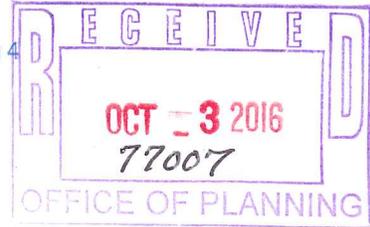




U.S. DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
Office for Coastal Management  
Silver Spring Metro Center, Building 4  
1305 East-West Highway  
Silver Spring, Maryland 20910



SEP 30 2016

Ms. Justine Nihipali  
Hawai'i Coastal Zone Management Program  
Department of Business, Economic Development and Tourism  
235 S. Beretania St., 6<sup>th</sup> Floor  
P.O. Box 2359  
Honolulu, HI 96804

Dear Ms. Nihipali:

Thank you for the Hawai'i Coastal Zone Management Program's July 26, 2016, request for approval of statutory and regulatory changes to the Hawai'i Coastal Management Program (CMP). The changes have been submitted as routine program changes (RPCs), pursuant to Coastal Zone Management Act (CZMA) regulations at 15 C.F.R. part 923, subpart H, and the National Oceanic and Atmospheric Administration's (NOAA's) Office for Coastal Management's *Program Change Guidance (July 1996)*.

Based on our review of your submission, we concur that the changes are RPCs and approve the incorporation of the changes as enforceable policies of the Hawai'i Coastal Management Program. Federal Consistency will apply to the approved changes to enforceable policies only after you publish notice of this approval pursuant to 15 C.F.R. § 923.84(b)(4) and the Office for Coastal Management's *Addendum to the July 1996 Program Change Guidance (November 2013)*. Please include in the public notice the list of changes provided in this letter, and send a copy of the notice to the Office for Coastal Management.

### **CHANGES APPROVED**

See the attached list of the changes incorporated into the Hawai'i CMP.

### **QUALIFICATIONS**

*Incorporation by Reference* – As a standard qualification applying to the approval of all enforceable policies, states may not incorporate enforceable policies by reference. If an approved enforceable policy refers to another statute, regulation, policy, standard, guidance, or other such requirement or document (hereinafter “referenced policy”), the referenced policy itself must be submitted to and approved by the Office for Coastal Management as an enforceable policy in order to be applied under the federal consistency review provisions of the CZMA. Therefore, no referenced policy in these approved enforceable policies may be applied to determine federal

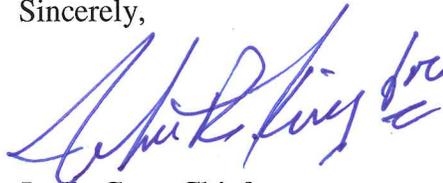
consistency unless that referenced policy has been separately approved by the Office for Coastal Management.

**PUBLIC AND FEDERAL AGENCY COMMENTS**

The Office for Coastal Management received comments from the Regional Environmental Department of the Navy. A conference call to discuss the comments was held with Hawai'i CMP and Navy staff on September 14, 2016. On that call, the staff for the Hawai'i CMP acknowledged and agreed with the Navy on the need to recognize national interests in the application of the state's policies.

Thank you for your cooperation in this review. Please contact Kerry Kehoe at 240-533-0782 if you have any questions.

