

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

January 10, 2014

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

REQUEST THAT THE BOARD OF LAND AND NATURAL RESOURCES APPROVE THE AMENDMENTS AND COMPILATION OF HAWAII ADMINISTRATIVE RULES (HAR), CHAPTER 13-253, REGISTRATION AND PERMIT FEES, AND AMENDMENTS TO HAWAII ADMINISTRATIVE RULES, SECTION 13-256-3 COMMERCIAL OPERATOR PERMIT REQUIREMENTS AND SECTION 13-256-4 COMMERCIAL VESSEL AND WATER SPORTS EQUIPMENT REGISTRATION REQUIREMENTS; AUTHORIZE THE DIVISION OF BOATING AND OCEAN RECREATION TO CONDUCT A SECOND ROUND OF PUBLIC HEARINGS REGARDING AMENDMENTS THAT WERE MADE TO CHAPTER 13-231, OPERATION OF BOATS, SMALL BOAT HARBORS, AND PERMITS AND CHAPTER 13-251, WAIKIKI AND KAA NAPALI OCEAN WATERS, BASED ON PUBLIC TESTIMONY THAT WAS RECEIVED DURING THE RULE MAKING PROCESS. ATTACHED TO THIS AGENDA AND INCORPORATED HEREIN ARE CHAPTER 13-231 (EXHIBIT 1), CHAPTER 13-251 (EXHIBIT 2), CHAPTER 13-253 (EXHIBIT 3), AND SECTIONS 13-256-3 AND 13-256-4 (EXHIBIT 4).

PURPOSE:

The purpose of these amendments is to bring parity to all Waikiki catamaran registration certificate holders and Kaanapali catamaran commercial use permit holders. Currently, there are separate rules found across four chapters regarding Maui and Waikiki catamaran registration and permitting requirements even though the services provided are the same. Over the years, the fee schedules for Maui and Waikiki catamarans have diverged to the point of unfairness. Kaanapali catamaran operators pay a commercial use fee of 3% of gross receipts. Waikiki catamaran operators do not pay a commercial use fee.

Furthermore, operator permits have been required for surf instruction, canoe operation, etc., for anyone operating in Waikiki or Kaanapali ocean waters. For reasons unknown to the current division administration, this requirement was never implemented in Kaanapali. For Waikiki, staff have been required to ensure that operators possess the ability to provide commercial water sports instructions. However, the division does not possess the expertise to determine whether an individual is competent to engage in water sports instruction nor should the department assume that liability. We propose to issue commercial use permits to the companies that engage in water sports activities and it will be the companies' responsibility to ensure they hire competent staff.

Lastly, the amendments would update and streamline commercial permit requirements, some of which have not changed in decades.

REMARKS:

On May 24, 2013, the Board of Land and Natural Resources authorized the Division of Boating and Ocean Recreation (DOBOR) to proceed with rulemaking procedures regarding the HAR chapters listed above. The following is a breakdown of the oral and written comments received during the public hearing process.

1. Describe how opinions or comments from the public and affected small business were solicited.

A request to engage in rulemaking was brought before the Board of Land and Natural Resources and the meeting followed proper sunshine law requirements. Legal ads were placed in the newspapers in accordance with Hawaii Revised Statutes, §91-3, and the proposed rule amendment package was placed on DOBOR's website. Copies of the proposed amendments were made available at the small boat harbor offices. Press releases were run to notify people of the proposed amendments.

2. Summary of public and small business comments.

DOBOR received numerous comments from the public with the majority of the comments coming from Waikiki catamaran operators, Waikiki water sports businesses, and commercial launch ramp users. The comments received are broken down as follows:

KAUAI 10/2013 PUBLIC HEARING ASSESSMENT:

ATTENDANCE

Eight individuals attended the Maui County public hearing on 10/17/13.

SUMMARY

None provided oral testimony.

OAHU 10/17/13 PUBLIC HEARING ASSESSMENT:

ATTENDANCE

Twenty four individuals signed the attendance sheets and there were approximately thirty in attendance.

ORAL TESTIMONY

Nine people provided oral testimony.

WRITTEN TESTIMONY

Two written testimonies were received, one from the law office of George K. Lindsey, Jr., and the other from the law office of Frame & Nakano. Both were primarily focused on commercial catamaran operations occurring on Waikiki beach and ocean waters as well as the provision to repeal the operator permit requirements for Waikiki and Kaanapali.

SUMMARY

Testimony was received regarding the proposed amendments as they relate to operator permits and catamaran operations on Waikiki beach and near shore waters. People felt that the operator permit requirements should be left in the rules and catamaran operators felt that the amendment to allow for larger catamarans to operate on Waikiki beach should be deleted. Comments were made that there wasn't enough notice given for the public hearings. A request was made to place all rules relating to Waikiki catamaran operations into a separate section. Waikiki catamaran operators were opposed to paying the same commercial fee as all other commercial vessel operators.

MAUI 10/2013 PUBLIC HEARING ASSESSMENT:

ATTENDANCE

Thirty four individuals attended the Maui County public hearing on 10/17/13.

ORAL TESTIMONY

Five people provided oral testimony.

WRITTEN TESTIMONY

One piece of written testimony was received at the hearing, which contained many suggestions on changes for clarification and to avoid significant and unnecessary hardship to commercial permit holders.

SUMMARY

Oral testimony about the rule amendment package in its entirety was mostly positive. However, it was stated that certain facets of the rule amendment package would cause hardships for commercial operators including the Vessel Moored Elsewhere (VME) and Ocean Recreation Management Area (ORMA) permit holders if this rule package were implemented as is. Other testimony was received about issuance of permits and how the shall/may change in terminology is unfair for those who have been on a waitlist for an extended period of time; differences between Waikiki and Kaanapali in regards to revocation of permits, that the same rules should apply to all parties; and that modification of the cap on vessel sizes is a safety issue. Support was expressed for the amendment that increased the cumulative number of days a vessel may be on a temporary mooring and the increase in the number of special charter permits from 8 to (the proposed) 24, although a suggestion was made that the seven day advance notice approval for these special charter permits be modified to allow "reasonable notice."

HAWAII ISLAND PUBLIC HEARING ASSESSMENT (KONA):

ATTENDANCE

25 individuals attended the Hawaii Island public hearing on 10/16/13 in Kona.

ORAL TESTIMONY

Testimony received from 9 individuals was, in general, opposed to the proposed rule amendments.

WRITTEN TESTIMONY

Five individuals submitted oral testimony or written testimony identical to documents DOBOR received by email.

SUMMARY

The majority of the people in attendance were opposed to the rule amendments. Testimony received stated that the rules are difficult to read and understand. A professional rules writer should be employed. The hearing is in violation of the Hawaii Administrative Procedures Act. The proposed limit of two commercial use permits per launch ramp per person would be detrimental to existing businesses. The rule does not allow existing businesses with more than two commercial use permits to continue business after the expiration of the current permit period.

HAWAII ISLAND PUBLIC HEARING ASSESSMENT (HILO):

ATTENDANCE

No individuals attended the Hawaii Island public hearing on 10/17/13 in Hilo.

SUMMARY

DOBOR did not document any oral testimony and did not receive any written testimony at the Hilo public hearing.

PUBLIC HEARING ASSESSMENT OF EMAILED TESTIMONY (RECEIVED BY 10/24/13 11:59 P.M.):

E-MAIL TESTIMONY RECEIVED

Thirty-one (31) separate emails messages were received containing testimony on the proposed rule amendments package. Five individuals who attended the public hearing in West Hawaii also submitted email testimony. Two emails were nearly verbatim documentation of oral testimony provided on Maui during that District's public hearing. Two individuals representing the Kauai Westside Watershed Council submitted testimony that was very similar in nature opposing any commercial activity that is detrimental to the environment. One piece of testimony was received from the C&C Honolulu suggesting that an ocean hazard analysis be undertaken as a baseline prior to passage of the proposed rule amendments.

The majority of the testimony received pertained to the Waikiki and Kaanapali commercial catamaran operations, Waikiki Operator Permits issued by the department, and the proposed limit of two commercial use permits per person for the use of state launch ramps. Another issue (which has been discussed at several Board meetings) is to allow the grace period that was recently established for regular mooring permits to apply to all use permits issued by the department.

Based on the oral testimony received at the public hearings as well as written (including email) testimony received during this process, the division is recommending further revisions to the proposed rule amendments. We propose that the Board authorize the division to conduct a second round of public hearings on the rules found in Chapter 13-231 and Chapter 13-251. DOBOR recommends the following additional revisions:

Chapter 13-231:

- 13-231-4: Add new subsection to read as follows “(c) Notwithstanding the provisions of subsection (a), the department may issue additional offshore mooring permits to owners of vessels holding a valid commercial use permit issued pursuant to section 13-231-59”. Remove the words “or other authorization”.
- 13-231-5(b): Amend “fails to renew a regular mooring permit” to “fails to renew a use permit”.
- 13-231-11: Add the language “requirements of the United States Coast Guard” but not in the provision where they would exceed fifteen months.
- 13-231-45: Add the language “(a) and” in subsection (c). Add the language to subsection (g) and (l) regarding the inspection of United States Coast Guard certified vessels.
- 13-231-61: Amend passenger capacity as it pertains to minimum gross receipts.
- 13-231-62: Add the language “in accordance with Chapter 91, Hawaii Revised Statutes”.
- 13-231-67(e): Add the following language, “Notwithstanding this section, all owners of commercial use permits on the effective date of these rules may continue operations and be permitted to apply for and renew their commercial use permits subject to compliance with all other conditions set forth in this chapter until their total number is reduced by attrition or other means to the numbers in subsection (d).” Allow for three commercial launch ramp permits at Ala Wai and Keehi small boat harbors.

Chapter 13-251:

- 13-251-3: Amend carrying capacity for minimum gross receipts from 25 to 26 and 25 to 27. Add language “held in accordance with chapter 91, Hawaii Revised Statutes.
- 13-251-37: Clarify that a propeller guard can be mechanical or a person used as a “look-out”. Amend the length of a Waikiki catamaran to 50’ and remove the repeal of (8)(b) & (c).
- 13-251-38: Add the proposed language, “with accuracy, validity”.
- 13-251-39: Remove the language, “or other vessel”.
- 13-251-40: Add the language, “an authorized”.
- 13-251-45: Add the language, “in accordance with Chapter 91, Hawaii Revised Statutes.”
- 13-251-49: Adding language to allow a catamaran to be absent for longer than thirty days as long as they are making repairs required by the USCG and add the language “in accordance with Chapter 91, Hawaii Revised Statutes.”
- 13-251-51: Remove strike through regarding attrition clause for Waikiki and limits on the number of catamarans for Kaanapali. Keep subsections (a) and (b).
- 13-251-52: Change the Section from 13-251-38 to 13-251-51. Change language from “genuineness and regularity” to “accuracy, validity, and regularity”.
- 13-251-53: Adding language to allow permanent anchors to be installed on Waikiki beach. Adding that the Land Board must approve any installation of moorings on Waikiki beach and the fee for the use of the beach for mooring and embarking and disembarking passengers will be included as part of the commercial use fee paid by the catamaran operators (instead of them obtaining a Revocable Permit from the Board at fair market value for the use of Waikiki beach). Catamaran operators must indemnify and defend the State and carry insurance for mooring and embarking and disembarking passengers on the beach.
- 13-251-76: Add the language “or registration certificate” to clarify that commercial use permits and registration certificates are treated similarly.

RECOMMENDATION:

1. Approve amendments and compilation made to Chapter 13-253, HAR; and approve amendments to subsections 13-256-3 and 13-256-4, HAR, as shown in Exhibits 3 and 4; and

2. Authorize DOBOR to conduct a second round of public hearings regarding amendments and compilation made to Chapter 13-231 and Chapter 12-251 based on comments received during the administrative rulemaking process, as shown in Exhibits 1 and 2.

Respectfully submitted,



Edward R. Underwood
Administrator

APPROVED FOR SUBMITTAL



William J. Aila, Jr.
Chairperson and Member

Attachments

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

Rules Amending Title 13
Hawaii Administrative Rules

DATE

1. Chapter 13-231, Hawaii Administrative Rules, entitled "Operation Of Boats, Small Boat Harbors, And Permits," is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 11

OCEAN RECREATION AND COASTAL AREAS

PART 1

SMALL BOAT [HARBORS] FACILITIES AND PROVISIONS
GENERALLY APPLICABLE TO ALL STATE NAVIGABLE WATERS

CHAPTER 231

OPERATION OF BOATS, SMALL BOAT HARBORS, AND USE PERMITS
FOR ALL NAVIGABLE WATERS

Historical note

Subchapter 1 Use of Small Boat Harbors, Offshore
Mooring, and Generally Applicable
Provisions

- §13-231-1 General statement and restrictions on mooring dormant vessels
- §13-231-2 Agreement for the use of small boat harbor property, facilities, and offshore mooring areas
- §13-231-3 Use permits; issuance
- §13-231-4 Use permits; part-time or intermittent occupancy
- §13-231-5 Period of validity and renewal of various types of use [permit] permits
- §13-231-6 Revocation of use permit

- §13-231-7 Assignment and reassignment of moorings and vessel storage space
- §13-231-8 Inspections
- §13-231-9 Cancellation of use permit
- §13-231-10 Removal and custody of a vessel or contrivance
- §13-231-11 Absence of vessel for more than fourteen days; effect on permits
- §13-231-12 Discontinuance of [~~service~~] services
- §13-231-13 Joint and several liability; non-transferability of use permits
- §13-231-14 Sale of abandoned vessels or to collect delinquent fees
- §13-231-15 Boat owner required to report change of ownership, address, and other changes
- §13-231-16 Numbers or other vessel identification
- §13-231-17 Mooring prohibited except at assigned locations
- §13-231-18 Vessel reconstruction
- §13-231-19 Salvage
- §13-231-20 Houseboats prohibited
- §13-231-21 Restrictions on mooring vessels utilized for living aboard at small boat harbors other than Ala Wai and [~~Keehi~~] Ke'ehi small boat harbors
- §13-231-22 Staying aboard transient or visiting vessels
- §13-231-23 Interim use of berth during temporary absence of regular permittee's vessel
- §13-231-24 Interim use of berth pending occupancy by regular permittee
- §13-231-25 Exchange of berths
- §13-231-26 Use of vessel as a place of habitation
- §13-231-27 Allocation of principal habitation permits
- §13-231-28 Staying aboard vessels moored at Ala Wai or [~~Keehi~~] Ke'ehi small boat [~~harbors~~] harbor
- §13-231-29 Vessel used as a vacation site
- §13-231-30 Restrictions on multiple permits
- §13-231-31 Administrative hearing
- §13-231-32 Rules of evidence; official notice
- §§13-231-33 to 13-231-39 (Reserved)

Subchapter 2 Boat Operation

- §13-231-40 General statement

- §13-231-41 Navigation or mooring vessels in small boat harbor
- §13-231-42 Interference with navigation
- §13-231-43 Pilotage
- §13-231-44 Vessel loading zone
- §13-231-45 [Marine] Vessel inspections
- §13-231-46 Vessel limitations
- §§13-231-47 to 13-231-49 (Reserved)

Subchapter 3 Commercial Activities

- §13-231-50 General statement
- §13-231-51 Business activities
- §13-231-52 Solicitations and advertisements
- §13-231-53 Signs
- §13-231-54 Commercial vessel; definition
- §13-231-55 Berthing commercial vessels at Ala Wai and [Keehi] Ke'ehi small boat harbors
- §13-231-56 Definitions, gross receipts
- §13-231-57 Berthing or using commercial vessels in state small boat harbors [~~signs and other structures~~]
- §13-231-58 Limitations on the number of commercial use permits and catamaran registration certificates for vessels assigned permanent moorings
- §13-231-59 Limitations on commercial use permits for vessels moored elsewhere
- §13-231-60 Allocation of commercial use permits for vessels and catamaran registration certificates
- §13-231-61 [~~Renewal~~] Reissuance of commercial use permits and catamaran registration certificates
- §13-231-62 Transferability of commercial use permits and catamaran registration certificates
- §13-231-63 Retention of berth upon termination of commercial use permit or catamaran registration certificate
- §13-231-64 Fees and charges
- §13-231-65 Insurance requirements
- §13-231-66 Limitation on number of berths held by a commercial permittee
- §13-231-67 Limitations on commercial use permits issued for the use of state boat launching ramps

- §13-231-68 Signs and other structures at a state small boat harbor
- §13-231-69 Multiple use of mooring facilities by commercial vessels
- §13-231-70 Water taxi operations
- ~~§13-231-71 (Reserved)~~
- ~~§13-231-72 Small inter island passenger vessel permit]~~
- ~~[[§13-231-73]§13-231-71 to 13-231-75 (Reserved)~~

Subchapter 4 Special Area Rules

- §13-231-76 Repealed
- §13-231-77 Ala Wai Canal
- §§13-231-78 to 13-231-79 (Reserved)

Subchapter 5 Allocation of Berths and Offshore Mooring

- §13-231-80 General
- §13-231-81 Application for a berth; seniority of application; period of validity; renewal of application
- §13-231-82 Review, ~~and~~ acceptance, or rejection of applications
- §13-231-83 Applicant required to furnish address and report changes; effect of failure to report changes
- §13-231-84 Withdrawal of application; effect if application has become void, expires, or has been withdrawn
- §13-231-85 Priority and procedures in allocation of berths
- §13-231-85.5 Allocation of offshore mooring permits
- §13-231-86 Categories of berths; priority of allocation
- §13-231-87 Notice to owner of available berth or offshore mooring
- §13-231-88 Offer of regular mooring permit valid only fourteen days; written notice of intention; acceptance
- §13-231-89 Offer of temporary mooring permit valid only seven days; notification of intention; acceptance
- ~~§13-231-90 Offer of category I (breakwater) berth Ala Wai harbor]~~

EXHIBIT "A"
EXHIBIT "B"

Historical note. [~~This chapter is based on use of small boat harbors, boat operation, commercial activities, special area rules, allocation of berths of the small boat harbors rules, effective November 5, 1981, and as amended thereafter, under the jurisdiction of the Department of Transportation, Harbors Division.~~] 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, SLH 1991. [Eff 2/24/94; comp]

SUBCHAPTER 1

USE OF SMALL BOAT HARBORS, OFFSHORE MOORING, AND
GENERALLY APPLICABLE PROVISIONS

§13-231-1 General statement and restrictions on mooring dormant vessels. (a) Berths in state small boat harbors and offshore mooring areas shall be used to accommodate recreational and commercial boats used for water transportation or fishing.

