

**Routine Program Changes  
to  
State of Hawai‘i Coastal Zone Management Program**

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**Request for Concurrence**

**July 2016**

**Submitted to:** Office for Coastal Management  
National Oceanic and Atmospheric Administration

**Submitted by:** State of Hawai‘i Office of Planning  
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## **Introduction**

In 1977, the Hawai‘i State Legislature enacted Hawai‘i Revised Statutes (HRS) Chapter 205A as the legal foundation for the Hawai‘i Coastal Zone Management Program (Hawai‘i CZM Program). The Legislature designed the Hawai‘i CZM Program to build upon the existing functions of agencies that comprise the network of the Hawai‘i CZM Program. HRS Chapter 205A requires state and county agencies to assure that their statutes, ordinances, rules and actions comply with Hawai‘i CZM Program objectives and policies. The Hawai‘i CZM Program provides the objectives, supporting policies, standards, and procedures to guide and regulate public and private uses in the coastal zone area, which encompasses the entire state out to three miles seaward. The Hawai‘i CZM Program is implemented through the licensing, permitting and other administrative programs created by the Hawai‘i CZM law and the networked authorities.

Since its approval in 1978 by National Oceanic and Atmospheric Administration (NOAA), the Hawai‘i CZM Program has incorporated a wide array of state and local authorities and enforceable policies into its management framework. It has been recognized that statutory and regulatory changes from the Hawai‘i CZM network agencies are necessary to address new challenges, strengthen the management regime, clarify provisions, or otherwise modify management of activities affecting coastal resources. In order for these statutory and regulatory changes to be incorporated into the federally approved Hawai‘i CZM Program, they must be submitted for federal review and concurrence in accordance with 15 Code of Federal Regulations (CFR) Part 923. The State of Hawai‘i Office of Planning (OP), the lead agency of the Hawai‘i CZM Program, is submitting this request for NOAA Office for Coastal Management (OCM) concurrence of these statutory and regulatory changes as routine program changes (RPCs) to the Hawai‘i CZM Program. Once the enforceable policies approved by the NOAA OCM take effect, they will be applied to CZM federal consistency review by the Hawai‘i CZM Program.

In accordance with requirements for RPCs as set forth in 15 CFR § 923.84, and the guidelines from *Program Change Guidance: Coastal Zone Management Act and Changes to State and Territory Coastal Management Programs* July 1996, and its addendum dated November 2013, the Hawai‘i CZM Program has prepared the following analysis of the proposed program changes, with the description of the polices that are already adopted under the state and county agencies to:

- (1) Describe the statutory and regulatory changes on regulating the coastal uses, which are proposed to be incorporated into the Hawai‘i CZM Program;
- (2) Explain why the proffered statutory and regulatory changes to the Hawai‘i CZM Program are RPCs, but not substantial changes as described in 15 CFR § 923.80(d); and
- (3) Identify the effects of the statutory and regulatory changes on the CZM Program.

## **Analysis of Incorporation**

This request for OCM’s concurrence on RPCs to the Hawai‘i CZM Program includes the following statutory or regulatory changes:

- 1) Added new subsections to HRS Chapter 115 and Chapter 205A that ensure beach transit corridors be kept passable and free from landowner's human-induced, enhanced, or unmaintained vegetation that interferes or encroaches in the beach corridors.
- 2) Added HRS § 266-2.2 that exempts all work involving submerged lands used for state commercial harbor purposes from any permitting and site plan approval requirements established for lands in a conservation district.
- 3) Amended and updated criteria and standards under Hawai'i Administrative Rules (HAR) Chapter 11-54 and Chapter 11-55 that enforce Hawai'i's water quality standards and water pollution control, and meet the Environmental Protection Agency (EPA) requirements in water recreation areas, for example, National Pollutant Discharge Elimination System (NPDES) general permits to discharger of pesticides into state waters without violating Hawai'i's Water Quality Standards.
- 4) Amended HAR Chapter 11-62 to prohibit the installation of new cesspools and require sewer connections or upgrades of existing cesspools to a septic system.
- 5) Adopted HAR Chapter 13-60.4 that minimizes user conflicts and resource depletion in the West Hawai'i Regional Fishery Management Area; Adopted HAR Chapter 13-60.8 that establishes new aquatic resource regulations for the Hā'ena Community-Based Subsistence Fishing Area, Kaua'i; and Adopted HAR Chapter 13-95.1 that prohibits the take or possession of aquatic life from, in or on the lands of waters of Maui Island subject to state jurisdiction or control.
- 6) Amended HAR Chapter 13-124 that provides enforceable policies to conserve, manage, protect, and enhance indigenous wildlife, and manage introduced birds.
- 7) Repealed HAR Chapter 13-190 and adopted HAR Chapter 13-190.1 that implement the requirements, penalties and fees to protect the health, safety, and welfare of the residents by reducing the risk of failure of dams and reservoirs.
- 8) Amended HAR Chapter 13-251 that authorizes the issuance of a commercial use permit and/or registration certificates to commercial catamaran operations occurring on Waikīkī and Kā'anapali beach and near shore waters, and establishes requirements for catamaran commercial use permits and registration certificates.
- 9) Amended HAR Chapter 13-256 that requires all commercial activities in state waters to obtain a commercial use permit, and all commercial vessels and water sports equipment to be registered, and establishes Ahu O Laka Safety Zone, to ensure that no person shall possess, use, or consume alcohol within the subject Zone, or create hazardous or physically offensive condition.
- 10) Adopted Maui County Administrative Rules Title MC-15, Chapter 111, for the design of storm water treatment best management practices that provides enforceable policies to establish controls on the timing and rate of discharge of storm water runoff, and reduce storm water runoff pollution to the maximum extent practicable through the implementation of best management practices and engineering control facilities.
- 11) Amended Kaua'i Article 27, Chapter 8, Kaua'i County Code (KCC) 1987, relating to shoreline setback and coastal protection, which strengthens shoreline setback

requirements by incorporating science-based erosion rates established in the Kaua‘i coastal erosion study and current coastal hazard mitigation best practices.

In accordance with the *Program Change Guidance July 1996*, indicators of a substantial program change include:

- 1) New or revised policies that address coastal uses or resources not previously managed may be substantial;
- 2) The extent to which the proposed change impacts the national interest reflected in the CZM Act; and
- 3) The extent to which the proposed change is similar to past program change requests that were treated as amendments.

The following analysis responds to the Five Program Areas identified in Subpart B-F of 15 CFR Part 923, CZM Program Regulations.

§923.80(d)(1) Uses Subject to Management – The Hawai‘i CZM Program, built upon the functions of existing agencies, provides criteria under the Hawai‘i CZM Program objectives and policies, and special management area guidelines for managing land uses and water uses within the coastal zone which have a significant impact on coastal water. As indicated in the request list at the end of this submittal, most of statutory laws or administrative rules with the submittal for amendments or additions were previously approved by NOAA’s Office of Ocean and Coastal Resource Management (OCRM)<sup>1</sup> as RPCs to the Hawai‘i CZM Program. New adopted ordinances and rules are to enhance the Hawai‘i CZM Program, including County of Maui ordinances for post-construction stormwater quality best management practices. The submitted changes to the Hawai‘i CZM Program will not substantially change the land and water uses subject to management or the enforceable authorities or organizational structure within the coastal zone area. For example, new subsections added to HRS Chapter 115 and Chapter 205A allow the State of Hawai‘i Department of Land and Natural Resources (DLNR), and the county authorities within their jurisdictions, either seaward or landward of the shoreline, to require landowners to remove their human-induced, enhanced, or unmaintained vegetation that interferes or encroaches into beach transit corridors. This new beach transit corridors policy enhances the beach protection and public-owned beach access under the Hawai‘i CZM Program.

§923.80(d)(2) Special Management Areas – The Hawai‘i CZM Program provides criteria for designating and managing areas of particular concern. The areas of particular concern include the Natural Area Reserves Systems, the Marine Life Conservation Districts, Estuarine and Wildlife Sanctuaries, and the Shoreline Setback Areas. The criteria to preserve and protect unique areas of Hawai‘i’s marine environment, designated by the DLNR, and for special controls on developments within special management areas administered by the counties will not be changed with the approval of the proposed RPCs. For example, adoption of HAR Chapter 13-60.8 establishes administrative rules and regulations governing marine resource uses and activities within the legislatively designated Hā‘ena Community-Based Subsistence Fishing Area, Kaua‘i. Regarding shoreline setbacks, County of Kaua‘i’s Shoreline Setback Rules and Regulations and their amendments were previously approved as RPCs by NOAA. Strengthening

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<sup>1</sup> The Office of Ocean and Coastal Resource Management is the predecessor of the current Office for Coastal Management.

shoreline setback requirements in Chapter 8, Article 27 of the Kaua‘i County Code 1987, protects the shoreline and reduces the risks to life and property from coastal hazards, but does not change the criteria of the Hawai‘i CZM Program for designating and managing the special management areas.

§923.80(d)(3) Boundaries – Requirements for defining Hawai‘i’s coastal zone boundary are provided in HRS Chapter 205A of Hawai‘i CZM Program. As defined in HRS §205A-1, “Coastal zone management area” means all lands of the state and the area extending seaward from the shoreline to the limit of the state’s police power and management authority, including the United States territorial sea. The Hawai‘i CZM Program boundary will not be changed with the approval of the proposed RPCs.

§923.80(d)(4) Authorities and Organizations – The State retains techniques for control of land uses and water uses within the coastal zone, and is organized to achieve this task through the networked state and county agencies of the Hawai‘i CZM Program. No changes come from this submittal, nor will the submittal affect or change State’s overall management authorities, organizations, and responsibilities through the Hawai‘i CZM Program.

§923.80(d)(5) Coordination, Public Involvement and National Interest – The Hawai‘i CZM Program provides opportunities for involvement and participation from federal and state agencies, local governments, interested parties, and the general public in permitting processes, consistency determinations, and other similar decisions. No specific changes involving federal consistency procedures are being submitted under §923.80(d)(5). The State’s management and process in coordination, public involvement and national interest will not be changed with the approval of the proposed RPCs.

The following pages provide the description of statutory and regulatory changes that are being submitted for NOAA OCM’s concurrence. The subject changes are also summarized in a chart format, with highlights on the policies that are added, modified and deleted, their effects on the CZM Program, and the date(s) of NOAA’s approval for previous changes.

Copies of subject changes in session laws, ordinances, and administrative rules submitted for OCM’s concurrence are enclosed in portable document format (PDF) with **Attachment-I** (*added*), **Attachment-II** (*modified*) and **Attachment-III** (*deleted*), in an order of the request list for reference. To go to specific policies on the request list, please review these three PDF documents by using bookmark links.

## **Added Statutory and Regulatory Policies**

### **1) HRS §§ 115-5(b), 115-9(a)(4), 115-9(b)(8), and 115-10**

Reference: Act 160, SLH 2010; Act 120, SLH 2013

Relating to: **Beach transit corridors**

Adopted: 06/2/2010

Effective: 06/2/2010; and 06/29/2013

RPC History: HRS Chapter 115, Public Access to Coastal and Inland Recreational Areas, was first approved by NOAA as RPCs on July 18, 1990. Amendments to HRS § 115-9 were approved as RPCs on March 12, 2009.

Description of change: The amendments to HRS §§ 115-5 and 115-9 by Act 160, Session Laws of Hawai‘i (SLH) 2010, were made permanent by Act 120, SLH 2013.

HAR § 115-10 “Duty to maintain access within beach transit corridors” was added to HRS Chapter 115. This added section requires the DLNR to maintain beach transit corridors by prohibiting private landowners’ human-induced vegetation that interferes with access within the beach corridor. If any landowner fails to remove the landowner’s human-induced, enhanced, or unmaintained vegetation within twenty-one days of notice being issued, the department shall take any action authorized under HRS § 183C-7, as necessary to maintain public access within beach transit corridor. The policy for maintaining beach transit corridors is administered and enforced by the DLNR under HRS Chapter 115 and HRS Chapter 183C.

HAR § 115-5 was amended by adding § 115-5(b) to authorize the DLNR to require the abutting landowner to remove the landowner’s interfering or encroaching vegetation.

HAR § 115-9 was amended by adding § 115-9(a)(4) to prohibit action or installation of a physical impediment to prevent a member of the public from traversing a beach transit corridor, and by adding § 115-9(b)(8) to add landowner’s human-induced, enhanced, or unmaintained vegetation that interferes or encroaches within beach transit corridors to the list of physical impediments that may obstruct access to public property.