Sincerely,



Joelle Gore, Chief  
Stewardship Division

| Enclosure to the Office for Coastal Management's September 30, 2016, Approval of the Incorporation of Changes to the Hawai'i Coastal Management Program |   |                       |                           |
|---|---|-----------------------|---------------------------|
| Name/Description of State or Local Law/Regulation/Policy/Program Authority  | Description of Changes  | Date Adopted by State | Date Effective in State   |
| <b>ADDED</b>  |   |                       |                           |
| HRS §§ 115-5(b), 115-9(a)(4), 115-9(b)(8) and 115-10 Beach transit corridors  | <ul style="list-style-type: none"> <li>Added DLNR's duty to maintain access within beach transit corridors.</li> <li>Added landowner's human-induced, enhanced, or unmaintained vegetation to the list of physical impediments that may obstruct public beach access.</li> </ul>  | 06/02/2010            | 06/02/2010;<br>06/29/2013 |
| HRS §§ 205A-2(c)(9)(D) and 205A-2(c)(9)(E) Beach transit corridors  | <ul style="list-style-type: none"> <li>Added the policies to prohibit private property owners from creating a public nuisance in a beach transit corridor by inducing or cultivating their vegetation</li> </ul>  | 06/02/2010            | 06/02/2010;<br>06/29/2013 |
| HRS § 266-2.2 Exemption from conservation district permitting and site plan approval requirements   | <ul style="list-style-type: none"> <li>Added exemption from conservation district permitting and site plan approval requirements</li> </ul>   | 05/21/2013            | 05/21/2013                |
| HAR § 11-23-24 Timely processing for underground injection construction   | <ul style="list-style-type: none"> <li>Added the timely processing for applications for underground injection construction</li> </ul>   | 10/21/2000            | 10/21/2000                |
| HAR § 11-54-4(e) Pesticide application  | <ul style="list-style-type: none"> <li>Added pesticide application to include certain restrictions on the use of pesticides</li> </ul>  | 10/21/2012            | 10/21/2012                |
| HAR §§ 11-54-4(b), 11-54-11, 11-54-12 and 11-54-15 Basic water quality criteria; Schedule of compliance; Intake credits; and Field citations.           | <ul style="list-style-type: none"> <li>Added the power of department chair regarding penalties and fines for violations.</li> <li>Added schedule of compliance in an individual NPDES permit;</li> <li>Added intake credits to allow the NPDES permit effluent limit to be adjusted.</li> <li>Added field citations to settle verifiable violations.</li> </ul> | 11/15/2014            | 11/15/2014                |

| Enclosure to the Office for Coastal Management's September 30, 2016, Approval of the Incorporation of Changes to the Hawai'i Coastal Management Program |  |                       |                         |
|---|--|-----------------------|-------------------------|
| Name/Description of State or Local Law/Regulation/Policy/Program Authority  | Description of Changes   | Date Adopted by State | Date Effective in State |
| <b>HAR Chapter 11-55, Appendix M</b><br>NPDES general permit authoring point source discharges from the application of pesticides                       | <ul style="list-style-type: none"> <li>Added NPDES general permit authorizing point source discharges from the application of pesticides</li> </ul>  | 10/21/2012            | 10/21/2012              |
| <b>HAR §§ 11-55-34.05(b) to (f)</b><br>Requiring an individual NPDES permit   | <ul style="list-style-type: none"> <li>Added department director's requirement for an individual NPDES permit.</li> <li>Coverage by a general NPDES permit may be excluded from the coverage of the general permit by applying for an individual permit.</li> <li>Requiring an individual NPDES permit was added.</li> </ul> | 12/06/2013            | 12/06/2013              |
| <b>HAR §§ 11-55-19(a)(9) and 11-55-19(a)(10)</b><br>Intake credits, Recreational Criteria for State Waters  | <ul style="list-style-type: none"> <li>Added intake credits, and recreational criteria for all state waters</li> </ul>   | 11/15/2014            | 11/15/2014              |
| <b>HAR Chapter 13-60.4</b> West Hawai'i Regional Fisheries Management Area, Hawai'i   | Adopted new chapter relating to West Hawai'i Regional Fishery Management Area, Hawai'i   | 12/26/2013            | 12/26/2013              |
| <b>HAR Chapter 13-60.8</b> Hā'ena Community-Based Subsistence Fishing Area, Kaua'i  | Adopted new chapter relating to Hā'ena community-based subsistence fishing area, Kaua'i  | 08/14/2015            | 08/14/2015              |
| <b>HAR Chapter 13-95.1</b> Island-based Fisheries Rules, Maui   | Adopted new chapter relating to Maui island-based fisheries  | 11/01/2014            | 11/01/2014              |