(b) Occupancy of berths at any small boat harbor or offshore mooring area shall be limited to vessels actively used as a means of transportation on water.

(c) The use permit for any vessel determined to be dormant by the department shall be terminated upon a show cause order. The show cause order may be issued by the department and shall contain the basis for the department's determination that the vessel is dormant. The show cause order shall be delivered to the owner as set forth in section 13-231-6. The owner shall have five working days after notification as provided in section 13-231-6 to inform the department of the owner's plan to resolve and correct the deficiencies noted in the show cause order. Failure to respond or failure to execute an approved plan in a timely manner shall result in the termination of the use permit. The department reserves the right to impound, remove and dispose of a vessel in accordance with chapter 200, Hawaii Revised Statutes, and these rules.

(d) The department reserves the right to restrict the use of state facilities to those who are in compliance with all state and federal laws and rules and make full and timely payment of their fees and charges. Failure to comply with this section shall be cause for termination of any use permit and for refusal or withholding the granting of any future use permit requests. [Eff 2/24/94; comp] (Auth: HRS §§200-2, 200-3, 200-4, 200-6) (Imp: HRS §§200-2, 200-3, 200-4, 200-6)

§13-231-2 Agreement for the use of small boat harbor property, facilities and offshore mooring areas.

(a) Before any property or facility at a small boat harbor or offshore mooring area is utilized by any vessel, its owner shall comply with the following:

- (1) Execute an agreement as set forth in Exhibit "A", dated [~~May 15, 1991~~] July 2012, located at the end of this chapter and incorporated herein;
- (2) Obtain the approval of the department as evidenced by the chairperson's or the chairperson's representative's signature on the agreement; and
- (3) Be in compliance with all state and federal laws and rules of the department.

(b) Nothing contained herein shall restrict the department's power to waive the requirements of this section as the circumstances may warrant.

(c) For the purpose of this section, a lessee under a lease not intended as security is not an "owner".

(d) Offshore mooring rules and areas are described in chapter 13-235. [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-3, 200-4, 200-6) (Imp: HRS §§200-2, 200-3, 200-4, 200-6)

§13-231-3 Use permits; issuance. (a) "Use permit" as used in these rules means the authorization by the department to utilize state boating facilities, offshore mooring areas, offshore mooring, ~~and~~ state ocean waters, and navigable streams, as evidenced by the fully executed "agreement" described in section 13-231-2. The department may issue the following types of use permits:

- (1) Mooring permit. A use permit which authorizes the docking, mooring, or anchoring of a vessel at a small boat harbor or offshore mooring area.
- (A) Regular mooring permit. A use permit which authorizes the permittee to moor a vessel in a state small boat harbor or at an offshore mooring area for a period not to exceed one year from the date of issuance.
- (B) Temporary mooring permit. A non-renewable use permit which authorizes the permittee to moor a vessel in a state small boat harbor or at an offshore mooring area for a period of thirty days or less from the date of issuance.
- ~~[-(2) Harbor resident permit. A use permit which authorizes use of a state small boat harbor by the permittee for the purpose of residing on board a vessel authorized by the department to be used as a principal place of habitation while moored in Ala Wai or Ke'ehi boat harbor or in Ke'ehi Lagoon.]~~
- (2) Catamaran registration certificate. A catamaran registration certificate is a commercial permit that may be issued for Waikiki ocean waters and beach.
- (3) Stay aboard permit. A use permit which authorizes use of a state small boat harbor or offshore mooring by the permittee for the purpose of staying aboard a vessel while moored in a state small boat harbor or at an offshore mooring or at anchor.
- (4) Vacation permit. A use permit which authorizes use of the small boat harbor or an offshore mooring area by the permittee for the purpose of using a vessel as a vacation site while moored in a state small boat harbor or at an offshore mooring or at anchor.
- (5) Principal habitation permit. A use permit which authorizes use of the small boat harbor by the permittee for the purpose of using the vessel as a principal place of habitation while moored in Ala Wai or Ke'ehi small boat harbor or in the Ke'ehi Lagoon mooring area.

~~[(6) Living aboard permit. A use permit which authorizes use of a small boat harbor by living aboard a vessel at a small boat harbor other than Ala Wai or Ke'chi boat harbor.]~~

~~[(7)]~~ (6) Commercial use permit. A use permit which authorizes the owner of a commercial vessel to ~~[use a small boat harbor and its facilities or an offshore mooring for]~~ engage in commercial activities as specified in the permit.

~~[(8)]~~ (7) Storage permit. A use permit which authorizes use of a small boat harbor storage area for vessels or other items on land at a small boat harbor.

~~[(9)]~~ (8) Miscellaneous permit. A use permit which authorizes use of a small boat harbor or an offshore mooring area for other purposes as may be authorized by the department in its use permit and is consistent with these rules and applicable laws.

(b) Use permits shall be issued only after the department has determined that all applicable laws have been complied with and that all fees and charges have been paid.

(c) The issuance of any use permit by the department shall not create a property interest in favor of the permittee to an unrestricted use of state small boat harbors, facilities or state ocean waters. [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-3, 200-4, 200-6) (Imp: HRS §§200-2, 200-3, 200-4, 200-6)

§13-231-4 Use permits; part-time or intermittent occupancy. (a) No use permit for docking, mooring, or anchoring a vessel at a small boat harbor or at an offshore mooring area shall be issued to any person who has been issued a use permit to moor the same vessel at any other small boat harbor, offshore mooring, private marina or yacht club in the State. A temporary mooring permit may be issued to authorize temporary mooring in any small boat harbor or offshore mooring area.

~~[(b) No use permit shall be issued authorizing temporary mooring of same vessel within the same small boat harbor or offshore mooring area for a cumulative period of more than ninety days in the same calendar~~

~~year, provided that for Ala Wai small boat harbor the cumulative period shall not exceed one hundred and twenty days if space is available at the designated transient mooring area and the temporary mooring permit is issued in accordance with section 13-231-85.]~~ (b) Temporary mooring of a vessel within the same small boat harbor or offshore mooring area shall not exceed a cumulative period of more than one hundred and twenty days in the same calendar year per vessel, except as provided in section 13-256-73.11 for commercial vessels authorized for use at He'eia Kea small boat harbor. Temporary mooring permits shall be issued in accordance with section 13-231-85.

(c) Notwithstanding the provisions of subsection (a), the department may issue additional offshore mooring permits to owners of vessels holding a valid commercial use permit issued pursuant to section 13-231-59". [Eff 2/24/94; am and comp]
 (Auth: HRS §§200-2, 200-3, 200-4, 200-6) (Imp: HRS §§200-2, 200-3, 200-4, 200-6)

§13-231-5 Period of validity and renewal of various types of use [permit] permits. (a) The department may issue or [renew]reissue a use permit of all types, including but not limited to commercial use permits, catamaran registration certificates, and mooring permits, for any period up to, but not exceeding one year. Upon expiration of the period stated therein, the use permit and all rights of the permittee thereunder shall automatically terminate. No type of use permit shall be renewed unless all the conditions or covenants of the original issuance, including the requirement of prompt monthly payment of charges in advance, have been met and the rules governing small boat harbors and navigable waters managed of the department of land and natural resources have been fully complied with.

(b) If a permittee fails to renew a [regular mooring] use permit on or before the date on which it expires, that person may be granted a thirty (30) calendar day period to reinstate the regular mooring permit as long as all the conditions or covenants of the original issuance, including the requirement of prompt monthly payment of charges in advance, have been met and the rules governing small boat harbors of the department of land and natural resources have been

fully complied with. The person shall pay a one-time penalty fee of \$250.00 as well as all other applicable fees. Impoundment of the vessel shall be stayed only until the grace period has expired. [Eff 2/24/94; am 8/8/11; am and comp] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)

§13-231-6 Revocation of use permit. (a) If after notice and lapse of a reasonable period of time set by the department, the permittee fails to remedy any breach of the duties, covenants or conditions of the use permit or to desist from violating or permitting violation of these rules, the department may revoke the permittee's use permit.

(b) In addition to subsection (a), the department may revoke a use permit for a deliberate misstatement or [~~wilful~~] willful failure to disclose any material fact in an application for a vessel number, documentation, registration of a vessel, or any of the use permits specified in section 13-231-3.

(c) A permittee's failure to pay all fees owed to the department within thirty days of the date payment is due shall result in suspension of the right to conduct business under the commercial use permit or catamaran registration certificate until all past due fees are paid in full. Each and every notification of default shall be sent by certified mail, return receipt requested to the last address of record of the permittee on record with the division of boating and ocean recreation. Any delinquency beyond the due date, even within the thirty days, may cause the commercial use permit or catamaran registration certificate to be revoked. [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-4, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-10, 200-22, 200-24)

§13-231-7 Assignment and reassignment of moorings and vessel storage space. Holders of mooring permits may be temporarily assigned or reassigned to berths and spaces within the same small boat harbor, if possible, to accommodate small boat harbor repairs, improvements, maintenance, construction, emergencies, or when necessar4y during a special event. Reassignments may also be made within the same harbor if a vessel's size in relationship to the size of the assigned berth does not permit maximum and efficient public utilization of

small boat harbor facilities or if a reassignment will in any other manner permit maximum and efficient public utilization of small boat harbor facilities. [Eff 2/24/94; comp] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)

§13-231-8 Inspections. All vessels located in or upon the waters of a small boat harbor or offshore mooring area shall be subject to inspection by the department or any peace officer of the State or its political subdivisions at any time when necessary and proper for the purpose of enforcing these rules. [Eff 2/24/94; comp] [Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)

§13-231-9 Cancellation of use permit. A use permit may be cancelled by a boat owner upon thirty days written notice to the department. [Eff 2/24/94; comp] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-9, 200-10)

§13-231-10 Removal and custody of a vessel or contrivance. (a) The department may impound and remove or dispose of any vessel or contrivance moored or left at a small boat harbor or offshore mooring area [~~seventy two~~] 72 hours after notice is given as provided in section 13-230-6 for the owner to remove the vessel or contrivance from the small boat harbor or an offshore mooring area when its presence is contrary to law or these rules or when the department determines that the removal is necessary to protect human life and property. This includes any property or personal articles located on board; its tackle, apparel, fixtures, equipment, and furnishings. Any action taken by the department to remove the vessel or contrivance, including any property or personal articles located thereon, shall be at the sole cost and risk of the owner of the vessel or contrivance.

(b) The department shall, within [~~seventy two~~] 72 hours of impoundment, send by certified mail, return receipt requested, a notice of impoundment to the registered owner or operator of any unauthorized vessel. The owner or operator of an unauthorized vessel shall have ten days after receipt of notice of impoundment of the vessel to request in writing an

administrative hearing to the administrator, division of boating and ocean recreation. The written request for an administrative hearing shall be mailed or delivered in person to the administrator during normal business hours. Any requests delivered outside of the normal business hours shall be deemed received on the next working day for the purpose of compliance with the time schedule for completing the administrative hearing as provided in chapter 200, Hawaii Revised Statutes. This administrative hearing is solely for the purpose of allowing the owner or operator of an unauthorized vessel to contest the basis given by the department for the administrative impoundment of the vessel. The administrative hearing shall be held within the time period established by statute and after the administrator's receipt of the written request. The procedures for the administrative hearing are contained in sections 13-231-31 and 13-231-32 of these rules.

(c) Custody of an unauthorized vessel shall be returned to the person entitled to possession upon payment of all fees and costs due, and fines levied by a court. Any unauthorized vessel, contrivance or material impounded under this section, which remains unclaimed by the person entitled to possession, the registered owner, or a lien holder, for more than thirty days, can be sold by the department at public auction in accordance with chapter 200, Hawaii Revised Statutes. [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-3, 200-4, 200-10, 200-16) (Imp: HRS §§200-2, 200-3, 200-4, 200-10, 200-16)

§13-231-11 Absence of vessel for more than fourteen days; effect on permits. (a) A regular mooring permit and related use permits issued to a vessel shall automatically expire if the vessel is absent from its assigned berth or mooring for more than fourteen days, unless the holder of the permit or permits submits an application prior to departure on a form furnished by the department enumerating the permits the holder wishes to reserve during the holder's absence. If this is done, the application may be approved, by the department, subject to subsection (b) and the regular permittee reserves for the estimated period of absence noted in the permittee's application which shall not exceed one year, the privilege of returning the vessel to its assigned berth or mooring and also retains, for the estimated period

of absence noted in the holder's application which shall not exceed one year, any other related use permit designated in the holder's application; provided that the regular permittee continues, during the absence from the assigned berth or mooring, to pay the fees and charges payable to the department in the amounts prescribed in section 13-234-6. The application shall contain information as to the duration of the absence of the regular permittee's vessel from the berth or mooring. If the assigned vessel does not return within thirty days after the time of return indicated in the approved application for the retention of the regular mooring permit and related use permits, or within one year, whichever is less, all use permits shall automatically expire unless the regular permittee applies to the department prior to the expiration date indicated on the approved application for an extension and the extension is approved by the department. No application to extend the period of retention of a permit to use the assigned berth or mooring and any other related use permits upon return shall be approved by the department if the absence of the permittee's vessel from the assigned berth or mooring would exceed one year unless the regular permittee presents conclusive evidence to the department that due to requirements of the United States Coast Guard, a boating accident, casualty, hull or equipment failure, weather, sea or related environmental conditions involving the permittee's vessel or similar unforeseen occurrences, the granting of additional time is reasonable and essential to prevent undue hardship. No extension in any case shall authorize the permittee to retain a permit to use the assigned berth or mooring or any other related use permits upon return if the period of absence of the permittee's vessel from its assigned berth or mooring would exceed fifteen months.

(b) Nothing contained in this section shall be construed as a waiver of the right of the department to:

- (1) Deny the application to retain the berth or mooring;
- (2) Deny the reissuance of or to revoke any use permit for failure to comply with any section of these rules; or
- (3) Reassign a vessel to another berth or mooring in order to provide for more efficient use of facilities in the reasonable discretion of

the department or when a berth or mooring is unusable, eliminated, or in need of repairs.