## **2) HRS §§ 205A-2(c)(9)(D) and 205A-2(c)(9)(E)**

Reference: Act 160, SLH 2010; Act 120, SLH 2013

Relating to: **Beach transit corridors**

Adopted: 06/2/2010

Effective: 06/2/2010; and 06/29/2013 (for permanent)

RPC History: HRS Chapter 205A, Coastal Zone Management was enacted in 1978 for the federal approved Hawai‘i CZM Program. Amendments to HRS §§ 205A-1, 205A-2, 205A-3, 205A-4, 205A-5, 205A-6, 205A-22, 205A-23, 205A-26, 205A-27, 205A-29, 205A-30, 205A-31, and 205A-33, were approved by NOAA as RPCs on July 1, 1984. Amendments to HRS Chapter 205A were approved as RPCs on October 20, 1986, October 18, 1989, July 18, 1990, June 7, 1993, October 17, 1997, September 18, 2001, and January 18, 2013, respectively.

Description of change: The amendments to HRS § 205A-2(c)(9) by Act 160, SLH 2010, were made permanent by Act 120, SLH 2013.

HRS § 205A-2(c)(9), Beach protection, is an federally approved enforceable policy. § 205A-2(c)(9) was amended by adding §§ 205A-2(c)(9)(D) and 205A-2(c)(9)(E) to prohibit private property owners from creating a public nuisance by inducing or cultivating the private property owner’s vegetation, or allowing their unmaintained vegetation to interfere or encroach upon a beach transit corridor.

### 3) HRS § 266-2.2

Relating to: **Exemption from conservation district permitting and site plan approval requirements**

Adopted: 05/21/2013

Effective: 05/21/2013

RPC History: HRS Chapter 266 Harbors, was enacted in 1978 with the approval of the Hawai'i CZM Program. Amendments to HRS § 266-2 Powers and Duties of Department, and HRS § 266-3 Rules, were approved by NOAA as RPCs on July 1, 1984. Amendments to HRS § 266-1 Department of Transportation; Harbors; Jurisdiction, and HRS 266-3 Rules, were approved as RPCs on October 31, 1985. Amendments to HRS § 266-2 were approved as RPCs on June 21, 1986. Amendments to HRS § 266-1, HRS § 266-3, HRS § 266-16 Repealed, were approved as RPCs on October 20, 1986. Amendments to HRS Chapter 266 were approved as RPCs on October 15, 1987, October 18, 1989, July 18, 1990, and June 7, 1993, respectively. Amendments to HRS 266-24 was approved as RPC on January 22, 1999.

Description of change: HRS § 266-2.2 was added to HRS Chapter 266 to exempt all work involving submerged lands used for state commercial harbor purposes from any permitting and site plan approval requirements established for lands in a conservation district.

### 4) HAR § 11-23-24

Relating to: **Timely processing for underground injection construction**

Adopted: 10/21/2000

Effective: 10/21/2000

RPC History: HAR Chapter 11-23, Underground Injection Control, was first approved by NOAA as RPCs on June 7, 1993.

Description of change: HAR § 11-23-24 was added to Chapter 11-23 Underground Injection Control (UIC). This new section provides specific policies for timely processing, and applies to each written application under § 11-23-08 Construction conditions, § 11-23-12 Application procedures for UIC permit, § 11-23-13 Submission of data, § 11-23-16 Permit issuance, § 11-23-17 Existing injection well registration, and § 11-13-19 Plugging and abandonment requirements.

The Director of the State of Hawai'i Department of Health shall approve, approve with conditions, or deny a complete application and notify the applicant accordingly within 180 days after the receipt of the complete application. The Director shall determine and notify an applicant of the completeness or deficiency of an application covered by this section, including payment of required fees, within forty-five days of receipt of application. Any automatic approval of construction or of a permit resulting from this section is subject to the conditions in HAR §§ 11-23-16(a)(1) through 11-23-16(a)(3), and expired after one year.

Please refer to Attachment I for added HAR § 11-23-24

**5) HAR § 11-54-4(e)**

Relating to: **Pesticide application**

Adopted: 10/21/2012

Effective: 10/21/2012

RPC History: HAR Chapter 11-54, Water Quality Standards, was first approved by NOAA as RPCs on October 18, 1989. Amendments to HAR Chapter 11-54 were approved as RPCs by NOAA on July 18, 1990, June 7, 1993, September 18, 2001, respectively. Amendments to HAR § 11-54-4(b)(3) and § 11-54-8(b) were approved as RPCs on January 18, 2013.

Description of change: HAR §11-54-4 was amended by adding § 11-54-4(e), Pesticide application, to include certain restrictions on the use of pesticides. The proposed amendments will require permit coverage for pesticide applied to state waters. This permit will be in the form of a pesticides general permit, the conditions of which were adopted from the use patterns specified in EPA’s Pesticides General Permit. To qualify for permit coverage, the pesticide must be registered by the U.S. EPA and licensed by the State Department of Agriculture or other state agency regulating pesticides. The pesticides must be used for the purpose of: (1) controlling mosquito and other flying insect pests; (2) controlling weed and algae pests; (3) controlling animal pests; (4) controlling forest canopy pests; or (5) protecting public health or the environment. HAR § 11-54-4(e) includes definitions of “pest” and “pesticides” which are the same as those found in the Federal Insecticide, and Rodenticide Act, and are consistent with those found in HAR Chapter 11-55 Water Pollution Control.

Please refer to Attachment I - Ramseyer version of HAR Chapter 11-54, 2013, for the amendments.

**6) HAR §§ 11-54-4(b), 11-54-11, 11-54-12, and 11-54-15**

Relating to: **Basic water quality criteria; Schedule of compliance; Intake credits; and Field citations**

Adopted: 11/15/2014

Effective: 11/15/2014

RPC History: HAR Chapter 11-54, Water Quality Standards, was first approved by NOAA as RPCs on October 18, 1989. Amendments to HAR Chapter 11-54 were approved as RPCs by NOAA on July 18, 1990, June 7, 1993, September 18, 2001, respectively. Amendments to HAR § 11-54-4(b)(3) and § 11-54-8(b) were approved as RPCs on January 18, 2013.

Description of change: The revisions to HAR Chapter 11-54, Water Quality Standards, include, among other things, new definitions, clarification to the definition of State waters; clarification on the existing classification of State waters; corrected typographical error to specific criteria for embayments; modifications to the specific criteria for recreational areas; provisions for non-compliance with HAR Chapter 11-54; schedule of compliance clarification; provisions for intake credits; and minor writing mechanics revisions. For example, the following additions were made:

HAR § 11-54-4 was amended by adding § 11-54-4(b), to clearly state that the Director of Health may order penalties and fines in HRS Chapter 342D against a person who discharges, or causes or allows water pollutants to enter State waters and cause violation of this chapter

by point or non-point source, unless that person has a permit, variance, or authorization issued by the director for that person's discharges.

HAR § 11-54-11 was added as new section to include a schedule of compliance in an individual NPDES permit issued by the direct pursuant to HRS Chapter 342D.

HAR §§ 11-54-12 and § 11-54-15 were added as new sections. HAR § 11-54-12, Intake Credits, allows the NPDES permit effluent limit to be adjusted based on the concentration of that pollutant in the intake water. HAR § 11-54-15, Field Citations; Non-compliance, authorizes field citations to effectively and quickly settle verifiable violations of HRS Chapter 342D and this HAR Chapter 11-54.

Please refer to Attachment I - Ramseyer version of HAR Chapter 11-54, 2014, for amendments.

## **7) HAR Chapter 11-55, Appendix M**

Relating to: **NPDES general permit authoring point source discharges from the application of pesticides**

Adopted: 10/21/2012

Effective: 10/21/2012

RPC History: HAR Chapter 11-55, Water Pollution Control, was first approved by NOAA as RPCs on July 18, 1990. Amendments to HAR Chapter 11-55 were approved as RPCs by NOAA on July 18, 1990, June 7, 1993, September 18, 2001, March 12, 2009, respectively. Deletions of HAR § 11-55-04(f), § 11-55-34.08(n) and § 11-55-38 were approved as RPCs on January 18, 2013.

Description of change: HAR Chapter 11-55 was first approved as RPC to integrate into the Hawai'i CZM Program on July 18, 1990. The latest amendments to HAR Chapter 11-55 with repeal of §§ 11-55-04(f), 11-55-34.08(n) and 11-55-38, were submitted on October 23, 2012, and approved by NOAA as RPCs on January 18, 2013.

Chapter 11-55 Appendix M was added to address discharges to surface drinking water sources. Any pesticide may be discharged to surface drinking water sources consistent with its FIFRA (Federal Insecticide, Fungicide, and Rodenticide Act) label provided that the operator shall coordinate with the owner of the surface drinking water source to prevent pesticide-treated water from entering the drinking water intake and distribution system. "Operator" is defined in HAR § 11-55-01 as any entity associated with the application of pesticides which results in a discharge to state waters that meets either of the following two criteria: 1) any entity who performs the application of a pesticide or who has day-to-day control of the application (i.e., they are authorized to direct workers to carry out those activities); or 2) any entity with control over the decision to perform pesticide applications including the ability to modify those decisions.

A notice of general permit coverage under this general permit expires five years after the effective date of this general permit, October 21, 2012.

Please refer to Attachment I - Ramseyer version of HAR Chapter 11-55, 2012, for amendments.

**8) HAR §§ 11-55-34.05(b) to (f)**

Relating to: **Requiring an individual NPDES permit**

Adopted: 12/06/2013

Effective: 12/06/2013

RPC History: HAR Chapter 11-55, Water Pollution Control, was first approved by NOAA as RPCs on July 18, 1990. Amendments to HAR Chapter 11-55 were approved as RPCs by NOAA on July 18, 1990, June 7, 1993, September 18, 2001, March 12, 2009, respectively. Deletions of HAR § 11-55-04(f), § 11-55-34.08(n) and § 11-55-38 were approved as RPCs on January 18, 2013.

Description of change: The Department of Health (DOH) proposes to re-adopt, HAR Chapter 11-55, Water Pollution Control, with the amendments including:

NPDES General Permit coverage for discharges to state waters, HAR Chapter 11-55, Appendices B through L, expired at midnight, October 21, 2012. With the amendments, Appendices B, D, H, and I will expire four years from the effective date December 6, 2013. Appendixes C, J, and L will expire five years from the effective date December 6, 2013.

HAR § 11-55-34.05(b) added to be consistent with 40 CFR § 122.28(b)(3).

HAR § 11-55-34.05(c) - (e) copied from § 11-55-34.06

HAR §§ 11-55-34.05(f) added to clarify the Director of Health may require an individual NPDES permit for those activities that discharged prior to obtaining coverage under a General Permit.

HAR § 11-55-34.05 (within citation of authority) – updated citation from 40 CFR § 122.28(b)(3) (i) to § 122.28(b)(3) for amendment to § 11-55-34.05(b).

Please refer to Attachment I - Ramseyer version of HAR Chapter 11-55, 2013, for amendments

**9) HAR §§ 11-55-19(a)(9) and 11-55-19(a)(10)**

Relating to: **Intake Credits, Recreational Criteria for State Waters**

Adopted: 11/15/2014

Effective: 11/15/2014

RPC History: HAR Chapter 11-55, Water Pollution Control, was first approved by NOAA as RPCs on July 18, 1990. Amendments to HAR Chapter 11-55 were approved as RPCs by NOAA on July 18, 1990, June 7, 1993, September 18, 2001, March 12, 2009, respectively. Deletions of HAR § 11-55-04(f), § 11-55-34.08(n) and § 11-55-38 were approved as RPCs on January 18, 2013.

Description of change: HAR § 11-55-19(a) was amended by adding § 11-55-19(a)(9) to allow intake credits to be applied to NPDES technology-based effluent limits in HAR Chapter 11-55 in accordance with 40 CFR 122.45(g). Federal NPDES permit regulations at 40 CFR 122.45(g) establish conditions under which credit can be given for pollutants in the intake water when computing technology-based effluent limits. This credit is called an intake credit. Intake credits

allow the NPDES permit effluent limit to be adjusted based on the concentration of that pollutant in the intake water.