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| <b>HAR §§ 13-124-11, 13-124-12, and 13-124-13</b><br>Endangered and Threatened Wildlife -- Prohibited activities; Scientific, propagation and educational permits; Penalty   | <ul style="list-style-type: none"> <li>• Added the prohibited activities.</li> <li>• Added scientific, propagation and educational permits.</li> <li>• Added violation penalty.</li> </ul>  | 12/12/2014 | 02/27/2015 |
| <b>HAR Chapter 13-190.1 Dams and Reservoirs</b>  | Adopted new chapter relating to Dams and Reservoirs   | 11/22/2010 | 02/20/2012 |
| <b>HAR § 13-251-33 to § 13-251-35, and § 13-251-53</b><br>Use permit; Reissuance of a registration certificate or commercial use permit; Waikīkī catamarans  | <ul style="list-style-type: none"> <li>• Added use permit, insurance requirements and reissuance of a registration certificate and/or commercial use permit.</li> <li>• Added the requirements of maintaining beach moorings in Waikīkī nearshore waters or Waikīkī beach.</li> </ul>   | 04/25/2014 | 09/25/2014 |
| <b>Title MC-15, Chapter 111 Rules for the Design of Storm Water Treatment Best Management Practices</b>  | Adopted new chapter relating to Design of Storm Water Treatment Best Management Practices   | 11/09/2012 | 11/25/2012 |
| <b>Maui County Code (MCC) § 18.20.135</b><br>Post-construction Stormwater Quality Best Management Practices  | Adopted new ordinance of Post-construction Stormwater Quality Best Management Practices, relating to Subdivision Improvements   | 01/09/2012 | 07/07/2012 |
| <b>MCC § 16.26.3306</b> Post-construction Stormwater Quality Best Management Practices   | Adopted new ordinance of Post-construction Stormwater Quality Best Management Practices, relating to the Building Code  | 01/09/2012 | 07/07/2012 |
| <b>MODIFIED</b>  |   |            |            |
| <b>Kaua'i County Ordinance 979, Article 27, Chapter 8, Kaua'i County Code 1987</b><br>Shoreline Setback and Coastal Protection   | Amended county shoreline setback and coastal protection, with "annual coastal erosion rate", which refers to Kaua'i Coastal Erosion Study conducted by the University of Hawai'i Coastal Geology Group; Shoreline setback calculations for lots included in the Kaua'i coastal erosion study based on the average lot depth. Shoreline setback calculation formula is also provided for lots that are not included in the Kaua'i coastal erosion study. | 11/19/2014 | 12/05/2014 |
| <b>HAR §§ 11-54-1, 11-54-1.1, 11-54-4(b), 11-54-5.1, 11-54-5.2, 11-54-6 to 11-54-9, 11-54-9.1 and 11-54-10</b> Definitions; General policy of water quality antidegradation; Basic water quality criteria to all waters; Inland water areas to be protected; Inland water criteria; Uses and specific criteria to marine waters, to marine bottom types; Specific criteria for recreational areas; Zone of mixing; Water quality certification | <ul style="list-style-type: none"> <li>• Reformatted Parts of Chapter 11-54.</li> <li>• Made content or technical changes to ensure anti-degradation policy and implementing method consistent.</li> <li>• Updated reference cited.</li> </ul>  | 12/06/2013 | 12/06/2013 |

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| <p><b>HAR §§ 11-54-1, 11-54-5.1, 11-54-6, and 11-54-8</b><br/> Definitions; Inland water areas to be protected; Uses and specific criteria applicable to marine waters; Recreational criteria for state waters</p>   | <ul style="list-style-type: none"> <li>• Added the definitions of best management practices, nonpoint source pollution, and water pollution control system.</li> <li>• Listed the specific water bodies that are Class 1 waters for clarification purposes.</li> <li>• Changed specific criteria for recreational areas which include all state waters.</li> </ul>   | 11/15/2014 | 11/15/2014 |
| <p><b>HAR §§ 11-55-01, 11-55-04, 11-55-19, 11-55-34.02(b), 11-55-34.04 and 11-55-34.08</b><br/> Definitions; application for NPDES permit; Application of effluent standards and water quality standards; NPDES General permit; General permit conditions; Notice of intent</p>  | <ul style="list-style-type: none"> <li>• Amended and added a series of definitions including “Biological pesticide”, “Discharge of a pollutant” and “Federal facility.”</li> <li>• Application for NPDES permit, notice of intent, or conditional “no exposure” exclusion was amended.</li> <li>• Nutrient management requirements and technical standards for concentrated animal feeding operations in 40 CFR 122.42 is added as the requirements of federal law or regulations.</li> <li>• Referred to added Appendix M, titled “NPDES General Permit Authoring Point Source Discharges from the Application of Pesticides.”</li> </ul> | 10/21/2012 | 10/21/2012 |
| <p><b>HAR § 11-55-01, 11-55-04, 11-55-15, 11-55-34.02, 11-55-34.04(b), 11-55-34.06, 11-55-34.08(j), 11-55-34.09(d) and (e), 11-55-34.11, 11-55-40, Appendices A through L</b><br/> Definitions; NPDES permit; Notice of intent; Notice of general permit coverage; Field citations; December 6, 2013 for NPDES General permits</p> | <ul style="list-style-type: none"> <li>• Require construction activities that disturb less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb one acre or more of total land area for application for NPDES permit.</li> <li>• Staggered the expiration of general permits to prevent them from expiring on the same date.</li> <li>• Clarified that an administrative extension may be granted automatically.</li> <li>• Added a provision to automatically terminate an administrative extension for any non-compliance.</li> </ul>          | 12/06/2013 | 12/06/2013 |

