be used for living on board must necessarily be limited. It might also be necessary to confine living-aboard to certain harbors and not others. This means that some permit system will need to be instituted. Allowing living aboard for periods of unlimited duration also raises questions of the applicability and enforcement of health and building code regulations and requirements presently governing all forms of human habitation. The extent to which special arrangements or exceptions could and should be made for habitations

located in small boat harbors would have to be carefully assessed.

The need for a permit system raises questions regarding the feasibility of enforcement of the permit requirement. However, it does not appear that enforcement here will be any more difficult than enforcement in the case of complete prohibition of any and all habitation. For one thing, a permit would be required for any and all forms of habitation, regardless of the duration of such habitation. In other words, all forms of living aboard would be treated alike, whether permanent habitation or only occasional habitation for short durations. In the latter case, a boat could be used for living aboard purposes as many times as one desires during the period of the permit. For another thing, permits although issued to the owners of boats would relate to the boats rather than the occupants. That is, boats would be authorized to be lived on. If living aboard is permitted as a matter of general rule, it should not matter whether those who live aboard, permanently or otherwise, are the owners of the boats or others, provided the craft is used for open-sea recreational activities. This being the case, it should not be difficult for a mechanism to be developed to identify those boats which are authorized to be lived on (e.g., the flying of a specially designated flag or the marking of the berth with a special emblem). The need to live on board in special or emergency situations would, of course, as in the first option, fall outside the permit system.

*c. Limited living aboard.* The third option is to limit living aboard to specified periods of time. This option eliminates permanent residences on board all boats. It requires a system of permits. It could take one or a combination of several different forms. It could, for instance, limit living on board any vessel to a specified number of continuous days per permit (e.g., 30 continuous days) with a further limitation that not more than a specified number of permits per year would be allowed per boat (e.g., three permits) or that not more than a specified aggregate number of days of

living aboard any one boat would be allowed in any one year. On the other hand, this option could take the form of limiting each boat to one permit a year good for a specified period (e.g., one month) during which the boat could be lived on as many days as desired.

This option lies in between the first and second alternatives described above. Unlike the two, however, it presents some problems. Under the existing statute, we noted that there are both interpretive and enforcement problems. This third option presents little, if any interpretive problems, but does present enforcement problems. The question is, how does one quickly determine at any given moment which boats are authorized to be lived on and which ones are not. Some mechanism might be devised as in the second option to identify those boats which are authorized to be lived on. However, because of the short duration of the permits, the different durations of the permits, and under some forms, the repetitive issuance of permits allowing a particular boat to be lived on, the mechanism for the physical identification of the boats may not be easy to devise.

Under this third option, the permit system should include visiting vessels, but, as in the second option, special and emergency situations might well be outside the permit system.

*2. Some comments.* The alternatives described above are suggestive. The focus of each, however, is specificity as to what form of living-aboard, if any, may be allowed. As already noted, any enabling legislation incorporating the concepts outlined in any of the alternatives might leave the specifics of the remedy to be fleshed out by the administering agency.

We might note here that boats moored in the harbors are essentially unused unless living aboard in some form or shape is permitted. Recreational boating as such is not something that occurs, at least with respect to each individual boater, with a great deal of frequency. A boat may be taken out to sea once a week (if

that often), for example. The unused time probably far exceeds the used time. Further, it appears that, except for practical reasons, there is no apparent rationale why boats are not permitted to be lived on, so long as they are used for recreational activities (other than habitation) with what one might term normal frequency.

The practical aspects, of course, are not to be lightly regarded. Such practical problems include, as in the case of the third alternative above, the problems of enforcement. They also include, particularly in the case of the second alternative, the possibility that, although the number of boats allowed to be lived-on might be limited, having due regard for the availability of supportive physical facilities, there could be mounting demand for more and more physical facilities to accommodate the growing number of boaters who desire to live on-board. This will present to decision-makers from time to time a kind of a dilemma: should the number of lived-on boats be determined by the availability of supporting physical facilities, or should the degree to which physical facilities are constructed and maintained be determined by the number desiring to live on-board. We believe that the former should be the rule, but the pressures from boaters are not likely to allow the rule to be consistently followed. If such pressures are not desired, then alternative two is not the option to choose.

Despite the difficulties posed by each alternative, at least a sense of certainty is engendered by each—a certainty as to the nature and extent to which living aboard will be permissible in state small boat harbors.

*Recommendation.* We recommend that section 266-21, HRS, be amended to clarify, or to enable the administering agency to clarify by appropriate rules, what forms of habitation on boats moored in the state small harbors, if any, will be permissible.

## Residence Fees

So long as living-on-board boats moored in state harbors is permitted, a fee ought to be charged for the privilege of doing so, except in those cases where living on board is necessitated for special or emergency reasons and is exempt from the permit system. Here we discuss how such residence fees may be set. Before doing so, however, some observations are in order regarding those who utilize their boats as permanent places of residence and the residence fees that are currently being imposed.

**Some observations.** In a sense, those who permanently reside on boats moored in small boat harbors are like owners of homes on lands leased from others. Resident boaters own their vessels but occupy space belonging to the State. However, there the similarity ends. Whereas homeowners on leased lands pay real property taxes and substantial amounts for lease rent (note particularly the recent increases in lease rentals), boat owners pay no real property tax and only a nominal fee of \$5.50 per month per person over four years of age at moorings where hot water showers are available and \$3.00 per month at others.<sup>4</sup> As of June 1974, only eight boats in Ala Wai and one in Keehi were paying as much as \$22 per month. The weighted averages as of June 1974 were \$10.05 at Ala Wai and \$9.76 at Keehi. New rates of \$7.00 and \$4.00 have been proposed—an increase of about 30 percent (as compared to recent lease rent increases of over 100 percent). One need not be an expert in residential real estate and rental costs to understand that the amount of fees now being paid by resident boaters bear no relationship whatever to the market.

Not only are live-aboards being treated better than those who own homes on leased land, but they are certainly better off than any land-based home dweller. At the fee rate they are now paying, the live-aboards are obviously being heavily subsidized through taxpayer

<sup>4</sup>In fiscal year 1973-74, the proceeds from residence charges amounted to just under \$31,000.

provision of the physical plant which they use. Were the boaters subject to the same financial qualifications as residents of other subsidized housing, justifiability would be attained, but this is clearly not the case. A sample of 20 boat owners taken in connection with a 1971 environmental impact statement prepared for an improvement project<sup>5</sup> revealed that these boat owners had an average annual household income of \$30,450, which amounted to \$8,013 per capita or 189 percent of the statewide average. The sample included both those living aboard and those not living aboard their vessels. However, to the extent that the sample included live-aboards (15 percent of the sample), the findings provide some insight into the relative financial standing of the live-aboards.<sup>6</sup>

In addition, in the case of Ala Wai, residential boaters have the privilege of residing in one of the most desirable areas of Honolulu—a privilege attainable by land dwellers either through great good fortune or at a high cost. Then, special security is provided and although the cost of this is perhaps compensated for by live-aboard fees, the same privilege is not available to land dwellers except in rare instances of exclusive or isolated areas.

All of these things place the live-aboards in a preferred position, although they reside in an environment that is particularly subject to damage through the everyday act of living; the impact of living in the harbors is likely to have more serious environmental effects there than elsewhere.

**Basis for residence charges.** All sense of equity indicates that residence charges ought to be imposed for being allowed to live on board boats moored in the state small boat harbors. However, the problem is that there is no convenient base upon which to determine the level of these charges. The present rules attempt to create a base by saying (section 12.07) that “[a] fee shall be charged to defray the additional expenses generated by persons residing aboard a vessel moored in a small boat harbor.” This base falls short of realism. The

actual additional costs that could be determined, even if research were done on it, would amount to little more than the cost of hot water, and perhaps some additional security. The present rates may, indeed, be compensatory if looked at only from this narrow point of view. However, they are not compensatory if compensation is sought for the social and economic benefits resident boaters derive and the environmental problems that are created by residing on boats or if they are supposed to reflect differences in benefits between live-aboards and other boaters.

Because boat residents obviously are in a preferred position compared with land dwellers, who pay rent and taxes, a number of suggestions have been made to base residence charges on something other than “costs.” Among the suggestions are: (1) a rental rate for the property occupied equivalent to ground rent and (2) a property tax on boats used as residences. Neither stands up under analysis for the simple reason that neither the theory of “ground rent” nor that of taxation permits differential rates based on occupancy or nonoccupancy of one’s own boat; either theory is applicable to all boats moored in small boat harbors whether lived on or not. Indeed, the Hawaii real property tax system does just the reverse: a substantial exemption is given to owner-occupied dwellings. To apply rent or taxes only to lived-on, moored boats would thus be inequitable.

It appears that living aboard can be considered only as a privilege, which in this case can be viewed as a deviation from the normally expected use of boats. Owner-residents receive much more benefit for unit of cost than do other boat owners. Not the least of such benefits is the opportunity to get full return from their

<sup>5</sup>Department of transportation, State of Hawaii, *Final Environmental Statement, Administrative Action for Improvements at Ala Wai Boat Harbor Phase I – Job H.C. 2004*, prepared by Oceanic Institute, September 7, 1972, p. 42.

<sup>6</sup>Indeed, the per capita income of live-aboards was perhaps greater than the \$8,013 noted in the study. The \$8,013 was computed on the basis of an average household of 3.8 persons. If the average number of persons (1.70) per boat shown in table 11.1 is correct, the per capita income of resident boaters was probably higher than \$8,013.

investments and to avoid duplication of costs involved in maintaining two livable premises. If the purpose of small boat harbors were defined as providing opportunity for securing such benefits, there would be no problem. But quite the opposite is true. The purpose of the harbors for 30 years has been principally to provide recreation and promote the fishing industry. The additional benefits accruing to boaters through living aboard become an additional privilege that should be paid for even if it required not one cent of additional expenditure.

**Setting residence charges.** It remains to quantify the benefit and hence the price of the privilege. One way would be to establish residential areas, suitably equipped with a limited number of moorings, and open the moorings therein to public bid, thus letting the market determine the amount of the benefit. Such a method would perhaps be economically sound, but would tend to discriminate severely against the less-affluent residents.

Since no theoretically sound rationale can be found for residence fees, and since mere reimbursement of identifiable excess costs by no means equals the extra benefit available at the discretion of the boaters, it is suggested that an entirely different system of determining residence charges be adopted. If mooring charges alone are considered to equal the benefit from having a place to keep a recreational boat, it would appear that having, in addition, an opportunity to live aboard could be expressed in

multiples of the mooring charges. Although no data exist that would "prove" what these multiples should be, perhaps two or three times the mooring rate would be appropriate for any permanent live-aboard permit issued. The charge could differ, depending on the number of persons occupying the boat, but the problem of enforcement appears to militate against the wisdom of making the amount of the fee dependent on the number of occupants. The charge could also vary depending on whether residence is permanent or only occasional and of short duration.

To so relate live-aboard fees to mooring rates would establish a rough proportionality between size of boats and charges for occupying them, which, on the theory that big boats are more commodious than small ones, would reflect the relative benefits received. Further, such a scheme would be consistent with property tax theory in which benefits received are assumed to be proportionate to value. The concept of multiples is admittedly arbitrary, but any other plan would be equally so, except that its arbitrariness could be concealed under a cloak of irrelevant statistics and unsound theory.

**Recommendation.** *We recommend that the charges for the privilege of residing on boats moored in the state small boat harbors be set by the administering agency according to a system of multiples of mooring rates paid by owners of the boats lived on and the multiples be determined on the basis of benefits received without regard to the cost of rendering service.*

## Chapter 12

### OTHER REVENUES

Although we have recommended that revenues derived from the rental of properties and fuel taxes be excluded from any special fund, including the boating special fund as it is now constituted, since these revenues are currently being deposited into the boating fund, we examined the nature and quality of these revenues. Also examined was the nature of electricity charges now imposed on boaters. Our findings on this examination are the subjects of this chapter.

#### Summary of Findings

In general, our findings are as follows:

1. Rentals now being derived from property at Ala Wai Boat Harbor appear to be less than what could be derived through proper property valuation, audit of lessee's gross income, and the greater use of the competitive bidding process.
2. The boating special fund is not currently being credited with the proper amount of fuel taxes collected.
3. There is currently no way to assess the fairness of the charges imposed on boaters for electricity supplied to them.

#### Property Rentals

As already noted, the theory under which rentals from property now being deposited into

the boating special fund is tenuous at best. Our recommendation is that such rentals be deposited into the general fund. Our findings and recommendations here, however, are applicable whether the rentals are indeed hereafter deposited into the general fund or are continued to be deposited into the boating special fund.

Our report on property rentals concerns those rentals charged at the Ala Wai Boat Harbor. There are 16 property rental agreements in effect at Ala Wai. Table 12.1 presents a summary of certain characteristics of these agreements. It will be noted from the table that the "licenses" ("illegal" long-term leases) and the revocable permits all have flat square-foot rentals computed at 5 percent per year of the appraised value of the property. The legal leases and the vendor agreements have some element of gross income built into the rent paid. Since the leases and vendor agreements are concerned with sales direct to recreational boaters while the revocable permit tenants are businesses or associations that only incidentally (sometimes not at all) depend upon boaters for their clientele and could operate elsewhere, this distinction would appear appropriate. The licenses, of course, really are leases and probably should be on a gross income basis also. Our other pertinent findings are discussed below.