(c) A temporary mooring permit and related use permits issued for a vessel shall automatically expire if the vessel is absent from its assigned berth or mooring for more than fourteen days.

(d) The department recognizes that a vessel operator may depart on a voyage with the intent of returning to the small boat harbor or assigned mooring within fourteen days or less but may be unable to return as planned due to wind, sea, or related environmental conditions, delays in completing repairs or refurbishing, or other unforeseen occurrences. Therefore, under these circumstances, the holder of the regular mooring permit may initially apply to the department by letter, telephone, or any other means of communication and be permitted to retain the mooring permit and any other related use permits upon return of the vessel to the assigned berth or mooring, provided that the initial application is received not later than the fourteenth day following departure from the assigned berth or mooring and confirmed in writing by the permittee within ten days of the date of initial application. [Eff 2/24/94; comp]
(Auth: HRS §§200-2, 200-3, 200-4, 200-9, 200-10) (Imp: HRS §§200-2, 200-3, 200-4, 200-9, 200-10)

§13-231-12 Discontinuance of services. When necessary and proper to do so, the department may, after reasonable notice, discontinue any service or withdraw the use of any utility, property, or facility at a small boat harbor as may be reasonable under the circumstances. [Eff 2/24/94; comp]
(Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)

§13-231-13 Joint and several liability; non-transferability of use [permit] permits. (a) All [persons] individuals and entities [whose signatures] who have [been affixed to] signed any agreement with respect to a vessel shall be jointly and severally liable for the full performance of such agreement. No use permit shall be transferable, so that whenever a permittee parts with possession or transfers the title to or interest in the vessel identified in the permit to another person by any arrangement, the use permit

shall expire except as provided herein [~~with respect to the original permittee~~]. The new possessor, transferee, or owner shall have no right to use the [~~space covered by the use~~] permit.

(b) Upon written application to and approval by the department:

- (1) The original mooring permittee may retain the mooring space under the permittee's mooring permit; provided that within thirty days the permittee moves into the space another vessel owned by the permittee of appropriate characteristics for occupancy of the berth or mooring space and pays the appropriate fees therefor;
- (2) A principal owner of a vessel may retain a berth or mooring space if that owner acquires the interest of one or more co-owners because a co-owner has died or moved out of the State;
- (3) An owner may retain the berth or mooring space if an interest in a vessel is transferred to the owner's spouse or ~~[other]~~ immediate family member, or a personal partner authorized to live on board under a principal habitation permit;
- (4) The spouse or immediate family member, or a personal partner authorized to live on board under a principal habitation permit, of a permittee, may retain all ~~[small-boat harbor]~~ use permits ~~[held by the permittee]~~ upon the death of the permittee, provided that the permittee's will, trust, or a court decree (the department may require a court decree if the department finds it necessary) states that the spouse or immediate family member, or a personal partner authorized to live on board under a principal habitation permit shall be awarded ownership of the vessel identified in the ~~[mooring]~~ use permit; or
- (5) The department may extend the deadline for the permittee holder to place a new vessel in the assigned berth or mooring space or in operation if conclusive evidence is presented to the department that the granting of additional time for compliance is reasonable and essential to prevent undue hardship, provided that any extension of time necessary to place a new vessel in the berth or mooring

space or in operation shall not exceed one hundred twenty days from the date of sale or transfer of the previously assigned vessel.

(c) Notwithstanding the requirements of subsection (a), the department may permit a one-time change in ownership of the permittee's vessel from personal ownership to corporate or other business ownership, provided that the [~~permittee~~] individual holds a valid commercial use permit, a valid catamaran registration certificate, or is engaged in commercial fishing as a primary means of livelihood, and notifies the department in writing of an intended change in ownership. The transfer of all [~~small boat harbor~~] use permits (or registration certificate) from the individual to the new corporation or other business entity shall be completed within one year of the date of receipt of the notification of intended change of ownership. The following requirements and conditions shall apply to the foregoing change in ownership:

- (1) The ownership of any corporation or other business entity formed under the provisions of this subsection shall [~~be limited to~~] include the original individual owner [~~permittee, any co owners of the vessel, and the members of the immediate families of the permittee and co owners~~];
- (2) The permittee or certificate holder shall apply for the reissuance of the commercial permit, mooring permit, catamaran registration certificate, and any other [~~small boat harbor~~] use permits in the name of the corporation or other business entity in accordance with the application procedures established by this chapter. Each application shall be accompanied by a copy of the charter of incorporation or other evidence acceptable to the department that the new corporation or other business entity is properly registered with the department of commerce and consumer affairs and is licensed to do business in the State; and
- (3) Each application for change of ownership shall be reviewed by the department in accordance with the provisions of section 13-231-82.

(d) No corporation or other business entity shall be eligible for the initial issuance of a mooring permit at a state small boat harbor unless the entity

is eligible for a then available commercial use permit or catamaran registration certificate.

(e) "Immediate family member" means, for purposes of this section, a natural individual who by blood line or adoption is a child, grandchild, parent, or grandparent of the deceased.

[Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-4, 200-9, 200-10) (Imp: §§200-2, 200-4, 200-9, 200-10)

§13-231-14 Sale of abandoned vessels or to collect delinquent fees. In the event any vessel is abandoned at a small boat harbor or any owner is delinquent in the payment of any fee or charge, after reasonable notice, the department may institute proceedings in accordance with chapter 200, Hawaii Revised Statutes, to secure the sale of the vessel.

[Eff 2/24/94; comp] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-3, 200-10, 200-16, part III of chapter 200)

§13-231-15 Boat owner required to report change of ownership, address, and other changes. (a) The owner of any vessel moored, stored, or left in a small boat harbor or offshore mooring area shall notify the department in writing within seven days if:

- (1) The owner no longer has possession of the vessel;
- (2) All or any interest in the vessel is transferred to another person or persons;
- (3) The owner's address or telephone number changes;
- (4) The vessel is chartered, leased, or rented; or
- (5) There is any change of [~~tenants or~~] agents or their telephone numbers or addresses.

(b) The new possessor or owner of any interest in any vessel moored in a small boat harbor or offshore mooring area shall within seven days after acquiring the same, inform the department in writing concerning the acquisition. If the vessel is owned by a corporation, the duties and obligations of the "owner" as prescribed in this section devolve upon the person who owns or controls a majority of the stock of the corporation. If there is no such ownership or control, the corporation must perform the duties and obligations. "Transfer" as used in this section

includes transfers of stock in a corporate owner if the transfer affects a change in the majority stockholder. "Interest" as used in this section includes ownership of stock in a corporation that owns a vessel moored in a small boat harbor or offshore mooring area.

(c) Evidence of any [~~wilful~~] willful misstatement or omission of fact regarding the ownership of a vessel moored in a state small boat harbor or offshore mooring area, or regarding transfer of ownership of a corporation or other business entity to which a mooring permit, commercial use permit, catamaran registration certificate, or other [~~use~~] permit has been issued, including failure to notify the department of a change of ownership, shall be cause for immediate termination of all [~~state small boat harbor use~~] permits and catamaran registration certificates held by the parties involved, and may be a bar against the issuance of any [~~use~~] permits or catamaran registration certificates [~~for state small boat harbor facilities~~] in the future. [Eff 2/24/94; am and comp] [Auth: HRS §§200-2, 200-3, 200-4, 200-10] [Imp: HRS §§200-2, 200-3, 200-4, 200-10]

§13-231-16 Numbers or other vessel identification. Owners of vessels required by law to be documented or numbered shall document or number their boats prior to obtaining a mooring permit. Owners of vessels not required by law or regulation to be documented or numbered shall, prior to obtaining a mooring permit, affix the boat's name, the owner's name, or the name of the vessel to which it is attached, in letters not smaller than three inches in height and in a color which contrasts with the background so as to be clearly visible for identification. Transient vessels are exempt from the provisions of this section. [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-9, 200-10)

§13-231-17 Mooring prohibited except at assigned locations. (a) A vessel, contrivance or material shall not be moored, anchored, or stored:

- (1) At a small boat harbor, offshore mooring or space other than that to which it was properly assigned.
- (2) Contrary to directions of proper authorities.

(b) Any vessel, contrivance or material moored, anchored, or stored, including any property located thereon or therein or attached thereto, in violation of this section, may be removed by the department to an impounding area or other location at the owner's risk and expense and the State shall not be liable for any damage which may result if notice to remove is given by placing it upon the vessel, contrivance or material, or as near as possible, indicating the violation of this section, the date and time the notice was posted and that the vessel, contrivance or material must be removed within seventy-two hours from the time the notice was posted. When a vessel is so removed, appropriate fees and charges shall be assessed therefore and possession of the space the vessel unlawfully occupied shall vest in the department. The removal to the impounding area shall not be deemed to confer any rights of occupancy in the impounding area occupied by such vessel.

(c) In addition, the department, within seventy-two hours of impoundment, shall send by certified mail, return receipt requested, a notice of impoundment to the registered owner or operator of any impounded vessel, contrivance or material. The owner or operator of an impounded vessel, contrivance or material shall have ten calendar days after receipt of notice of impoundment of the vessel, contrivance or material to request in writing an administrative hearing. The written request for an administrative hearing must be mailed or delivered in person to the administrator during normal business hours. After hours requests will be deemed received on the next working day for the purpose of compliance with the time schedule for completing the administrative hearing as provided in chapter 200, Hawaii Revised Statutes. This administrative hearing is solely for the purpose of allowing the owner or operator of an impounded vessel, contrivance or material to contest the basis given by the department for the impoundment of the vessel, contrivance or material. The administrative hearing shall be held within the time period established by statute and after the administrator's receipt of the written request. The procedures for the administrative hearing are contained in sections 13-231-31 and 13-231-32 of these rules.

(d) Any unauthorized vessel, contrivance or material impounded under this section, which remains unclaimed by the person entitled to possession, the

registered owner or a lien holder, for more than thirty days, can be sold by the department at public auction in accordance with chapter 200, Hawaii Revised Statutes. [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-16) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-16)

§13-231-18 Vessel reconstruction. Vessel reconstruction or major modification shall be accomplished only in an area designated by the small boat harbor supervisor. [Eff 2/24/94; comp] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)

§13-231-19 Salvage. If a vessel is moored so as to be in danger of wreckage, damaging other property, or sinking, the department shall, upon notice and after reasonable time has elapsed, not to exceed ten days, to allow the owner or the owner's agent to take appropriate action, take such action as the circumstances require to save or rescue the vessel, or prevent damage to other property or the obstruction of waterways; provided that an emergency, where life or property is endangered or the vessel may interfere with other vessels or with free and proper navigation of waterway unless immediate action is taken, remedial action may be taken by the department without prior notice. Appropriate fees and charges shall be assessed against the owner for such services. [Eff 2/24/94; comp] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)

§13-231-20 Houseboats prohibited. A use permit shall not be issued for any houseboat in any small boat harbor or designated mooring area, except in Ke'ehi Lagoon and in accordance with section 13-235-31. The department may consider the following in determining whether a vessel is a houseboat:

- (1) Whether the vessel is actually used as a dwelling or abode;
- (2) If used as a dwelling or abode, to what extent and in what manner;
- (3) The extent to which it is actually used for any recreational boating or for fishing;

- (4) Whether it is so constructed, reconstructed, or designed as to be capable of being used for recreational boating or fishing in the waters surrounding the small boat harbor or designated mooring area in which it is moored;
- (5) The frequency with which it leaves the confines of the small boat harbor or designated mooring area in which it is moored; and
- (6) Whether it is equipped with any operating means of propulsion. [Eff 2/24/94; comp] (Auth: HRS §§200-2, 200-4, 200-6, 200-10) (Imp: HRS §§200-2, 200-4, 200-6, 200-10)

§13-231-21 Restrictions on mooring vessels utilized for living aboard at small boat harbors other than Ala Wai and [Keēhi] Ke'ehi small boat harbors.

- (a) This section is applicable in all small boat harbors, except Ala Wai and [Keēhi] Ke'ehi small boat harbors. Further, it is not applicable to a:
 - (1) Vessel other than a yacht engaged in carrying passengers for hire on international voyages;
 - (2) Vessel owned by the United States Government; or
 - (3) Tug boat or towboat.
- (b) No person shall moor any vessel or any contrivance in a state small boat harbor if any person is living aboard, provided that the department may permit the operator and other persons accompanying the operator, of a visiting or transient vessel to moor the vessel and live aboard for a period not to exceed thirty days at any one small boat harbor during the calendar year, if the following conditions are met:
 - (1) The operator applies for and is granted a living aboard permit authorizing the persons named in the permit to live aboard the operator's vessel.
 - (2) The mooring of the vessel in a small boat harbor with persons living aboard does not interfere with the maximum, safe, and efficient utilization of the small boat harbor facilities; and
 - (3) The vessel conforms with the department's standards of safety, sanitation, and

maintenance as prescribed in these rules and the state boating rules.

(c) Small boat harbors are constructed, operated and maintained for the primary purposes of providing public recreational boating facilities and promoting the fishing industry. To implement these purposes an application for a living aboard permit shall be reviewed and additional information may be required by the department to ascertain the effect or probable effect the issuance of the permit would have on the maximum efficient utilization of small boat harbor facilities for recreational boating activities and the promotion of the fishing industry. No permit to live aboard a vessel shall be issued by the department unless the application and supporting information clearly shows that the issuance thereof is not contrary to the public interest, or otherwise unlawful. [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-4, 200-9, 200-10) (Imp: HRS §§200-2, 200-4, 200-9, 200-10)

§13-231-22 Staying aboard transient or visiting vessels. A stay aboard permit authorizing persons to stay aboard a transient or visiting vessel moored in a small boat harbor or offshore mooring area may be issued to the owner, master, crew, and passengers for a period or periods not to exceed ~~[ninety]~~one hundred twenty nights in a calendar year. ~~[, except that for Ala Wai small boat harbor the period shall not exceed one hundred twenty nights in a calendar year.]~~ [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-4, 200-9, 200-10) (Imp: HRS §§200-2, 200-4, 200-9, 200-10)

§13-231-23 Interim use of berth during temporary absence of regular permittee's vessel. (a) The department may allocate a berth assigned to a regular permittee to another person, pursuant to section 13-231-5 for interim use while the regular permittee's vessel assigned thereto is temporarily absent from the berth or for a period not to exceed thirty days, whichever period is shorter. A temporary mooring permit for interim use, issued pursuant to this section, shall be nonrenewable.

(b) Interim use of the berth by a temporary permittee, pursuant to this section, while the regular

permittee's vessel assigned thereto is absent, does not grant the temporary permittee any right to retain the use of the berth or any other space in the small boat harbor[7]. ~~Upon~~ Upon expiration of the temporary mooring permit or upon lapse of forty-eight ~~hour~~ written hours of notice in writing to vacate the berth prior to the return of the regular permittee's vessel, whichever ~~event~~ occurs first, ~~and~~ the temporary permittee shall immediately remove the temporary permittee's vessel from the berth and the harbor ~~upon the occurrence of either event~~ if not already removed from the berth and the harbor.

(c) Failure of a temporary permittee, allocated a berth for interim use pursuant to this section, to vacate the berth and the small boat harbor[7] upon expiration of the temporary mooring permit or upon lapse of forty-eight hours of written notice to vacate, in order to accommodate the return of the regular permittee's vessel, shall subject the temporary permittee to liability for any damages incurred by the returning regular permittee resulting from the temporary permittee's failure to vacate, and to a fine pursuant to section 200-14 or section 200-14.5, Hawaii Revised Statutes, and entitles the department to remove the temporary permittee's vessel to an impounding area. The temporary permittee shall indemnify and hold harmless the State from any liability for damages arising out of a failure to vacate the berth and the small boat harbor and from the removal of the vessel to an impounding area by the department in accordance with this rule. [Eff 2/24/94; am and comp]
(Auth: HRS §§200-2, 200-4, 200-9, 200-10) (Imp: §§200-2, 200-4, 200-9, 200-10)

§13-231-24 Interim use of berth pending occupancy by regular permittee. (a) The department shall allocate an unassigned berth to the senior applicant for a regular mooring permit as expeditiously as possible pursuant to section 13-231-5. It is recognized that, despite efforts to expedite the process, variable periods of time will elapse before the berth is assigned and the newly-assigned regular permittee actually moves a vessel into the berth. Therefore the department may allocate the berth to another person, pursuant to section 13-231-5 for interim use, until the allocation and assignment procedures have been completed and the newly-assigned

regular permittee is prepared to move a vessel into the berth, or for a nonrenewable period not to exceed thirty days, whichever period is shorter.