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| <p><b>HAR § 11-55-40</b><br/>Field Citations; Non-Compliance with NPDES Requirements</p>   | <ul style="list-style-type: none"> <li>• Amended and clarified the field citations, non-compliance with NPDES requirements.</li> <li>• Provide the amount of fines for the first and subsequent violations.</li> </ul>  | <p>11/15/2014</p> | <p>11/15/2014</p> |
| <p><b>HAR §§ 11-62-03, 11-62-05, 11-62-06, 11-62-07.1, 11-62-08, 11-62-09, 11-62-11, 11-62-24, 11-62-26, 11-62-27, 11-62-28, 11-62-31.1, 11-62-31.2, 11-62-32, 11-62-33.1, 11-62-34, 11-62-36, 11-62-37, 11-62-41, 11-62-42, 11-62-43, 11-62-44, 11-62-54.08, 11-62-55.03, 11-62-56, 11-62-57.02, 11-62-57.04, 11-62-82, and 11-62-83</b> relating to Prohibitions and General Requirements, Wastewater Treatment Works, Individual Wastewater Systems, Wastewater Sludge Use and Disposal, Wastewater Management Permits and Registration, and Field Citations.</p> | <ul style="list-style-type: none"> <li>• Prohibiting the installation of new cesspools and requiring sewer connections or upgrades of existing cesspools to a septic system within 180 days after sale of property.</li> <li>• Changing definitions in §11-62-03 to clarify the meaning of terms used in the rules and delete terms no longer included.</li> <li>• Eliminating the “general permit” and clarifying that the Wastewater Branch of Department of Health issues construction approvals and approvals to use, not permits.</li> <li>• Clarifying when a building modification may trigger a requirement to upgrade a system.</li> <li>• Consolidating requirements for non-domestic wastewater.</li> <li>• Prohibiting individual wastewater systems (IWSs) for developments with greater than 15 subdivided lots and deleting the exception that allows developments to use individual wastewater systems if they have one dwelling unit per acre or greater.</li> <li>• Adding restrictions to prevent the direct discharge of effluent from an aerobic treatment unit to groundwater.</li> </ul> | <p>03/21/2016</p> | <p>03/21/2016</p> |
| <p><b>HAR §§ 13-124-2, 13-124-3, 13-124-4, 13-124-7, 13-124-8 and Exhibits 1-5</b> Indigenous, Injurious, Introduced Wild Birds, and Introduced Wildlife -- Prohibited activities; Scientific, propagation and educational permits; Crop damage, nuisance and threat to human health and safety permits; Penalty; Updated Exhibits 1-5.</p>  | <ul style="list-style-type: none"> <li>• Provide definitions for the terms “Introduce” and “Release”, and amend the definitions of “Introduced wildlife” “Injurious” and “Wildlife.”</li> <li>• Amended “Prohibited activities” to prohibit the transport and release of injurious wildlife.</li> <li>• Clarified the meaning of scientific, propagation and educational permits.</li> <li>• Introduced a fine system pursuant to HRS Chapter 183D, and add seizure and forfeiture language.</li> </ul>   | <p>12/12/2014</p> | <p>02/27/2015</p> |