**Yacht club licenses.** Even besides the absence of a gross income feature, the licenses for the two yacht clubs pose major difficulties. Both pay only half as much rent as other tenants because the standard 5 percent is

applied, in the case of the yacht clubs, to only one-half the appraised value of the property occupied by the clubs.

This reduced rental for yacht clubs originated in a policy adopted by the former board of harbor commissioners on December 18, 1957. The minutes of the meeting at which this policy was adopted read as follows:

“Mr. Rothwell stated that the method of assessing rental on leases to non-profit clubs, such as Hawaii Yacht Club, should be revised as the current practice of applying the rate of 5% of the appraised value of land to any and all comers would burden such clubs financially. He suggested that a Board policy be established to reduce this percentage 50 per cent to apply to all Harbor Board leases to non-profit clubs. Other members of the Board agreed with Mr. Rothwell on the advisability and justification of establishing such a policy. MOTION: Establish a policy to assess 2-1/2% of appraised value on leases of land to non-profit clubs. Motion...carried unanimously.”

Although originally the reduction was in the form of a reduced percentage (2½ percent) of the appraised value, in recent years, 5 percent has been applied to one-half of the appraised value. The result, of course, is the same but the present practice enables DOT to avoid granting leases with reduced rates; the valuations used are less visible and far less subject to challenge.

There is another aspect to this matter. Appraisal of the yacht club properties is a challenge to the ingenuity of everyone who has attempted it—the problems ranging from what to use as a basis for appraisal to the effect of the restrictions in the leases. One appraiser stated that the highest and best use of the Waikiki Club property is as a commercial restaurant, but then used comparisons with public parks in Oregon and California to arrive at value. On the other hand, the property also has been appraised as residential, because of the zoning, and then

Table 12.1  
Summary of Land Agreements  
Ala Wai Small Boat Harbor, 1975

| Type of agreement | No.            | Rental basis <sup>a</sup> | Purpose          | Basic rent per square foot per mo. <sup>b</sup> | Gross annual basic rent |
|-------------------|----------------|---------------------------|------------------|---|-------------------------|
| License           | 3              | Flat                      | Yacht club       | \$.01 – \$.023 <sup>c</sup>                     | \$2,640 – \$14,918      |
|                   |                |                           | Dry dock         | \$.02   |                         |
| Lease             | 2              | Flat + 5%                 | Fueling station  | \$.013 – \$.016                                 | \$1,200 – \$20,520      |
|                   |                |                           | Boat rental      |   |                         |
| Revocable permit  | 7              | Flat                      | Misc. business   | \$.04 – \$.12 <sup>d</sup>                      | \$ 264 – \$15,276       |
|                   |                |                           | Parking, storage |   |                         |
| Vendor agreements | 4 <sup>e</sup> | % gross                   | Vending machines | 10% – 12%                                       | Not applicable          |

<sup>a</sup>Flat – given rent per square foot; flat + 5% – rent per square foot plus 5% of gross over stated amount.

<sup>b</sup>Computed at 5% of appraised value; except yacht clubs.

<sup>c</sup>Computed at 5% of one-half of appraised value.

<sup>d</sup>Also one office space rental @ \$.40.

<sup>e</sup>Two are called “vending agreements,” two are revocable permits.

value written down because the tenants have no opportunity to use the property for its zoned "highest and best" use. In the absence of some consensus as to both the economic value and the social usefulness of the yacht clubs, playing with half-values or reduced rates of return is no more than that. The "system" in use is a perfect example of hiding the most subjective of judgments behind a facade of scientific method.

An objective and high-level review of the rentals charged the yacht clubs is badly needed. It is doubtful that under the current system the State is receiving a fair return, even with the assumed policy of charging the clubs only one-half of the rental which the State would otherwise receive.

#### **Appraisal and capitalization practices.**

There are other questions that can be raised concerning property management at Ala Wai Boat Harbor. The sufficiency of the rentals being derived depends, of course, on the quality of appraisal and the appropriateness of the normal 5 percent rate. Appraised values on current agreements range from around \$4 per square foot for the boat rental site in Ala Wai Canal to some \$14 for the parking lot at the Tahitian Lanai. Some of these values were no doubt set sometime ago, but they appear modest by any current value standard. It would be wise for the State to review the rate and also to be suitably critical of the values recommended by its appraisers.

**Other problems.** The various gross income rental schemes are appropriate in themselves, but do not produce maximum revenue unless the tenants' income is verified regularly. The harbors division has an auditor whose job it is to make such verification, but he is fully engaged in the commercial harbor system. The difficulties of this type of auditing are such that a superior system would be to require an annual CPA audit, to be paid for by the tenant as a condition of his lease. Whether accurate auditing would produce more revenue for small boat harbors is unknown, but certainly the State could not lose and might profit considerably.

Another question is whether or not the DOT uses the best method for managing properties when it relies to such a large extent on revocable permits. These agreements do not permit of competition among prospective tenants. The Pilot Marine and Keehi Drydock leases were auctioned, and not only were the returns considerable but their amounts were set by the actual market. It should be possible to extend the system to some other tenancies, such as the business premises at Ala Wai now covered by revocable permits. Additional returns would not be spectacular because of the modest size of most of the parcels, but at least the value would be set by the market. There are, of course, properties that are already improved at tenants' expense for which auctioning might be inappropriate, but some extension of the method in future dispositions would appear desirable.

Parking fees (chiefly meter revenues) at Ala Wai are considered as property revenues by the DOT. They produce substantial amounts of income (over \$60,000 in 1973-74) and parking may be the best use of the property, at least until alternative uses are found. There also are free parking areas for boaters at Ala Wai, as at other small boat facilities. These free areas are essential parts of the boat facilities rather than general additions to area parking. A modest and justifiable increase in revenue could be achieved if boaters were charged an annual fee for parking their cars. The cost of enforcement could be prohibitive, however, unless parking permits were issued to all boaters at the time of annual registration of boats. At present, there are some permanent parking permits which have been issued to boaters at a very modest fee. However, the issuance of such permits and the charging of fees for them have no legal authorization in terms of properly adopted rules and regulations covering these matters.

#### **Recommendations.** *We recommend that:*

1. *The policy of charging organizations (specifically the yacht clubs) differentially low lease rentals be reviewed completely from*

*both economic and social points of view and indicated changes be incorporated into existing land agreements at the earliest opportunity.*

2. *Future gross income leases include a provision that tenants furnish an annual certified audit of income, at their expense.*

3. *More use be made of competitive bidding for land agreements as a means of establishing the market value thereof.*

4. *All boaters who own automobiles be charged a fee for parking at boating facility sites, the fee to be collected at the time of registration.*

## Fuel Taxes

**Background.** The diversion of part of the fuel tax to boating purposes goes back a long way in Hawaii. Prior to statehood, the law required that “[A]ll taxes collected under chapter 123 with respect to liquid fuel sold for use in or used for small boats shall be set aside in the small boat harbor maintenance fund . . .” (Sec. 129-11, RLH 1955) With abolition of the special fund in 1959, this language was construed as meaning that deposits thereafter should be made in the general fund. They were restored to the special fund when it was re-created in 1971.

The revenues from this source were indeed considerable for some years, amounting to as much as .65 percent of total fuel taxes in 1956 (\$71,430). The method of computation, however, was faulty in two respects: (1) the base used was sales reports of oil companies for marine use, which excluded any roadside fuel sales from the base; and (2) the oil companies included in the base (until 1960) sales to ocean-going tugs, which should have been excluded.

Exclusion of tug fuel brought about a large decrease in boating tax revenue in 1960 to only .25 percent of total fuel taxes (\$36,737). Subsequently, it remained at about that level in

dollars but fell to .15 percent of the total because the base still was sales at marine fueling stations. Even though trailer boating was an increasing percentage of all boating and constituted the major user of fuel, many trailer boaters bought their fuel from roadside service stations rather than the marine fueling stations. This problem was highlighted as long ago as 1962 by the Lublin McGaughy study of boat harbor fees, but nothing was done about it until the passage of Act 180 of 1972.

Act 180 took recognition of the obvious diversion of large amounts of taxes on marine fuels to the highway fund by providing as follows: “The director of transportation is directed, prior to July 1, 1973 . . . to establish standards or formulas that will . . . establish the percentage of total taxes collected under chapter 243 . . . that are derived from the sale of liquid fuel for use in or used for small boats.” While this act repeated much of the prior language, it added one major point: the director was mandated to prepare a system for allocating all fuel taxes collected from whatever source among the various special funds, rather than relying on reports of sales by marine stations only.

After enactment of Act 180, the DOT retained the services of consultants in university of Hawaii’s college of tropical agriculture to recommend the “standards or formulas” required by law. The study was carried out in the fall of 1973 and involved extensive data collection from boat operators and sophisticated statistical manipulation of the data. The principal finding was the estimate that gasoline taxes actually paid for marine use were some nine times as high as the amount credited to the boating special fund. This effect was believed entirely attributable to exclusion of roadside sales from the tax base as the estimates for diesel fuel (obtainable at marine stations only) corresponded well with the actual taxes collected.<sup>1</sup>

<sup>1</sup>Hawaii experiment Station, college of tropical agriculture, university of Hawaii, *Marine Fuel Consumption and Tax Payments by Hawaii Boatowners*, Departmental Paper 18.

In terms of dollars, the UH study estimated that in FY 1972-73 \$238,723 should have been credited to the boating fund for fuel taxes, which constituted almost exactly 1 percent of total fuel tax collections other than for aviation fuel. On this basis, it was recommended that, as an interim measure, 1 percent be diverted from the non-aviation tax proceeds for the benefit of the boating fund, but that this percentage be revised as necessary when and if the impact of the then crucial fuel shortage was assessed.

In one respect, the recommendations of the UH group are misleading. In computing the percentage to be diverted to boating, the base used was fuel taxes after subtraction of aviation fuel tax. The statute, however, requires a "percentage to total taxes collected under 243" (emphasis supplied). Since aviation fuel taxes are collected under chapter 243, they should be included in the base. If that were done, the percentage of estimated marine fuel tax to the total is reduced to .8347 percent, and it can be inferred that the UH in its study would have recommended such a percentage if the proper base had been used. The total revenues, of course, would remain the same but in assessing the DOT reaction to the UH recommendations the distinction should be kept in mind.

**Delayed and inadequate determination of boating fund share.** The DOT, in fact, did nothing with the report until July 1, 1974, which had the effect of continuing to credit marine-generated taxes to the highway fund. Table 12.2 presents an estimate of the marine fuel taxes actually collected, using the UH methodology and FY 1973-74 figures. Since only \$37,756 was deposited in the boating fund, there was an apparent diversion of \$210,782 or 85 percent to highway purposes.

Nor did the situation entirely clear up after July 1974. The director still refrained from any official determination of percentage, as required by law, but did informally advise the director of taxation to deposit .75 percent of the non-

Table 12.2

Estimated Marine Fuel Tax Revenues  
For the Fiscal Year Ended June 30, 1974

|  |                           |
|--|---------------------------|
| Total state tax collected<br>(excluding aviation fuel taxes) . . . . . | \$14,841,988 <sup>a</sup> |
| Total county fuel tax collected . . . . .                              | 10,011,841 <sup>a</sup>   |
| Applicable tax base . . . . .  | 24,853,829                |
| Recommended percentage . . . . .                                       | .01                       |
| Estimated marine fuel tax revenues . . . . .                           | <u>\$ 248,538</u>         |

<sup>a</sup>Source: department of taxation, State of Hawaii, *Liquid Fuel Base and Tax Collections*.

aviation fuel tax into the boating fund. Since only .15 percent had been so deposited in the preceding year, this resulted in a dramatic increase, made even more dramatic by the increased fuel consumption during the current fiscal year. There are, however, two things wrong with the present arrangement: (1) no formal determination has been made by the director in accordance with statutory mandate; and (2) there is no explanation as to why a rate of .75 percent has been used rather than the 1 percent recommended by the UH study (or the equivalent .83 percent of total fuel tax).

Until a formal determination, based on up-to-date statistics, is made, there will be a question as to whether the boating fund is indeed suffering in comparison with the state and county highway funds. This question will be aggravated in the future as the recently adopted increase in state gasoline taxes will increase boating fund revenues by over \$150,000 a year using the UH formula and 1972 consumption figures. A future rate of only .75 percent would divert nearly \$40,000 of that to highways.

**Recommendation.** We recommend that the director of the department of transportation make a formal determination as quickly as possible in conformance with law on the amount of the fuel taxes to be credited to the boating special fund.

## Miscellaneous Charges

Miscellaneous charges of different kinds produce boating fund revenue of over \$20,000 per year. These charges are for incidental services available at boat harbors, including such amenities as hot water showers and electricity, and fees for processing various permits and applications. The level of most of these fees and charges would be raised moderately by proposed changes in regulations. None appears excessive at either present or proposed levels, and taken together they have small effect on the solvency of the boating fund.