(b) Interim use of a berth by a temporary permittee pursuant to this section does not grant the temporary permittee any right to retain the use of the berth or any other space in the small boat harbor~~[7]~~. ~~[upon]~~ Upon expiration of the temporary permittee's temporary mooring permit or upon lapse of forty-eight ~~[hours]~~ hours of notice in writing to vacate the berth prior to movement of the newly-assigned regular permittee's vessel into the berth, whichever ~~[event]~~ occurs first, ~~[and]~~ the temporary permittee shall immediately remove the temporary permittee's vessel from the berth and the small boat harbor ~~[upon the occurrence of either event]~~ if not already removed from the berth and harbor.

(c) Failure of a temporary permittee, allocated a berth for interim use pursuant to this section, to vacate the berth and the small boat harbor~~[7]~~ upon expiration of the temporary mooring permit or receipt of a forty-eight hours notice to vacate, in order to accommodate the regular permittee's vessel, shall subject the temporary permittee to liability for any damages incurred by the regular permittee resulting from the temporary permittee's failure to vacate, and to a fine and other penalties pursuant to section 200-14 and section 14.5, Hawaii Revised Statutes, and entitles the department to remove the temporary permittee's vessel to an impounding area. The temporary permittee shall indemnify and hold harmless the State from any liability for damages arising out of a failure to vacate the berth and the small boat harbor and from the removal of the vessel to an impounding area by the department in accordance with this rule. [Eff 2/24/94; am and comp] (Auth: §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, §§200-9, 200-10)

§13-231-25 Exchange of berths. A permittee holding a regular mooring permit to moor in ~~[the]~~ a small boat harbor may, upon approval by the department, exchange the permittee's berth with another permittee holding a regular mooring permit to moor in the same small boat harbor if:

- (1) The vessels are suitable for the berths as determined by the factors enumerated in section 13-231-5;

- (2) There is mutual agreement between the permittees; and
- (3) The berths to be exchanged are of the same characteristics, (e.g. category, length, size, configuration). [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-9, 200-10)

§13-231-26 Use of a vessel as a place of principal habitation. (a) A vessel owner who holds a valid regular mooring permit issued by the department authorizing the owner to moor the owner's vessel in Ala Wai or [~~Ke'ehi~~] Ke'ehi small boat [~~harbor~~] harbors may use that vessel as a place of principal habitation if the owner has applied for and secured[-

~~(1) A] a principal habitation permit [-and] issued by the department in accordance with these rules, provided that the owner and the vessel meet the requirements set forth in these rules.~~

~~[-(2) A harbor resident permit issued by the department in accordance with these rules, provided that the owner and the vessel meet the requirements set forth in these rules.]~~

(b) A permit authorizing the use of a vessel as a place of principal habitation shall not be issued if the vessel is owned by a corporation.

(c) No person shall be issued a permit authorizing the use of any vessel as a place of principal habitation while the vessel is moored at the following locations in Ala Wai small boat harbor:

- (1) Berths 23 through 79;
- (2) The area leased to the Waikiki Yacht Club;
- (3) The area leased as a marine fueling facility; and
- (4) [~~The area leased to Ala Wai Marine, Ltd.~~] A haul-out facility[-and].

~~[-(5) The moorings adjacent to the breakwater.]~~

(d) A vessel owner may utilize the owner's vessel as a place of principal habitation while moored in the area leased to the Hawaii Yacht Club if the owner has applied for and holds a valid principal habitation permit [~~and harbor resident permit~~] issued by the department in accordance with these rules.

(e) Only the vessel owner, co-owner, the spouse

or, in the alternative, one personal partner of each, and their legal dependents may be issued a [~~harbor resident~~] principal habitation permit. A "personal partner" is an individual considered to be a "significant other" of the vessel owner principal habitation permittee who is not a relative by biology or adoption of the vessel owner principal habitation permittee. While living together on the vessel, the vessel owner principal habitation permittee and personal partner shall not have a landlord-tenant relationship. The department shall retain the right to limit the total number of people allowed to live on a particular vessel based on reasonable health, safety, security, or environmental concerns for persons on the vessel, other permittee's at the harbor, public use of the harbor, or the harbor itself, and may deny the issuance of a [~~harbor resident~~] principal habitation permit if such issuance would exceed the limit determined by the department to be appropriate.

(f) The owners of no more than one hundred twenty-nine vessels moored at Ala Wai small boat harbor shall be issued permits to use their vessels as a place of principal habitation. The owners of no more than thirty-five vessels moored at [~~Ke'ehi~~] Ke'ehi small boat harbor [~~shall~~] may be issued such permits. Any vessel used as a place of principal habitation that is temporarily absent from its [~~moorings~~] mooring shall continue to be considered as one of the vessels being used as a place of principal habitation if the owner retains a principal habitation permit as provided in section 13-231-11. [Eff 2/24/94; am 8/20/12; am and comp] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-9, 200-10)

§13-231-27 Allocation of principal habitation permits. (a) Application for a principal habitation permit; period of validity; renewal of application.

- (1) The first owner to file an application may be offered a principal habitation permit as described under subsection (e) if the maximum number of vessels authorized by subsection 13-231-26(f) are not being used as the principal habitation of the owners; provided that no prior requests [~~therefore~~] are pending as provided in this section.

- (2) If the maximum number of vessels permitted by subsection 13-231-26(f) is being used as the principal habitation of the owners, an owner's application for a principal habitation permit shall be retained and honored when the total number of vessels so used is less than the maximum limit and the issuance of the permit is determined by the department to not be detrimental to the operations of the harbor or any planned use of the harbor. [~~so that the issuance of such a permit is authorized pursuant to these rules.~~]
- (A) An application for the issuance of a principal habitation permit shall be made in writing to the department by the owner on a form provided by the department. The department shall accept the application for consideration by endorsing it and entering the filing time and date on the application form submitted; one copy shall be given to the applicant. The time and date the application is endorsed by the department shall be the filing date and the effective date of the application for consideration and shall establish such applicant's seniority or priority over later applicants if the application remains valid. No application shall be accepted unless and until the application fee prescribed in these rules is paid by the applicant and review thereof has been conducted pursuant to subsection (b).
- (B) An application shall continue in full force and effect for a period ending one year from the effective date of the application, except as provided in subsection (c) unless terminated sooner in accordance with these rules. An application is void after the date of expiration indicated thereon.
- (C) An application may be renewed within a ninety-day period preceding its expiration date. An application properly renewed prior to its expiration date shall be valid for a period ending

one year from expiration date of the previous application. No application for renewal shall be accepted until the fee prescribed in these rules is paid by the applicant.

- (D) It is the policy of the department to mail an application renewal notice to an applicant, prior to the expiration of the application, at the address the applicant has furnished to the department pursuant to subsection (c). However, the applicant is nonetheless responsible for the timely renewal of an application without receipt of a renewal notice from the department.

(b) Review, and acceptance, or rejection of applications.

- (1) The department shall examine and determine the genuineness and regularity of each application and may conduct any investigation as may be deemed necessary for its examination and determination; and it may require additional information from the applicant as may be necessary to determine the genuineness and regularity of the application.
- (2) The department shall reject any application that contains a material misstatement or if the applicant has failed to disclose any material fact in the application.
- (3) An application shall not be accepted for consideration and shall be rejected if:
 - (A) The application fee is not paid at the time the application is made;
 - (B) The applicant is delinquent in the payment of any moneys due and payable to the department; or
 - (C) The applicant has pending a citation for violation of any of the department's rules.
- (4) Upon rejection of an application, the department shall inform the applicant, in writing within a reasonable time, that the application has not been accepted for consideration and has been rejected and the reasons therefore. An applicant may cure the defect and reapply.

- (c) Applicant required to furnish address and report changes; effect of failure to report changes.
- (1) An applicant shall include the applicant's address in the application to the department for a principal habitation permit.
 - (2) An applicant shall immediately notify the department in writing of any changes in the applicant's address in order to maintain the validity of his application.
 - (3) An application shall be void if the department is unable to reach the applicant to offer the applicant a principal habitation permit at the address:
 - (A) Appearing on the application; or
 - (B) Furnished in writing to the department by the applicant as a change of address subsequent to submitting the application.
- (d) Withdrawal of application; effect if application has become void, expires, or has been withdrawn.
- (1) An application may be withdrawn by an applicant upon written notice to the department.
 - (2) An applicant who withdraws an application or whose application has expired, or become void, may submit a new application for acceptance by the department. Seniority begins on the date the applicant's new application is accepted for consideration as provided in subsection (a) (2) (A).
- (e) Priority in the allocation of principal habitation permits. When the total number of vessels authorized by the department to be used as the principal habitation of the owners at Ala Wai or [~~Ke'ehi boat harbor~~] Ke'ehi small boat harbors is less than the maximum number of vessels authorized to be so used pursuant to the provisions of section 13-231-26(f), the department [~~shall~~] may offer a principal habitation permit to the senior applicant eligible to receive such a permit.
- (f) Notice to owner of available principal habitation permit. When an offer of a principal habitation permit is provided for in this section, the department shall deliver the offer or send it by certified mail - return receipt requested, addressed to the applicant eligible to receive the offer pursuant to

this section at the post office address furnished to the department in writing by the applicant.

(g) Offer of principal habitation permit valid only fourteen days; written notice of intention; acceptance.

- (1) An applicant may decline an offer of a principal habitation permit and retain the applicant's seniority if the applicant declines the offer in writing addressed to and received by the department, not later than fourteen days after the date of receipt of the offer. An applicant who declines an offer in writing and retains the applicant's seniority pursuant to this subsection shall not be considered for another offer on the basis of the applicant's seniority until six months have elapsed since the date of the applicant's last refusal.
- (2) (A) If an applicant decides to accept the offer of a principal habitation permit, the applicant shall either:
 - (i) Deliver a written notice of intention to accept the offer to the department within fourteen days after the date of receipt of the offer; or
 - (ii) Accept the offer by securing a principal habitation permit, within fourteen days after the receipt of the offer.
- (B) The applicant's application for a principal habitation permit and the offer by the State of a principal habitation permit shall be void if the applicant fails to either secure a principal habitation permit or give notice of intent to accept or to decline the offer in writing within fourteen days after the date of receipt of the offer, and the permit shall then be offered to the next senior applicant pursuant to this section.
- (3) (A) An applicant who has not accepted the offer but has delivered a written notice of intention to accept to the department pursuant to paragraph (2) shall accept the offer by securing a principal habitation permit as prescribed in sections 13-231-2 and

13-231-3 within fourteen days after the applicant mails or personally delivers the notice of intention to accept to the department.

- (B) Except as provided in paragraph (4) the applicant's application for a principal habitation permit, the offer by the State of a principal habitation permit and the applicant's notice of intention to accept the offer shall be void if the applicant fails to secure a principal habitation permit within the fourteen days as prescribed herein, and the principal habitation permit shall then be offered to the next senior applicant in accordance with these rules.
- (4) The department may extend the deadline for acceptance prescribed in paragraph (2) if the applicant presents evidence to the department that the granting of additional time for compliance is reasonable and essential to prevent undue hardship, provided that any extension of time for compliance shall not exceed a period of sixty days from the date the department received from the applicant a written notice of intention to accept the offer of a principal habitation permit.
- (5) Since time is of the essence, the offer delivered or mailed to an applicant pursuant to subsection (f) shall contain a statement that the offer will lapse unless accepted in accordance with the procedures of this section. [Eff 2/24/94; am and comp
] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-9, 200-10)

§13-231-28 Staying aboard vessels moored at Ala Wai or [Keehi] Ke'ehi small boat harbor. (a) Staying aboard a vessel moored at Ala Wai or [Keehi] Ke'ehi small boat harbor is prohibited except that:

- (1) Owners holding a valid regular mooring permit, the spouse or personal partner of each, their legal dependents, and their nonpaying guests, when in the company of the owner, may stay aboard the vessel without a

use permit upon written notification to the department on or before the date of stay; provided that the period does not exceed any three nights in a week and a total of any one hundred twenty nights in a calendar year, including vessels used as a vacation site;

- (2) Staying aboard a vessel in excess of any three nights in a week may be permitted when done in accordance with a valid:
- (A) Stay aboard permit issued pursuant to section 13-231-22 (staying aboard transient or visiting vessels);
 - (B) Stay aboard permit issued pursuant to section 13-231-29 (vessel used as a vacation site);
 - (C) Stay aboard permit issued to a vessel owner holding a valid principal habitation permit authorizing a nonpaying bona fide guest to stay aboard the vessel in the company of the owner for a period not to exceed any thirty days in a calendar year.

(b) When staying aboard in accordance with subsection (a)(1), and the stay is extended past the third day, the entire period of stay will be counted against time used as a vacation site in accordance with section 13-231-29.

(c) Each harbor resident or other person authorized by the department to stay aboard a vessel in a small boat harbor in accordance with this chapter, except for those under the age of six, may secure one shower facility key. Prior to receiving the shower key, the person shall deposit with the State the amount specified in section 13-234-32. No person shall be permitted to replace a shower facility key more than two times. [Eff 2/24/94; am 8/8/11; comp

] (Auth: HRS §§200-2, 200-4, 200-9, 200-10) (Imp: HRS §§200-2, 200-4, 200-9, 200-10)

§13-231-29 Vessel used as a vacation site. (a) Staying aboard a vessel moored in Ala Wai or [~~Ke'ehi~~] Ke'ehi small boat harbor during a vacation is authorized but limited to owners holding valid regular mooring permits authorizing them to moor their vessels in the small boat harbor, the spouse or personal partner of each, their legal dependents, and nonpaying

guests when accompanied by the owner, provided that:

- (1) The aggregate period of the stay is not more than thirty days in a calendar year;
- (2) The vessel owner secures a vacation permit and a stay-aboard permit for each individual vacationer;
- (3) The vessel and its occupants comply with the sanitation, vessel equipment, and all other requirements set forth under this chapter; and
- (4) The vessel owner provides evidence that the owner maintains a bona fide shoreside residence.

(b) No vacation permit shall be issued for a vessel registered or documented as being owned by a corporation. [Eff 2/24/94; am 8/8/11; comp] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-9, 200-10)

§13-231-30 Restrictions on multiple permits. The accumulation of more than two permits for a berth, mooring, or both by a co-owner, firm, corporation, trust, association, organization, institution, or lessee is prohibited in any one small boat harbor. [Eff 2/24/94; comp] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-9, 200-10)

§13-231-31 Administrative hearing. (a) The procedures under this section shall be used for any administrative hearing conducted by the division of boating and ocean recreation as required by law.

(b) An administrative hearing officer shall be appointed by the chairperson. Upon setting the time for the hearing, the administrative hearing officer shall make a reasonable effort to transmit a notice to the owners or their attorneys, if any, at their last known address, containing the following:

- (1) The date, time, place and nature of hearing;
- (2) The legal authority under which the hearing is to be held;
- (3) The fact that any party may retain counsel if the party so desires and the fact that an individual may appear on the individual's own behalf, or a member of a partnership or limited liability company may represent the partnership or limited liability company, or

an authorized officer or authorized employee or trustee of a corporation or trust or association, as appropriate, may represent the corporation, trust or association.

(c) All parties shall be afforded an opportunity to present evidence and argument on all relevant issues involved.

(d) Any procedure in the administrative hearing may be modified or waived by stipulation of the parties and informal disposition may be made of any administrative hearing by stipulation, agreed settlement, consent order, or default.

(e) A tape recording may be made of the proceedings. No videotaping or other cameras shall be allowed during the hearing.

(f) Appeals from the decision may be made in accordance with chapter 91, Hawaii Revised Statutes. [Eff 2/24/94; am and comp] (Auth: HRS §§91-9, 200-4, 200-16, 200-49) (Imp: HRS §§200-4, 200-16, 200-49)

§13-231-32 Rules of evidence; official notice.

(a) The administrative hearing officer may exercise discretion in the admission or rejection of evidence and the exclusion of immaterial, irrelevant, or unduly repetitious evidence as provided by law with a view of doing substantial justice.