HAR § 11-55-19(a)(10) was added to establish a minimum number of samples in the NPDES permits for compliance with the proposed standards found in HAR §§ 11-54-8(b) and 11-54-8(c), in accordance with EPA's 2012 Recreational Water Quality Criteria recommendations.

Please refer to Attachment I - Ramseyer version of HAR Chapter 11-55, 2014, for amendments

#### **10) HAR Chapter 13-60.4**

Relating to: **West Hawai'i Regional Fishery Management Area, Hawai'i**

Adopted: 12/26/2013

Effective: 12/26/2013

RPC History: HAR Chapter 13-60.4 is based substantially upon Chapter 13-60.3, which was approved as RPC to the Hawai'i CZM Program on September 18, 2001. Amendments to HAR §§ 13-60.3-2, 60.3-3, 60.3-4, 60.3-5 and 60.3-6 were approved to integrate into the Hawai'i CZM Program as RPCs on March 12, 2009. Chapter 13-60.4 is simultaneously adopted upon repeal of Chapter 13-60.3.

Description of change: The amendments from adopted HAR Chapter 13-60.4 are clarified in the following sections of definitions and the enforceable policies. HAR § 13-60.4-1 clarifies the intent and purpose of the adopted administrative rules. A number of definitions are amended, deleted from, or added to 60.4-3 Definitions to provide clarify on the regulatory provisions for the implementation of the Ka'ūpūlehu Fishery Replenishment Area. "Aquatic life", "Commercial purpose", "Scuba gear", "Scuba spearfishing", "Set", "Spear", "Speared", "Total length" and "White list" are added. Other definitions such as "Kealakekua Bay Marine Life Conservation District", "Keauhou Fisheries Management Area", "Kona Coast Fisheries Management Area", "Landward boundary" and "Seaward boundary" are deleted.

HAR § 13-60.4-2 Geographical jurisdiction of chapter provisions, replaces the repealed § 60.3-13 through 21 individual fisheries management areas, and applies to the West Hawai'i regional fishery management area, bounded by the west coast of Hawai'i Island, from Ka Lae, Ka'ū (South Point) to Upolu Point, North Kohala, and extending from the upper reaches of the wash of the waves on shore, seaward to the limit of the State's police power and management authority. Fourteen specific fish replenishment areas and netting restricted areas are established within the subject boundaries. Marine life conservation districts as described in HAR Chapters 13-29, 35, 37, 52, 53, 54, 55, 57, 58 and 60 were previously approved by NOAA OCM as Hawai'i CZM routine program changes.

HAR § 13-60.4-4 Activities prohibited within the West Hawai'i Regional Fishery Management Area, is added for the Ka'ūpūlehu fish replenishment areas management.

HAR § 13-60.4-5 Activities prohibited within the selected area, is added for the Ka'ūpūlehu fish replenishment areas management.

HAR § 13-60.4-6 Lay net registration and use requirements, § 60.4-7 Aquarium collecting permit and vessel registration requirements, are added for Ka‘ūpūlehu fish replenishment areas enforcement.

Please refer to Attachment I - the adopted HAR Chapter 13-60.4, and repealed HAR Chapter 13-60.3 for changes.

### **11) HAR Chapter 13-60.8**

Relating to: **Hā‘ena Community-Based Subsistence Fishing Area, Kaua‘i**

Adopted: 08/14/2015

Effective: 08/14/2015

RPC History: HAR Chapter 13-60.8, Hā‘ena Community-Based Subsistence Fishing Area, Kaua‘i, was adopted and effective in the state on August 14, 2015. This is the initial request to NOAA to add HAR Chapter 13-60.8 as a RPC.

Description of change: HAR Chapter 13-60.8 establishes administrative rules and regulations governing marine resource uses and activities within the legislatively designated Hā‘ena Community-Based Subsistence Fishing Area, Kaua‘i.

Section 1 - Describes the purpose of the chapter.

Section 2 - Provides definitions of relevant terms as used in the chapter.

Section 3 - Delineates the boundaries of the Hā‘ena Community-Based Subsistence Fishing Area, including three subzones.

Section 4 - Established procedural and substantive requirements for the development and review of a management plan.

Section 5 - Prescribes the activities that are allowed and prohibited within the Hā‘ena Community-Based Subsistence Fishing Area. This section recognizes native Hawai‘ian traditional and customary rights and gives deference to a determination of these rights by appropriate agencies once a claims procedure is established.

Section 6 - Makes it unlawful for any person to enter the Makua Pu‘uhonua without a special activity permit issued by the Board of Land and Natural Resources. The shallow interior portion of the reef at Makua was selected as a no harvesting zone due to its importance as nursery habitat for a number of culturally and recreationally important species.

Section 7 - Establishes minimum and maximum administrative fines for first, second, and third or subsequent violations of this chapter.

## **12) HAR Chapter 13-95.1**

Relating to: **Island-based Fisheries Rules, Maui**

Adopted: 11/01/2014

Effective: 11/01/2014

RPC History: HAR Chapter 13-95.1, Island-based Fisheries Rules, Maui, was adopted and effective in the state on November 1, 2014. This is the initial request to NOAA to add HAR Chapter 13-95.1 as an RPC.

Description of change: HAR Chapter 13-95.1, was adopted to apply to the take or possession of aquatic life from, in or on the lands or waters of Maui Island subject to state jurisdiction or control. For such purpose, “Waters of Maui island” means all ocean waters within three nautical miles seaward from the highest wash of the waves on the shores of Maui, excluding all waters within two nautical miles from the shores of Kaho‘olawe island.

HAR § 13-95.1-1 provides a number of definitions including “Commercial marine dealer”, “Possess” and “Take” “Moano kea”, “Munu”, “Oama”, Uhu” and other specific fish species. HAR § 13-95.1-2 applies administrative fines and potential penalty for any violations of this chapter. HAR § 13-95.1-3 clarifies the scope of jurisdiction of HAR Chapter 13-95.1. The take and possession provision of this chapter supersede any conflicting take or possession provisions in HAR Chapter 13-95, which was approved as RPC on September 18, 2001.

HAR § 13-95.1-4 provides exceptions that HAR Chapter 13-95.1 shall not apply to authorized employees of the department when acting in the course of their official duties, departmental agents and contractors engaged in authorized departmental activities, or to any persons conducting activities permitted under a valid license or permit listed under HAR § 13-95-1.1. Specific native Hawai‘ian traditional and customary rights shall not be abridged by this chapter.

HAR § 13-95.1-20 provides specific requirements to prohibit the take or possess of goatfish; HAR § 13-95.1-21 provides specific requirement to prohibit the take and possess of Uhu.

## **13) HAR §§ 13-124-11, 13-124-12, and 13-124-13**

Relating to: **Endangered and Threatened Wildlife -- Prohibited activities; Scientific, propagation and educational permits; Penalty**

Adopted: 12/12/2014

Effective: 02/27/2015

RPC History: HAR Chapter 13-124, Indigenous Wildlife, Endangered and Threatened Wildlife, Injurious Wildlife, Introduced Wild Birds and Introduced Wildlife, was first approved as RPCs by NOAA on July 18, 1990. The amendments to HAR Chapter 13-124, were approved as RPCs on September 18, 2001.

Description of change: The added sections to Subchapter 3 Endangered and Threatened Wildlife of HAR Chapter 13-124 include: 1) adding HAR § 13-124-11 Prohibited activities, with respect to endangered and threatened species of wildlife; 2) adding HAR § 13-124-12 Scientific, propagation and educational permits; and 3) adding HAR § 13-124-13 Penalty, to include a fine system pursuant to HRS Chapter 195D, and add seizure and forfeiture language.

Please refer to Attachment I - Ramseyer version of HAR Chapter 13-124 for revisions.

#### **14) HAR Chapter 13-190.1**

Relating to: **Dams and Reservoirs**

Adopted: 11/22/2010

Effective: 02/20/2012

RPC History: HAR Chapter 13-190, Dams and Reservoirs, is repealed, and HAR Chapter 13-190.1 is adopted. HAR Chapter 13-190 was first approved by NOAA OCRM as RPC to the Hawai‘i CZM Program on June 7, 1993.

Description of change: In conjunction with HRS Chapter 179D, “Dams and Reservoirs”, HAR Chapter 13-190 governs the design, construction, operation, maintenance, enlargement, alteration, repair, and removal of dams, reservoirs, and their appurtenant works in the State of Hawai‘i, to reduce the risk of failure of the dams or reservoirs.

During the 2007 regular session, the Legislature significantly revised HRS Chapter 179D in an act entitled the “Hawai‘i Dam and Reservoir Safety Act of 2007.” § 179D-9 directs the DLNR to adopt the necessary administrative rules not later than one and one-half year after July 1, 2007. Due to the significant amendment of HRS Chapter 179D, and the numerous changes, additions and deletions to the existing administrative rules necessary to implement the new requirements, penalties and fees allowed under HRS Chapter 179D, it was determined that HAR Chapter 13-190 be repealed, and that the proposed HAR Chapter 13-190.1 be adopted.

The following are the highlights of changes from HAR Chapter 13-190 to Chapter 13-190.1:

§ 13-190.1-2: definitions have been added and amended to reflect the changes to HRS Chapter 179D. For example, adds the definition of “Appurtenance”, the definition of “Certificate of approval to impound”, the definition of “Emergency”, the definition of “Freeboard”, the definition of “Hazard potential”, and the definition of “Significant hazard”; amends the definition of “Dam”, amends the definitions of “Person” and “Repair”.

§ 13-190.1-3: Amends subsection 1 to more clearly define what type of highways or road fills are exempt.

§ 13-190.1-4: Adds a minimum design criteria to be followed.

§ 13-190.1-4.1: Adds additional design requirements.

§ 13-190.1-5: Amends subsection to increase the maximum fine, and allows the Board of Land and Natural Resources to recover administrative fees and costs.

§ 13-190.1-5.1: Adds criminal penalties to the rules as allowed under HRS § 179D-8.

§ 13-190.1-6: Adds language that clarifies that the Board's approval or disapproval of application is conclusive and binding except in the case where it can be demonstrated that the decision was based on one or more misrepresentations.

§ 13-190.1-7: Adds a section for inspections and refers to the guidelines that will be followed.

§ 13-190.1-8: Adds a change in ownership provision.

§ 13-190.1-9: Adds a variance provision which allows the Board of Land and Natural Resources or Department of Land and Natural Resources to grant a variance from the provision of these rules.

§ 13-190.1-10: Adds a severability provision.

§ 13-190.1-11: New section requires a certificate of approval to impound water for all dams and reservoirs.

§ 13-190.1-12: New section requiring all regulated dams constructed before July 6, 2007 to file an application for a certificate to impound water with all information as required.

§ 13-190.1-13: New section sets forth the notice.

§ 13-190.1-14: New section sets forth the application preview process, including requirement of doing tests or investigations to disclose information to enable the board to make decision.

§ 13-190.1-16: Allows the Board of Land and Natural Resources to suspend, revoke, or both, any application approval.

§ 13-190.1-17: Transfer of Certificate to Impound must be approved by the Board of Land and Natural Resources.

§§ 13-190.1-20 to 13-190.1-24: These sections set forth the requirements for construction, enlargement, repair, alterations, or removal of dams.

§§ 13-190.1-30 to 13-190.1-32: These sections set forth the construction requirements and the inspection and completion requirements.

§ 13-190.1-40: Amends the rule by allowing the Department of Land and Natural Resources to require inspections of dams not less than one every five years, without requiring notice.

§ 13-190.1-40.1: Adds a requirement for owners to maintain an operation and maintenance plan.

§ 13-190.1-41: Adds new rule which places primary responsibility for determining when an emergency exists on the owner or operator.

§ 13-190.1-41.1: New rule allows the department to take action in an emergency. The department shall be in full charge and control of the dam until they are rendered safe or the emergency has ceased.

§ 13-190.1-42: Amends the Emergency Action Plan by requiring that the plan be submitted to the Board of Land and Natural Resources for acceptance.

§ 13-190.1-43: Adds new section which shall consider the costs of construction, enlargement, repair, alteration, or removal work done to render a dam, reservoir, or appurtenances safe, a statutory lien against all property of the owner.

§ 13-190.1-44: Adds new section which allows the Department of Land and Natural Resources to apply to the circuit courts.

§ 13-190.1-45: Adds new section which allows the Department of Land and Natural Resources to issue an order to ensure public safety.

§ 13-190.1-46: Adds a new section which gives the Department of Land and Natural Resources the right to conduct investigations as it reasonably deems necessary to carry out its duties as prescribed by statute.