The only apparent problem in miscellaneous charges is with respect to electricity, which is furnished to a number of consumers at Ala Wai Boat Harbor on a flat rate basis. Without metering, it is hard to tell

whether the State is subsidizing the boaters receiving electricity on this basis, but the current fluctuations in the price of electricity would indicate that there is a real possibility that this is so. The unmetered service is available only at the newer mooring area of Ala Wai, and it has been stated that meters were left out because no funds were available to install them. It would seem appropriate to install meters now, and charge the cost of installation to the boaters served, perhaps amortized over a reasonable period of time. To do otherwise is to invite deficits in the State's accounts and with it an indefensible subsidy to a small group of boaters.

*Recommendation.* We recommend that meters be installed wherever electricity is afforded to moored boats and that the cost thereof be charged to the boaters concerned.



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**PART IV**

**ACCOUNTING AND FINANCIAL STATEMENTS**

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## Chapter 13

### INTRODUCTION

This part is devoted to the results of the financial audit conducted by this office of the present boating special fund. The audit included a review of the accounting system and the public reports issued by the DOT from time to time concerning the financial condition of the fund.

Governmental accounting exists for the purpose of providing accurate, complete, and consistent financial information to individuals and groups responsible for and concerned with the operations of government. Accurate financial reports are necessary to relate the management of public funds to the services rendered, as well as to aid management in its daily decisions and to help it in the prudent financial planning and control that are essential to efficient utilization of public funds. We examined the harbors division accounting system to assess the degree to which it contributes to such goals, and also performed a detailed post audit of the accounts for the fiscal year 1973-74. Chapter 14 of this part focuses on the accounting and financial reporting of the

harbors division, and chapter 15 presents financial statements prepared in the course of the post audit of the division's accounts.

#### Summary of Findings

1. The system for accounting and reporting the transactions of the special boating fund requires improvements in important respects. The transfer of funds from the boating special fund to the commercial harbors special fund to pay for the services rendered by the personnel assigned to the commercial harbors program are not being properly handled, and reports on the boating special fund are not being issued in an accurate and complete manner.

2. In general, the financial statements contained in chapter 15 of this report fairly present the conditions of the boating special fund that the statements are intended to reflect.

## Chapter 14

### ACCOUNTING AND FINANCIAL REPORTING

Monies collected and expended through the boating special fund for the recreational boating program are accounted for by the fiscal section of the harbors division through a set of accounts which completely separates recreational boating from other harbors division financial activities. Because of the existence of other special funds in the harbors division, strict segregation between funds is required. Further, the interest that boating clientele and others take in the program requires that frequent public reporting of fund transactions be made. Most of the problems identified in our review of the accounting system for the boating special fund were in these areas.

#### Summary of Findings

In general, our findings are:

1. The boating special fund has not properly reimbursed the commercial harbors special fund for expenditures made by the commercial harbors special fund for recreational boating.
2. Financial reporting to the public is inaccurate, misleading, and incomplete.
3. There are numerous instances of failure to comply with laws, regulations, and sound fiscal practices.

#### Improper Accounting for Interfund Transfers

Employees assigned to the commercial harbors program of the DOT are frequently called upon to perform services in the recreational boating program. In these instances, since the costs of the two programs are funded through separate special funds, interfund transfers are necessary to allocate the costs of the services provided by these employees to the recreational boating program. The amounts are substantial—more dollars were involved in this process in 1973–74 than the entire recreational boating payroll—and employees of every rank and specialty from the division chief to laborers are involved. The boating special fund has not properly and in a consistent fashion reimbursed the commercial harbors special fund in all cases where the employees funded by the commercial harbors special fund provided services in the recreational boating program.

**Improper distribution of costs.** Part of the difficulty here has been the method of allocating the costs of the commercial harbors employees to the boating special fund. The primary means used by the DOT to account for commercial harbors employees' time spent on the recreational boating program is a time card system. After work is performed for boating, the time spent is recorded and the cost of the services provided for boating is calculated for the transfer of the cost from the boating special fund to the commercial harbors special fund. Although time-consuming, this is the only

method that yields an accurate result in most cases.

However, in addition to the time card system, the DOT uses another system at the same time. It estimates the percentage of the salaries of certain commercial harbors employees that would be chargeable to the boating program during the year and simply charges that percentage to the boating fund. In 1973-74, nearly half of the interfund transactions were by this payroll distribution method. This payroll distribution method is also an appropriate method. However, DOT has attempted payroll distributions in cases where they should not have been; and in cases where they were appropriate, the allocations have been made on improper bases. Allocations have been made in a manner totally unrelated to the amount of work actually performed for boating. For example, only 2 percent of the salary of the boating programs manager on Oahu was so allocated, even though he had spent all of his time on boating. Then, over 20 percent of the salary of a district manager was allocated to boating in a district where there are only 2.25 boating employees to manage. These results have necessitated the DOT to go back to the time cards at the end of each year to adjust the interfund transfers that had previously been made during the year. The futility of this accounting exercise has been recognized, and the division planned to do away with the payroll distribution on July 1, 1975.

For the majority of the employees, of course, time cards are the only practical means of keeping track, as the participation of a repair crew, for example, in boating cannot be predicted either as to occurrence or amount. The same can be said of the engineering staff and of the property management personnel.

There are nevertheless good uses for the payroll distribution method, with respect to some employees. Among these are the division staff, staff services employees (excluding property managers), district managers, and anyone else whose activities in different

programs can be reasonably allocated in advance. To be workable, however, defensible formulas related to some measurement such as proportionate numbers of employees, total program costs, transactions completed, or other appropriate base should be used. If worked out and agreed to, this system requires no more accounting than any other payroll operation and has the great virtue of being an automatic distribution of costs not requiring any after-the-fact adjustments.

**Incomplete reimbursement of harbor special fund.** Ever since the boating fund was created in 1971, it has never completely reimbursed the commercial fund for services rendered by employees assigned to commercial harbors. Table 14.1 presents the data for the fiscal years 1971 through 1974. A similar situation is expected to occur for 1974-75.

Table 14.1

Under-Reimbursement of Personal Services Costs to the Harbor Special Fund from the Recreational Boating Program  
Fiscal Years 1971-1972 to 1973-1974

| <i>Fiscal year</i> | <i>Actual cost</i> | <i>Reimbursement</i> | <i>Under-reimbursement</i> |
|--------------------|--------------------|----------------------|----------------------------|
| 1973-74            | \$251,557          | \$197,097            | 54,460                     |
| 1972-73            | 177,365            | 38,669               | 138,696                    |
| 1971-72            | 146,865            | 82,328               | 64,537                     |
| Total              | \$575,787          | \$318,094            | \$257,693                  |

Inquiry of the harbors division personnel as to the cause of underreimbursement yielded a response that the extent of work to be done by employees of the harbors special fund had been underestimated and there were insufficient funds budgeted to meet the obligations. This explanation does not account for the fact that there was more than enough money in the fund balance at the end of each year to effect the reimbursement, and we found no evidence that any request was made of the department of budget and finance to allot enough of that to meet the obligations. The problem may, therefore, be primarily one of inadequate budget

execution, but it results in inadequate financial reporting. Even if the internal records reflect accurately the amount of work done, the financial reports of the boating special fund have noted only the amounts paid and thus have understated the costs of the boating program by a substantial amount.

**Recommendation.** *We recommend that the harbors division revise its accounting procedures for interfund obligations to assure that the most appropriate methods of cost allocations are employed and financial reports accurately reflect such obligations.*

### **Inaccurate Public Financial Reporting**

The harbors fiscal office is often requested to prepare financial statements and reports of the recreational boating program for use by the harbors division staff offices and the boating public. These financial statements and reports are important management tools in making necessary financial decisions for the boating program. Without such financial information, the division and the public have no way to assess adequately the past financial performance of the program or to plan for future financial requirements. These financial statements and reports, to be of any benefit to the users, must reflect accurate data on a consistent and informative basis.

Despite the importance of issuing financial statements that are accurate, the harbors division has prepared inaccurate financial statements and reports of the recreational boating program. An example is its *Statement of Revenues, Expenditures and Fund Balances for the Fiscal Year 1973-1974*, prepared on September 24, 1974. That statement failed to include the interest earned of \$1578 from the investment in a bank time certificate of deposit. Also, the following expenditures were omitted from the statement: (1) personal service costs reimbursed by federal funds of \$37,756 and (2) personal service costs reimbursed to various commercial harbor funds totaling \$22,900.

Another example is the division's *Statement of Revenues, Expenditures and Fund Balances Based on Proposed Rate Schedule*, dated April 11, 1975. There are material differences in the information contained in this statement and that contained in the department's 1975-1977 biennium budget request for the boating program, now incorporated into the appropriations act. The financial statement projected as expenditures \$1,510,000 for 1975-76 and \$1,387,000 for 1976-77, for a biennial total of \$2,897,000. A note on the display stated that no amortization costs were included in the estimates. The requested budgets for the same fiscal years, however, were \$1,484,000 and \$1,482,000, respectively, for a total of \$2,966,000, including \$124,000 for amortization. The net effect of the financial statement is a little hard to judge, but it seems to have understated the actual planned program by \$69,000.

It is recognized that plans change and that the budget calendar of the state government does not lend itself to precise estimates. Such estimates therefore should and must be changed from time to time. However, in the case above, the financial statement was misleading in two respects: (1) it exceeded the total appropriations for the biennium, after subtracting for amortization; and (2) it implied that no amortization costs were to be paid from the boating fund when in fact \$124,000 had been earmarked for that purpose.

The problem of inaccurate financial reporting by the harbors division is not a new one. In 1973, the director's advisory ad hoc committee on boating requested an investigation as to the accuracy of the small boat harbors financial statements after differences were noted in the figures of various financial statements for the same fiscal year. In a January 29, 1974 memorandum to the director of transportation, the then chairman reported that his committee found the reliability of harbors' figures questionable and asked for a review at the departmental level. As a result of the committee's concern, the director of

transportation directed his deputy in charge of administration to investigate and correct the purported differences in the financial statements. In a March 22, 1974 memorandum to the director, the deputy reported that he had found numerous deficiencies, including inconsistent rounding and the taking of data from different sources without reconciliation. Although the differences were eventually reconciled, the division's method of financial reporting has continued to be inaccurate and inconsistent.

**Recommendation.** *We recommend that the harbors division take the steps necessary to ensure the preparation of accurate and consistent financial statements of the recreational boating program.*

#### **Failure to Comply with Laws, Regulations, and Sound Fiscal Practices**

The harbors division has in several instances failed to comply with state laws, departmental regulations, and sound fiscal practices. In summary, the deficiencies are as follows:

- . Questionable legality of transfer of funds.
- . Violation of security deposit rules.
- . Confirming purchases.

**Questionable legality of transfer of funds.** During our audit of the financial transactions, we noted two instances where the division apparently violated the requirements of Act 218, S.L.H. 1973, the general appropriation act of 1973, which requires transfer of funds between appropriations to be authorized by the governor.

The problem arose in these instances when the harbors division desired to reduce the funds available to one program (boating and water safety) and increase those available to another (ocean-based activities) by an equal amount. To do this, the division transferred \$16,422.74 and \$427.07 on September 28, 1973 and December 31, 1973, respectively, from the first allotment

to the second by means of journal vouchers purporting to be reimbursements for personal services. Upon inquiry, we were informed that these amounts were in fact transfers of funds between allotments rather than reimbursements for personal services. As such, they were improperly made in the absence of approval by the governor.

**Violation of security deposit rules.** Section 12.03(1)(a) of the *Small Boat Harbors Rules and Regulations*, dated July 12, 1971, states in part that:

“A permittee, upon being issued a use permit, shall in addition to paying fees and charges as they become due, deposit . . . an amount equal to two months fees and charges as security for the faithful performance on his part of all the terms and conditions . . . .”

During our audit we found numerous examples where the harbors division failed to collect such security deposits, despite the clear language of the rule.

The purpose of requiring a security deposit is twofold. *First*, it provides some monetary incentive for the permittee to comply faithfully with the provisions and terms stipulated in the use permit agreement. If he fails to perform in accordance with the terms, he may forfeit all or a portion of his deposit, thus providing the State with some indirect control over a permittee's adherence to conditions of the permit. *Second*, a security deposit assures the State some monetary compensation should the permittee breach the terms of the agreement. Section 12.03(1)(a) of the harbor rules states that “in the event the permittee does not so perform, the Department may declare the deposit forfeited or apply it as an offset to any amounts owed by the permittee to the State under the use permit or to any damages or loss caused to the State by the breach of such terms and conditions by the permittee.” We noticed many instances where the security deposit of a

permittee was in fact applied to an outstanding debt owed to the State. Thus, it is important that the harbors division require a security deposit from every permittee.

Upon inquiry, the apparent disregard of the rule requiring deposits was explained by the harbors division as being a practice primarily used for permittees who were originally issued use permits prior to the adoption of the deposit requirement. The harbors division has usually not enforced the provision requiring security deposits in such cases, despite the generality of the rule.

