



# OFFICE OF PLANNING STATE OF HAWAII

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Ref. No. P-15326

October 12, 2016

To: Hawai'i Coastal Zone Management (CZM) Program Agencies and the Public at Large

From: Leo R. Asuncion, Director, State of Hawai'i Office of Planning 

Subject: Notice of Routine Program Changes to the Hawai'i CZM Program

On September 30, 2016, the Office for Coastal Management (OCM), National Oceanic and Atmospheric Administration (NOAA), issued its concurrence with Hawai'i CZM routine program changes (RPCs) submittal.

The OCM concurred that the changes are RPCs and approved the incorporation of the changes as enforceable policies of the Hawai'i CZM Program with the following list of changes.

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>			
Hawai'i Revised Statutes (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; 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; 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
Hawai'i Administrative Rules (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

Name/Description of State or Local Law/Regulation/Policy/Program Authority	Description of Changes	Date Adopted by State	Date Effective in State
<b>HAR §§ 11-54-4(b), 11-54-11, 11-54-12 and 11-54-15</b> 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
<b>HAR Chapter 11-55, Appendix M</b> 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> 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> 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	<ul style="list-style-type: none"> <li>Adopted new chapter relating to West Hawai'i Regional Fishery Management Area, Hawai'i</li> </ul>	12/26/2013	12/26/2013
<b>HAR Chapter 13-60.8</b> Hā'ena Community-Based Subsistence Fishing Area, Kaua'i	<ul style="list-style-type: none"> <li>Adopted new chapter relating to Hā'ena community-based subsistence fishing area, Kaua'i</li> </ul>	08/14/2015	08/14/2015
<b>HAR Chapter 13-95.1</b> Island-based Fisheries Rules, Maui	<ul style="list-style-type: none"> <li>Adopted new chapter relating to Maui island-based fisheries</li> </ul>	11/01/2014	11/01/2014
<b>HAR §§ 13-124-11, 13-124-12, and 13-124-13</b> 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

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 13-190.1</b> Dams and Reservoirs	<ul style="list-style-type: none"> <li>Adopted new chapter relating to Dams and Reservoirs</li> </ul>	11/22/2010	02/20/2012
<b>HAR § 13-251-33 to § 13-251-35, and § 13-251-53</b> 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</b> Rules for the Design of Storm Water Treatment Best Management Practices	<ul style="list-style-type: none"> <li>Adopted new chapter relating to Design of Storm Water Treatment Best Management Practices</li> </ul>	11/09/2012	11/25/2012
<b>Maui County Code (MCC) § 18.20.135</b> Post-construction Stormwater Quality Best Management Practices	<ul style="list-style-type: none"> <li>Adopted new ordinance of Post-construction Stormwater Quality Best Management Practices, relating to Subdivision Improvements</li> </ul>	01/09/2012	07/07/2012
<b>MCC § 16.26.3306</b> Post-construction Stormwater Quality Best Management Practices	<ul style="list-style-type: none"> <li>Adopted new ordinance of Post-construction Stormwater Quality Best Management Practices, relating to the Building Code</li> </ul>	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> Shoreline Setback and Coastal Protection	<ul style="list-style-type: none"> <li>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.</li> </ul>	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	<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

Name/Description of State or Local Law/Regulation/Policy/Program Authority	Description of Changes	Date Adopted by State	Date Effective in State
types; Specific criteria for recreational areas; Zone of mixing; Water quality certification			
<p><b>HAR §§ 11-54-1, 11-54-5.1, 11-54-6, and 11-54-8</b>                      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> 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> 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> </ul>	12/06/2013	12/06/2013

Name/Description of State or Local Law/Regulation/Policy/Program Authority	Description of Changes	Date Adopted by State	Date Effective in State
	<ul style="list-style-type: none"> <li>Added a provision to automatically terminate an administrative extension for any non-compliance.</li> </ul>		
<p><b>HAR § 11-55-40</b>                      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>	11/15/2014	11/15/2014
<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>	03/21/2016	03/21/2016
<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;</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> </ul>	12/12/2014	02/27/2015

Name/Description of State or Local Law/Regulation/Policy/Program Authority	Description of Changes	Date Adopted by State	Date Effective in State
Crop damage, nuisance and threat to human health and safety permits; Penalty; Updated Exhibits 1-5.	<ul style="list-style-type: none"> <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> <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 Waikiki 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> Waikiki and Ka'anapali catamarans; Waikiki and Ka'anapali beach and ocean waters ; Commercial activities</p>	<ul style="list-style-type: none"> <li>• Amended chapter title from “Waikiki and Ka'anapali Ocean Waters” to “Commercial Activities on State Ocean Waters, Navigable Streams, and Beaches.”</li> </ul>	04/25/2014	09/25/2014

Name/Description of State or Local Law/Regulation/Policy/Program Authority	Description of Changes	Date Adopted by State	Date Effective in State
	<ul style="list-style-type: none"> <li>Amended for registration certificate and/or commercial use permit.</li> <li>Amended for Waikiki ocean waters and Ka'anapali beach and ocean waters.</li> </ul>		
<b>HAR §§ 13-256-3 to 13-256-4</b> Commercial use permit requirements; Commercial vessel and water sports equipment registration requirements	<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
<b>HAR § 13-256-73.13</b> Ahu O Laka Safety Zone	<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>	05/08/2015	07/25/2015
<b>DELETED</b>			
<b>HAR Chapter 13-60.3</b> West Hawai'i Regional Fisheries Management Area, Hawai'i	<ul style="list-style-type: none"> <li>Repealed HAR Chapter 13-60.3</li> </ul>	12/26/2013	12/26/2013
<b>HAR §13-126-22</b> Aircraft	<ul style="list-style-type: none"> <li>Remove §13-126-22 Aircraft from the list of enforceable policies</li> </ul>	12/11/2009	01/22/2010
<b>HAR Chapter 13-190</b> Dams and Reservoirs	<ul style="list-style-type: none"> <li>Repealed HAR Chapter 13-190 consisting of HAR §§ 13-190-1 to 13-190-42</li> </ul>	11/22/2010	02/20/2012
<b>HAR § 13-231-72, § 13-231-76, and § 13-231-90</b> Small inter-island passenger vessel permit; Kewalo basin; Offer of category I berth Ala Wai harbor	<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>	04/25/2014	09/25/2014
<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.	<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>	04/25/2014	09/25/2014

According to NOAA OCM's concurrence, 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 OCM as enforceable policy in order to be applied under the federal consistency review provisions of the CZM Act. No referenced policies in the approved enforceable policies may be applied to determine federal consistency unless that referenced policy has been separately approved by the OCM.

In accordance with 15 CFR § 923.84(b)(2), and Addendum to Office of the Ocean and Coastal Resource Management's July 1996 Program Change Guidance, November 2013, by mail and by publishing the notice on Hawai'i CZM Program's website, notice of the request for NOAA OCM's concurrence was given on July 15, 2016 to the general public and affected parties.

The public notice of NOAA OCM's concurrence will be published on Hawai'i CZM Program's website at <http://planning.hawaii.gov/czm/federal-consistency> on October 12, 2016. Federal Consistency to the approved enforceable policies takes effect on **October 12, 2016**.

For more information, please call the Hawai'i CZM Program at (808) 587-2846.