§ 13-190.1-50: Adds a new section setting forth the filling fee for applications.

§ 13-190.1-51: Adds new section setting a fee of \$400 for a certificate to impound.

§ 13-190.1-52: Adds new section for an annual fee based on a fixed rate and height of the dam.

Please refer to Attachment I - the adopted HAR Chapter 13-190.1, and the repealed HAR Chapter 13-190.

#### **15) HAR §§ 13-251-33 to 13-251-35, and § 13-251-53**

**Relating to: Use permit; Reissuance of a registration certificate or commercial use permit; Waikīkī catamarans**

Adopted: 04/25/2014

Effective: 09/25/2014

RPC History: HAR Chapter 13-251, Waikīkī and Kā‘anapali Ocean Waters, was first approved by NOAA OCRM as RPC to the Hawai‘i CZM Program on October 17, 1997.

Description of change: The administrative jurisdiction for recreational boating and related vessel activities was transferred from the State Department of Transportation, Harbors Division, to the Department of Land and Natural Resources, Division of Boating and Ocean Recreation, effective July 1, 1992, in accordance with Act 272, Session Laws of Hawai‘i 1991.

HAR §§ 13-251-33 to 13-251-35 Use Permits were added to HAR Chapter 13-251, with name changed from “Waikīkī and Kā‘anapali Ocean Waters” to “Commercial Activities on State Ocean Waters, Navigable Streams, and Beaches”. No regular or extensive use of any state property or facilities or ocean waters or navigable streams for private gain or purposes shall be allowed without benefits and returns to the public. The Department of Land and Natural Resources may reissue a registration certificate or commercial permit.

HAR § 13-251-53 was added for the requirements of maintaining beach moorings in Waikīkī nearshore waters or Waikīkī Beach.

Please refer to Attachment I - Ramseyer version of HAR Chapter 13-251 for revisions.

#### **16) Title MC-15, Chapter 111, Administrative Rules**

Relating to: **Design of Storm Water Treatment Best Management Practices**

Adopted date: 11/9/2012

Effective date: 11/25/2012

RPC History: Title MC-15, Chapter 111, Rules for the Design of Storm Water Treatment Best Management Practices, was effective in the County of Maui on November 25, 2012. This is the initial request to NOAA to add Title MC-15, Chapter 111 as a RPC.

Description of change: Section 309 Assessment and Strategy FY 2011-2015, pages 9-10, Hawai‘i CZM Program states that upon adoption of County of Maui Storm Water Ordinances relating to § 16.26.3306, § 18.20.135, and MC-15 Chapter 111, said items would be submitted as an RPC. Therefore, the Hawai‘i CZM Program is submitting § 18.20.135, § 16.26.3306, and MC-15 Chapter 111 for OCM’s concurrence.

To implement the provisions of Maui County Ordinance 3902, §18.20.135, and Maui County Ordinance 3903, § 16.26.3306, the Maui County Department of Public Works adopts Title MC-15, Chapter 111, Rules for the Design of Storm Water Treatment Best Management Practices.

MC-15, Chapter 111 includes a purpose section, water quality criteria, criteria for sizing of storm water quality facilities, management practices to meet criteria, and water quality design standards.

Projects with a disturbed area of greater than one acre must meet the specific criteria for sizing of storm water quality facilities. Projects with a disturbed area of less than one acre will be subject to approval of a site-specific best management practices plan to be approved by the Director of Maui County Department of Public Works. Low Impact Development (LID) techniques can be incorporated into site design to satisfy water quality criteria. By implementing LID principles and practices, water can be managed in a way that reduces the impact of built areas and promotes the natural movement of water within an ecosystem or watershed.

The design for detention-based storm water quality control facilities include: wet ponds, dry extended detention ponds, combination wet and dry extended detention ponds, and storm water marsh. The subsection of water quality design standards specifies and/or presents 1) the total extended storage and/or wet volume required for detention-based water quality systems per tributary acre, 2) the average outlet discharge rate from extended detention volumes to achieve the necessary detention times, 3) the flow rate, and 4) flow-through treatment rate.

#### **17) Maui County Ordinance 3902, Maui County Code (MCC) § 18.20.135**

Relating to: **Post-construction Stormwater Quality Best Management Practices**

Adopted: 01/09/2012

Effective: 07/07/2012

RPC History: Maui County Ordinance 3902, Maui County Code (MCC) § 18.20.135, Post-construction Stormwater Quality Best Management Practices, was effective in the County of Maui on July 7, 2012. This is the initial request to NOAA to add Maui County Code (MCC) § 18.20.135 as a RPC.

Description of change: Section 309 Assessment and Strategy FY 2011-2015, pages 9-10, Hawai'i CZM Program states that upon adoption of County of Maui Stormwater Ordinances § 18.20.135, §16.26.3306, and MC-15 Chapter 111, said items would be submitted as an RPC.

MCC Chapter 18.20, *relating to Subdivision Improvements*, was amended by adding § 18.20.135, Post-construction Stormwater Quality Best Management Practices, which shall be implemented for all subdivision. The Director of Public Works of the County of Maui shall adopt rules to implement this section.

### **18) Maui County Ordinance 3903, MCC § 16.26.3306**

Relating to: **Post-construction Stormwater Quality Best Management Practices**

Adopted: 01/09/2012

Effective: 07/07/2012

RPC History: Maui County Ordinance 3903, MCC § 16.26.3306, Post-construction Stormwater Quality Best Management Practices, was effective in the County of Maui on July 7, 2012. This is the initial request to NOAA to add MCC § 16.26.3306 as a RPC.

Description of change: Section 309 Assessment and Strategy FY 2011-2015, pages 9-10, Hawai'i CZM Program states that upon adoption of County of Maui Stormwater Ordinances § 18.20.135, § 16.26.3306, and MC-15 Chapter 111, said items would be submitted as a RPC.

MCC Chapter 16.26, *relating to the Building Code*, was amended by adding § 16.26.3306, Post-construction Stormwater Quality Best Management Practices, which shall be implemented for property on which any new structure(s) will be situated, or for any work such as remodeling, reconstruction, repairs, additions, and similar work, where the cost of the work over a period of twelve consecutive months exceeds fifty percent of the replacement value of the existing structure(s) before work is started. The requirements of this section shall not apply to a single-family dwelling and its accessory structures. The Director of Public Works of the County of Maui shall adopt rules to implement this section.

## **Modified Regulatory Policies**

### **19) Kaua'i County Ordinance 979, Article 27, Chapter 8, Kaua'i County Code (KCC) 1987**

Relating to: **Shoreline Setback and Coastal Protection**

Adopted date: 11/19/2014

Effective date: 12/05/2014

RPC History: Kaua‘i County Ordinance 863, Article 27, Chapter 8, Kaua‘i County Code 1987, Shoreline Setback and Coastal Protection, effective February 25, 2008, and amendments to §§ 8-27.1, 8-27.3, 8-27.7, 8-27.8, and 8-27.10, were approved as RPCs on January 18, 2013.

Description of change: Ordinance 979, known as the “Shoreline Setback and Coastal Protection Ordinance” amended Chapter 8, Article 27 of the Kaua‘i County Code 1987, as follows:

§ 8-27.0 – Purpose

§ 8-27.1 – Applicability, which shall be applicable to all lands within the County of Kaua‘i.

§ 8-27.2 – Definitions, including “annual coastal erosion rate”, which refers to Kaua‘i Coastal Erosion Study conducted by the University of Hawai‘i Coastal Geology Group. We understand no referenced policy may be applied for federal consistency unless that referenced policy has been approved by the OCM.

§ 8-27.3 – Shoreline Setback Determination. This section provides the calculation table for shoreline setback calculations for lots included in the Kaua‘i coastal erosion study based on the average lot depth. For example, besides mandatory 20 foot additional safety buffer, for lots with an average lot depth of less than 140 feet, the shoreline setback line shall be 40 feet plus 70 times the annual erosion rate. Shoreline setback calculation formula is also provided for lots that are not included in the Kaua‘i coastal erosion study.

§ 8-27.6 – Prohibited Activities in the Shoreline Setback Area.

§ 8-27.7 – Permitted structures within the shoreline setback area.

§ 8-27.8 – Procedures for Obtaining Determinations.

§ 8-27.9 – Variance Application.

§ 8-27.10 – Criteria for Approval of a Variance.

§ 8-27.11 – Enforcement.

§ 8-27.12 – Civil Fines.

Please refer to Attachment II - Kaua‘i County Ordinance 979, which amends Chapter 8, Kaua‘i County Code 1987. Ordinance material repealed is bracketed. New ordinance material is underscored.

**20) 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**

Relating to: **Water Quality Standards**

Adopted: 12/06/2013

Effective: 12/06/2013

RPC History: HAR Chapter 11-54, Water Quality Standards, was first approved by NOAA as RPCs on October 18, 1989. Amendments to HAR Chapter 11-54 were approved as RPCs by NOAA on July 18, 1990, June 7, 1993, September 18, 2001, respectively. Amendments to HAR § 11-54-4(b)(3) and § 11-54-8(b) were approved as RPCs on January 18, 2013.

Description of change: The proposed revisions to HAR Chapter 11-54, Water Quality Standards, are presented in three independent units. The first component is a compilation and incorporation of grammatical and formatting recommendations provided by the Legislative Reference Bureau (LRB). The second component describes content or technical changes to the rule. The final component updates the various references cited in Chapter 11-54.

○ **Format Revisions**

By direction of the LRB and pursuant to the procedures established in Hawai'i Administrative Rules Drafting Manual (LRB: Second Edition 1994), parts of Chapter 54 have been reformatted. These reformatting changes in HAR §§ 11-54-5.1, 11-54-5.2, and 11-54-6 to 11-54-9, do not affect the content of the document. Content, or technical changes, are discussed thoroughly in Content or Technical Changes below.

○ **Content or Technical Changes**

HAR § 11-54-1.1 General policy of water quality anti-degradation was amended by adding HAR § 11-54-1.1(d), the text of paragraph (4) in 40 CFR 131.12, to ensure anti-degradation policy and implementing method be consistent with section 316 of the Clean Water Act.

HAR § 11-54-4(b)(1) was added with definition of "In-Stream Waste Concentration" (IWC) and "Test of Significant Toxicity" (TST). HAR § 11-54-4(b)(4) was amended for formatting and content changes, including No Observed Effect Concentration (NOEC) and no unacceptable level of chronic toxicity at the IWC. The proposed TST method of interpreting whole effluent toxicity (WET) testing results provides the Hawai'i Department of Health with an additional tool to assess water quality.

HAR § 11-54-9.1 was amended by amending the definition of "Water quality certification" to ensure that the State's section 401 water quality certification program is consistent with paragraph 401(a)(1) of the Clean Water Act.

○ **Updates to reference cited**

The reference cited were updated in HAR § 11-54-10 to ensure the consistency with EPA's updates, and Hawai'i Revised Statutes, for example, Hawai'i Revised Statutes Chapter 342 was repealed in 1989 and was replaced with Chapter 342D in HAR § 11-54-7(e)(3).

Please refer to Attachment II - Ramseyer format of HAR Chapter 11-54, 2013, for amendments.

**21) HAR §§ 11-54-1, 11-54-5.1, 11-54-6, 11-54-8 amended**

Relating to: **Definitions; Inland water areas to be protected; Uses and specific criteria applicable to marine waters; Recreational criteria for state waters**

Adopted: 11/15/2014

Effective: 11/15/2014

RPC History: HAR Chapter 11-54, Water Quality Standards, was first approved by NOAA as RPCs on October 18, 1989. Amendments to HAR Chapter 11-54 were approved as RPCs by NOAA on July 18, 1990, June 7, 1993, September 18, 2001, respectively. Amendments to HAR § 11-54-4(b)(3) and § 11-54-8(b) were approved as RPCs on January 18, 2013.

Description of change: The revisions to HAR Chapter 11-54, Water Quality Standards, include, among other things, new definitions, clarification to the definition of State waters; clarification on the existing classification of State waters; corrected typographical error to specific criteria for embayments; modifications to the specific criteria for recreational areas; provisions for non-compliance with HAR 11-54; schedule of compliance clarification; provisions for intake credits; and minor writing mechanics revisions. For example,

HAR § 11-54-1 was amended by adding the definition of “Best management practices” which is based on the definitions contained in 40 CFR §§ 122.2 and 130.2 and would apply to both point and non-point source pollution control programs.

