

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Division of Boating and Ocean Recreation  
Honolulu, Hawaii 96813

May 24, 2013

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

Request Approval to Initiate Rule-Making Proceedings (Including Public Hearing) to (1) Amend and Compile Hawaii Administrative Rules, Chapter 13-231, Operation of Boats, Small Boat Harbors, and Permits; Chapter 13-251, Waikiki and Kaanapali Ocean Waters; and Chapter 13-253, Registration and Permit Fees; and (2) Amend Hawaii Administrative Rules, Section 13-256-3 Commercial operator permit requirements and Section 13-256-4 Commercial vessel and water sports equipment registration requirements, in Order to Update, Revise, and Reorganize Rules Relating to Commercial Activities in State Navigable Waters and at Boat Harbors and Facilities Under the Department's Jurisdiction. Attached to this Agenda and Incorporated Herein are the Proposed Changes to Chapter 13-231 (Exhibit "B-1"), Chapter 13-251 (Exhibit "B-2"), Chapter 13-253 (Exhibit "B-3"), and Sections 13-256-3 and 13-256-4 (Exhibit "B-4")

**PURPOSE:** The purpose of these amendments is to bring parity to all Waikiki catamaran registration certificate holders and commercial use permit fees and conditions statewide. Currently, there are separate rules found across four chapters regarding Maui and Waikiki catamarans, however, the services provided are the same. Over the years, the fee schedules for Maui and Waikiki catamarans have diverged to the point of unfairness. Lastly, the amendments would update and streamline commercial permit requirements, some of which have not changed in decades.

**REMARKS:**

The fees and business documentation to use State ocean waters are paid by all commercial vessel operators. In order to use State waters, commercial vessel operators are required to submit statements of monthly gross receipts, insurance, be in compliance with the Department of Commerce and Consumer Affairs, and other requirements for safety and liability.

Commercial vessel operators such as Kaanapali catamarans, surf schools, thrill craft, and parasails statewide are issued commercial use permits to operate their businesses in State ocean waters. The commercial use permit fee for the Kaanapali catamarans is the greater of \$200.00 or 3% of gross per month, except for Waikiki catamarans.

In previous meetings, the Division of Boating and Ocean Recreation (DOBOR) and the Waikiki catamaran operators were in agreement that a government subsidy in the form of an \$8.50 registration fee per year while others pay \$200.00 or 3% of gross per month offers an unfair

business advantage and, therefore, does not meet the intent of the law. As such, DOBOR proposes to amend the registration certificate fee for Waikiki catamarans to be the same as commercial use permit holders statewide. To achieve parity, DOBOR needs to amend and compile the subject chapters and reorganize rules relating to commercial activities in State navigable waters and at boat harbors and facilities under the department's jurisdiction. All three chapters and portions of chapter 13-256, HAR are related as it concerns commercial use permits and catamaran registration certificates and need to be amended at the same time.

The amendment and compilation of Chapter 13-231, HAR, incorporates offshore mooring facilities and provisions generally applicable to all State ocean waters, including navigable streams; defines catamaran registration certificate and clarifies commercial use permits; defines a permittee's failure to pay fees owed to the department and the consequences of non-payment; requires vessel owners to demonstrate to the department that their vessel is capable of navigating beyond the confines of the harbor and returning under its own power to its assigned mooring/berth prior to the permit being issued; authorizes the total number of commercial use permits in the Ala Wai and Keehi small boat harbors at 15% and 35% respectively, and other length and location of berth requirements; clarifies the use of State small boat harbors regarding commercial use permits and catamaran registration certificates; equates commercial use permits with catamaran registration certificates; defines categories of berths at various small boat harbors statewide; corrects Hawaiian spelling and other non-substantive changes.

The amendment and compilation of Chapter 13-251, HAR, redefines Waikiki and Kaanapali ocean waters to include commercial activities on all State ocean waters, navigable streams, and beaches; requires that no person shall engage in any business or commercial activity on the navigable waters of the State without prior written approval from the Board of Land and Natural Resources or its authorized representative and the proper execution of an agreement with the department; defines insurance requirements for commercial activities and conditions of reissuance of catamaran registration certificates and commercial use permits; repeals operator permits issued to catamaran captains, canoe captains, surfboard instructors, sail board instructors and commercial motorboat operators; equates commercial use permits with catamaran registration certificates; redefines areas delineated by azimuth into global positioning system (GPS) coordinates and updates maps; corrects Hawaiian spelling and other non-substantive changes.

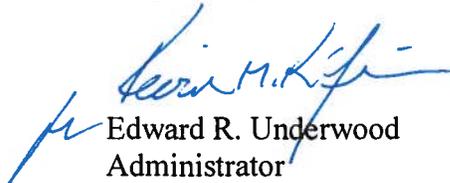
The amendment and compilation of Chapter 13-253, HAR, increases surfboard rentals from 10 cents to one dollar; increases catamaran registration certificate fees to be the same as commercial use permit fees (the greater of \$200 or 3% of gross receipts per month); clarifies that a permittee who is paying 3% of gross receipts per month under the harbor commercial use permit shall not be required to pay an additional 3% of gross receipts per month under the commercial use permit or catamaran registration certificate; defines gross receipts.

The amendments to 13-256 subsections 3 and 4, HAR defines commercial use permit requirements and commercial vessel and water sports equipment registration requirements.

RECOMMENDATION:

1. Grant to the Division of Boating and Ocean Recreation approval for the initiation of rule-making proceedings, including public hearing, to amend and compile Chapter 13-231, HAR; Chapter 13-251, HAR; and Chapter 13-253, HAR; and to amend subsections 13-256-3 and 13-256-4, HAR, as shown in Exhibits "B-1"; "B-2"; "B-3"; and "B-4".

Respectfully submitted,



Edward R. Underwood  
Administrator

Attachments

- Chapter 13-231 (Exhibit "B-1")
- Chapter 13-251 (Exhibit "B-2")
- Chapter 13-253 (Exhibit "B-3")
- Sections 13-256-3 and 13-256-4 (Exhibit "B-4")

APPROVED FOR SUBMITTAL



William J. Aila, Jr.  
Chairperson and Member