We find no justification in the division's reason for not collecting a security deposit from permittees who were first issued a use permit prior to July 12, 1971. Under the present rules all permits are issued for a one-year period and must be renewed annually. There seems to be no reason why the division should not collect a security deposit from these permittees when they renew their use permits, especially in view of the fact that deposits made by others are frequently partially forfeited.

**Confirming purchases.** In numerous instances, the DOT makes purchases on a confirming basis. Under this practice, a purchase commitment is made prior to the preparation and approval of a purchase order. Confirming purchases are technically illegal and proper custody of public monies requires that

certification of availability of funds and the propriety of purchases be made in advance of obligation by a properly authorized person. Confirming purchase orders may be permissible in emergency or other clearly defined situations such as when time does not permit prior preparation, approval, and issuance.

A review of the purchase orders issued by the harbors division in fiscal year 1973-1974 revealed that the majority of the confirming purchases appears not to have been made under emergency conditions. In fact, several were for the purchase of items for which there appears to have been no reason why prior approval could not have been secured. Among these cases were janitorial supplies and construction materials, for which needs are readily foreseeable.

**Recommendations.** We recommend that the harbors division:

1. Obtain the necessary approval prior to the transfer of funds between appropriations.
2. Collect a security deposit from each permittee holding a current use permit, as required by its own rules and regulations.
3. Formulate and enforce an internal policy for the issuance of confirming purchase orders, prohibiting them in all cases other than true emergencies or other strictly defined situations.

## Chapter 15

### FINANCIAL STATEMENTS

This chapter contains the results of our examination of the financial statements of the recreational boating program as administered by the harbors division of the department of transportation for the fiscal year July 1, 1973 to June 30, 1974. Explanations to the financial statements, our opinions regarding the reasonable accuracy of the financial statements, and displays of the financial statements are included in this chapter. The financial statements and schedules are as follows:

- Balance Sheet—Boating Special Fund (Table 15.1)
- Statement of Resources and Operating Expenditures—Boating Special Fund (Table 15.2)
- Schedule of Boating-Related Revenues (Table 15.3)
- Schedule of Operating Expenditures (Table 15.4)
- Statement of Receipts, Disbursements, and Balances of Security Deposits (Table 15.5)
- Statement of Capital Improvements Project Appropriations, Allotments, Expenditures, Lapses, and Balances—General Obligation Bond Fund (Table 15.6).

#### Method of Accounting

The accounts for the recreational boating program are maintained and the financial

statements are prepared on a modified cash basis of accounting. Generally, under this method, revenue is recognized when actually received in cash and expenditures are recorded at the time payments are made, except for encumbrances which are recognized as obligations of the fund.

The accounting procedures provide for the recording of commitments at the time contracts are awarded and orders are placed for services, equipment, construction, and supplies. These commitments are represented as encumbrances and are necessary to reflect obligations which are chargeable to an appropriation and for which a part of the appropriation is reserved.

Capital assets constructed or purchased for the recreational boating program are recorded as expenditures of the respective funds expending the monies. These capital expenditures are shown as assets in the statewide general fixed asset accounts. Depreciation on these assets are generally not recorded by the State.

As is the practice followed by other state agencies, the recreational boating program does not reflect in its financial statements any earned vacation and sick leave credits. Vacation credits, although technically accrued when earned, are recorded as expenditures and charged against the program's appropriation only as the vacations are taken or claimed (in cases of employment termination). Sick leave credits, although accrued, can only be applied when an employee is ill; there is no cash payoff for unused, accrued sick leave credits upon the termination of employment.

## Balance Sheet—Boating Special Fund

The balance sheet of the boating special fund at June 30, 1974 is shown in table 15.1.

**Opinion on statement.** In our opinion, the balance sheet of the boating special fund presents fairly the assets, reserves, and fund balances of the boating special fund as presented on the modified cash basis of accounting at June 30, 1974.

**General description of the statement.** The balance sheet discloses the assets, reserve for encumbrances, and fund balances of the boating special fund as of June 30, 1974. A discussion of the major items on the balance sheet follows.

**1. Assets.** At June 30, 1974, the assets of the boating special fund totaled \$419,154. Of this total, \$269,154 represents cash held in the state treasury, and the remaining \$150,000 represents cash invested in a bank time certificate of deposit.

**2. Reserve for encumbrances.** At June 30, 1974, the boating special fund had a total of \$134,481 in reserve for encumbrances. Since encumbrances are obligations which have been committed but not yet paid for at June 30, 1974, a reserve is recorded to segregate a portion of the fund balance that is equal to the amount of encumbrances since this portion of the fund balance is no longer available for future expenditures.

**3. Fund balance.** The fund balance of the boating special fund at June 30, 1974 amounted to \$284,673. This amount represents the excess of the fund's assets over its reserves which is available for future expenditures. The fund balance had a net decrease of \$147,871 over the beginning fund balance at July 1, 1973 of \$432,544. This net decrease consists of an addition of \$30,884 representing the unrequired balance of the prior year's encumbrances and deductions of \$178,755. The deductions resulted from (a) operating expenditures exceeding resources during the fiscal year

1973-74 by \$124,982, and (b) \$53,773 of expenditures for capital improvement projects during the fiscal year.

## Statement of Resources and Operating Expenditures—Boating Special Fund

The statement of resources and operating expenditures of the boating special fund for the fiscal year July 1, 1973 to June 30, 1974 is displayed in table 15.2.

**Opinion on statement.** In our opinion, the statement of resources and operating expenditures for the boating special fund presents fairly the results of resources collected and the operating expenditures made and obligated from such resources during the fiscal year ended June 30, 1974.

**General description of the statement.** The statement of resources and operating expenditures presents a summary of the boating special fund transactions for the fiscal year ended June 30, 1974. A brief discussion of the boating special fund resources and operating expenditures follows.

**1. Resources. a. Boating-related revenue.** Boating-related revenue includes the income earned from the direct charges made to the users of small boating harbors and boating-related activities. During the fiscal year ended June 30, 1974, the boating special fund received a total of \$644,125 in boating-related revenue. A breakdown of this total by various types of revenue is shown on table 15.3.

**b. Fuel tax.** During the fiscal year ended June 30, 1974, the boating special fund received a total of \$37,756 in liquid fuel taxes. This total represents that portion of the liquid fuel taxes collected on liquid fuel sold at marine fueling stations.

**c. Federal funds.** The recreational boating program receives federal assistance under the federal Boat Safety Act of 1971 for

the State's efforts in promoting boating safety education and boating safety enforcement activities. The federal funds are received for the eligible costs incurred on a percentage matching basis each year. During the fiscal year ended June 30, 1974, a total of \$34,879 was received as an advance payment for the federal government's share of the eligible costs to be incurred by the recreational boating program for the fiscal year 1974-75.

*d. Interest.* During the fiscal year 1973-74, the recreational boating program earned a total of \$1,578 in interest income from the investment of special fund monies in a bank time certificate of deposit.

**2. Operating expenditures.** In the fiscal year ended June 30, 1974, the recreational boating program incurred a total of \$843,320 in operating expenditures. Of this total, \$147,206 was expended for boating and water safety and \$696,114 for other ocean-based activities. Included in the total of \$843,320 is the sum of \$134,481 in encumbrances. Encumbrances are obligations which, although not yet paid, are chargeable to the fiscal year in which the obligation is incurred. Similar to the expending of general fund monies, special funds are subject to legislative controls over spending limits through the appropriation process. A brief discussion of the major categories of expenses included in the \$843,320 total operating expenditure follows.

*a. Personal services.* Personal services, which include salaries, overtime pay, and other pay adjustment actions totaled \$456,178 for the fiscal year. Of this total, \$88,217 was expended for the boating and water safety activities and \$367,961 was expended for other ocean-based activities. A detailed listing of the expenditures for personal services is presented in table 15.4.

*b. Other current expenses.* This category of expenditures includes all expenditures except those for personal services, equipment, and capital improvements. For the fiscal year ended June 30, 1974, the program incurred a total of

\$387,142 in other current expenses. Of this total, more than 53 percent (\$205,506) was expended for the repairs and maintenance of the small boat harbors throughout the State. A detailed listing of current expenses is presented in table 15.4.

#### **Statement of Receipts, Disbursements, and Balances of Security Deposits**

The recreational boating program's statement of receipts, disbursements, and balances of security deposits for the fiscal year ended June 30, 1974 is presented in table 15.5.

**Opinion on statement.** In our opinion, the statement shown on table 15.5 presents fairly the receipts, disbursements, and balances of the security deposits of the recreational boating program for the fiscal year ended June 30, 1974.

**General description of statement.** The statement of receipts, disbursements, and balances of security deposits summarizes the results of the cash transactions of security deposits during the fiscal year. This fund was established to account for the security deposits on mooring and land lease agreements.

#### **Statement of CIP Appropriations, Allotments, Expenditures, Lapses, and Balances—Bond Fund**

The recreational boating program's statement of CIP (capital improvements project) appropriations, allotments, expenditures, lapses, and balances of the general obligation bond fund for the year ended June 30, 1974 is shown in table 15.6.

**Opinion on statement.** In our opinion, the statement shown in table 15.6 presents fairly the financial transactions of the general obligation bond fund for the year ended June 30, 1974, with respect to the expenditures of the appropriations contained in the statement.

**General description of the statement.** The bond fund accounts for the proceeds from the sale of bonds to finance capital improvement projects. Generally, the department of accounting and general services (DAGS) is the agency responsible for the administration of the capital improvement projects for the State. However, in some instances, other agencies are designated the responsibility for the execution of a project by the legislature. The statement of CIP appropriations, allotments, expenditures, lapses, and balances presents a summary of the transactions of the bond fund proceeds for those capital improvement projects the execution of which has been designated to the department of transportation for the recreational boating program.

A discussion of the CIP appropriations, allotments, expenditures, lapses, and balances (table 15.6) follows.

**1. Appropriations.** The appropriation amounts in table 15.6 represent the sums appropriated by the state legislature to the department of transportation for the projects listed in the table. The total amount of the appropriations available in fiscal year 1973-74 was \$14,292,000.

**2. Allotments.** The figures in the column headed "allotments" represent the amount authorized by the director of budget and finance

to the department of transportation to incur obligations and to make expenditures pursuant to the appropriation made by the state legislature for capital improvement projects. Allotments for the projects totaled \$5,554,470.

**3. Expenditures.** As of June 30, 1974, the department of transportation had expended a total of \$4,691,255 for the projects listed in table 15.6. Of the total expenditures, \$1,625,576 was expended during the fiscal year ended June 30, 1974 and \$3,065,679 was expended in prior fiscal years.

**4. Lapses.** During the fiscal year ended June 30, 1974, a total of \$49,196 in unexpended and uncommitted funds lapsed from seven projects listed in table 15.6. These lapsed funds reverted to the state bond fund and will be available for expenditure for other capital improvement projects financed by state general obligation bonds.

**5. Balances.** The figures in the "balances" columns represent the unexpended amounts at June 30, 1974 for the various projects listed in table 15.6. These balances include \$185,115 representing sums which have been encumbered (obligated) and \$628,904 representing the allotment balances for the listed projects at June 30, 1974. The allotment balances are the unencumbered portion of the allotments.