(b) In administrative hearings:

- (1) Any oral or documentary evidence may be received, but the department shall as a matter of policy provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence and no sanction shall be imposed or rule or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party and as supported by and in accordance with the reliable, probative, and substantial evidence. The department shall give effect to the rules of privilege recognized by law.
- (2) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available; provided that upon request parties shall be given an opportunity to compare the copy with the original.
- (3) Every party shall have the right to conduct cross-examination as may be required for a

full and true disclosure of the facts, and shall have the right to submit rebuttal evidence at the time of the hearing.

- (4) Except as otherwise provided by law, the party initiating the proceeding shall have the burden of proof, including the burden of producing evidence as well as the burden of persuasion. The degree of quantum of proof shall be a preponderance of the evidence. [Eff 2/24/94; comp] (Auth: HRS §§91-10, 200-4, 200-16, 200-49) (Imp: HRS §§200-4, 200-16, 200-49)

§§13-231-33 to 13-231-39 (Reserved)

SUBCHAPTER 2

BOAT OPERATION

§13-231-40 General statement. This subchapter shall govern the operation of vessels in small boat harbors. Nothing contained in this subchapter shall be construed to limit the authority of the federal government. (Refer also to subchapter 4, chapter 231 for provisions relating to specific area.) [Eff 2/24/94; comp] (Auth: HRS §§200-1, 200-2, 200-4) (Imp: HRS §§200-1, 200-2, 200-4)

§13-231-41 Navigation or mooring vessels in small boat harbors. Whenever a vessel enters a small boat harbor, its operator shall immediately come under the jurisdiction of these rules. Such vessels shall be operated, navigated, moored, or stored in accordance with reasonable directions of small boat harbor authorities. The department may designate areas for special boating activities. Each vessel is to be navigated within a state small boat harbor at a speed low enough that its wake will not disturb any other vessel or property. [Eff 2/24/94; comp] (Auth: HRS §§200-1, 200-2, 200-4) (Imp: HRS §§200-1, 200-2, 200-4)

§13-231-42 Interference with navigation. Unless otherwise authorized, no log, boom, float, pier, dock, fence, pile, anchorage, or other obstruction shall be installed or placed in small boat harbors without a permit from the department. No person shall operate any vessel in a manner which will unreasonably interfere with other vessels or free and proper navigation of waterways. Anchoring in heavily travelled channels or main thoroughfares shall constitute such interference. [Eff 2/24/94; comp] (Auth: HRS §§200-1, 200-2, 200-4)
(Imp: HRS §§200-1, 200-2, 200-4)

§13-231-43 Pilotage. Every person operating a vessel in a small boat harbor or through channels or entrances leaving or approaching such harbor shall do so at this person's own risk. [Eff 2/24/94; comp] (Auth: HRS §§200-1, 200-2, 200-4)
(Imp: HRS §§200-1, 200-2, 200-4)

§13-231-44 Vessel loading zone. Vessel loading zone means a portion of a small boat harbor facility reserved for the exclusive use of vessels during fueling, loading, or unloading. No person shall stop or moor a vessel for any purpose other than for the expeditious loading, unloading, or fueling in any place marked as a vessel loading zone during the hours when the regulations applicable to such loading zone are applicable. Except when otherwise prescribed by signs, the use of a vessel loading zone by any one vessel shall not exceed thirty minutes. No person shall leave a vessel unattended at a vessel loading zone. [Eff 2/24/94; comp] (Auth: HRS §§200-1, 200-2, 200-4) (Imp: HRS §§200-1, 200-2, 200-4)

§13-231-45 Vessel inspections. (a) "Approved marine surveyor" as used in this section means a person who has been approved by the chairperson to inspect a vessel for an owner seeking a permit to moor a vessel in a small boat harbor in accordance with subsections (h) and (i). "Approved vessel inspector" as used in this section means an employee of the department who has been designated by the chairperson to inspect a vessel for compliance with criteria necessary to obtain a mooring permit. An inspection conducted by an

approved vessel inspector is deemed to meet the requirements of the marine inspection required by section 200-13, Hawaii Revised Statutes, and [~~shall~~] may be valid for a period of [~~only one~~] two [~~year~~] years.

(b) Before a regular mooring permit is issued or renewed, the vessel owner shall complete a satisfactory vessel inspection conducted by an approved vessel inspector, or present a certificate not more than two years old to the department at the owner's own expense, signed by an approved marine surveyor certifying the surveyor has inspected the vessel and considers it to fulfill the minimum requirements described in [~~the exhibit~~] Exhibit "B" located at the end of this chapter and incorporated herein entitled "vessel inspection report" and dated July 2012. The department reserves the right to inspect any vessel to ensure that any deficiencies or omissions noted on a marine [~~survey~~] inspection have been corrected prior to issuing a mooring permit. All vessel owners shall also 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 mooring permit being issued.

(c) Commercial vessels carrying more than six passengers for hire are exempted from the provisions of subsection (a) and (b) when evidence of a current Coast Guard certificate of inspection is presented.

(d) Owners of vessels failing the vessel inspection shall have thirty days to correct deficiencies and complete the inspection. Failure to do so will preclude re-issuance of the use permit or be cause for rejection of the application for mooring.

(e) The department may extend the deadline for correction of deficiencies prescribed in subsection (d) if the vessel owner presents conclusive evidence to the department that the granting of additional time is reasonable and essential due to the necessity of replacing essential parts and gear and that reasonable and diligent efforts by the owner to secure the items necessary to repair the vessel or replacement of parts is demonstrated, and further provided that any extension of time for compliance shall not exceed sixty days.

(f) Owners of vessels that fail the vessel inspection may contest the decision [~~at~~] before an arbitration board as established in section 200-13, Hawaii Revised Statutes. The costs of the arbitration

shall be borne by the vessel owner if it is determined that the vessel does not meet the minimum requirements to moor in a small boat harbor in accordance with these rules. No additional time allowance for the correction of deficiencies will be granted following arbitration and the vessel shall be removed from the harbor. The costs of the arbitration shall be borne by the State if it is determined that the vessel does meet minimum requirements.

(g) The fee for a vessel inspection conducted by the department, pursuant to this section shall be as prescribed in section 13-234-29 provided that holders of commercial use permits and registration certificates with proof of certification of inspection from the United States Coast Guard shall be exempt from this requirement or state fees associated therewith.

(h) A person who desires to become an approved marine surveyor shall apply to the department upon a form furnished by the department and pay the application fee prescribed in section 13-234-30.

(i) An application to become an approved marine surveyor shall not be accepted by the department unless the applicant is engaged wholly or partly in the business of performing marine surveys for gain or compensation and the person's surveys are acceptable to at least one insurance company or surety company authorized to do business in the State[-], and is a member of a nationally recognized marine surveyor organization as approved by the department.

(j) An approved marine surveyor permit shall be valid for a period of three years from date of issuance. The department reserves the right to revoke any approved marine surveyor permit at any time prior to the expiration of the permit.

(k) A satisfactory vessel inspection shall consist of the following:

- (1) Presentation of the vessel to be inspected at a place designated by the harbor agent;
 - (2) A demonstration that the vessel is capable of being regularly navigated beyond the confines of the harbor or mooring area and maneuvering into and out of the assigned berth;
 - (3) A finding that the vessel and all systems are in good material and operating condition;
 - (4) A finding that the requirements described in the exhibit at the end of this chapter entitled "vessel inspection report" are met;
- and

Applicable standards published by the U.S. Coast Guard and the American Boat and Yacht Council, Inc. (ABYC) shall be used in conducting the vessel inspection, and are adopted and incorporated herein by reference.

(l) A marine survey shall be required for any vessel which has undergone any substantial reconstruction, alteration or modification of the original vessel design, certifying that such reconstruction, alteration or modification does not materially affect the vessel's stability or maneuverability, and the existing power plant is in good operating condition and meets the minimum power requirement necessary for safe navigation beyond the confines of the small boat harbor or offshore mooring area in which it is moored. Any vessel 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. A certificate of protection and indemnity insurance for the vessel, in an amount of not less than \$100,000, naming the State as an additional insured, shall be required in addition to the marine survey.

(m) No modification or alteration to a houseboat moored in Ke'ehi Lagoon which changes the length, beam or size of silhouette area from that which existed at the time of issuance of the initial mooring permit shall be allowed without prior approval of the department, provided that routine maintenance and repairs for safety, security and structural integrity shall be allowed. [Eff 2/24/94; am and comp
] (Auth: HRS §§200-1, 200-2, 200-4, 200-9, 200-10) (Imp: HRS §§200-1, 200-2, 200-4, 200-9, 200-10)

§13-231-46 Vessel limitations. Due to the restricted entrance and turning area in Lahaina small boat harbor, [No] no vessel of any size will be allowed to moor on the makai side of the Lahaina loading (fuel) dock from sunset to sunrise. Mooring from sunrise to sunset will be limited to fifteen minutes. [Eff 2/24/94; am and comp
] (Auth: HRS §§200-1, 200-2, 200-4) (Imp: HRS §§200-1, 200-2, 200-4)

§§13-231-47 to 13-231-49 (Reserved)

SUBCHAPTER 3

COMMERCIAL ACTIVITIES

§13-231-50 General statement. No regular or extensive use of any state property or facilities for private gain or purposes shall be permitted without corresponding and reasonable benefits and returns to the public. [Eff 2/24/94; comp] (Auth: HRS §§200-2, 200-10) (Imp: HRS §§200-2, 200-4)

§13-231-51 Business activities. No person shall engage in any business or commercial activity at any small boat harbor or other small boat facility without:

- (1) Prior written approval of the department; or
- (2) The proper execution of an agreement with the department. [Eff 2/24/94; comp] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)

§13-231-52 Solicitations and advertisements. Without limiting its generality, the words "business or commercial activity" as used in section 13-231-51 includes any solicitations and advertisements, intended for private gain or purposes. [Eff 2/24/94; comp] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)

§13-231-53 Signs. No person shall post or display any signs at a small boat harbor without the prior written approval of the department, except that signs strictly pertaining to the sale of vessels and of maximum dimensions of three feet by three feet shall be permitted on the vessel without approval. [Eff 2/24/94; comp] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)

§13-231-54 Commercial vessel; definition. "Commercial vessel" as used in this subchapter means a vessel engaged in any trade or business including, but

not limited to, carrying passengers for hire, charter fishing, bare boat (demise) or any type of charter maintenance, harvesting coral or similar resources, construction, towing, tow-boating, or other trade or business wherein the vessel is used in any manner to promote the venture, or is registered with the State or documented by the United States Coast Guard for commercial use. [Eff 2/24/94; comp]
 (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)

§13-231-55 Berthing commercial vessels at Ala Wai or [Keehi] Ke'ehi small boat harbor. (a) [Commercial vessels shall not be moored nor shall any person be issued a permit to moor a commercial vessel at the Ala Wai or Keehi boat harbor, including the areas leased to Hawaii and Waikiki Yacht Clubs, except at the areas leased to Ala Wai Marine, Ltd. and Texaco, Inc. for purposes authorized in their leases.]

The total number of valid commercial use permits that may be issued for vessels assigned mooring in Ala Wai small boat harbor shall not exceed fifteen per cent of the total number of berths and shall not exceed thirty-five per cent of the total number of berths at the [Keehi] Ke'ehi small boat harbor; provided that at the Ala Wai small boat harbor, vessels issued commercial use permits shall:

- (1) Not exceed sixty-five feet in length;
- (2) Occupy not more than fifty-six berths located along the row of berths furthestmost mauka or adjacent to Holomoana Street, with the remainder located throughout the Ala Wai small boat harbor, with priority assigned to row five hundred, row seven hundred, and row eight hundred;
- (3) Be phased-in in a manner that does not displace any existing recreational boater or existing catamaran operator; and
- (4) Include commercial catamarans, for which valid commercial use permits or existing registration certificates have been issued by the department that allow the catamarans to operate upon Waikiki shore waters for hire.

(b) The department may issue a temporary mooring permit authorizing the owner to temporarily moor at Ala Wai or ~~[Keehi boat harbor]~~ Ke'ehi small boat harbors,

provided the vessel is not engaged in commercial activities.

(c) This section is not applicable to a vessel used principally for recreational purposes (more than fifty per cent of its operating time) but licensed to engage in commercial fishing. [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-4, 200-9)
(Imp: HRS §§200-2, 200-4, 200-9)

§13-231-56 Definitions, gross receipts. Gross receipts as used in this subchapter means all moneys paid or payable to the account of the vessel owner, for the rendition of services, or resulting from trade, business, commerce, or sales by the vessel owner when the services, trade, business, commerce, ~~[and]~~ or sales have a direct relationship to the vessel. [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)

§13-231-57 Berthing or using commercial vessels in state small boat harbors~~[; signs and other structures]~~. (a) This section is applicable ~~[in]~~ to all state small boat harbors ~~[and boat launching facilities except Ala Wai and Kechi small boat harbors]~~. This section is applicable to all commercial vessels including commercial fishing vessels engaged in charter fishing or any other trade or business; provided that commercial fishing vessels are exempt from this section if the total income derived from the use of the vessel is generated through the sale of fish or permitted coral.

(b) No commercial vessel shall load or discharge passengers or cargo or engage in any other commercial activity at any small boat harbor unless the owner possesses a regular mooring permit and a valid commercial use permit or valid catamaran registration certificate issued by the department ~~[in accordance with this chapter]~~. Inter-island ferry service within Maui County shall be afforded preferential consideration in accordance with section 200-9(d), Hawaii Revised Statutes. The ~~[foregoing]~~ restrictions of this section shall not apply to any commercial vessel operated in connection with the lease of premises at a small boat harbor.

(c) Notwithstanding subsection (b) and except at

the Ala Wai and Ke'ehi small boat harbors, the department may authorize the owner of a transient or visiting commercial vessel engaged in a trade or business elsewhere to:

- (1) Carry passengers for hire in the [~~above listed~~] small boat harbors if the vessel will be so engaged as a registered participant in a bona fide fishing tournament;
- (2) While on cruise, off-load and load passengers in the [~~above listed~~] small boat harbors if those passengers are embarked elsewhere or bound for another destination; provided that a reservation for a berth was made in advance and space is available; or
- (3) Embark and disembark passengers occasionally and infrequently, not exceeding [~~eight~~] twenty-four times in a calendar year on a special charter when approved not less than seven days in advance of the voyage.

(d) A commercial use permit or catamaran registration certificate shall automatically expire upon the department's notice to vacate, if any vessel granted a temporary mooring permit under section 13-231-57(c) engages in a trade or business contrary to the provisions of the permit or certificate [~~issued for the vessel while authorized to be moored in the above listed small boat harbors~~]. [Eff 2/24/94; am and comp] (Auth: HRS §200-2, 200-4, 200-9, 200-10) (Imp: HRS §§200-2, 200-4, 200-9, 200-10)

§13-231-58 Limitations on the number of commercial use permits and catamaran registration certificates for vessels assigned permanent moorings.

(a) The total number of valid commercial use permits which may be issued for vessels assigned permanent mooring in [~~Mānele~~] Mānele small boat harbor shall not exceed ten percent of the available berths.

(b) Subject to any other limitations on commercial catamarans that may be provided in these rules, [The] the total number of valid commercial use permits or catamaran registration certificates [~~which~~] that may be issued for vessels assigned [~~permanent~~] mooring in the [~~following small boat harbors are:~~] Ala Wai small boat harbor shall not exceed fifteen per cent of the total number of berths; provided that at the Ala

Wai small boat harbor, vessels issued commercial use permits or catamaran registration certificates shall:

- (1) Not exceed sixty-five feet in length;
- (2) Occupy not more than fifty-six berths located along the row of berths furthest mauka or adjacent to Holomoana Street, with the remainder located throughout the Ala Wai small boat harbor, with priority assigned to row five hundred, row seven hundred, and row eight hundred;
- (3) Be phased-in in a manner that does not displace any existing recreational boater or existing catamaran operator; and
- (4) Include commercial catamarans for which valid commercial use permits or existing registration certificates have been issued by the department, that allow the catamarans to operate upon Waikiki shore waters for hire.