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|  | <ul style="list-style-type: none"> <li>Updated Exhibits 1 through 5 regarding list of species of indigenous wildlife, endangered wildlife, threatened wildlife and injurious wildlife in Hawai'i.</li> </ul>   |            |            |
| <p><b>HAR §§ 13-231-2 to 13-231-6, 13-231-8, 13-231-11, 13-231-13, 13-231-15, §§ 13-231-21 to 13-231-27, § 13-231-45, §§ 13-231-55 to 13-231-67, § 13-231-70, and §§ 13-231-85.5 to 13-231-89</b> Use of small boat harbors, offshore mooring, and generally applicable provisions; Boat operation; Commercial activities; Allocation of berths and offshore mooring</p> | <ul style="list-style-type: none"> <li>Changed the date for agreement set forth in Exhibit "A" from May 15, 1991 to July 2012.</li> <li>Amended the "Use permit" to include navigable streams.</li> <li>Added "Catamaran registration certificate" as a commercial permit for Waikīkī ocean waters and beach.</li> <li>Set the time limit for temporary mooring of a vessel within the same small boat harbor or offshore mooring area.</li> <li>Added offshore mooring area besides small boat harbor.</li> <li>Vessels operating under a commercial use permit or registration certificate that can produce evidence of a valid United States Coast Guard inspection certification for the above condition shall not be required to obtain a separate marine survey.</li> <li>Limit the number of issued commercial use permits for vessels assigned mooring in Ala Wai small boat harbor, and for vessels assigned permanent moorings.</li> </ul> | 04/25/2014 | 09/25/2014 |
| <p><b>HAR §§ 13-251-36 to 13-251-46, §§ 13-251-48 to 13-251-52, §§ 13-251-57 to 13-251-58, and § 13-251-76</b> Waikīkī and Kā'anapali catamarans; Waikīkī and Kā'anapali beach and ocean waters ; Commercial activities</p>  | <ul style="list-style-type: none"> <li>Amended chapter title from "Waikīkī and Kā'anapali Ocean Waters" to "Commercial Activities on State Ocean Waters, Navigable Streams, and Beaches."</li> <li>Amended for registration certificate and/or commercial use permit.</li> <li>Amended for Waikīkī ocean waters and Kā'anapali beach and ocean waters.</li> </ul>  | 04/25/2014 | 09/25/2014 |
| <p><b>HAR §§ 13-256-3 to 13-256-4</b> Commercial use permit requirements; Commercial vessel and water sports equipment registration requirements</p>   | <ul style="list-style-type: none"> <li>Added commercial operator permit requirements.</li> <li>Added commercial vessel and water sports equipment registration requirements.</li> </ul>  | 04/25/2014 | 09/25/2014 |

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| <p><b>HAR § 13-256-73.13</b> Ahu O Laka Safety Zone</p>  | <ul style="list-style-type: none"> <li>• Zone H-2 was amended as Zone J, titled "Ahu O Laka Safety Zone", dated April 21, 2015.</li> <li>• Became a permanent policy by taking away the period of three years.</li> </ul>   | <p>05/08/2015</p> | <p>07/25/2015</p> |
| <p><b>DELETED</b></p>  |   |                   |                   |
| <p><b>HAR Chapter 13-60.3</b> West Hawai'i Regional Fisheries Management Area, Hawai'i</p>   | <ul style="list-style-type: none"> <li>• Repealed HAR Chapter 13-60.3</li> </ul>  | <p>12/26/2013</p> | <p>12/26/2013</p> |
| <p><b>HAR §13-126-22</b> Aircraft</p>  | <ul style="list-style-type: none"> <li>• Remove §13-126-22 Aircraft</li> </ul>  | <p>12/11/2009</p> | <p>01/22/2010</p> |
| <p><b>HAR Chapter 13-190</b> Dams and Reservoirs</p>   | <ul style="list-style-type: none"> <li>• Repealed HAR Chapter 13-190 consisting of HAR §§ 13-190-1 to 13-190-42</li> </ul>  | <p>11/22/2010</p> | <p>02/20/2012</p> |
| <p><b>HAR § 13-231-72, § 13-231-76, and § 13-231-90</b><br/>Small inter-island passenger vessel permit; Kewalo basin; Offer of category I berth Ala Wai harbor</p>   | <ul style="list-style-type: none"> <li>• Repealed the subsection of "Small inter-island passenger vessel permit."</li> <li>• Repealed subsection of "Kewalo basin."</li> <li>• Repealed subsection of "Offer of category I berth Ala Wai harbor."</li> </ul>  | <p>04/25/2014</p> | <p>09/25/2014</p> |
| <p><b>HAR §§ 13-251-31 to 13-251-32, § 13-251-47, § 13-251-56, §§ 13-251-59 to 13-251-60, and § 13-251-68</b> Owner of passenger-carrying vessels; Operations of vessels without proper identification; Rules of the road; Intoxication; Catamarans, mooring of.</p> | <ul style="list-style-type: none"> <li>• Repealed the subsection of "Owner of passenger-carrying vessels, for rent surfboards, for rent sailboards, for charter or rent motorboats and for rent watersports equipment."</li> <li>• Repealed the subsection of "Operations of vessels without proper identification."</li> <li>• Repealed the subsection of "Rules of the road"</li> <li>• Repealed the subsection of "Intoxication."</li> <li>• Repealed the subsection of "Catamarans; mooring of."</li> </ul> | <p>04/25/2014</p> | <p>09/25/2014</p> |