Table 15.1  
 Department of Transportation – Harbors Division  
 Boating Special Fund  
 Balance Sheet  
 June 30, 1974

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| <i>ASSETS</i>   |           |           |
|---|-----------|-----------|
| Cash  |           |           |
| Held in state treasury . . . . .                          |           | \$269,154 |
| Time certificates of deposit . . . . .                    |           | 150,000   |
|   |           | \$419,154 |
| <br><i>RESERVE AND FUND BALANCE</i><br>                   |           |           |
| Reserve for encumbrances . . . . .                        |           | \$134,481 |
| Fund balance:   |           |           |
| Balance July 1, 1973 . . . . .                            | \$432,544 |           |
| Add:  |           |           |
| Unrequired balance of prior year encumbrances . . . . .   | 30,884    |           |
| Deduct:   |           |           |
| Excess of operating expenditures over resources . . . . . | [124,982] |           |
| Capital improvements . . . . .                            | [53,773]  |           |
|   |           | 284,673   |
| Balance June 30, 1974 . . . . .                           |           | 284,673   |
|   |           | \$419,154 |
| <br><u>Total reserve and fund balance</u> . . . . .       |           |           |
|   |           | \$419,154 |

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**Table 15.2**  
**Department of Transportation – Harbors Division**  
**Boating Special Fund**  
**Statement of Resources and Operating Expenditures**  
**Year Ended June 30, 1974**

|   |                  |
|---|------------------|
| <hr/>   |                  |
| <i>Resources</i>  |                  |
| Boating-related revenue (table 15.3) . . . . .            | \$644,125        |
| Fuel tax . . . . .  | 37,756           |
| Federal funds . . . . .                                   | 34,879           |
| Interest . . . . .  | 1,578            |
| Total resources . . . . .                                 | <u>\$718,338</u> |
| <br>  |                  |
| <i>Operating expenditures</i>                             |                  |
| Act 218, Session Laws of Hawaii 1973 (table 15.4)         |                  |
| Boating and water safety . . . . .                        | 147,206          |
| Other ocean-based activities . . . . .                    | <u>696,114</u>   |
| Total operating expenditures . . . . .                    | <u>\$843,320</u> |
| Excess of operating expenditures over resources . . . . . | <u>\$124,982</u> |
| <hr/>   |                  |

**Table 15.3**  
**Department of Transportation – Harbors Division**  
**Boating Special Fund**  
**Schedule of Boating-Related Revenues**  
**Year Ended June 30, 1974**

|  |                  |
|--|------------------|
| <hr/>  |                  |
| Boat registration fees . . . . .   | \$ 42,900        |
| Mooring charges . . . . .  | 349,353          |
| Residence charges . . . . .  | 30,938           |
| Rental – land and wharf space . . . . .  | 138,676          |
| Rental – parking space . . . . .   | 78,013           |
| Rental – vendor permits . . . . .  | 4,630            |
| Other revenues . . . . .   | <u>17,869</u>    |
| Total revenues, accrual basis . . . . .  | 662,379          |
| <br>   |                  |
| <i>Less:</i>   |                  |
| Net increase in the accounts receivables not recognized as revenues<br>under the modified cash basis of accounting . . . . . | <u>18,254</u>    |
| Total boating-related revenues, modified cash basis . . . . .  | <u>\$644,125</u> |
| <hr/>  |                  |

Table 15.4  
 Department of Transportation – Harbors Division  
 Boating Special Fund  
 Schedule of Operating Expenditures  
 Year Ended June 30, 1974

|   | Total     | Boating<br>and<br>water<br>safety | Other<br>ocean-<br>based<br>activities |
|---|-----------|-----------------------------------|--|
| <i>Personal services</i>                              |           |                                   |  |
| Recreational boating employees . . . . .              | \$243,663 | \$ 74,479                         | \$169,184                              |
| Services of other harbor division employees . . . . . | 197,097   | 2,800                             | 194,297                                |
| Services of other divisions and agencies . . . . .    | 15,418    | 10,938                            | 4,480                                  |
| Total personal services . . . . .                     | 456,178   | 88,217                            | 367,961                                |
| <i>Other current expenditures</i>                     |           |                                   |  |
| Repairs and maintenance . . . . .                     | 205,506   | 11,705                            | 193,801                                |
| Special fund and departmental assessment . . . . .    | 87,839    | 34,387                            | 53,452                                 |
| Utilities . . . . .                                   | 53,663    | 657                               | 53,006                                 |
| Building and construction materials . . . . .         | 9,943     | 256                               | 9,687                                  |
| Maintenance materials and supplies . . . . .          | 9,041     | 706                               | 8,335                                  |
| Other materials and supplies . . . . .                | 5,322     | 5,322                             | -                                      |
| Communications . . . . .                              | 3,657     | 1,483                             | 2,174                                  |
| Miscellaneous . . . . .                               | 3,547     | 597                               | 2,950                                  |
| Travel and subsistence . . . . .                      | 3,264     | 1,364                             | 1,900                                  |
| Other expenses . . . . .                              | 5,360     | 2,512                             | 2,848                                  |
| Total other current expenditures . . . . .            | 387,142   | 58,989                            | 328,153                                |
| Total operating expenditures . . . . .                | \$843,320 | \$147,206                         | \$696,114                              |

Table 15.5  
 Department of Transportation – Harbors Division  
 Recreational Boating Program – Agency Funds  
 Statement of Receipts, Disbursements, and Balances of Security Deposits  
 Year Ended June 30, 1974

|   |          |
|---|----------|
| Cash July 1, 1973 – held in state treasury . . . . .  | \$60,700 |
| Receipts – temporary deposits . . . . .               | 29,203   |
| Disbursements – reimbursements of deposits . . . . .  | [15,709] |
| Cash June 30, 1974 – held in state treasury . . . . . | \$74,194 |

Table 15.6

Department of Transportation—Harbors Division  
 Recreational Boating Program — Bond Fund (General Obligation Bonds)  
 Statement of Capital Improvements Project Appropriations, Allotments, Expenditures, Lapses, and Balances  
 Year Ended June 30, 1974

|  | Appropriations | Allotments | Expenditures |              |        | Balances   |              |
|--|----------------|------------|--------------|--------------|--------|------------|--------------|
|  |                |            | Prior year   | Current year | Lapses | Allotments | Encumbrances |
| <i>Act 218, Session Laws of Hawaii 1974</i>  |                |            |              |              |        |            |              |
| Lahaina small boat launching ramp, Maui . . . . .  | \$ 220,000     | \$ —       | \$ —         | \$ —         | \$ —   | \$ —       | \$ —         |
| Kikiaola boat harbor, Kauai . . . . .  | 80,000         | —          | —            | —            | —      | —          | —            |
| Kapaa boat landing ramp, Kauai . . . . .   | 70,000         | —          | —            | —            | —      | —          | —            |
| Kukuiula small boat harbor, Kauai . . . . .  | 100,000        | —          | —            | —            | —      | —          | —            |
| Hanalei district, Kauai small boat launching ramp . . . . .  | 20,000         | —          | —            | —            | —      | —          | —            |
| Pokai Bay improvements, Waianae . . . . .  | 100,000        | —          | —            | —            | —      | —          | —            |
| Haleiwa boat harbor . . . . .  | 125,000        | —          | —            | —            | —      | —          | —            |
| <i>Act 176, Session Laws of Hawaii 1972</i>  |                |            |              |              |        |            |              |
| Small boat launching ramp, Honouliwai Bay, Molokai . . . . .   | 39,000         | —          | —            | —            | —      | —          | —            |
| Comfort stations, Hawaii . . . . .   | 75,000         | —          | —            | —            | —      | —          | —            |
| Small boat ramp, Honaunau Bay, Kona, Hawaii . . . . .  | 35,000         | —          | —            | —            | —      | —          | —            |
| Kukuiula small boat harbor, Kauai . . . . .  | 125,000        | 1,500      | —            | 615          | —      | 885        | —            |
| Hanalei boat landing, Kauai . . . . .  | 25,000         | 25,000     | 2,320        | 22,680       | —      | —          | —            |
| <i>Act 202, Session Laws of Hawaii 1972</i>  |                |            |              |              |        |            |              |
| Honokohau boat harbor, Kona, Hawaii—design . . . . .   | 30,000         | —          | —            | —            | —      | —          | —            |
| Honokohau boat harbor, Kona, Hawaii—construction . . . . .   | 470,000        | —          | —            | —            | —      | —          | —            |
| Improvements to boating facilities, statewide—design . . . . .   | 20,000         | 18,900     | —            | 5,695        | —      | 3,405      | 9,800        |
| Improvements to boating facilities, statewide—construction . . . . .   | 160,000        | 61,420     | —            | —            | —      | 61,420     | —            |
| New Lahaina boat harbor, Lahaina, Maui (lump sum) . . . . .  | 560,000        | —          | —            | —            | —      | —          | —            |
| Waianae boat harbor, Waianae, Oahu (lump sum) . . . . .  | 1,230,000      | —          | —            | —            | —      | —          | —            |
| Hana harbor, Hana, Maui—construction . . . . .   | 63,000         | —          | —            | —            | —      | —          | —            |
| <i>Act 197, Session Laws of Hawaii 1971</i>  |                |            |              |              |        |            |              |
| Small boat harbor ramp, Kihei, Maui . . . . .  | 35,000         | —          | —            | —            | —      | —          | —            |
| Small boat launching ramp, west Maui . . . . .   | 35,000         | 2,000      | 229          | 1,238        | —      | 533        | —            |
| Kaunakakai small boat harbor, Molokai . . . . .  | 150,000        | 150,000    | 76           | 114,334      | —      | 12,466     | 23,124       |
| Planning and construction of boating facilities and<br>other improvements in Hilo Bay or Wailoa River area . . . . . | 85,000         | 3,100      | —            | 125          | —      | 2,975      | —            |
| Kaualalu Bay . . . . .   | 100,000        | —          | —            | —            | —      | —          | —            |
| Nawiliwili boat harbor . . . . .   | 111,000        | 111,000    | 110,000      | 984          | —      | 16         | —            |
| Kikiaola boat harbor, Waimea . . . . .   | 40,000         | 25,000     | 20,779       | 3,479        | —      | 742        | —            |
| Kukuiula small boat harbor . . . . .   | 75,000         | —          | —            | —            | —      | —          | —            |
| Hanalei small boat harbor . . . . .  | 10,000         | —          | —            | —            | —      | —          | —            |
| Waikiki beach erosion control . . . . .  | 286,000        | 12,000     | —            | 11,962       | —      | 38         | —            |
| <i>Act 68, Session Laws of Hawaii 1971</i>   |                |            |              |              |        |            |              |
| Honokohau boat harbor, Kona, Hawaii—design . . . . .   | 40,000         | —          | —            | —            | —      | —          | —            |
| Honokohau boat harbor, Kona, Hawaii—construction . . . . .   | 730,000        | —          | —            | —            | —      | —          | —            |
| Improvements to boating facilities, statewide—design . . . . .   | 25,000         | 25,000     | 15,376       | 7,652        | —      | 737        | 1,235        |
| Improvements to boating facilities, statewide—construction . . . . .   | 235,000        | 235,000    | 135,509      | 87,543       | —      | 7,736      | 4,212        |
| New Lahaina boat harbor, Lahaina, Maui (lump sum) . . . . .  | 987,000        | —          | —            | —            | —      | —          | —            |
| Port Allen small boat harbor improvements, Kauai . . . . .   | 1,000          | —          | —            | —            | —      | —          | —            |
| Ala Wai boat harbor, Honolulu, Oahu—design . . . . .   | 30,000         | 16,000     | 318          | 10,645       | —      | 5,037      | —            |
| Ala Wai boat harbor, Honolulu, Oahu—construction . . . . .   | 470,000        | 470,000    | 119,346      | 348,571      | —      | 2,083      | —            |
| Waianae boat harbor, Waianae, Oahu—design . . . . .  | 130,000        | 129,000    | —            | 475          | —      | 3,525      | 125,000      |
| Kaunakakai boat harbor, Kaunakakai, Molokai—design . . . . .   | 2,000          | 2,000      | 765          | 1,235        | —      | —          | —            |
| Kaunakakai boat harbor, Kaunakakai, Molokai—construction . . . . .   | 23,000         | 23,000     | —            | 23,000       | —      | —          | —            |
| Haleiwa boat harbor—emergency repairs to storm damage . . . . .  | 1,500          | 1,500      | —            | 1,500        | —      | —          | —            |
| Haleiwa boat harbor—emergency repairs to storm damage . . . . .  | 22,500         | 22,500     | —            | 4,165        | —      | 18,335     | —            |

Table 15.6

Department of Transportation – Harbors Division  
 Recreational Boating Program – Bond Fund (General Obligation Bonds)  
 Statement of Capital Improvements Project Appropriations, Allotments, Expenditures, Lapses, and Balances  
 Year Ended June 30, 1974 (continued)