(c) The total number of valid commercial use permits or catamaran registration certificates that may be issued for vessels assigned mooring at the Ke'ehi small boat harbor shall not exceed thirty-five per cent of the total number of berths;

~~[-b-]~~ (d) The total number of valid commercial use permits [which] or commercial registration certificates that may be issued for vessels assigned permanent mooring in the following small boat harbors are:

<u>Harbor</u>	<u>Number of commercial use permits</u>
[-1-] <u>Ala Wai</u>	<u>[0] as provided for in Hawaii Revised Statutes 200-9</u>
[-2-] <u>Keehi</u>	<u>[0] as provided for in Hawaii Revised Statutes 200-9</u>
[-3-] <u>(1) [Heeia] He'eia Kea</u>	<u>[7] as provided for in section 13-256-73.1</u>
[-4-] <u>(2) [Haleiwa] Hale'iwa</u>	<u>[8] 20</u>
[-5-] <u>(3) [Waianae] Waianae</u>	<u>15</u>
[-6-] <u>(4) [Nawiliwili] Nāwiliwili</u>	<u>10</u>
[-7-] <u>(5) Port Allen</u>	<u>12</u>
[-8-] <u>(6) [Kikīaola] Kikīaola</u>	<u>3</u>
[-9-] <u>(7) [Kukui'ula] Kukui'ula</u>	<u>4</u>
[-10-] <u>(8) [Hana] Hāna</u>	<u>2</u>
[-11-] <u>(9) Kaunakakai</u>	<u>9</u>
[-12-] <u>(10) Lahaina</u>	<u>32</u>
[-13-] <u>(11) [Maalaea] Mā'alaea</u>	<u>29</u>

(14) (12)	[Honokohau] <u>Honokōhau</u>	120
(15) (13)	Kawaihae (north)	4
(16) (14)	Kawaihae (south)	[14] 10
(17) (15)	Kailua-Kona <u>Makai</u>	3
(18) (16)	[Keauhou] <u>Kailua-Kona Offshore</u>	[6] 8
(19) (17)	Wailoa	[20] 10
(20) (18)	Reed's Bay	3
(19)	<u>Keauhou</u>	6

~~(e)~~ (e) Notwithstanding the provisions of subsections (a) ~~and (b)~~ through (d) limiting the number of commercial use permits and catamaran registration certificates that ~~[which]~~ may be issued, the owner of a commercial vessel holding a regular mooring permit and a valid commercial use permit or valid catamaran registration certificate on the effective date of the rule amendments for the above listed small boat harbors, may retain and apply for reissuance of the commercial use permit or catamaran registration certificate, provided that all other requirements of these rules are met.

~~(d)~~ (f) Upon the approval by the department, a person or ~~[corporation]~~ business entity possessing a valid commercial ~~[activity]~~ use permit for a vessel moored elsewhere may be issued a regular mooring permit at a state boating facility listed in subsection ~~(b)~~ (d), and retain the commercial ~~[activity]~~ use permit, provided that the permittee relinquishes the vessel moored elsewhere permit and that the total number of valid commercial ~~[activity]~~ use permits for vessels moored elsewhere shall be reduced accordingly. A regular mooring permittee who possesses a valid commercial ~~[activity]~~ use permit may~~(7)~~ relinquish the regular mooring permit and retain the commercial ~~[activity]~~ use permit, provided that the total number of valid commercial ~~[activity]~~ use permits for vessels moored in the state boating facility plus the number of commercial ~~[activity]~~ use permits for vessels moored elsewhere are not exceeded, and that the category of commercial ~~[activity]~~ use permits assigned to vessels moored elsewhere pursuant to section 13-231-59(d) shall not exceed the passenger capacity of the vessel formerly moored in the state boating facility. [Eff 2/24/94; am 6/16/03; am and comp]
 (Auth: HRS §§200-2, 200-3, 200-4, 200-9, 200-10) (Imp: HRS §§200-2, 200-3, 200-4, 200-9, 200-10)

§13-231-59 Limitations on commercial use permits for vessels moored elsewhere. (a) The department recognizes that it may be necessary or desirable to operate a commercial vessel from more than one small boat harbor, and that lack of mooring facilities in certain areas has required numerous vessels to establish permanent moorings offshore, outside of the small boat harbors of intended use. Therefore, notwithstanding section 13-231-57, the department may issue a limited number of commercial use permits to owners of vessels moored elsewhere for use of small boat harbor facilities. The number and categories of those commercial use permits shall be based on the physical capacity of the small boat harbor facilities to accommodate the additional volume of activity expected to be generated by the additional permits, and shall be determined by the department on a case-by-case basis for each small boat harbor, subject to the limitations listed in subsection (b).

(b) No commercial vessel moored elsewhere shall use any small boat harbor facilities for commercial purposes unless the owner of the commercial vessel moored elsewhere has been issued a commercial use permit for that vessel, or the vessel is exempt from commercial use permit requirements under the provisions of subsection 13-231-57(c) or as otherwise permitted by the department. "Commercial purposes" as used in this subsection includes the staging, loading and discharge of passengers or supplies at a state boating facility for further transport to a vessel's offshore location by means of a water taxi or any other vessel, or provisioning a vessel before or after a voyage involving the carriage of passengers for hire.

(c) The number of commercial use permits for vessels moored elsewhere which may be issued for each small boat harbor shall be as follows:

- (1) ~~[Maalaea harbor]~~ Mā'alaea small boat harbor: twenty;
- (2) Lahaina ~~[harbor]~~ small boat harbor: sixteen;
- (3) Manele ~~[and Heeia-Kea harbors]~~ small boat harbor: six [each, ~~except that for Heeia-Kea,~~ ~~commercial permits shall be limited to vessels having passenger categories I and II as listed in subsection (d), and may include the use of an auxiliary platform in an offshore operating area for which the owner has been issued a permit by the department,~~

~~provided that there shall be no increase in the level of commercial activity by the permittee, as of June 19, 1990, the effective date of Act 208, SLH 1990]; and~~

- (4) All other small boat harbors except for He'eia Kea small boat harbor, which is subject to section 13-256-73.1: no limit. ~~[These limits notwithstanding, all valid commercial permits for vessels moored elsewhere in effect on the effective date of these rules shall be permitted to remain in effect and be eligible for reissuance provided that all other provisions of these rules are met.]~~

(d) Each commercial use permit issued for a vessel moored elsewhere shall be assigned one of the following categories, depending on the passenger-carrying capacity of the vessel named in the permit:

- (1) Category I- one to twenty-four passengers
- (2) Category II - twenty-five to forty-nine passengers
- (3) Category III - fifty to seventy-four passengers
- (4) Category IV - seventy-five to ninety-nine passengers
- (5) Category V- one hundred to one hundred forty-nine passengers

(e) No commercial use permit for vessels moored elsewhere shall be issued for any vessel with a passenger-carrying capacity in excess of one hundred forty-nine, and no existing commercial use permit issued for a vessel moored elsewhere shall be issued a permit whenever the owner seeks to increase the passenger-carrying capacity above the limit of the category to which the [~~original~~] current permit was assigned.

(f) The department reserves the right to impose further restrictions on the operation of commercial vessels moored elsewhere, on a case-by-case basis, as may be necessary to reduce congestion and achieve more efficient use of small boat harbor facilities. Restrictions may include designation of docking times for passenger loading and unloading or fueling, and parking restrictions for patron and delivery vehicles. Additional restrictions shall be implemented by addenda

to existing commercial use permits issued by the department. Refusal of a permittee to accept or comply with additional restrictions implemented in this manner shall be cause for immediate termination of the commercial use permit.

(g) Use of any vessel in violation of this section may be cause for termination of all small boat harbor use permits issued to the owner by the department. [Eff 2/24/94; am and comp]
(Auth: HRS §§200-2, 200-3, 200-4, 200-9, 200-10) (Imp: HRS §§200-2, 200-3, 200-4, 200-9, 200-10)

§13-231-60 Allocation of commercial use permits and catamaran registration certificates. (a)
Commercial use permits and catamaran registration certificates shall be issued to qualified applicants in the order in which applications are received by the department. Seniority begins on the date an application is received and accepted by the department. The allocation procedures specified in subchapter 5, Allocation of berths, shall also govern the allocation of commercial use permits and catamaran registration certificates under this section; provided that waiting lists for commercial use permits and catamaran registration certificates shall be established and maintained separately from waiting lists for berth assignment.

(b) The sale or transfer of any corporation or other business entity while on the waiting list which results in a change of the majority stockholder or person holding the majority interest in the business shall result in loss of seniority, and the applicant shall be placed at the bottom of the waiting list.

(c) The department may reject an application for a commercial use permit if the type of commercial activity is determined by the department to be inappropriate for the facility or area for which the permit is being requested, in addition to the grounds for rejection of an application for a permit listed in section 13-231-82.

(d) When a commercial use permit becomes available for a vessel moored elsewhere, the permit issued shall be of the same category as the commercial use permit which was previously in effect. [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §§200-2, 200-3, 200-4, 200-10)

§13-231-61 [~~Renewal~~] Reissuance of commercial use permits and catamaran registration certificates. (a) The department may reissue a commercial use permit or catamaran registration certificate provided that:

(1) The gross receipts during the twelve-month period under the commercial use permit or catamaran registration certificate for which the application for reissuance has been submitted, equals or exceeds the following minimums as applicable:

- (A) Vessel used for bare boat (demise) charters and charter sail boats \$7,000
- (B) Vessels registered by the state or documented by the U.S. Coast Guard to carry six passengers or less[7]; including charter fishing boats \$15,000
- (C) Vessels certified by the U.S. Coast Guard to carry seven to twenty-[five]six passengers \$45,000
- (D) Vessels certified by the U.S. Coast Guard to carry twenty-[five]seven to forty-nine passengers \$85,000
- (E) Vessels certified by the U.S. Coast Guard to carry fifty to ninety-nine passengers \$125,000
- (F) Vessels certified by the U.S. Coast Guard to carry more than ninety-nine passengers. \$250,000
- (G) Vessels engaged in another trade or business not delineated and governed by an appropriate paragraph above \$7,000 [7]
- (H) Water sports equipment rentals \$7,000 ;
or

- (2) The permittee applies to the department in writing for reissuance of the permittee's commercial use permit or catamaran registration certificate and concurrently presents evidence that any failure to generate gross receipts from the operation of the permittee's vessel or certificate holder's catamaran as prescribed in this subsection was due to:
 - (A) The sinking, loss, or destruction of the permittee's vessel or certificate holder's catamaran;
 - (B) The permittee's vessel or certificate holder's catamaran being inoperative in excess of sixty days due to disability of the permittee or certificate holder;
 - (C) The permittee's vessel or certificate holder's catamaran was rendered inoperative in excess of sixty days due to damage to the vessel, or due to the necessity of replacing essential parts and gear, provided that reasonable and diligent efforts by the permittee to secure such items necessary to repair the vessel or replacement of parts is demonstrated; or
 - (D) Where conditions and circumstances are demonstrated wherein a reissuance of the permittee's commercial use permit or the catamaran registration certificate would be fair and warranted, and the application for reissuance is approved by the department; and
- (3) All fees and charges due and payable to the department have been paid and no violations are outstanding.
 - (b) No commercial use permit or catamaran registration certificate shall be issued to any permittee or certificate holder whose commercial use permit or catamaran registration certificate has been terminated for cause, provided that the permittee or certificate holder may apply for a new commercial use permit or catamaran registration certificate after one year has expired from the date of termination [~~of the commercial permit~~], all fees and charges owing the State have been paid, and the permittee or certificate holder is in compliance with federal and state laws.

(c) A corporation must have been in continuous commercial operation as evidenced by the submission of monthly reports of gross receipts for a minimum of twelve months in order to retain commercial use permits or a catamaran registration certificate upon the transfer of any interest in that corporation. [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §§200-2, 200-3, 200-4, 200-10)

§13-231-62 Transferability of commercial use permits and catamaran registration certificates. (a) Commercial use permits and catamaran registration certificates issued to individuals.

- (1) A commercial use permit issued to an individual is non-transferable, so that whenever the permittee parts with possession or transfers the title or interest in the vessel identified in the commercial use permit to another person by any arrangement, the commercial use permit shall expire except as provided herein with respect to the original permittee. The new possessor, transferee, or owner of the vessel shall have no right to use the commercial use permit. However, a sole proprietor holding a commercial use permit or catamaran registration certificate for a commercial catamaran to land on Waikiki beach and operate upon Waikiki shore waters for hire may transfer ownership of the vessel from personal ownership to corporate or other business ownership without terminating the right to operate. The existing permit or registration certificate shall be reissued in a timely manner in the name of the transferee corporation or other business entity. No commercial use permit or catamaran registration certificate for an existing Waikiki beach catamaran operation shall be denied or revoked without a prior hearing in accordance with chapter 91, hawaii revised statutes;
- (2) An original commercial use permittee or catamaran certificate holder [~~holding both~~] who also holds a [~~commercial permit and a~~] regular mooring permit, upon written

application and approval by the department may retain the commercial use permit or catamaran registration certificate, provided that within thirty days the permittee moves into the small boat harbor another vessel owned by the mooring permittee pursuant to the provisions of section 13-231-13; and

- (3) An original permittee holding a commercial use permit and moored elsewhere may, upon written application to and approval by the department retain the commercial use permit, provided that within thirty days the permittee resumes operation with another vessel owned by the permittee pursuant to the provisions of sections 13-231-13 and 13-231-61.

(b) The following rights, conditions, and restrictions apply to commercial use permits and catamaran registration certificates issued to a corporation or other business entity.

- (1) Notwithstanding section 13-231-13, a corporation or other business entity holding a valid commercial use permit or catamaran registration certificate may transfer any or all stock or interest and retain the commercial use permit or catamaran registration certificate and all other valid small boat harbor use permits in effect on the date of transfer, provided that the corporation or other business entity has been in continuous operation as evidenced by the submission of monthly reports of gross receipts for a minimum period of one full year and meets all requirements necessary for issuance of a commercial use permit or catamaran registration certificate. The department shall be notified within ten working days of:

(A) All transactions that amount to a transfer of ten per cent or more of the stock or interest in the firm by owners of record on the [effective] date of issuance of the current commercial use permit or catamaran registration certificate [~~these rules~~];

(B) The transfer of any stock or interest which results in a change of the principal stockholder or owner; and

- (C) The business transfer fee is paid on or before the date of transfer; and
- (2) A commercial use permit or catamaran registration certificate issued to a corporation or other business entity shall automatically expire:
 - (A) Upon the voluntary or involuntary dissolution of the corporation or business entity;
 - (B) If the vessel or vessels operated under the commercial use permit or catamaran registration certificate are sold or otherwise transferred and not replaced in accordance with the provisions of section 13-231-13(b); or
 - (C) If the permittee or certificate holder fails to operate the vessel for which the commercial use permit or catamaran registration certificate is issued for a period in excess of sixty days, except as provided in section 13-231-61(a)(2), and except when the permittee or certificate holder provides advance notification to the department in writing that operations will be temporarily suspended for a specific period not to exceed four months. [Eff 2/24/94; am and comp]
 (Auth: HRS §§200-2, 200-3, 200-4, 200-9, 200-10) (Imp: HRS §§200-2, 200-3, 200-4, 200-9, 200-10)

§13-231-63 Retention of berth upon termination of commercial use permit or catamaran registration certificate. The owner of a vessel moored in any of the above listed small boat harbors whose commercial use permit or catamaran registration certificate has been cancelled at the owner's request, expired, or revoked by the department pursuant to the provisions of these rules may continue to moor the vessel in the small boat harbor in accordance with the owner's regular mooring permit and to utilize the vessel for non-commercial purposes if the vessel and the owner conform to the conditions set forth in these rules to renew or maintain a regular mooring permit. [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-

4, 200-9, 200-10) (Imp: HRS §§200-2, 200-4, 200-9, 200-10)

§13-231-64 Fees and charges. Fees and charges for commercial vessels shall be as prescribed in chapter 13-234 and chapter 13-253. (Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

§13-231-65 Insurance requirements. A use permittee issued a commercial use permit or catamaran registration certificate shall, concurrently with the execution of the permit or registration certificate, shall tender to the department a copy of either a comprehensive general liability insurance policy or policies or a protection and indemnity insurance policy, or a certificate of insurance in lieu thereof, evidencing that such policy has been and is in force, with a combined single limit of not less than \$500,000 for commercial vessels not authorized to carry passengers and for those authorized to carry not more than six passengers; not less than \$500,000 for vessels authorized to carry more than six passengers, but less than twenty-six passengers; and not less than \$750,000 for vessels authorized to carry more than twenty-five passengers, for bodily injury and damage to property per occurrence. The specification of limits contained herein shall not be construed in any way to be a limitation on the liability of the permittee or certificate holder for any injury or damage proximately caused by it or for purposes of indemnification of the State of Hawaii. This insurance shall:

- (1) Be issued by an insurance company authorized to do business in the State and approved in writing by the department;
- (2) Name the State as an additional insured;
- (3) Provide that the department shall be notified in writing at least thirty days prior to any termination, cancellation, or material change in insurance coverage;

- (4) Cover all injuries, losses, or damages arising from, growing out of, or caused by any acts or omissions of the permittee or certificate holder, its officers, agents, employees, invitees, members, shareholders, subcontractors, or licensees, in connection with the permittee's or certificate holder's activities under the permit or certificate; and
- (5) Be maintained and kept in effect at the permittee's or certificate holder's own expense throughout the life of the permit or certificate. The permittee or certificate holder shall submit evidence to the department of renewals or other actions proving that the insurance policy remains in effect as prescribed herein.