Additions to definition of “State waters” are for clarification and to be protective of water quality. Added definition of “drainage ditch” from HRS § 342D-1 and clarified that it excludes sanitary sewage. Added definition of “water pollution control system” for clarification.

HAR § 11-54-5.1 was revised for clarification purposes only by listing the specific water bodies that are Class 1 waters. As a result, the public and the applicants for NPDES permits and Section 401 WQCs do not have to research other regulations to determine the Class 1 water bodies. The water bodies in the proposed Appendix A are based on the existing requirements in HAR § 11-54-5.1. Accordingly, specific water body names in HAR § 11-54-6 were deleted and added to new Appendices B, C, and D. These amendments were made to be consistent with the proposed revision in HAR § 11-54-5.1, and to improve the overall readability of HAR Chapter 11-54.

HAR § 11-54-6(a)(2)(B)(3) corrects the typographical error in specific criteria for embayments.

HAR § 11-54-8 change specific criteria for recreational areas which include all state waters. The revision is to be consistent with EPA’s 2012 Recreational Water Quality Criteria recommendations for protecting human health in all coastal and non-coastal waters.

Please refer to Attachment II - Ramseyer version of HAR Chapter 11-54, 2014, for amendments.

**22) HAR §§ 11-55-01, 11-55-04, 11-55-19, 11-55-34.02, 11-55-34.04, 11-55-34.08**

Relating to: **Definitions; application for NPDES permit; Application of effluent standards and water quality standards; NPDES general permit; General permit conditions; Notice of intent**

Adopted: 10/21/2012

Effective: 10/21/2012

RPC History: HAR Chapter 11-55, Water Pollution Control, was first approved by NOAA as RPCs on July 18, 1990. Amendments to HAR Chapter 11-55 were approved as RPCs by NOAA on July 18, 1990, June 7, 1993, September 18, 2001, March 12, 2009, respectively. Deletions of HAR § 11-55-04(f), § 11-55-34.08(n) and § 11-55-38 were approved as RPCs on January 18, 2013.

Description of change: The latest amendments to HAR Chapter 11-55 with repeal of HAR §§ 11-55-04(f), 11-55-34.08(n) and 11-55-38, were submitted on October 23, 2012, and approved by NOAA as RPCs on January 18, 2013.

A series of definitions, including “Biological pesticide”, “Discharge of a pollutant”, and “Federal facility”, were amended and added to HAR § 11-55-01. The definition of “Pest” in HAR § 11-55-01 refers to the definitions as provided in HAR § 11-54-4(e)(1), which was revised to be consistent with the definition as provided in EPA’s Final Pesticide General Permit.

Definition of “Annual treatment area threshold” was added to HAR § 11-55-01, which means the additive area (in acres) or linear distance (in miles) in a calendar year to which a decision-maker is authorizing and/or performing pesticide applications in that area for activities covered under Appendix M – NPDES General Permit Authorizing Point Source Discharges from the Application of Pesticides.

HAR § 11-55-04 was amended for application for NPDES permit notice of intent, or conditional “no exposure” exclusion. For any discharge from a regulated concentrated animal feeding operations. The permit application shall be made under 40 CFR § 122.21.

HAR § 11-55-19 was amended for application of effluent standards and limitations, water quality standards, and other requirements. Nutrient management requirements and technical standards for concentrated animal feeding operations found in 40 CFR 122.42 is added as the requirements of federal law or regulations.

HAR §§ 11-55-34.02, 11-55-34.04 and 11-55-34.08 was amended accordingly by adding or referring to the list in Appendix M, titled “NPDES General Permit Authoring Point Source Discharges from the Application of Pesticides.” A notice of general permit coverage under this general permit expires five years after the effective date of this general permit, October 21, 2012.

Please refer to Attachment II - Ramseyer version of HAR Chapter 11-55, 2012, for amendments.

**23) HAR §§ 11-55-01, 11-55-04, 11-55-15, 11-55-34.02(b), 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 amended**  
Relating to: **Definitions; NPDES permit; Notice of intent; Notice of general permit coverage; Field citations; December 6, 2013 for NPDES General permits**

Adopted: 12/06/2013

Effective date: 12/06/2013

RPC History: HAR Chapter 11-55, Water Pollution Control, was first approved by NOAA as RPCs on July 18, 1990. Amendments to HAR Chapter 11-55 were approved as RPCs by NOAA on July 18, 1990, June 7, 1993, September 18, 2001, March 12, 2009, respectively. Deletions of

HAR § 11-55-04(f), § 11-55-34.08(n) and § 11-55-38 were approved as RPCs on January 18, 2013.

Description of change: The Department of Health (DOH) proposes to re-adopt, HAR Chapter 11-55, Water Pollution Control, with the following amendments:

NPDES General Permit coverage for discharges to State waters, HAR Chapter 11-55 Appendices B through L, expired at midnight, October 21, 2012. With the amendments, Appendices B, D, H, and I will expire four years from the effective date December 6, 2013. Appendices C, J, and L will expire five years from the effective date December 6, 2013.

HAR § 11-55-01 was amended with new date January 1, 2013 for “13 CFR” and July 1, 2012 for “40 CFR”.

HAR § 11-55-04 was amended to 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.

HAR § 11-55-15 was amended to allow the director of the State of Hawai‘i Department of Health administratively extend the NPDES permit until the effective date of the new permit for discharges that the permit covered prior to expiration.

Amendments to HAR §§ 11-55-34.02(b)(1) to (11) are to clearly identify the term of the permit and to stagger the expiration dates to prevent them from expiring on the same date. After this round of amendments, general permits expiring within three and four years will return back to a five year permit term.

HAR § 11-55-34.04(b) the title of Appendix was changed to “Department of Health Standard General Permit Conditions”.

HAR § 11-55-34.06(a) to (c) moved to HAR § 11-55-34.05(c) – (e) and the section was reserved for future amendments.

HAR § 11-55-34.08(j)(2) revised to be consistent with Appendix C. The revision clarifies that for emergency-related construction activities, the NOI may be submitted within 30 calendar days after the start of the construction activity. For non-emergency projects, the existing requirement to submit the Notice of Intent (NOI) 30 calendar days prior to the start of the construction activity remains unchanged.

HAR § 11-55-34.09(d) revised to (1) Clarify that an administrative extension may be granted automatically, and (2) Add a provision to automatically terminate an administrative extension for any non-compliance.

HAR § 11-55-34.09(e) replaced “director” with “department.” Notification by the Department of Health instead of by the Director of Health will help to decrease the processing time.

HAR § 11-55-34.11 revised to be consistent with 40 CFR 122.28 where general permits may only be revoked and/or terminated. Any change which would affect the information within an existing

Notice of General Permit Coverage (NGPC) will require submittal of a new NOI and reissuance of the NGPC.

HAR § 11-55-40 revised to clarify the common and easily verifiable situations in which a Field Citation may be issued and to ensure consistency and accuracy with the HRS § 342D-50(a)-(d).

Chapter 11-55, Appendices A through L revisions include: “October 2007” was replaced with “Dec 6, 2013.” Appendix A, Section 34(d) deleted requiring the coordinates of the separate storm water drainage system as the locations of the drainage system are required to be submitted with Notice of Intent. Appendix A, Section 34(g) deleted requiring maps on paper, and a U.S. Geological Survey Map. Appendix A, Section 34(h) deleted requiring flow chart for Appendices B, C, and K since drainage pattern maps are already required in these appendices.

Please refer to Attachment II - Ramseyer version of HAR Chapter 11-55, 2013, for amendments.

#### **24) HAR § 11-55-40**

Relating to: **Field Citations; Non-Compliance with NPDES requirements**

Adopted: 11/15/2014

Effective: 11/15/2014

RPC History: HAR Chapter 11-55, Water Pollution Control, was first approved by NOAA as RPCs on July 18, 1990. Amendments to HAR Chapter 11-55 were approved as RPCs by NOAA on July 18, 1990, June 7, 1993, September 18, 2001, March 12, 2009, respectively. Deletions of HAR § 11-55-04(f), § 11-55-34.08(n) and § 11-55-38 were approved as RPCs on January 18, 2013.

Description of change: HAR § 11-55-40 was amended to authorize citations to effectively and quickly settle easily verifiable violations of HRS Chapter 342D, and HAR Chapter 11-55, including penalties. Provides the amount of fines for the first and subsequent violations.

Please refer to Attachment II - Ramseyer version of HAR Chapter 11-55, 2014, for amendments.

#### **25) 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**

Relating to: **Definitions; Critical wastewater disposal areas; General requirements; Requirements for non-domestic wastewater; Other requirements; Public access to information; Incorporation by reference; Treatment unit requirements; Wastewater effluent requirements; Recycled water systems; Additional monitoring, recordkeeping and reporting; General requirements for individual wastewater systems; Site evaluation; Spacing of individual wastewater systems; Specific requirements for new and proposed treatment units, for new and proposed disposal systems; Cesspools; Application for and review of building permits and individual wastewater systems; General requirements and prohibitions; Land application of exceptional quality wastewater sludge; Land application of other than exceptional quality wastewater sludge, to agricultural lands, forest, public contact site, or reclamation site; Land application of domestic septage to**

**agricultural land, forest, or reclamation site; Issuance of individual permits, duration, conditions; Requiring an individual permit; Standard permit conditions; Modification or revocation and reissuance of permits; Renewal of permits; Offer to settle; and Resolution of field citation.**

Adopted: 03/21/2016

Effective: 03/21/2016

RPC History: HAR Chapter 11-62, Wastewater Systems, was first approved as RPCs by NOAA on October 18, 1989, and amendments to HAR Chapter 11-62 were approved as RPCs on July 18, 1990, June 7, 1993 and March 12, 2009, respectively.

Description of change: The amendments to HAR Chapter 11-62 include: 1) 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; 2) Changing definitions in §11-62-03 to clarify the meaning of terms used in the rules and delete terms no longer included; 3) Eliminating the “general permit” and clarifying that the Wastewater Branch of Department of Health issues construction approvals and approvals to use, not permits; 4) Increasing from one to five years after the Director approves a wastewater system the period in which a building permit must be issued and wastewater system must be constructed; 5) Clarifying when a building modification may trigger a requirement to upgrade a system; 6) Consolidating requirements for non-domestic wastewater; 7) Streamlining by allowing engineers to submit certification statements for treatment works; 8) Requiring new facilities > 100,000 gpd to dewater their sludge; 9) 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; 10) Add restrictions to prevent the direct discharge of effluent from an aerobic treatment unit to groundwater; and 11) Revising provisions of field citations, and revising spill reporting requirements.

Please refer to Attachment II - Ramseyer version of HAR Chapter 11-62 for amendments.

## **26) HAR §§ 13-124-2, 13-124-3, 13-124-4, 13-124-7, 13-124-8, and Exhibits 1-5**

Relating to: **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.**

Adopted: 12/12/2014

Effective: 02/27/2015

RPC History: HAR Chapter 13-124, Indigenous Wildlife, Endangered and Threatened Wildlife, Injurious Wildlife, Introduced Wild Birds and Introduced Wildlife, was first approved as RPCs by NOAA on July 18, 1990. Amendments to HAR Chapter 13-124, were approved as RPCs on September 18, 2001.

Description of change: The amendments to HAR Chapter 13-124 include: 1) amending the title of the chapter by adding injurious wildlife and introduced wildlife; 2) re-organizing chapter into subchapters to clarify statutory authority; 3) amend HAR § 13-124-2 “Definitions” to provide definitions for the terms “Introduce” and “Release”, and amend the definitions of “Introduced wildlife” ”Injurious” and “Wildlife”; 4) amending Subchapter 2 Indigenous, Injurious, Introduced

Wild Birds, and Introduced Wildlife, including HAR § 13-124-3 “Prohibited activities” with respect to indigenous wildlife and introduced wild birds, to prohibit the transport and release of injurious wildlife; 5) amending HAR § 13-124-4 to clarify scientific, propagation and educational permits for indigenous, injurious, introduced wild birds, and introduced wildlife; 6) amending HAR § 13-124-7 to protect agriculture or aquaculture, native plants or wildlife, and human health from species of introduced wildlife; 7) amending HAR § 13-124-8 “Penalty” to introduce a fine system pursuant to HRS Chapter 183D, and add seizure and forfeiture language; and 8) updating Exhibits 1 through 5 regarding list of species of indigenous wildlife, endangered wildlife, threatened wildlife and injurious wildlife in Hawai‘i, and introduced wild birds other than game birds.