|  |                     |                    |                    |                    |                 |                  |                  |
|--|---------------------|--------------------|--------------------|--------------------|-----------------|------------------|------------------|
| <i>Act 187, Session Laws of Hawaii 1970</i>                                |                     |                    |                    |                    |                 |                  |                  |
| Improvements to boating facilities, statewide . . . . .                    | 35,000              | 35,000             | 34,000             | —                  | —               | 1,000            | —                |
| New Lahaina boat harbor . . . . .  | 880,000             | —                  | —                  | —                  | —               | —                | —                |
| Honokohau boat harbor, Kona . . . . .                                      | 1,190,000           | —                  | —                  | —                  | —               | —                | —                |
| Reeds Bay boat harbor, Hilo . . . . .                                      | 40,000              | 40,000             | 12,770             | 25,073             | —               | 2,157            | —                |
| Wailoa estuary & river basin, Hilo . . . . .                               | 50,000              | 21,000             | 20,295             | 256                | —               | 449              | —                |
| Kukuiula small boat harbor, Kauai . . . . .                                | 78,000              | 35,160             | 25,603             | 324                | —               | 9,233            | —                |
| Nawiliwili small boat harbor, Kauai . . . . .                              | 320,000             | 360,000            | 320,000            | 40,000             | —               | —                | —                |
| Port Allen boat harbor improvements . . . . .                              | 175,000             | 46,000             | —                  | 36,043             | —               | 9,957            | —                |
| Hanalei boat landing, Kauai (transferred from Act 176, SLH 1972) . . . . . | —                   | 5,650              | —                  | 5,650              | —               | —                | —                |
| <i>Act 155, Session Laws of Hawaii 1969</i>                                |                     |                    |                    |                    |                 |                  |                  |
| Maunaloa boat harbor, Oahu . . . . .                                       | 20,000              | —                  | —                  | —                  | —               | —                | —                |
| Kahana Bay . . . . .   | 50,000              | —                  | —                  | —                  | —               | —                | —                |
| New Lahaina boat harbor . . . . .  | 30,000              | 12,000             | 11,670             | 32                 | —               | 298              | —                |
| Small boat launching ramp, Hana . . . . .                                  | 5,000               | 5,000              | 2,774              | 1,696              | —               | 530              | —                |
| Kaunakakai small boat harbor . . . . .                                     | 230,000             | 230,000            | 227,842            | 2,106              | —               | 52               | —                |
| Honokohau boat harbor, Kona, Hawaii . . . . .                              | 250,000             | 194,890            | 116,741            | 34,730             | —               | 43,419           | —                |
| Kawaihae boat harbor . . . . .   | 60,000              | 6,400              | 5,638              | 762                | —               | —                | —                |
| Pohoiki Bay, Hawaii . . . . .  | 24,000              | —                  | —                  | —                  | —               | —                | —                |
| Port Allen boat harbor improvements . . . . .                              | 25,000              | 25,000             | —                  | 25,000             | —               | —                | —                |
| Kikiaola boat harbor . . . . .   | 30,000              | 30,000             | 29,866             | —                  | —               | 134              | —                |
| Port Allen small boat harbor . . . . .                                     | 75,000              | 59,500             | 5,653              | 52                 | —               | 53,795           | —                |
| <i>Act 40, Session Laws of Hawaii 1968</i>                                 |                     |                    |                    |                    |                 |                  |                  |
| Maunaloa small boat harbor . . . . .                                       | 50,000              | 50,000             | 5,900              | —                  | 44,100          | —                | —                |
| Port Allen small boat harbor improvements . . . . .                        | 50,000              | 50,000             | 23,827             | 25,578             | 595             | —                | —                |
| La Perouse Bay improvements, Maui . . . . .                                | 8,000               | 7,500              | 7,500              | —                  | —               | —                | —                |
| Small boat launching ramp, Maui . . . . .                                  | 20,000              | 20,000             | 19,623             | —                  | 377             | —                | —                |
| Puako launching ramp improvements, Puako, Hawaii . . . . .                 | 18,000              | 18,000             | 17,681             | —                  | 319             | —                | —                |
| Hanalei boat landing, Kauai (transferred from Act 176, SLH 1972) . . . . . | —                   | 500                | —                  | 500                | —               | —                | —                |
| <i>Act 217, Session Laws of Hawaii 1967</i>                                |                     |                    |                    |                    |                 |                  |                  |
| Restoration of Waikiki beach . . . . .                                     | 426,000             | 21,950             | —                  | 21,950             | —               | —                | —                |
| Haleiwa small boat harbor . . . . .  | 574,000             | 574,000            | 430,754            | 137,107            | —               | —                | 6,139            |
| Additional moles & improvements, Ala Wai . . . . .                         | 1,097,000           | 1,097,000          | 555,132            | 540,368            | 1,500           | —                | —                |
| New Lahaina small boat harbor . . . . .                                    | 5,000               | —                  | —                  | —                  | —               | —                | —                |
| <i>Act 38, Session Laws of Hawaii 1966 . . . . .</i>                       |                     |                    |                    |                    |                 |                  |                  |
| Restoration of Waikiki beach . . . . .                                     | 583,000             | 583,000            | 129,939            | 60,521             | —               | 384,241          | 8,299            |
| Kukuiula small boat harbor . . . . .                                       | 20,000              | 20,000             | 19,000             | —                  | 1,000           | —                | —                |
| <i>Act 195, Session Laws of Hawaii 1965</i>                                |                     |                    |                    |                    |                 |                  |                  |
| New Lahaina boat harbor . . . . .  | 90,000              | 60,000             | 37,826             | 12,518             | —               | 3,706            | 5,950            |
| Nawiliwili small boat harbor . . . . .                                     | 63,000              | 63,000             | 54,594             | 8,406              | —               | —                | —                |
| <i>Act 52, Session Laws of Hawaii 1964</i>                                 |                     |                    |                    |                    |                 |                  |                  |
| Kukuiula small boat harbor, restroom & ramp . . . . .                      | 10,000              | 10,000             | 8,302              | 393                | 1,305           | —                | —                |
| <i>Act 201, Session Laws of Hawaii 1963</i>                                |                     |                    |                    |                    |                 |                  |                  |
| Kuhio beach improvements, Honolulu . . . . .                               | 540,000             | 540,000            | 538,031            | 613                | —               | —                | 1,356            |
| <b>TOTALS . . . . .</b>  | <b>\$14,292,000</b> | <b>\$5,554,470</b> | <b>\$3,065,679</b> | <b>\$1,625,576</b> | <b>\$49,196</b> | <b>\$628,904</b> | <b>\$185,115</b> |



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**PART V**

**RESPONSES OF THE AFFECTED AGENCIES**

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## COMMENTS ON AGENCY RESPONSES

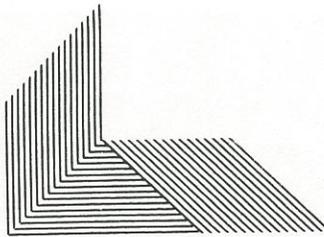
A preliminary draft of this audit report was transmitted on February 23, 1976 to the department of transportation, the department of land and natural resources, and the mayors of the four counties. We asked the two departments and the mayors for their comments on the findings and recommendations contained in the report.

A copy of the transmittal letter to the department of transportation is included as attachment 1 of this part. Similar letters were sent to the department of land and natural resources and the mayors. The responses which were received are included as attachments 2 to 5 of this part.

As of March 3, 1976, we received written comments from the department of transportation, the department of land and natural resources, and the mayors of the counties of Honolulu and Kauai. In its response, the department of transportation has indicated general agreement with the report. However, it suggests that the matter of transferring the recreational boating program either to the department of land and natural resources or to the counties be reviewed further by the government organization commission which has now been established pursuant to Act 148 of 1975. The department also notes that some of the recommendations relating to financial aspects of the recreational boating program will require additional study and consideration although it agrees that basic changes and improvements are needed in this area. The department of land and natural resources has reservations concerning the alternative of assuming responsibility for the recreational boating program and the alternative of transferring the program to the counties.

The mayor of Kauai has responded that the suggested transfer of the recreational boating program to the counties is uninviting unless adequate means of financing the program also accompanies the transfer. The mayor of Honolulu has indicated general support of the idea of placing recreational boating under the counties, but has indicated that the transfer of functions between the State and the counties should await the recommendations of the organization commission.

THE OFFICE OF THE AUDITOR  
STATE OF HAWAII  
STATE CAPITOL  
HONOLULU, HAWAII 96813



CLINTON T. TANIMURA  
AUDITOR  
RALPH W. KONDO  
DEPUTY AUDITOR

February 23, 1976

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Y

Mr. E. Alvey Wright, Director  
Department of Transportation  
State of Hawaii  
Honolulu, Hawaii

Dear Mr. Wright:

Enclosed are two copies of our preliminary report on the *Management Audit of the Recreational Boating Program*.

The term "preliminary" indicates that the report has not been released for general distribution. Copies of the report have been distributed to the governor, the presiding officers of both houses of the legislature, the chairman of the board of land and natural resources, and the mayors of the four counties.

The report contains a number of recommendations. I would appreciate receiving your comments on the recommendations directed to your department. Please have your written comments submitted to us by March 3, 1976. Your comments will be incorporated into the report and the report will be finalized and released shortly thereafter.

If you wish to discuss the report with us, we will be pleased to meet with you, at our office, on or before February 27, 1976. Please call our office to fix an appointment. A "no call" will be assumed to mean that a meeting is not required.

We appreciate the assistance and cooperation extended to us during the examination.

Sincerely,

Clinton T. Tanimura  
Legislative Auditor

Enclosure

GEORGE R. ARIYOSHI  
GOVERNOR



E. ALVEY WRIGHT  
DIRECTOR

DEPUTY DIRECTORS

WALLACE AOKI  
RYOKICHI HIGASHIONNA  
DOUGLAS S. SAKAMOTO  
CHARLES O. SWANSON

STATE OF HAWAII

DEPARTMENT OF TRANSPORTATION  
869 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813

March 3, 1976

IN REPLY REFER TO:

DEP-A  
1.450

RECEIVED

MAR 3 4 43 PM '76

OFC. OF THE AUDITOR  
STATE OF HAWAII

Mr. Clinton Tanimura  
Legislative Auditor  
State Capitol  
Honolulu, Hawaii 96813

Dear Mr. Tanimura:

Thank you for your letter dated February 23, 1976 inviting our written comments by March 3, 1976. Our preliminary comments are those of our department and do not necessarily represent the state administration's or other state departments' position regarding your preliminary report entitled "Management Audit of the Recreational Boating Program" dated February 1976.

During your review of our recreational boating program we became more aware of the problems besetting our decentralized boating operation. Such attention and awareness have prompted us to institute corrective measures. We did delay several significant contemplated actions pending receipt of your report. Your report will be timely for the legislators during their Eighth Session, and we look to their guidance in implementing your recommendations.

We note with keen interest your recommendation to transfer the entire state outdoor recreation program to the counties, or transfer the recreational boating program to the State Department of Land and Natural Resources, or centralize in the Department of Transportation. We invite the Governor's Organization Commission to review this matter in greater depth.

Enclosed for your edification are our preliminary comments regarding each of your recommendations.

ATTACHMENT NO.  
E. ALVEY WRIGHT  
DIRECTOR  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
STATE OF HAWAII  
1505 ALI'OLE DRIVE  
HONOLULU, HAWAII 96818



STATE OF HAWAII

Mr. Clinton Tanimura  
March 3, 1976  
Page 2

DEP-A 1.450

We appreciate your efforts in attempting to improve our program and focus on the real issues of our organization. We assure you that our efforts will carry momentum in implementing the recommendations of your report wherever practical and feasible for the best interest of the boaters and the people of Hawaii.

Sincerely,

  
E. ALVEY WRIGHT  
Director

Enclosure

cc: Governor  
Chairman, Department of Land and Natural Resources  
Director, Department of Budget and Finance

DEPARTMENT OF TRANSPORTATION

COMMENTS ON LEGISLATIVE AUDITOR'S PRELIMINARY REPORT'S  
RECOMMENDATIONS DATED FEBRUARY 1976 ENTITLED MANAGEMENT  
AUDIT OF THE RECREATIONAL BOATING PROGRAM

These comments are listed in order by the numbers of those pages of the Report which list the recommendations:

Page No.

5-7

Recommendations:

We recommend as follows:

1. That serious consideration be given by the legislature to the transfer of the entire outdoor recreation program (including the recreational boating program) to the counties.

2. That so long as the outdoor recreation program is maintained at the state level, the recreational boating program be transferred to the department of land and natural resources. The transfer should include all boating activities now vested in the boating branch and the small boat harbors sections of the district offices of the harbors division and jurisdiction over and management of property at boat harbor sites, and responsibility for maintaining the fiscal integrity of the boating fund.

3. That, if the recreational boating program is to be kept within the department of transportation, the harbors division be reorganized to the end that responsibility for recreational boating activities is vested and centralized in an organizational entity whose sole function would be the administration of the program. To this unit should be assigned all of the present functions of the boating branch and the small boat harbors sections of the district offices.

Comments:

General

The report provides excellent reference material for use in an in-depth consideration of the issue. Additional alternatives are available and should be

5-7 (cont'd.)

explored. It is imperative that all of the ramifications of any proposed change be thoroughly considered before any decisions are made. A recommendation from the Government Organization Commission would provide valuable guidance concerning this issue.

Recommendations No. 1 and 2

These comments will not discuss all factors to be considered but the following important factor deserves attention. Uniformity in laws and regulations governing the operation, use, and equipment of small craft as provided in a Statewide program is highly desirable since vessels operate throughout the State. Federal Boating Safety Funds would not be available unless there is in operation a uniform Statewide program conforming to Federal standards, including vessel registration, casualty reporting, accident investigation, enforcement and related matters. We do not anticipate any significant problem in this area if only the boating facility program (boat harbors and launching facilities) were to be transferred to the counties.

These recommendations suggest transferring the "recreational boating program" to the counties or DLNR. The existing State program relates to both recreational vessels and small craft involved in commercial operations. It is not considered practical to attempt to completely separate recreational and commercial programs. Considerable small craft activity occurs in commercial harbors both recreational and commercial. This condition will continue even if the "recreational boating program" is transferred from DOT. In addition, it is considered desirable to continue the existing system of designing, constructing and operating small craft facilities for multiple use. Small boat harbors provide a base of operations or harbors of refuge for the commercial fishing fleet, charter fishing vessels, and other small craft engaged in commercial activities. Many of these small commercial vessels operate throughout the State, using both commercial and small boat harbors.

We are concerned that the program may not benefit from such a transfer.

5-7 (cont'd.)

Recommendation No. 3

It is assumed that the recommendation would entail the establishment of a separate position and organization to administer the Statewide boating program. Adoption of this recommendation would require additional personnel if the program is centralized as an organizational entity within DOT or any other agency for administration. As now organized, the boating program receives Division and District direct line and staff support in the areas of supervision, personnel and fiscal administration, property management, planning, engineering and maintenance. Efforts currently are being made to strengthen the program which should result in improvements.