~~[tender to the department a copy of either a comprehensive general liability insurance policy or policies or a protection and indemnity insurance policy, or a certificate of insurance in lieu thereof, evidencing that such policy has been and is in force, with a combined single limit of not less than \$300,000 for commercial vessels not authorized to carry passengers and for those authorized to carry not more than six passengers; not less than \$500,000 for vessels authorized to carry more than six passengers, but less than twenty six passengers, and not less than \$750,000 for vessels authorized to carry more than twenty five passengers for bodily injury and damage to property per occurrence. The specification of limits contained herein shall not be construed in any way to be a limitation on the liability of the permittee for any injury or damage proximately caused by it. This insurance shall:~~

- ~~(1) Be issued by an insurance company or surety company authorized to do business in the State and approved in writing by the department;~~
- ~~(2) Name the State as an additional insured;~~
- ~~(3) Provide that the department shall be notified at least thirty days prior to any termination, cancellation, or material change in its insurance coverage;~~

- ~~(4) Cover all injuries, losses, or damages arising from, growing out of, or caused by any acts or omissions of the permittee, its officers, agents, employees, invitees, or licensees, in connection with the permittee's use or occupancy of the premises; and~~
~~(5) Be maintained and kept in effect at the permittee's own expense throughout the life of the permit. The permittee shall submit evidence to the department of renewals or other actions to indicate that the insurance policy remains in effect as prescribed herein.]~~

[Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

§13-231-66 Limitation on number of berths held by a commercial permittee. No person ~~[holding a valid commercial vessel permit for a commercial vessel moored]~~ shall be issued permits to moor more than two commercial vessels in any of the state's small boat harbors ~~[listed in section 13-231-57 shall be issued a use permit authorizing the person to moor more than two commercial vessels in one of these small boat harbors]~~ except temporarily pursuant to section 13-231-57(c) or as provided by section 13-231-69; provided further, that any person holding valid commercial use permits on the 1994 effective date of these rules authorizing the mooring of more than two commercial vessels in any of these small boat harbors may continue to moor the person's vessels in the small boat ~~[harbors]~~ harbor subject to compliance with the conditions of the commercial use ~~[permit]~~ permits and this chapter and until the commercial use permits expire or terminate without a proper reissuance. [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

§13-231-67 Limitation on commercial use permits issued for the use of state boat launching ramps. (a) State boat launching ramps were constructed for the primary purpose of providing access to the waters of the State for trailered boats. Therefore, commercial

use permits issued for the use of state boat launching facilities shall be restricted to boats that are regularly launched and recovered from boat launching ramps and used in the course of doing business. A commercial use permit shall be required for any trailered vessel which is rented off-site, but launches or recovers from a state boat launching facility. The owner of a trailered vessel shall be required to obtain a commercial use permit and comply with all other rules of the department governing commercial vessel activities. Notwithstanding the limitation of the number of commercial use permits which may be issued for launching ramps in subsections (d)(3) through (d)(9) below, the owner may apply for and may be issued a commercial use permit for the number of vessels owned and registered in furtherance of its commercial use by the business on the 1994 effective date of these rules. Vessels registered to boat dealers and manufacturers and used for the purpose of conducting sea trials and instruction of prospective owners shall be exempt from commercial use permit requirements.

(b) No commercial use permits for the use of state boat launching ramps shall be issued for the purpose of embarking or disembarking passengers by small craft or lighter from a vessel moored offshore.

(c) A commercial use permit issued for the use of a state boat launching ramp shall also be valid for all other state boat ramps on the same island at which commercial activities are permitted except those listed in subsection (d); provided that the permittee shall indicate which launching ramp is expected to be the location of primary use and the fees derived from [~~two~~] three percent of gross revenues shall be paid to that account. No commercial use permit shall be issued for a launching ramp located on an island other than the place of business of the permittee.

(d) The maximum number of commercial use permits which may be issued for the use of the following launching ramps are:

- | | | | |
|-----|-------------------------------------|---------------------|---|
| (1) | Ala Wai | - | [none] 3 |
| (2) | [Keehi] <u>Ke'ehi</u> | - | [none] 3 |
| (3) | [Heeia] He'eia Kea | [--- 7] | <u>as provided for in section 13-256-73.1</u> |
| (4) | Maunalua Bay | - | 5 |
| (5) | [Mala] <u>Māla</u> | - | 15 |
| (6) | [Kihei] <u>Kihei</u> | - | 15 |
| (7) | [Manele] <u>Mānele</u> | - | 3 |

(8)	Kaunakakai	-	5
(9)	[Kukuiula] Kukui'ula	-	6
(10)	[All others] Lahaina	-	[no limit.] none
(11)	Mā'alaea	-	none
(12)	Kikīaola	-	10
(13)	Nāwiliwili	-	5
(14)	Port Allen	-	9
(15)	Waika'ea	-	5
(16)	Honokōhau	-	35
(17)	Kawaihae (N)	-	5
(18)	Kawaihae (S)	-	10
(19)	Puakō	-	4
(20)	Pohoiki	-	4
(21)	Wailoa	-	10
(22)	Kailua Pier	-	6
(23)	Keauhou	-	11
(24)	All others	-	no limit.

(e) The maximum number of commercial use permits that may be issued for the use of any launch ramp is two (2) per business entity or sole proprietor registered to do business in the state. Notwithstanding this section, all owners of commercial use permits on the effective date of these rules may continue operations and be permitted to apply for and renew their commercial use permits subject to compliance with all other conditions set forth in this chapter until their total number is reduced by attrition or other means to the numbers in subsection (d)." [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-3, 200-4, 200-10, 200-39) (Imp: HRS §§220-2, 200-3, 200-4, 200-10, 200-39)

§13-231-68 Signs and other structures at a state small boat harbor. (a) No person shall erect or place a sign, ticket booth, or any other structure in a state small boat harbor without the prior written approval of the department. All such structures shall only be erected or placed within a state small boat harbor if they are in conformity with state and county laws and ordinances, and prior approval of all appropriate governing agencies has been obtained.

(b) Signs identifying commercial activities posted or displayed within a state small boat harbor shall be limited to twelve square feet maximum sign area and be designed in accordance with the guide for small boat harbor signs provided by the department.

Structures for ticket booths shall be limited to thirty-six square feet maximum and be designed in accordance with the guide for ticket booths provided by the department.

(c) Signs and other structures placed or erected within Lahaina small boat harbor shall also comply with the requirements of the Maui County Cultural Resources Commission.

(d) Fees for signs and ticket booths are set forth in chapter 13-234. [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §§200-2, 200-3, 200-10)

§13-231-69 Multiple use of mooring facilities by commercial vessels. (a) Notwithstanding the provisions of section 13-231-4, a permittee holding a valid mooring permit for a commercial vessel may place another commercial vessel of the same size category that is owned by the permittee in the permittee's assigned berth when the commercial vessel for which the mooring permit is issued is temporarily absent from the berth, provided that prior notification is provided to the department.

(b) The mooring permit for the assigned berth shall be issued for the largest commercial vessel to utilize the berth, and mooring fees charged in accordance with the fee schedule shown in section 13-234-25. The vessel name and registration or documentation number of each additional vessel expected to utilize the berth shall be listed as an addendum to the regular mooring permit issued for that berth. [Eff 2/24/94; comp] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10.)

§13-231-70 Water taxi operations. (a) Water taxi operations may be permitted at all small boat harbors [~~except Ala Wai and Keehi,~~] provided that the owner of the water taxi operation has been issued a commercial use permit. For the purpose of this section, "water taxi operations" means the shuttling of persons or cargo to or from the small boat harbor facility or a shoreside location authorized for such use under chapter 13-256, Hawaii Administrative Rules, to a destination or vessel located outside the small boat harbor boundary.

(b) No water taxi operations may be permitted to transport passengers and crew from commercial vessels moored offshore, or the shuttling of passengers to and from a commercial vessel moored elsewhere if that vessel has not been issued a commercial use permit for the small boat harbor or other valid commercial use permit issued by the department. There shall be no restriction on the use of water taxi service by recreational vessels, vessels owned by the United States, or commercial vessels which are exempt from commercial use permit requirements under the provisions of section 13-231-57.

(c) The department may furnish a current list of commercial vessels authorized to receive water taxi service as provided in subsection (b) upon request by the owner of the vessel performing water taxi operations at no charge. [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §§200-2, 200-3, 200-4, 200-10)

~~[§13-231-71 Reserved]~~

~~[§13-231-72 Small inter island passenger vessel permit. (a) This section shall apply only to vessels that are berthed at a location other than a state boating facility that conduct inter island passenger cruises, and are certified by the United States Coast Guard to carry no more than 49 passengers.~~

~~(b) An operator of a small inter island passenger vessel may apply to the department for a permit to conduct passenger visits to one or more state boating facilities during the course of inter island cruises in accordance with the provisions of section 13-231-57(e)(2), provided that a schedule of planned passenger visits is provided not less than one week in advance. The term of the permit shall not exceed one year.~~

~~(c) Notwithstanding the provisions of section 13-234-26, the permittee shall pay fees in accordance with section 13-234-25(a)(2). The permittee shall designate a state boating facility of principal use for accounting purposes, and the fee assessed under this section shall be paid to that account.]~~

~~[R]~~

~~[§§13-231-73] §§13-231-71 to 13-231-75 (Reserved)~~

SUBCHAPTER 4

SPECIAL AREA RULES

~~§13-231-76 Kewalo basin. The Kewalo basin is not a small boat harbor for the purpose of these rules. (See rules governing commercial harbors.)~~ [Eff 2/24/94; R]

§13-231-77 Ala Wai canal. Operation of vessels in Ala Wai canal shall be accomplished in a manner that will not create a nuisance to area residents. All applicable provisions of these rules shall apply to Ala Wai canal. [Eff 2/24/94; comp] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

§§13-231-78 to 13-231-79 (Reserved)

SUBCHAPTER 5

ALLOCATION OF BERTHS AND OFFSHORE MOORING

§13-231-80 General. (a) This subchapter shall govern the allocation of berths as they become available in small boat harbors.

(b) It is the policy of the department to promptly assign an available berth on a first-come, first-served basis to the first qualified applicant, determined in accordance with the provisions of this subchapter, for the type of mooring requested provided that the proposed use by the vessel affords maximum, safe, convenient, and efficient utilization of facilities and provided that assignment is not contrary to public interests, or otherwise unlawful or contrary to these rules.

(c) Since each berth and each vessel presents unique ship handling and other peculiar berthing problems in relation to the small boat harbor, the department reserves the right to utilize its fair and impartial judgment, flexibility, and discretionary authority to allocate berths based upon its knowledge of available facilities, prevailing small boat harbor

conditions, safe boating practices, effective harbor management procedures, and other factors which must be thoroughly considered prior to acceptance of an application and allocating a berth to a vessel. The many factors that the department may take into consideration in accepting an application and allocating a berth include, but are not limited to, the applicant's vessel length, draft, beam, method of propulsion; the proposed vessel use and any other special or unique vessel handling problems in relation to the size of the available berth; berth location, water depth, prevailing winds and currents, and other pertinent factors relative to the available berth.

(d) If berths of varying lengths are available for assignment in a small boat harbor then no regular mooring permit shall be issued which allocates a berth to a vessel, if the length of the berth to be assigned exceeds the vessel length overall by more than five feet; provided, however this provision does not apply:

- (1) When more than one vessel is assigned to and occupies a single berth end to end; or
- (2) In a small boat harbor with established categories of berths which may be assigned to designated classes of vessels, pursuant to section 13-231-86.

(e) A vessel with a length overall which exceeds the catwalk or pier length may be nonetheless allocated an available berth if the vessel may be safely moored in the berth and provided that the vessel, while moored in the berth, does not obstruct or hamper safe and convenient navigation within the small boat harbor.

(f) The department may establish categories of berths available to corresponding classes of vessels in a small boat harbor for allocation to applicants and shall place applicants in the most appropriate vessel classification to assure that vessels are allocated to suitable berths in order to promote the maximum, safe, convenient, and efficient utilization of facilities. Categories of berths and corresponding classes of vessels have been established in the small boat harbors enumerated in section [~~13-231-76~~] 13-231-86. [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-9, 200-10)

§13-231-81 Application for a berth; seniority of applications; period of validity; renewal of

application. (a) The department shall allocate a berth to an applicant by issuing a use permit pursuant to this subchapter and sections 13-231-2 and 13-231-3 if:

- (1) A berth is vacant in the small boat harbor and is available for such assignment pursuant to this subchapter;
- (2) No prior valid application for such is pending.

(b) A person desiring to moor a vessel in a small boat harbor where no berths are available for allocation pursuant to this subchapter may apply for and be allocated a berth as prescribed in this subchapter when a berth suitable for the vessel becomes vacant in the future.

- (1) An application for a berth shall be made in writing to the department on a form provided by the department. The applicant shall indicate in the application the type and characteristics of the vessel the applicant proposes to moor, including but not limited to, the vessel's length overall, draft, beam, principal source of propulsion, and any secondary or auxiliary source of propulsion, the type of mooring desired, and if applicable, the category or categories desired, provided that except in small boat harbors where the department has not established categories of berths an applicant may modify at any time the material contained in the applicant's application relating to the type and characteristics of the vessel the applicant proposes to moor in the small boat harbor and retain seniority or priority over later applicants. The department shall accept the application for consideration by endorsing it and entering the filing time and date on the application form submitted; one copy shall be given to the applicant. The time and date the application is endorsed by the department shall be the filing date and the effective date of the application for consideration and shall establish such applicant's seniority or priority over later applicants if the application remains valid, subject to the suitability of the berth which becomes available for allocation to the vessel to be moved into the berth by the

applicant. Priority of applicants for mooring in small boat harbors with established categories of berths is set forth in section 13-231-86. No application shall be accepted until the applicant pays the application fee prescribed in these rules and review thereof has been conducted pursuant to section 13-231-82.

- (2) An application shall continue in full force and effect for a period ending one year from the effective date of the application except as provided in paragraph (3), unless sooner terminated in accordance with these rules. An application is void after the date of expiration indicated thereon.
- (3) An application may be renewed within a ninety-day period preceding its expiration date. An application renewed prior to its expiration date shall be valid for a period ending one year from the expiration date of the previous application.
- (4) It is the policy of the department to mail an application renewal notice to the applicant, prior to the expiration of this application, at the address the applicant has furnished to the department pursuant to section 13-231-83. However, the applicant is responsible for the timely renewal of an application without receipt of a renewal notice from the department. [Eff 2/24/94; comp
] (Auth: HRS §§200-2, 200-4, 200-10)
(Imp: HRS §§200-2, 200-4, 200-9, 200-10)

§13-231-82 Review, acceptance, or rejection of applications. (a) The department shall examine and determine the genuineness and regularity of each application for a mooring or other small boat harbor use permit and may conduct any investigation as may be deemed necessary for its examination and determination; and it may require additional information from the applicant as may be necessary to determine the genuineness and regularity of the application.