Please refer to Attachment II - Ramseyer version of HAR Chapter 13-124 for revisions.

**27) 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**  
**Relating to: Use of small boat harbors, offshore mooring, and generally applicable provisions; Boat operation; Commercial activities; Allocation of berths and offshore mooring**

Adopted: 04/25/2014

Effective: 09/25/2014

RPC History: HAR Chapter 13-231, Small Boat, was first approved by NOAA OCRM as RPC to the Hawai‘i CZM Program on October 17, 1997.

Description of change: The administrative jurisdiction for recreational boating and related vessel activities was transferred from the State Department of Transportation, Harbors Division, to the Department of Land and Natural Resources, Division of Boating and Ocean Recreation, effective July 1, 1992, in accordance with Act 272, Session Laws of Hawai‘i 1991.

This RPC request is for the following amendments to HAR Chapter 13-231:

The chapter title was amended from “Small Boat Harbors” to “Small Boat Facilities and Provisions Generally Applicable to All State Navigable Waters”

The title of Subchapter 1 was amended from “Use of Small Boat Harbors” to “Use of Small Boat Harbors, Offshore Mooring, and Generally Applicable Provisions”

Subchapter 5 title was amended from “Allocation of Berths” to “Allocation of Berths and Offshore Mooring”

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 are amended. The amendments include: the date set for agreement set forth in Exhibit A, for the use of small boat harbor property, facilities and offshore mooring areas, was changed from May 15, 1991 to July 2012; Navigable streams were included for use permits; Catamaran registration certificate as a commercial permit for Waikīkī ocean waters and beach; Inspections include offshore mooring area; Clarified and added more details on joint and several liability;

non-transferability of use permits; Keehi boat harbors were specified as small boat harbors; and the issuance of a principal habitation permit is determined by the department to not be detrimental to the operations of the harbor or any planned use of the harbor.

HAR § 13-231-45 is amended for requirements of vessel inspections.

HAR §§ 13-231-55 to 13-231-67 are amended for berthing commercial vessels at Ala Wai or Keehi small boat harbor with total number of valid commercial use permits may be issued for vessels, for berthing or using commercial vessels in state small boat harbors; limitations on commercial use permits for vessels moored elsewhere; commercial use permits and catamaran registration certificates, and their reissuance; insurance requirements; limitation on commercial use permits.

HAR § 13-231-70 is amended for Water taxi operations that may be permitted at all small boat harbors.

HAR §§ 13-231-85.5 to 13-231-89 are amended for allocation of offshore mooring permits, categorizes of berths, and available berth or offshore moorings.

Please refer to Attachment II - Ramseyer version of HAR Chapter 13-231 for revisions.

**28) 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**

Relating to: **Waikīkī and Kā‘anapali catamarans; Waikīkī and Kā‘anapali beach and ocean waters; Commercial activities**

Adopted: 04/25/2014

Effective: 09/25/2014

RPC History: HAR Chapter 13-251, Waikīkī and Kā‘anapali Ocean Waters, was first approved by NOAA OCRM as RPC to the Hawai‘i CZM Program on October 17, 1997.

Description of change: The administrative jurisdiction for recreational boating and related vessel activities was transferred from the Department of Transportation, Harbors Division, to the Department of Land and Natural Resources, Division of Boating and Ocean Recreation, effective July 1, 1992, in accordance with Act 272, Session Laws of Hawai‘i 1991.

HAR Chapter 13-251 was first approved by NOAA Office of Ocean and Coastal Resource Management as RPC to the Hawai‘i CZM Program on October 17, 1997. This RPC request is for the following amendments to HAR Chapter 13-251:

Titles of HAR Chapter 13-251 and Subchapters 2, 5, and 6 are amended as follows:

Title of HAR Chapter 13-251 title was amended from “Waikīkī and Kā‘anapali Ocean Waters” to “Commercial Activities on State Ocean Waters, Navigable Streams, and Beaches”

Subchapter 2 title was amended from “Suspension or Revocation of Permits” to “Suspension or Revocation of Operator Permits”.

Subchapter 5 title was amended from “Registration” to “Waikīkī and Kā‘anapali Catamarans”.

Subchapter 6 title was amended from “Rules of the Road” to “Waikīkī and Kā‘anapali Beach and Ocean Waters.”

HAR §§ 13-251-2 to 13-151-11, 13-251-16 to 13-251-20, 13-251-26 to 13-251-28, 13-251-66 to 13-251-67, and 13-251-69 were amended for minor format change, which will not be included for this submittal.

HAR §§ 13-251-36 to 13-251-46, 13-251-48 to 13-251-52 were amended for registration certificate and/or commercial use permit, HAR §§ 13-251-57 to 13-251-58, and 13-251-76 were amended for Waikīkī ocean waters and Kā‘anapali beach and ocean waters. Historical note under § 13-251-76 was amended accordingly.

Please refer to Attachment II - Ramseyer version of HAR Chapter 13-251 for revisions.

### **29) HAR §§ 13-256-3 and 13-256-4**

Relating to: **Commercial operator permit requirements; Commercial vessel and water sports equipment registration requirements**

Adopted: 04/25/2014

Effective: 09/25/2014

RPC History: HAR Chapter 13-256, Ocean Recreation Management Rules and Areas, was first approved by NOAA OCRM as RPC to the Hawai‘i CZM Program on October 17, 1997.

Description of change: The administrative jurisdiction for recreational boating and related vessel activities was transferred from the Department of Transportation, Harbors Division, to the Department of Land and Natural Resources, Division of Boating and Ocean Recreation, effective July 1, 1992, in accordance with Act 272, Session Laws of Hawai‘i 1991.

This PRC request is for the following amendments to HAR §§ 13-256-3 and 13-156-4. All commercial vessels, water craft or water sports equipment shall be registered with the DLNR for commercial use in compliance with HAR §§ 13-231-50 to 13-231-70. HAR Chapter 13-231 was approved to integrate into the Hawai‘i CZM as RPC by NOAA on October 17, 1997. Please refer to Item 26 of this submittal for the request of RPC for the amendments to HAR Chapter 13-231, adopted April 25, 2014, and effective September 25, 2014.

Please refer to Attachment II - Ramseyer version of HAR §§ 13-256-3 and 256-4 for revisions.

### **30) HAR § 13-256-73.13**

Relating to: **Ahu O Laka Saftey Zone**

Adopted: 05/08/2015

Effective: 07/25/2015

RPC History: HAR Chapter 13-256, Ocean Recreation Management Rules and Areas, was first approved by NOAA OCRM as RPC to the Hawai‘i CZM Program on October 17, 1997.

Description of change: The administrative jurisdiction for recreational boating and related vessel activities was transferred from the State Department of Transportation, Harbors Division, to the Department of Land and Natural Resources, Division of Boating and Ocean Recreation, effective July 1, 1992, in accordance with Act 272, Session Laws of Hawai‘i 1991.

The Ahu O Laka safety zone is the area encompassed within the boundaries designated as Zone J shown on Exhibit O-9 “Kaneohe Bay Ocean Waters” dated April 21, 2015.

Please refer to Attachment II - Ramseyer version of HAR § 13-256-73.13 for revisions.

## **Deleted Regulatory Rules**

### **31) HAR Chapter 13-60.3**

Relating to: **West Hawai‘i Regional Fisheries Management Area, Hawai‘i**

Adopted: 12/26/2013

Effective: 12/26/2013

RPC History: HAR Chapter 13-60.3, West Hawai‘i Regional Fisheries Management Area, Hawai‘i, was approved as RPC to Hawai‘i CZM Program on September 18, 2001. Amendments to HAR §§ 13-60.3-2, 60.3-3, 60.3-4, 60.3-5 and 60.3-6, were approved to integrate into the Hawai‘i CZM Program as RPCs on March 12, 2009.

Description of change: As a result of adoption of HAR Chapter 13-60.4, HAR Chapter 13-60.3 is repealed accordingly.

HAR Chapter 13-60.3 was approved as RPC to the Hawai‘i CZM Program on September 18, 2001. Amendments to HAR §§ 13-60.3-2, 3, 4 and 6 were approved to integrate into the Hawai‘i CZM Program as RPCs on March 12, 2009.

### **32) HAR § 13-126-22**

Relating to: **Aircraft**

Adopted: 12/11/2009

Effective: 01/22/2010

RPC History: HAR Chapter 13-126, Rules Regulating Wildlife Sanctuaries, with the exception of Ka‘ula Island, was approved by NOAA as RPC to the Hawai‘i CZM Program on January 18, 2013.

Description of change: HAR §13-126-22 Aircraft. No person shall land, launch, or cause any aircraft to approach within 500 feet of any sanctuary, including airplanes, airships, balloons, gliders, hang gliders, para-gliders, helicopters, parachutes, dirigibles, and other similar means of conveyance, except with the written permission of the board or its authorized representative or in the case of an emergency.

The Federal Aviation Act preempts state regulation of aircraft in flight, except around airports. HAR §13-126-22 is not enforceable as applied to aircraft in flight. We proposes to remove HAR §13-126-22 from the list of enforceable policies.

Please refer to Attachment III - HAR §13-126-22 for removal.

### **33) HAR Chapter 13-190**

Relating to: **Dams and Reservoirs**

Adopted: 11/22/2010

Effective: 02/20/2012

RPC History: HAR Chapter 13-190, Dams and Reservoirs, was first approved by NOAA OCRM as RPC to the Hawai'i CZM Program on June 7, 1993.

Description of change: HAR Chapter 13-190 was first approved by NOAA Office of Ocean and Coastal Resource Management as RPC to the Hawai'i CZM Program on June 7, 1993.

As a result of adoption of HAR Chapter 13-190.1, HAR Chapter 13-190 is repealed accordingly.

### **34) HAR §§ 13-231-72, 13-231-76, and 13-231-90**

Relating to: **Small inter-island passenger vessel permit; Kewalo basin; Offer of Category I Berth Ala Wai harbor**

Adopted: 04/25/2014

Effective: 09/25/2014

RPC History: HAR Chapter 13-231, Small Boat, was first approved by NOAA OCRM as RPC to the Hawai'i CZM Program on October 17, 1997.

Description of change: The administrative jurisdiction for recreational boating and related vessel activities was transferred from the State Department of Transportation, Harbors Division, to the Department of Land and Natural Resources, Division of Boating and Ocean Recreation, effective July 1, 1992, in accordance with Act 272, Session Laws of Hawai'i 1991.

HAR Chapter 13-231 was first approved by NOAA OCRM as RPC to the Hawai'i CZM Program on October 17, 1997.

HAR § 13-231-72 Small inter-island passenger vessel permit, HAR § 13-231-76 Kewalo basin, and § 13-231-90 Offer of category I (breakwater) berth Ala Wai harbor, are repealed.

Please refer to Attachment III - Ramseyer version of HAR Chapter 13-231 for revisions.

### **35) 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**

Relating to: **Owner of passenger-carrying vessels; Operations of vessels without proper identification; Rules of the road; Intoxication; Catamarans, mooring of.**

Adopted: 04/25/2014

Effective: 09/25/2014

RPC History: HAR Chapter 13-251, Waikīkī and Kā‘anapali Ocean Waters, was first approved by NOAA OCRM as RPC to the Hawai‘i CZM Program on October 17, 1997.

Description of change: The administrative jurisdiction for recreational boating and related vessel activities was transferred from the State Department of Transportation, Harbors Division, to the Department of Land and Natural Resources, Division of Boating and Ocean Recreation, effective July 1, 1992, in accordance with Act 272, Session Laws of Hawai‘i 1991.

HAR Chapter 13-251 was first approved by NOAA as RPC to the Hawai‘i CZM Program on October 17, 1997.

Subsection 4 including HAR § 13-251-31 through § 13-251-32, Owner of passenger-carrying vessels, for rent surfboards, for rent sailboards, for charter or rent motorboats, and for rent watersports equipment proof of financial responsibility, are repealed.

The repealed subsections also include:

HAR § 13-251-47, Operations of vessels without proper identification

HAR § 13-251-56, Rules of the road,

HAR §§ 13-251-59 to § 13-251-60, Intoxication and Careless operation, and

HAR § 13-251-68 Catamarans; mooring of.