6-3

Recommendation:

We recommend that the statutes relating to harbors be reviewed, and, to conform to the State Constitution, all references to DOT jurisdiction over public lands and resources, other than lands set aside for public purpose, be deleted.

Comment:

Concur. Needs careful study. A task force should be appointed to include representatives from the Attorney General's Office, DLNR and DOT to prepare a bill for the 1977 Legislature.

6-4

Recommendation:

We recommend that the DOT initiate action to cause to be officially set aside for its use those public lands which are now under its management and which are being used for public purposes but which have not yet been formally set aside.

Comment:

We concur. With few exceptions, all lands under the management of the Harbors Division are either under Executive Order or have been requested to be set aside to the Harbors Division by Executive Order.

Recommendation:

We recommend that the DOT and the DLNR take steps to withdraw from the management control of the DOT all public lands previously set aside for management by the DOT which are no longer being used for public purposes directly related to DOT operations.

Comment:

If such lands are identified, we would take immediate steps to relinquish control; however, in those cases where offices are used for non-conforming purposes, other considerations must enter into the picture. Office spaces located within a maritime-oriented complex, such as Piers 9, 10 and 11, are rented to maritime-oriented firms on a first-priority basis. However, when these spaces are vacant, rather than have the State lose the revenues they are rented to others on a 30-day revocable permit. Should a maritime-oriented requirement for the space arise at a later date the previous tenant can be given 30-days' notice to vacate. Withdrawal of such properties from Executive Orders and placing management control in DLNR would be cumbersome and unwieldy and would involve actions akin to a horizontal property regime. Because of the time required to obtain Executive Orders, returning properties to DLNR and then setting aside to DOT again when needed would be impractical.

Recommendation:

We recommend that currently existing illegal "licenses" be permitted to run their course, provided no renewals will be allowed other than on a legal basis.

Comment:

The Harbors Division is presently following this policy. The licenses of the yacht clubs and Ala Wai Marine, Ltd., referred to as "illegal" licenses were issued by the Board of Harbor Commissioners--not the DOT. This matter will be referred to the Attorney General's office.

6-8

Recommendation:

We recommend that the process for the issuance of shorewater construction and use permits be revised so that the requirements of both the DOT and the DLNR may be fully met. In particular, we recommend that the process be modified so that conservation district use permits, shorewater construction permits, and revocable permits are issued in that sequential order.

Comment:

Concur.

6-10

Recommendation:

We recommend that a procedure for the enforcement of regulations concerning construction in shorewaters be developed by the DOT and DLNR such that the efforts of both are coordinated and the structures that are now illegally in place may be made to conform to regulations.

Comment:

Concur.

6-12

Recommendation:

We recommend that the DOT and DLNR resolve their differences as rapidly as possible, and in the case of the Maui fishing club, in the absence of agreement, the subtenant arrangement be terminated.

Comment:

The Maalaea Boat and Fishing Club lease and its sub-lease have been resolved and approved by the Board of Land and Natural Resources in June, 1975.

Page No.

6-12 (cont'd.)

Recommendation:

We recommend that the DOT property inventory records be improved by preparation of adequate maps to assure completeness and by basing the entire record system on real property designations rather than on tenancies or other criteria.

Comment:

We will review such recommendation. The cost benefit analysis and alternatives will be considered.

6-13

Recommendation:

We recommend that the DOT exert prompt and vigorous action to enforce the terms of the rental agreements.

Comment:

Concur.

9-4

Recommendation:

We recommend that the recreational boating program, except for the construction, maintenance, and operation of small boat harbor facilities, be funded by the state general fund. The small boat harbor activities relating to the construction, operation, and maintenance of facilities should be funded through a special fund.

9-4 (cont'd.)

Comment:

The separation of the boating program for funding purposes may lead to fiscal problems, particularly from a cost allocation standpoint. For example, maintenance of a launching ramp located within a boat harbor. We are conceptually reviewing a proposal that boating program cost be special funded except certain construction cost be general funded. We will consider such recommendation as an alternative to our conceptual proposal.

9-7

Recommendation:

We recommend that the special fund for the construction, maintenance, and operation of small boat harbor facilities consist only of the revenues derived from charges imposed on the users of the facilities.

Comment:

We will review such recommendation's impact to the proper funding of the small boat harbor program. Our preliminary review indicates that user revenues will not fully support the construction, maintenance, and operation of small boat harbor facilities.

9-11

Recommendations:

We recommend as follows:

1. The users of small boat harbors be required to pay for all of the operating costs of the facilities, with occasional general fund assistance in unusual circumstances where such assistance may be rendered on a one-time, short-term basis.

2. The State subsidize a part of the cost of constructing small boat harbor facilities, at least

Page No.

9-11 (cont'd)

for a time. The amount of such subsidy should be determined on a project-by-project basis, in the case of future improvements, and on the basis of the total unamortized costs, in the case of improvements in-place.

3. To assist the legislature in determining what amount of capital improvement construction should be subsidized through the state general fund, the agency responsible for small boat harbors be required to submit a financial impact statement. Such a statement, with respect to authorized and future improvements, should show the fiscal impact of the improvements on the state general fund and on user fees, with recommendation as to means of financing (general fund, user fees, or both). With respect to improvements in place, the financial impact statement should show the amount of the unamortized costs of the improvements in total and the impact of such costs on the general fund and user fees, with a recommended method payment.

Comments:

1.,2.,3. As mentioned previously, we will review such recommendations' impact to the proper funding of the small boat harbor program.

10-10

Recommendation:

We recommend that mooring fees be determined by following the outline provided in this chapter. As outlined, mooring fees should be set only after the adoption of policies (1) affirming that the costs of construction and maintenance of small boat

Page No.

10-10 (cont'd.)

harbor facilities shall be paid for by the users thereof; (2) determining the basis for setting the basis for determining the fees for live-aboards; and (3) affirming that the costs to be borne by recreational boaters shall be distributed among the boaters on the benefit theory. Only after these policies are firmly articulated should the mooring fees be calculated.

Comment:

We concur that these recommendations and other considerations should be articulated before determining mooring fees. One of the major considerations in our review process of rate-making is to consider the statewide boating program.

We concur with the benefit theory as a basis for determining mooring fees but believe that the establishment of fees should not be limited to a break-even situation. If benefits exceed the costs, then the rates should be adjusted so the State is adequately compensated for providing the benefits.

11-6

Recommendation:

We recommend that section 266-21, HRS, be amended to clarify, or to enable the administering agency to clarify by appropriate rules, what forms of habitation on boats moored in the state small harbors, if any, will be permissible.

Comment:

Concur.

11-8

Recommendation:

We recommend that the charges for the privilege of residing on boats moored in the state small boat harbors be set by the administering agency according to a system of multiples of mooring rates paid by owners of the boats lived on and the multiples be determined on the basis of benefits received without regard to the cost of rendering service.

Comment:

Concur except that the benefits received will be as specified by the administering agency.

12-6

Recommendation:

We recommend that the director of the department of transportation make a formal determination as quickly as possible in conformance with law on the amount of the fuel taxes to be credited to the boating special fund.

Comment:

We will seek legal advice in expediting a formal determination.

Recommendation:

We recommend that meters be installed wherever electricity is afforded to moored boats and that the cost thereof be charged to the boaters concerned.

Comment:

Concur where the cost of metering is reasonable. In some cases it is not economically feasible to do so.

Page No.

14-2 & 3

Recommendation:

We recommend that the harbors division revise its accounting procedures for interfund obligations to assure that the most appropriate methods of cost allocations are employed and financial reports accurately reflect such obligations.

Comment:

Concur. We have implemented a cost allocation program with the assistance of an independent CPA firm.

14-4

Recommendation:

We recommend that the harbors division take the steps necessary to ensure the preparation of accurate and consistent financial statements of the recreational boating program.

Comment:

Concur. An independent CPA firm has audited and rendered an opinion on the financial statements of the recreational boating program for the fiscal year ended June 30, 1975. Annual audits are contemplated.

14-5

Recommendations:

We recommend that the harbors division:

1. Obtain the necessary approval prior to the transfer of funds between allotments.

14-5 (cont'd.)

2. Collect a security deposit from each permittee holding a current use permit, as required by its own rules and regulations.

3. Formulate and enforce an internal policy for the issuance of confirming purchase orders, prohibiting them in all cases other than true emergencies or other strictly defined situations.

Comments:

1.,2.,3. Concur.

March 3, 1976

GEORGE R. ARIYOSHI  
GOVERNOR OF HAWAII



CHRISTOPHER COBB, CHAIRMAN  
BOARD OF LAND & NATURAL RESOURCES

EDGAR A. HAMASU  
DEPUTY TO THE CHAIRMAN

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
P. O. BOX 621  
HONOLULU, HAWAII 96809

DIVISIONS:  
CONVEYANCES  
FISH AND GAME  
FORESTRY  
LAND MANAGEMENT  
STATE PARKS  
WATER AND LAND DEVELOPMENT

March 3, 1976

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OFF. OF THE AUDITOR  
STATE OF HAWAII

MEMORANDUM

TO: Mr. Clinton Tanimura, Legislative Auditor

FROM: Christopher Cobb, Chairman  
Board of Land and Natural Resources

SUBJECT: Management Audit of the Recreational Boating Program

The major concerns of the State Parks Division are contained in Chapter 5 of the Management Audit of the Recreation Boating Program. There have been previous suggestions that Department of Land and Natural Resources take over the recreational boating programs. A gray area seems to exist between commercial and recreational boating and, therefore, valid arguments exist for having this program in either Department of Transportation or Department of Land and Natural Resources. For example, some boats are used for both private recreation and commercial uses and boating regulations are presumably similar.

If the problem is to be corrected rather than just transferred to another agency, a well-managed program with clear authorization and funding will have to be established. DLNR would have to give careful consideration to the placement of this program within our present organization, the program management needs and the manpower to do an adequate job. Your audit indicates this would require far more than a simple transfer of existing DOT personnel and related facilities to DLNR.

The State Parks Division is particularly concerned about your recommendation to turn the operation of the entire recreation program over to the counties. We feel this recommendation must deal with several strong arguments for state operation which have not been considered. I suggest that you obtain the views of Mr. Joseph M. Souza, Jr., State Parks Administrator, with respect to this.

Mr. Clinton Tanimura

-2-

March 3, 1976

We concur with Department of Transportation's letter (see their letter to you dated March 3, 1976) to the effect that this matter should be considered in depth by the Governor's Organization Commission. With respect to other matters with regard to the Department of Land and Natural Resources which are covered by your report, we concur with the comments attached to Admiral's Wright letter to you.

CHRISTOPHER COBB  
Chairman

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OFFICE OF THE ATTORNEY  
STATE OF HAWAII

MEMORANDUM

TO: Mr. Clinton Tanimura, Legislative Auditor  
FROM: Christopher Cobb, Chairman  
Board of Land and Natural Resources  
SUBJECT: Management Audit of the Recreational Housing Program

The major concerns of the State Parks Division are contained in Chapter 3 of the Management Audit of the Recreational Housing Program. There have been previous suggestions that Department of Land and Natural Resources take over the recreational housing programs. A gray area seems to exist between commercial and recreational housing and, therefore, valid arguments exist for having this program in either Department of Transportation or Department of Land and Natural Resources. For example, some points are used for both private recreation and commercial uses and housing regulations are essentially similar.

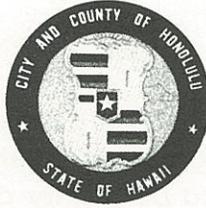
If the problem is to be compared rather than just transferred to another agency, a well-managed program with clear authorization and funding will have to be established. DENR would have to give serious consideration to the placement of this program within our present organization, the program management needs and the manpower to do an adequate job. Your audit indicates this would require far more than a simple transfer of existing DOT personnel and related facilities to DENR.

The State Parks Division is particularly concerned about your recommendation to turn the operation of the entire recreation program over to the counties. We feel this recommendation must deal with several existing systems for state operation which have not been considered. I suggest that you obtain the views of Mr. Joseph M. Scales, Jr., State Parks Administrator, with respect to this

OFFICE OF THE MAYOR

**CITY AND COUNTY OF HONOLULU**

HONOLULU, HAWAII 96813 • AREA CODE 808 • 523-4141

FRANK F. FASI  
MAYOR

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OFC. OF THE AUDITOR  
STATE OF HAWAII

March 2, 1976

Mr. Clinton T. Tanimura  
Legislative Auditor  
The Office of the Auditor  
State of Hawaii  
State Capitol Building  
Honolulu, Hawaii 96813

Dear Mr. Tanimura:

This is in response to your letter relating to the Preliminary Report of Management Audit of the Recreational Boating Program.

Basically, I am in favor of eliminating duplication and overlapping of functions, wherever it exists. I believe there are many highly significant possibilities in this regard. Thus, I would be in favor of the State transferring the recreational boating function on Oahu to the City and County of Honolulu.