Please refer to Attachment III - Ramseyer version of HAR Chapter 13-251 for revisions.

## **Conclusion**

*Program Change Guidance: Coastal Zone Management Act and Changes to State and Territory Coastal Management Programs, July 1996*, states that a substantial change is a high threshold based on a case-by-case determination. Such determination is made by reviewing indicators of substantial change, such as whether new or revised enforceable policies address coastal uses or resources not previously managed, or major changes in the way a state CZM Program manages coastal uses or resources. Pursuant to CZM Act § 306(e) and 15 CFR § 923.80, the Hawai‘i CZM Program finds that the statutory and regulatory changes submitted for approval will not substantially change the enforceable authorities of Hawai‘i CZM Program, and coastal uses subject to management under the Hawai‘i CZM Program, or affect national interests in the state’s coastal zone. The submitted changes to the Hawai‘i CZM Program will not substantially change the land and water uses subject to management, or the enforceable authorities or organizational structure within the coastal zone. The submitted changes increase the ability of Hawai‘i CZM Program network agencies to manage, preserve, and sustain the coastal resources of the State of Hawai‘i.

According to the standards set forth by 15 CFR § 923.80(d), procedures set forth by 15 CFR § 923.84, and *Program Change Guidance of July 1996*, the Hawai‘i CZM Program submits the above statutory and regulatory changes as RPCs to the Hawai‘i CZM Program, and requests concurrence from NOAA’s OCM.

## Request List for Routine Program Changes

Name/Description of State or Local Law/Regulation		Approved Incorporation into the Hawai'i CZM Program by NOAA OCRM	State/Local Legal Citation	Changes to the Law/Regulation	Effect of Changes on the CZM Program	Date Adopted	Date Effective in State
			<b>ADDED</b>				
1	HRS Chapter 115, Public Access to Coastal and Inland Recreational Areas	Enacted 1978 Amended 7/18/1990; 3/12/2009	<b>HRS §§ 115-5(b), 115-9(a)(4), 115-9(b)(8) and 115-10</b> 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>	<ul style="list-style-type: none"> <li>Authorizes the DLNR to require landowners to remove their human-induced, enhanced, or unmaintained vegetation that interferes or encroaches into beach transit corridors.</li> <li>Benefits public access along the beach from prohibiting landowner's human-induced vegetation.</li> </ul>	06/02/2010	06/02/2010; 06/29/2013
2	HRS Chapter 205A Coastal Zone Management	Enacted 1978 Amended 7/1/1984; 10/20/1986; 10/18/1989; 7/18/1990; 6/7/1993; 10/17/1997; 9/18/2001; 1/18/2013	<b>HRS §§ 205A-2(c)(9)(D) and 205A-2(c)(9)(E)</b> 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>	<ul style="list-style-type: none"> <li>Authorizes the DLNR to require landowners to remove their human-induced, enhanced, or unmaintained vegetation that interferes or encroaches into beach transit corridors.</li> <li>The counties apply their special management area and shoreline setback rules and regulations to enforce the objectives and policies set forth in HRS § 205A-2, including the prohibition of landowner's human-induced, enhanced, or unmaintained vegetation that interferes or encroaches into beach transit corridors.</li> </ul>	06/02/2010	06/02/2010; 06/29/2013
3	HRS Chapter 266 Harbors	Enacted 1978 Amended 7/1/1984; 10/31/1985;	<b>HRS § 266-2.2</b> Exemption from conservation district permitting	<ul style="list-style-type: none"> <li>Added exemption from conservation district permitting and site plan approval requirements</li> </ul>	<ul style="list-style-type: none"> <li>Allows the Harbors Division of the State Department of Transportation to plan and more effectively implement projects in a timely</li> </ul>	05/21/2013	05/21/2013

Name/Description of State or Local Law/Regulation		Approved Incorporation into the Hawai'i CZM Program by NOAA OCRM	State/Local Legal Citation	Changes to the Law/Regulation	Effect of Changes on the CZM Program	Date Adopted	Date Effective in State
		10/20/1986; 10/15/1987; 10/18/1989; 7/18/1990; 6/7/1993	and site plan approval requirements		manner to meet the growing needs of the maritime industry.		
4	HAR Chapter 11-23 Underground Injection Control	Enacted 6/7/1993	<b>HAR § 11-23-24</b> 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>	<ul style="list-style-type: none"> <li>The timely processing and timeline clarification for completed UIC permit applications helps the State UIC Program to protect the quality of the state's underground sources of drinking water from pollution by subsurface disposal of fluids.</li> </ul>	10/21/2000	10/21/2000
5	HAR Chapter 11-54 Water Quality Standards	Enacted 10/18/1989 Amended 7/18/1990; 6/7/1993; 9/18/2001; 1/18/2013	<b>HAR § 11-54-4(e)</b> Pesticide application	<ul style="list-style-type: none"> <li>Added pesticide application to include certain restrictions on the use of pesticides</li> </ul>	<ul style="list-style-type: none"> <li>Adding HAR § 11-54-4(e) is necessary for the State of Hawai'i to issue NPDES general permits to discharger of pesticides into state waters without violating Hawai'i's Water Quality Standards.</li> </ul>	10/21/2012	10/21/2012
6	HAR Chapter 11-54 Water Quality Standards	Enacted 10/18/1989; Amended 7/18/1990; 6/7/1993; 9/18/2001; 1/18/2013	<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>	<ul style="list-style-type: none"> <li>The added HAR § 11-54-4(b), authorizes that the director may order penalties and fines in HRS Chapter 342D against a person who discharges, or causes or allows water pollutants to enter State waters and cause violations of discharges.</li> <li>Intake credits can be applied to both technology-based effluent limits in HAR Chapter 11-55 and water quality-based effluent limits in HAR Chapter 11-54.</li> </ul>	11/15/2014	11/15/2014

Name/Description of State or Local Law/Regulation		Approved Incorporation into the Hawai'i CZM Program by NOAA OCRM	State/Local Legal Citation	Changes to the Law/Regulation	Effect of Changes on the CZM Program	Date Adopted	Date Effective in State
7	HAR Chapter 11-55 Water Pollution Control	Enacted 7/18/1990 Amended 6/7/1993; 9/18/2001; 3/12/2009; 1/18/2013	<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>	<ul style="list-style-type: none"> <li>NPDES General Permit Authorizing Point Source Discharges from the application of pesticides covers point source discharges from pesticide applications to State waters.</li> <li>Minimizes point source discharges from application of biological pesticides and chemical pesticides that leave a residue when a pesticide is selected as the preferred pest management option.</li> </ul>	10/21/2012	10/21/2012
8	HAR Chapter 11-55 Water Pollution Control	Enacted 7/18/1990 Amended 6/7/1993; 9/18/2001; 3/12/2009; 1/18/2013	<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>	<ul style="list-style-type: none"> <li>Requires any activity and/or discharge that has commenced prior to obtaining the required coverage under a general permit to apply for an individual NPDES permit.</li> <li>For construction activities which have commenced prior to obtaining general permit coverage, restoration of the site to preconstruction conditions may re-qualify it for coverage under the general permit.</li> </ul>	12/06/2013	12/06/2013
9	HAR Chapter 11-55 Water Pollution Control	Enacted 7/18/1990 Amended 6/7/1993; 9/18/2001; 3/12/2009; 1/18/2013	<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>	<ul style="list-style-type: none"> <li>Allows the NPDES permit effluent limit to be adjusted based on the concentration of that pollutant in the intake water, and protect human health in all coastal and non-coastal waters.</li> </ul>	11/15/2014	11/15/2014
10	HAR Chapter 13-60.3 West Hawai'i Regional	Enacted 9/18/2001 Amended	<b>HAR Chapter 13-60.4</b> West Hawai'i Regional	Adopted new chapter relating to West Hawai'i Regional Fishery Management Area, Hawai'i	<ul style="list-style-type: none"> <li>HAR Chapter 13-60.4 is based substantially upon Chapter 13-60.3, which was repealed.</li> </ul>	12/26/2013	12/26/2013

Name/Description of State or Local Law/Regulation		Approved Incorporation into the Hawai'i CZM Program by NOAA OCRM	State/Local Legal Citation	Changes to the Law/Regulation	Effect of Changes on the CZM Program	Date Adopted	Date Effective in State
	Fisheries Management Area, Hawai'i	3/12/2009	Fisheries Management Area, Hawai'i		<ul style="list-style-type: none"> <li>• Does not substantially change the land and water uses subject to management or the enforceable authorities or organizational structure within the coastal zone.</li> <li>• Minimizes user conflicts and resource depletion in the West Hawai'i Regional Fishery Management Area</li> <li>• Provides a 10-year nearshore “not take” rest period with limited exceptions to allow for the recovery of reef fish stocks prior to the implementation of a fishery management plan for Ka'ūpūlehu.</li> </ul>		
11	HAR Chapter 13-60.8 Hā'ena Community-Based Subsistence Fishing Area, Kaua'i	New adoption	<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	<ul style="list-style-type: none"> <li>• Establishes administrative rules and regulations governing marine resource uses and activities within the legislatively designated Hā'ena Community-Based Subsistence Fishing Area, Kaua'i.</li> <li>• Reaffirms traditional and customary native Hawai'ian subsistence fishing practices within the ahupua'a of Hā'ena.</li> <li>• Does not substantially change the land and water uses subject to management or the enforceable authorities or organizational structure within the coastal zone.</li> </ul>	08/14/2015	08/14/2015

Name/Description of State or Local Law/Regulation		Approved Incorporation into the Hawai'i CZM Program by NOAA OCRM	State/Local Legal Citation	Changes to the Law/Regulation	Effect of Changes on the CZM Program	Date Adopted	Date Effective in State
12	HAR Chapter 13-95.1 Island-based Fisheries Rules, Maui	New adoption	<b>HAR Chapter 13-95.1</b> Island-based Fisheries Rules, Maui	Adopted new chapter relating to Maui island-based fisheries	<ul style="list-style-type: none"> <li>Provides enforceable policies to prohibit the take or possession of aquatic life from, in or on the lands or waters of Maui Island subject to state jurisdiction or control.</li> <li>Does not substantially change the land and water uses subject to management or the enforceable authorities or organizational structure within the coastal zone.</li> </ul>	11/01/2014	11/01/2014
13	HAR Chapter 13-124 Indigenous Wildlife, Endangered and Threatened Wildlife, and Introduced Wild Birds	Enacted 7/18/1990 Amended 9/18/2001	<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>	<ul style="list-style-type: none"> <li>The Hawai'i CZM area encompasses the entire State.</li> <li>Provides enforceable policies to conserve, manage, protect, and enhance indigenous wildlife, and manage introduced birds.</li> <li>No person shall or attempt to take, possess, sell, offer for sale or transport any endangered and threatened species of wildlife except authorized persons, enforcements agents, researchers or inspectors, or authorized scientific or educational purposes.</li> </ul>	12/12/2014	02/27/2015
14	HAR Chapter 13-190 Dams and Reservoirs	Enacted 6/7/1993	<b>HAR Chapter 13-190.1</b> Dams and Reservoirs	Adopted new chapter relating to Dams and Reservoirs	<ul style="list-style-type: none"> <li>HAR Chapter 13-190 is repealed, and HAR Chapter 13-190.1 is adopted.</li> <li>Implements the new requirements, penalties and fees allowed to protect the health, safety and welfare of the citizens of the State by reducing the risk of failure of such dams.</li> <li>Does not substantially change the</li> </ul>	11/22/2010	02/20/2012

Name/Description of State or Local Law/Regulation		Approved Incorporation into the Hawai'i CZM Program by NOAA OCRM	State/Local Legal Citation	Changes to the Law/Regulation	Effect of Changes on the CZM Program	Date Adopted	Date Effective in State
					land and water uses subject to management or the enforceable authorities or organizational structure within the coastal zone.		
15	HAR Chapter 13-251 Commercial Activities on State Ocean Waters, Navigable Streams, and Beaches	Enacted 10/17/1997	<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>	<ul style="list-style-type: none"> <li>No regular or extensive use of any state property or facilities or ocean waters or navigable streams for private gain or purposes shall be allowed without benefits and returns to the public.</li> <li>Authorizes the issuance of a commercial use permit or registration certificates to commercial catamaran operations occurring on Waikīkī and Kā'anapali beach and near shore waters.</li> <li>Establishes minimum requirements for catamaran commercial use permits and registration certificates.</li> </ul>	04/25/2014	09/25/2014
16	Title MC-15, Chapter 111 Rules for the Design of Storm Water Treatment Best Management Practices	New adoption	<b>Title MC-15, Chapter 111</b> Rules for the Design of Storm Water Treatment Best Management Practices	Adopted new chapter relating to Design of Storm Water Treatment Best Management Practices	<ul style="list-style-type: none"> <li>Establishes controls on the timing and rate of discharge of storm water runoff, and reduce storm water runoff pollution to the maximum extent practicable through the implementation of best management practices (BMPs) and engineering control facilities.</li> <li>Requires development to be designed to mitigate water quality impacts from small frequent storms.</li> </ul>	11/09/2012	11/25/2012

Name/Description of State or Local Law/Regulation		Approved Incorporation into the Hawai'i CZM Program by NOAA OCRM	State/Local Legal Citation	Changes to the Law/Regulation	Effect of Changes on the CZM Program	Date Adopted	Date Effective in State
17	Maui County Code (MCC) § 18.20.135 Post-construction Stormwater Quality Best Management Practices	New adoption	<b>Maui County Code (MCC) § 18.20.135</b> Post-construction Stormwater Quality Best Management Practices	Adopted new ordinance of Post-construction Stormwater Quality Best Management Practices, relating to Subdivision Improvements	<ul style="list-style-type: none"> <li>Requires post-construction stormwater quality BMPs, and authorizes the director of public works to adopt administrative rules to implement such practices for all subdivision.</li> <li>The post-construction BMPs enforce stormwater runoff management and reduces the potential pollution on state waters from storm water runoff by post-construction.</li> </ul>	01/09/2012	07/07/2012
18	Maui County Code (MCC) § 16.26.3306 Post-construction Stormwater Quality Best Management Practices	New adoption	<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	<ul style="list-style-type: none"> <li>Requires post-construction stormwater quality best management practices, and authorizes the director of public works to adopt administrative rules to implement such practices for new structures, remodeling, reconstruction, repairs, additions, and similar work.</li> <li>The post-construction BMPs enforce stormwater runoff management and reduces the potential pollution on state waters from storm water runoff by post-construction.</li> </ul>	01/09/2012	07/07/2012
			<b>MODIFIED</b>				
19	Article 27, Chapter 8, Kaua'i County Code (KCC) 1987, Shoreline Setback and Coastal Protection	Enacted and amended 1/18/2013	<b>Kaua'i County Ordinance 979, Article 27, Chapter 8, Kaua'i County Code 1987</b> Shoreline Setback	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	<ul style="list-style-type: none"> <li>Strengthens shoreline setback requirements, by incorporating science-based erosion rates established in the <i>Kaua'i Coastal Erosion Study</i> and current coastal hazard mitigation best practices.</li> <li>Promotes proper siting of structures</li> </ul>	11/19/2014	12/05/2014

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		and Coastal Protection	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.	<p>and reduced use of the shoreline setback area for structures and ensures the longevity and integrity of Kaua'i's coastal and beach resources.</p> <ul style="list-style-type: none"> <li>• Gives the Planning Director flexibility in applying shoreline setback law to large parcels that abut the shoreline where the proposed improvement is sited in a location that will not increase erosion or impact natural shoreline processes.</li> </ul>		
20 HAR Chapter 11-54 Water Quality Standards	Enacted 10/18/1989 Amended 7/18/1990; 6/7/1993; 9/18/2001; 1/18/2013	<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	<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>	<ul style="list-style-type: none"> <li>• Includes the addition of EPA-required anti-degradation language to comply with Section 316 of the Federal Clean Water Act.</li> <li>• Allows the state to specify the use of a new EPA-developed alternative statistical test method (the Test of Significant Toxicity, TST) for determining toxicity effects of effluents from NPDES permittees.</li> </ul>	12/06/2013	12/06/2013

Name/Description of State or Local Law/Regulation		Approved Incorporation into the Hawai'i CZM Program by NOAA OCRM	State/Local Legal Citation	Changes to the Law/Regulation	Effect of Changes on the CZM Program	Date Adopted	Date Effective in State
			for recreational areas; Zone of mixing; Water quality certification				
21	HAR Chapter 11-54 Water Quality Standards	Enacted 10/18/1989 Amended 7/18/1990; 6/7/1993; 9/18/2001; 1/18/2013	<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	<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>	<ul style="list-style-type: none"> <li>Ensures that water pollutants that enter State waters from all sources, point or non-point, shall comply with applicable requirements as established in HAR, Chapter 11-54.</li> <li>Amendments to specific criteria for recreational areas, is to be consistent with EPA's 2012 Recreational Water Quality Criteria recommendations (DPA-820-F-12-061, December 2012) for protecting human health in all coastal and non-coastal waters.</li> </ul>	11/15/2014	11/15/2014
22	HAR Chapter 11-55 Water Pollution Control	Enacted 7/18/1990 Amended 6/7/1993; 3/12/2009; 9/18/2001; 1/18/2013.	<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	<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,</li> </ul>	<ul style="list-style-type: none"> <li>Authorizes point source discharges from the application of pesticides, covers point source discharges from pesticide applications to State waters only.</li> <li>Minimizes point source discharges from application of biological pesticides and chemical pesticides that leave a residue when a pesticide is selected as the preferred pest management option.</li> </ul>	10/21/2012	10/21/2012

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				titled "NPDES General Permit Authoring Point Source Discharges from the Application of Pesticides."			
23	HAR Chapter 11-55 Water Pollution Control	Enacted 7/18/1990 Amended 6/7/1993; 9/18/2001; 3/12/2009; 1/18/2013.	<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	<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>	<ul style="list-style-type: none"> <li>Potential requirement of NPDES general permit for less than one acre construction land area.</li> <li>NPDES General Permit coverage for discharges to State waters, HAR Chapter 11-55 Appendices B through L, expired at midnight, October 21, 2012. The Department of Health proposes to re-adopt, HAR Chapter 11-55, Water Pollution Control to stagger the expiration dates to prevent them from expiring on the same date.</li> <li>After this round of amendments, general permits expiring within three and four years will return back to a five year permit term.</li> </ul>	12/06/2013	12/06/2013
24	HAR Chapter 11-55 Water Pollution Control	Enacted 7/18/1990 Amended 6/7/1993; 9/18/2001; 3/12/2009; 1/18/2013.	<b>HAR § 11-55-40</b> Field Citations; Non-Compliance with NPDES Requirements	<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>	<ul style="list-style-type: none"> <li>Authorizes citations to effectively and quickly settle easily verifiable violations of HRS Chapter 342D, and HAR Chapter 11-55, including penalties.</li> </ul>	11/15/2014	11/15/2014

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25 HAR Chapter 11-62, Wastewater Systems	Enacted 10/18/1989 Amended 7/18/1990; 6/7/1993; 3/12/2009.	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 relating to Prohibitions and General Requirements, Wastewater Treatment Works, Individual Wastewater Systems, Wastewater Sludge Use and Disposal, Wastewater	<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</li> </ul>	<ul style="list-style-type: none"> <li>• Prohibit new cesspools and upgrading the existing cesspools to sewer or septic systems to protect public health, water resources, and ocean environment.</li> <li>• Clarify that all areas of the State are critical wastewater disposal areas, and are not appropriate for construction of new cesspools.</li> <li>• Help to qualify for federal financial assistance under the Coastal Nonpoint Pollution Control Program.</li> </ul>	03/21/2016	03/21/2016

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			Management Permits and Registration, and Field Citations.	groundwater.			
26	HAR Chapter 13-124 Indigenous Wildlife, Endangered and Threatened Wildlife, and Introduced Wild Birds	Enacted 7/18/1990 Amended 9/18/2001.	<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.	<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> <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>	<ul style="list-style-type: none"> <li>• Provide enforceable policies to conserve, manage, protect, and enhance indigenous wildlife, and manage introduced birds.</li> <li>• Protect agriculture or aquaculture, native plants or wildlife, and human health from species of introduced wildlife.</li> <li>• Does not substantially change the land and water uses subject to management or the enforceable authorities or organizational structure within the coastal zone.</li> </ul>	12/12/2014	02/27/2015
27	HAR Chapter 13-231 Operation of Boats, Small Boat Harbors, and Use Permits for All Navigable Waters	Enacted 10/17/1997	<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-</b>	<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</li> </ul>	<ul style="list-style-type: none"> <li>• Places limits on the number of commercial use permits that may be issued for harbors and launch ramps.</li> <li>• Implements a thirty day grace period for the renewal of all use permits, implements commercial catamaran</li> </ul>	04/25/2014	09/25/2014

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		27, § 13-231-45, §§ 13-231-55 to 13-231-67, § 13-231-70, and §§ 13-231-85.5 to 13-231-89 Use of small boat harbors, offshore mooring, and generally applicable provisions; Boat operation; Commercial activities; Allocation of berths and offshore mooring	<p>certificate” as a commercial permit for Waikīkī ocean waters and beach.</p> <ul style="list-style-type: none"> <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>	<p>registration requirements.</p> <ul style="list-style-type: none"> <li>• Update and streamline the rules as they pertain to commercial operations occurring in state small boat harbors, facilities, and near shore waters.</li> </ul>		
28	Enacted 10/17/1997	<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;	<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> </ul>	<ul style="list-style-type: none"> <li>• Authorizes the issuance of a commercial use permit or registration certificates to commercial catamaran operations occurring on Waikīkī and Kā’anapali beach and near shore waters.</li> <li>• Establishes minimum requirements for catamaran commercial use permits and registration certificates.</li> </ul>	04/25/2014	09/25/2014

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			Waikīkī and Kā'anapali beach and ocean waters ; Commercial activities	<ul style="list-style-type: none"> <li>Amended for Waikīkī ocean waters and Kā'anapali beach and ocean waters.</li> </ul>	<ul style="list-style-type: none"> <li>Updates and streamlines the rules as they pertain to commercial operations occurring in state small boat harbors, facilities, and near shore waters.</li> </ul>		
29	HAR Chapter 13-256 Ocean Recreation Management Rules and Areas	Enacted 10/17/1997	<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>	<ul style="list-style-type: none"> <li>Requires all commercial activities in state waters to obtain a commercial use permit.</li> <li>Requires all commercial vessels and water sports equipment to be registered.</li> </ul>	04/25/2014	09/25/2014
30	HAR Chapter 13-256 Ocean Recreation Management Rules and Areas	Enacted 10/17/1997	<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>	<ul style="list-style-type: none"> <li>No person shall possess, use, or consume alcohol within Zone J, or create hazardous or physically offensive condition by any act which is not performed under any authorized license or permit.</li> </ul>	05/08/2015	07/25/2015
			<b>DELETED</b>				
31	HAR Chapter 13-60.3 West Hawai'i Regional Fisheries Management Area, Hawai'i	Enacted 9/18/2001; Amended 3/12/2009.	<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>	<ul style="list-style-type: none"> <li>Adoption of HAR Chapter 60.4 with repeal of Chapter 13-60.3</li> </ul>	12/26/2013	12/26/2013
32	HAR §13-126-22 Aircraft	Enacted 01/18/2013	HAR §13-126-22 Aircraft	<ul style="list-style-type: none"> <li>Remove §13-126-22 Aircraft</li> </ul>	<ul style="list-style-type: none"> <li>HAR §13-126-22 is not enforceable as applied to aircraft in flight</li> </ul>	12/11/2009	01/22/2010

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33	HAR Chapter 13-190 Dams and Reservoirs	Enacted 6/7/1993	<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>	<ul style="list-style-type: none"> <li>Adoption of HAR Chapter 13-190.1 with repeal of Chapter 13-190</li> </ul>	11/22/2010	02/20/2012
34	HAR Chapter 13-231 Operation of Boats, Small Boat Harbors, and Use Permits for All Navigable Waters	Enacted 10/17/1997	<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>	<ul style="list-style-type: none"> <li>Update and streamline the rules as they pertain to commercial operations occurring in state small boat harbors, facilities, and near shore waters.</li> </ul>	04/25/2014	09/25/2014
35	HAR Chapter 13-251 Commercial Activities on State Ocean Waters, Navigable Streams, and Beaches	Enacted 10/17/1997	<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>	<ul style="list-style-type: none"> <li>Update and streamline the rules as they pertain to commercial operations occurring in state small boat harbors, facilities, and near shore waters.</li> </ul>	04/25/2014	09/25/2014