Before agreeing to and urging that such a transfer be made, however, much would have to be done to clarify and spell out in specific terms what is involved, totally. It is important that as far as this County is concerned, the entire matter of government organization and re-organization must be brought into comprehensive perspective.

I wonder about the State's thrusts in the matters of organization and realignment of functions. First, the Legislature established an Organization Commission. The City gave fairly substantial testimony to that Commission. Second, the Arthur Young Study and Report deal heavily with functions and organization matters. Third, the Legislative Auditor's study and recommendations on recreational boating likewise deal with functions and organization.

Mr. Clinton T. Tanimura

Page 2

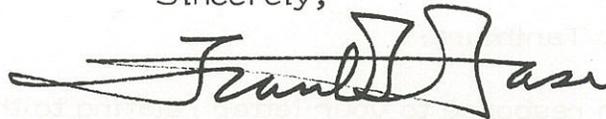
March 2, 1976

Other points of concern, as they relate to the boating matter, include your recommended retention and management of recreational boating facilities at the State. We would be highly concerned that the City would be responsible for usage of facilities which would be managed by others.

It is believed here that the State should not address the question of transferring functions to the counties with a result of a piecemeal approach. Thus, I believe it would be wise to await the conclusions and recommendations of the Organization Commission.

With warm personal regards.

Sincerely,



FRANK F. FASI, Mayor  
City and County of Honolulu

FFF:jt

EDUARDO E. MALAPIT  
MAYOR



CAYETANO GERARDO  
ADMINISTRATIVE ASST.

OFFICE OF THE MAYOR  
4396 RICE STREET  
LIHUE, KAUAI, HAWAII 96766

March 1, 1976

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OFC. OF THE AUDITOR  
STATE OF HAWAII

Mr. Clinton T. Tanimura  
Legislative Auditor  
Office of the Auditor  
State of Hawaii  
State Capitol  
Honolulu, Hawaii 96813

Dear Sir:

The present state of the recreational boating program with its high cost of facilities, low revenues, problems of on-board living and overview of the Army Corps of Engineers and the Coast Guard over boating, make it uninviting for the County of Kauai to undertake the management of the program.

Unless an adequate funding program is attached to the transfer, the risks of financial liability would be prohibitive for the County of Kauai.

Very truly yours,

*Eduardo E. Malapit*  
EDUARDO E. MALAPIT  
Mayor, County of Kauai

/my



## Appendix

### Derivation of Mooring Fees

This appendix presents the computation of mooring rates referred to in chapter 10. Conceptually, it is a way of distributing a given number of dollars to be charged to boat owners at such a level that the rates, expressed in dollars per foot of berth or boat per month, are proportionate to benefits received.

All steps in the computation are shown in table 1, the arithmetic proceeding from left to right. The following discussion defines the column headings, and explains the coding used in the first column, and derivation of the benefit factors shown in column 2.

*Column 1 – Berthing category.* The codes shown identify the various categories of berthing situations provided for in the mooring schedule included in the proposed revision of the rules and regulations governing small boat harbors recently proposed and now awaiting action. Letters in the code refer to types of moorings, while numbers refer to classification of harbors. The harbor classifications are:

Class 1 – Ala Wai and Keehi

Class 2 – Haleiwa, Heeia-Kea, Port Allen, Kaunakakai, Lahaina, Waialae

Class 3 – All others

Table 2 identifies each code used in table 1.

*Column 2 – Benefit factor.* The entries in this column express the assumed relative benefits received by persons using each of the berthing categories. They were taken from the proposed mooring rate schedule cited above. They are merely expressions of the proposed rates as percentages (\$1.00 = 1.00, \$.65 = .65, etc.).

*Column 3 – Average length.* This is the average length of berths or boats in the various categories, as reported by harbors division district managers.

*Column 4 – Adjusted average length.* This column is derived from multiplying the preceding two. It represents a weighting of benefit factors by boat lengths.

*Column 5 – Number of moorings.* This is the number of moorings in each category, as reported by district managers.

*Column 6 – Revenue units.* This term was coined to express in relative terms the amount of revenue required from each category. It is derived from multiplying the two preceding columns and in effect further weights the benefit factors for number of berths.

*Column 7 – Revenue factor.* This term was also coined. It expresses the percentage of total revenue units in each category.

*Column 8 – Revenue requirement.* This is the number of dollars to be derived from each berthing category. The amounts are derived by multiplying the revenue factors by the total revenue requirement of \$805,000, which is the amount used for illustrative purposes in this report.

*Column 9 – Revenue/berth.* This is the amount of revenue required annually from an average berth in each category. It is derived by dividing column 8 by column 5.

*Column 10 – Fee/foot/year.* This is the fee that is necessary to produce the revenue computed in the preceding column. It is derived by dividing column 9 by column 3.

*Column 11 – Fee/foot/month.* This reduces the fee to the conventional amount per month. It is derived by dividing column 10 by 12.

*Column 12 – Fee/foot/month/\$100,000 revenue.* This is an information column that shows the fee change required in each category for each change of \$100,000 in revenue requirements. It is derived by dividing column 11 by 8.05.

Table 1

Computation of Mooring Fees, Hawaii Small Boat Harbor System  
Assuming Revenue Requirements of \$805,000 per Year

| (1)               | (2)            | (3)               | (4)                      | (5)             | (6)                     | (7)                      | (8)                                 | (9)                     | (10)                | (11)                  | (12)                                    |
|-------------------|----------------|-------------------|--------------------------|-----------------|-------------------------|--------------------------|-------------------------------------|-------------------------|---------------------|-----------------------|---|
| Berthing category | Benefit factor | Avg length (feet) | Adj avg length (2) x (3) | No. of moorings | Revenue units (4) x (5) | Revenue factor (6) ÷ (7) | Revenue requirement (7) x \$805,000 | Revenue/berth (8) ÷ (5) | Fee/ft/yr (9) ÷ (3) | Fee/ft/mo (10) ÷ (12) | Fee/ft/mo \$100,000 revenue (11) ÷ 8.05 |
| A1                | 1.00           | 34                | 34.0                     | 960             | 32,640                  | .652569                  | 525,318                             | 547.21                  | 16.09               | 1.34                  | .166                                    |
| A2                | .80            | 30                | 24.0                     | 205             | 4,920                   | .098365                  | 79,184                              | 386.26                  | 12.88               | 1.07                  | .133                                    |
| A3                | .60            | 39                | 23.4                     | 33              | 772                     | .015434                  | 12,424                              | 376.48                  | 9.66                | .81                   | .100                                    |
| B1                | 1.00           | 35                | 35.0                     | 28              | 980                     | .019593                  | 15,772                              | 563.28                  | 16.09               | 1.34                  | .166                                    |
| B2                | .80            | 60                | 48.0                     | 4               | 192                     | .003839                  | 3,090                               | 772.50                  | 12.88               | 1.07                  | .133                                    |
| B3                | .60            | 30                | 18.0                     | 12              | 216                     | .004318                  | 3,476                               | 289.67                  | 9.66                | .81                   | .100                                    |
| C1                | .70            | 30                | 21.0                     | 11              | 231                     | .004618                  | 3,717                               | 337.91                  | 11.26               | .94                   | .117                                    |
| C2                | .55            | 38                | 20.9                     | 112             | 2,341                   | .046803                  | 37,676                              | 336.39                  | 8.85                | .74                   | .092                                    |
| C3 <sup>a</sup>   | .40            | --                | --                       | 0               | --                      | --                       | --                                  | --                      | --                  | --                    | --                                      |
| C1a               | .55            | 40                | 22.0                     | 5               | 110                     | .002199                  | 1,770                               | 354.00                  | 8.85                | .74                   | .092                                    |
| C2a               | .45            | 46                | 20.7                     | 46              | 952                     | .019033                  | 15,321                              | 333.07                  | 7.24                | .60                   | .075                                    |
| C3a               | .35            | 20                | 7.0                      | 82              | 574                     | .011476                  | 9,238                               | 112.66                  | 5.63                | .47                   | .058                                    |
| D1                | .65            | 40                | 26.0                     | 18              | 468                     | .009357                  | 7,532                               | 418.44                  | 10.46               | .87                   | .108                                    |
| D2 <sup>a</sup>   | .50            | --                | --                       | 0               | --                      | --                       | --                                  | --                      | --                  | --                    | --                                      |
| D3                | .40            | 20                | 8.0                      | 63              | 504                     | .010076                  | 8,111                               | 128.75                  | 6.44                | .54                   | .067                                    |
| D1a               | .50            | 40                | 20.0                     | 24              | 480                     | .009597                  | 7,726                               | 321.92                  | 8.05                | .67                   | .083                                    |
| D2a               | .40            | 35                | 14.0                     | 31              | 434                     | .008677                  | 6,985                               | 225.32                  | 6.44                | .54                   | .067                                    |
| D3a               | .30            | 20                | 6.0                      | 10              | 60                      | .001200                  | 966                                 | 96.60                   | 4.83                | .40                   | .050                                    |
| E1 <sup>a</sup>   | .60            | --                | --                       | 0               | --                      | --                       | --                                  | --                      | --                  | --                    | --                                      |
| E2                | .50            | 30                | 15.0                     | 10              | 150                     | .002999                  | 2,414                               | 241.40                  | 8.05                | .67                   | .083                                    |
| E3                | .35            | 30                | 10.5                     | 142             | 1,491                   | .029809                  | 23,996                              | 168.99                  | 5.63                | .47                   | .058                                    |
| E1a               | .40            | 20                | 8.0                      | 20              | 160                     | .003199                  | 2,575                               | 128.75                  | 6.44                | .54                   | .067                                    |
| E2a               | .30            | 30                | 9.0                      | 4               | 36                      | .000720                  | 579                                 | 144.75                  | 4.83                | .40                   | .050                                    |
| E3a               | .25            | 50                | 12.5                     | 73              | 913                     | .018253                  | 14,694                              | 201.29                  | 4.03                | .34                   | .042                                    |
| F1                | .50            | 20                | 10.0                     | 109             | 1,090                   | .021792                  | 17,543                              | 160.94                  | 8.05                | .67                   | .083                                    |
| F2                | .40            | 20                | 8.0                      | 38              | 304                     | .006078                  | 4,893                               | 128.76                  | 6.44                | .54                   | .067                                    |
| F3                | .30            | 15                | 4.5                      | 0               | --                      | --                       | --                                  | --                      | --                  | --                    | --                                      |
| Total             |                |                   |                          | 2,040           | 50,018                  |                          | 805,000                             |                         |                     |                       |   |

<sup>a</sup>No berthing reported.

Table 2  
Codes Used to Identify Berthing Situations  
On Table 1

| Type of Mooring                       | Class 1<br>Harbors | Class 2<br>Harbors | Class 3<br>Harbors |
|---------------------------------------|--------------------|--------------------|--------------------|
| Alongside catwalk .....               | A1                 | A2                 | A3                 |
| Alongside wharf .....                 | B1                 | B2                 | B3                 |
| Bow or stern mooring to pier or wharf |                    |                    |                    |
| On state buoy or cable .....          | C1                 | C2                 | C3                 |
| On owner's buoy or anchor .....       | C1a                | C2a                | C3a                |
| Other bow or stern mooring            |                    |                    |                    |
| On state buoy or anchor .....         | D1                 | D2                 | D3                 |
| On owner's buoy or anchor .....       | D1a                | D2a                | D3a                |
| In harbor basin or anchorage          |                    |                    |                    |
| On state cable, buoy, or anchor ..... | E1                 | E2                 | E3                 |
| On owner's buoy or anchor .....       | E1a                | E2a                | E3a                |
| Skiff moorings .....                  | F1                 | F2                 | F3                 |

## PUBLISHED REPORTS OF THE LEGISLATIVE AUDITOR

### AUDIT REPORTS

- 1966 1. Examination of the Office of the Revisor of Statutes, 66 pp. (out of print).
- 1967 1. Overtime in the State Government, 107 pp.  
2. Management Audit of Kula Sanatorium, 136 pp.
- 1968 1. Financial Audit of the Department of Health for the Fiscal Year Ended June 30, 1967, v.p. (out of print).  
2. Financial Audit of the Department of Planning and Economic Development for the Fiscal Year Ended June 30, 1967, v.p. (out of print).  
3. Financial Audit of the Department of Regulatory Agencies for the Fiscal Year Ended June 30, 1967, v.p. (out of print).  
4. Financial Audit of the Department of Hawaiian Home Lands for the Fiscal Year Ended June 30, 1967, 54 pp.  
5. Financial Audit of the Oahu Transportation Study for the Period July 1, 1962 to August 31, 1967, 68 pp.  
6. Financial Audit of the Hawaii Visitors Bureau for the Period July 1, 1966 to January 31, 1968, 69 pp. (out of print).  
7. State Capital Improvements Planning Process, 55 pp. (out of print).  
8. Financial Audit of the Hilo Hospital for the Fiscal Year Ended June 30, 1967, 43 pp. (out of print).  
9. Financial Audit of the Hawaii Visitors Bureau for the Period July 1, 1967 to June 30, 1968, 42 pp.
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