(b) The department shall reject any application that contains a material misstatement or if the applicant has failed to disclose any material fact in the application.

- (c) An application shall not be accepted for consideration and shall be rejected if:
- (1) The application fee is not paid at the time the application is made;
 - (2) The applicant is delinquent in payment of any moneys due and payable to the department;
 - (3) The applicant has pending a citation for violation of any of the department's rules; or
 - (4) The category or type of mooring requested is inappropriate for the vessel to be moored by the applicant and will not, therefore, afford maximum, safe, convenient, and efficient utilization of small boat harbor facilities as determined by the department pursuant to section 13-231-80.

(d) Upon rejection of an application, the department shall inform the applicant, in writing within a reasonable time, that the person's application has not been accepted for consideration and has been rejected and the reasons therefor. The applicant shall be afforded the opportunity to submit a new application upon the correction of deficiencies cited in the notification of rejection of the original application.
 [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-4, 200-9, 200-10) (Imp: HRS §§200-2, 200-4, 200-9, 200-10)

§13-231-83 Applicant required to furnish address and report changes; effect of failure to report changes.

- (a) An applicant shall include the applicant's address in the application to the department for a berth.
- (b) An applicant shall immediately inform the department in writing of any changes in the applicant's address in order to maintain the validity of the applicant's application.
- (c) An application shall be void if the department is unable to notify the applicant of a vacancy at the address:
- (1) Appearing on the application; or
 - (2) Furnished in writing to the department by the applicant[+] as a change of address subsequent to submitting the application.
 [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-9, 200-10)

§13-231-84 Withdrawal of application; effect if application has become void, expires, or has been withdrawn. (a) An application may be withdrawn by an applicant upon written notice to the department.

(b) An applicant who withdraws an application or whose application has expired or becomes void may submit a new application for acceptance by the department. The applicant's seniority begins on the date the new application is accepted for consideration as provided in section 13-231-81.

(c) The application fee shall not be refunded if an applicant withdraws an application or if the application expires, or becomes void. [Eff 2/24/94; comp] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-9, 200-10)

§13-231-85 Priority and procedures in allocation of berths. (a) An unassigned berth (a berth that is not assigned to a permittee by a regular mooring permit) shall first be offered to the senior applicant holding a regular mooring permit authorizing the applicant to moor in the small boat harbor who has applied for movement to another berth within the same harbor, provided that the vacant berth is of the same characteristics, category, or type as the berth currently allocated to the applicant and assignment of the applicant's vessel to the vacant berth would not be contrary to public interest or otherwise unlawful or contrary to these rules.

(b) Except as provided in subsection (a) and except where allocation shall be made pursuant to section 13-231-86 in small boat harbors with established categories of berths, an unassigned berth shall be promptly offered to the senior applicant for a regular mooring permit subject to the limitations contained in these rules promoting maximum, safe, convenient, and efficient utilization of facilities. Therefore, when the department receives a notice of cancellation of a regular mooring permit pursuant to section 13-231-9; a regular mooring permit expires, becomes void or is cancelled; or an assigned berth is vacated, other than temporarily for any reason, the department shall commence the process of allocating the berth to the senior applicant for a regular mooring

permit as expeditiously as possible as provided herein or in section 13-231-86.

(c) If assignment of the senior applicant's vessel to the available berth would not afford maximum, safe, convenient, and efficient utilization of the facility as determined in accordance with the factors enumerated in section 13-231-80 or is contrary to public interest or is otherwise unlawful or contrary to these rules, the berth shall then be promptly offered to the next senior qualified applicant whose vessel is suitable for the berth.

(d) An assigned berth, temporarily vacant while the regular permittee's vessel assigned thereto is temporarily absent from the berth, or an unassigned berth that is temporarily vacant pending allocation to and occupancy by a regular permittee shall be temporarily allocated to applicants as follows subject to sections 13-231-23 and 13-231-24 and the suitability of the vessel for the berth as determined by evaluation of the factors enumerated in this subchapter in order to promote the maximum safe, convenient, and efficient utilization of the small boat harbor facilities.

- (1) A nonrenewable temporary mooring permit authorizing interim use of a temporarily vacant berth for a period not to exceed the anticipated period of temporary vacancy or in any event not to exceed thirty days, whichever period is shorter, shall be offered to the senior applicant for a temporary mooring permit for the berth available pursuant to subsection (2) if suitable for the applicant's vessel in accordance with the factors enumerated in this subchapter, to promote maximum, safe, convenient, and efficient utilization of the facility. If the senior applicant for a temporary mooring permit declines the offer of interim use of the berth, the applicant's application for a temporary mooring permit shall be void and the berth shall be offered to the next senior applicant for a temporary mooring permit.
- (2) Priorities for allocation of temporarily vacant berths for interim use as they become available shall be as prescribed herein:
 - (A) First priority. The senior applicant to moor a transient vessel who applied in advance in writing for interim use of a temporarily vacant berth to begin at a

specified time and whose application was received and accepted by the department shall have priority for use of the berth over other applicants for temporary moorings enumerated in this subsection; provided that a transient vessel shall be allocated to a berth that has been set aside and designated by the department for use by transient vessels only unless the transient berths available for allocation at that time are not suitable for the vessel, or no such transient berths have been set aside in that harbor.

- (B) Second priority. If none of the vessels owned by the applicants, enumerated in paragraph (2) (A) are suitable for allocation to a temporarily vacant berth available for use, or if the eligible applicants decline an offer by the department to utilize a suitable berth, the senior applicant who applied in advance in writing to moor a vessel, other than a transient vessel, for an interim period whose application was received and accepted by the department shall have priority for use of the berth over other applicant's enumerated in subparagraph (C).
- (C) Third priority. If none of the vessels owned by the applicants awaiting a berth, enumerated in subparagraphs (A) and (B), are suitable for allocation to a temporarily vacant berth, or the eligible applicants decline an offer by the department to utilize the berth, the berth shall be offered on a first-come, first-served basis. [Eff 2/24/94; comp] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)

§13-231-85.5 Allocation of offshore mooring permits. Offshore mooring permits shall be allocated in accordance with and following the procedures set forth for mooring permits for berths. [Eff and comp] (Auth: HRS §§200-2, 200-4,

200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-10, 200-22, 200-24)

§13-231-86 Categories of berths; priority of allocation. (a) Categories or berths available to applicants for moorings in Ala Wai, [~~Keeki, and~~] Lahaina, Nāwiliwili, and Port Allen small boat harbors are established as shown in subsections (b), (c), (d), and (e). In these small boat harbors an applicant for a berth shall be placed in an appropriate vessel class by the department and is eligible for the corresponding category of berths. Applicants may apply by separate application for more than one category; provided, that their vessel is eligible for assignment only to those categories which correspond to the vessel class in which they are placed. An available berth shall be allocated to the senior applicant eligible for assignment to that category of berth provided that the proposed assignment of the vessel to the berth affords maximum, safe, convenient, and efficient utilization of facilities, and provided that the assignment is not contrary to public interest or is otherwise unlawful or contrary to these rules. Allocation of a berth shall not be made if the length of the senior applicant's vessel is greater or less than the length limitations prescribed for each category as shown below. Each category of berths is subject to all the limitations prescribed by this section.

Allocation of temporary mooring permits shall be made in accordance with the categories as established by this section and pursuant to the terms and conditions of section 13-231-87(c).

(b) Ala Wai small boat harbor. The following categories of berths are established at Ala Wai small boat harbor.

<u>CATEGORIES</u>	<u>[PIER/CATWALK LENGTH/TYPE]</u>	<u>VESSELS ELIGIBLE TO MOOR</u>
A	[25' Floating piers]	[From] 20' to 28' in length
B	[30' Floating piers]	["28' to 34' " " "] ["] 28' to <u>35'</u> " " "
C	[30' Fixed piers]	["35' to 44' " " "] ["] 35' to <u>45'</u> " " "

	[40' Fixed piers]	
D	[50' Floating piers]	[45' to 54' " "] [45' to 55' " "]
	[50' Fixed piers]	
E	[60' " "]	[55' to 65' " "]
F	[65' " "]	[60] 65' to [70] 75' " "]
G	[70' " "]	[65] 75' to [75] 85' " "]
H	[80' " "]	[75' to 85' " "] up to 19' in length
I	[Bow stern berths] [490 to 494]	Multihull vessels exclusively of varying lengths

<u>[CATEGORIES]</u>	<u>PIER/CATWALK LENGTH/TYPE</u>	<u>VESSELS ELIGIBLE TO MOOR</u>
J	Bow stern berths Berths 801 to 835	Vessels of varying lengths up to 45'
K	Marginal wharf (Diamond Head End)	Hobie Cats and other small sailing vessels.
F	Bow stern Transient vessels berths 836 to 865]	lengths up to 45'

~~[(c) Keehi boat harbor. The following categories of berths are established at Keehi boat harbor.~~

<u>CATEGORIES</u>	<u>PIER/CATWALK LENGTH/TYPE</u>	<u>VESSELS ELIGIBLE TO MOOR</u>
A	16' Fixed pier	From 18' to 25' in length
B	20' " "]	" 20' to 27' " "]
C	26' " "]	" 25' to 35' " "]
D	30' " "]	" 30' to 40' " "]
E	40' " "]	" 40' to 50' " "]
F	48' " "]	" 46' to 55' " "]
G	Alongside pier (former skiff mooring area)	" 40' to 50' " "]
S	Fore/aft skiff reserved exclusively for skiffs, open motorboats and similar vessels with low profiles, less than twenty four feet in length.]	

(c) [(d)] Lahaina small boat harbor. The following categories of berths are established at Lahaina small boat harbor.

<u>CATEGORIES</u>	<u>PIER/CATWALK LENGTH/TYPE</u>	<u>VESSELS ELIGIBLE TO MOOR</u>
A	Old marginal wharf, berths 2-5	Commercial vessels Up to 65' in length
B	Catwalks, berths 6-21	Commercial vessels Up to 55' in length
C	New marginal wharf, berths 22-100	Up to 50' in length

Commercial vessels holding valid mooring permits within Lahaina small boat harbor shall load and unload passengers from the assigned berth, unless otherwise authorized by the department to load and unload passengers from the loading dock. The mooring of any vessel within Lahaina small boat harbor shall be subject to sections 13-231-7, 13-231-80 and other applicable rules of the department.

~~[(e)] Heeia Kea boat harbor. The following categories of berths are established at Heeia Kea boat harbor.~~

<u>CATEGORIES</u>	<u>PIER/CATWALK BULKHEAD/TYPE</u>	<u>VESSELS ELIGIBLE TO MOOR</u>
A	Buoy moorings, berths and 300, 302	Up to 30' in length
B	200 Row, fore/aft cable moorings	Up to 25' in length
C	200 Row, fore/aft buoy moorings	Up to 28' in length
D	Fixed piers, odd numbered berths 303-319	From 30' to 45'
E	Fixed piers, even numbered berths 304-320]	From 40' to 55'

(d) Nāwiliwili small boat harbor. The following categories of berths are established at Nāwiliwili small boat harbor.

<u>CATEGORIES</u>	<u>PIER/CATWALK</u>	<u>ELIGIBLE VESSELS TO MOOR</u>
<u>A</u>	<u>60' Pier 100</u>	<u>55' to 65' in length</u>
<u>B</u>	<u>40' Piers 100, 200, 300</u>	<u>35' to 45' " "</u>
<u>C</u>	<u>30' Pier 300</u>	<u>25' to 35' " "</u>
<u>D</u>	<u>Harbor basin</u>	<u>Not to exceed 50' " "</u>
<u>E</u>	<u>Offshore Mooring</u>	

(e) Port Allen small boat harbor. The following categories of berths are established at Port Allen small boat harbor.

<u>CATEGORIES</u>	<u>PIER/CATWALK</u>	<u>ELIGIBLE VESSELS TO MOOR</u>
<u>A</u>	<u>50' Pier 100</u>	<u>45' to 55' in length</u>
<u>B</u>	<u>40' Piers 100, 200</u>	<u>35' to 45' " "</u>
<u>C</u>	<u>Harbor Basin</u>	<u>Not to exceed 50' " "</u>

[Eff 2/24/94; am 11/15/99; am and comp]
 (Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §§200-2, 200-3, 200-4, 200-9, 200-10)

§13-231-87 Notice to owner of available berth or offshore mooring. (a) When an offer of a regular mooring permit to use a berth or offshore mooring area can be made, as provided for in this subchapter, the department shall deliver the offer or send it by certified mail, return receipt requested, addressed to the applicant eligible to receive the offer pursuant to this subchapter at the post office address furnished to the department in writing by the applicant.

(b) The department shall offer a temporary mooring permit to the applicant eligible to receive it by telephone, personal service, or first class mail, postage prepaid addressed to the applicant at the post office address furnished to the department in writing by the applicant. [Eff 2/24/94; am and comp]
 (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-9, 200-10)

§13-231-88 Offer of regular mooring permit valid

only fourteen days; written notice of intention; acceptance. (a) An applicant for a regular mooring permit may decline an offer to the applicant of a regular mooring permit and retain the applicant's seniority if the applicant declines the offer in writing addressed to and received by the department, not later than fourteen days after the date of receipt of the offer. An applicant who declines an offer in writing and retains the applicant's seniority pursuant to this section, shall not be considered for a second offer on the basis of the applicant's seniority until six months have elapsed since the date of the applicant's first refusal. If the applicant decides to accept the offer, the applicant shall either deliver a written notice of intention to accept the offer to the department within fourteen days after the date of receipt of the offer or accept the offer by securing a use permit, complying with the requirements of section 200-9 and moving the applicant's vessel into the assigned berth or assigned mooring area, as applicable, within fourteen days after the receipt of the offer. The applicant's application for a use permit and the offer by the department of a use permit shall be void if the applicant fails to either move the applicant's vessel into the [small boat harbor] berth or mooring area, as applicable, or to give notice of intent to accept or to decline the offer in writing within fourteen days after the date of receipt of the offer, and the use permit shall then be offered to the next senior applicant for berth or mooring area, as applicable, pursuant to this subchapter. An applicant's application for a regular mooring permit shall also be void if the applicant fails to accept [the] a second offer of a regular mooring permit to use a berth, or mooring area, as applicable, and the [berth] permit shall then be offered to the next senior applicant for berth or mooring area, as applicable. Since time is of the essence, the offer delivered or mailed pursuant to section 13-231-87 shall contain a statement that the offer will lapse unless accepted in accordance with the procedures of this section. For the purposes of this subsection an applicant who declines a berth offered to the applicant as provided herein after presenting conclusive evidence to the department that for reasons of safety or navigation the berth offered to the applicant is unsuitable for the applicant's vessel shall not be classified as "an applicant who has declined the offer of a berth".

(b) An applicant who has delivered a written notice of intention to accept the offer to the department shall accept the offer by:

- (1) Securing a use permit for use of the berth or mooring area offered to the applicant as prescribed in sections 13-231-2 and 13-231-3 within fourteen days after the applicant mails or personally delivers the notice of intention to accept to the department;
- (2) Otherwise complying with section 200-9, HRS, and sections 13-231-2 and 13-231-3; and
- (3) Moving the applicant's vessel into the assigned berth or mooring area, as applicable, within fourteen days after the applicant mails or personally delivers the notice of intention to accept the offer to the department. Except as provided in subsection (c) the applicant's application for a use permit, the offer by the State of a use permit and the applicant's notice of intention to accept the offer shall be void if the applicant fails to secure a use permit and to move the applicant's vessel into the applicant's assigned berth or mooring area, as applicable, within fourteen days as prescribed herein, and the use permit shall then be offered to the next senior applicant in accordance with these rules.

(c) The department may extend the deadline for acceptance prescribed in subsection (b) if the applicant presents conclusive evidence to the department that the granting of additional time for compliance is reasonable and essential to prevent undue hardship, provided that any extension of time for compliance shall not exceed a period of one hundred twenty days from the date the department received from the applicant a written notice of intention to accept the offer of a use permit. This exception is only applicable to an applicant who has been offered a regular mooring permit.

(d) Should an applicant receive additional time for compliance and fail to bring in a vessel to occupy the accepted berth or mooring, the applicant shall pay \$250.00 per month, from the time of original acceptance until the one hundred and twentieth day lapses. [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

§13-231-89 Offer of temporary mooring permit valid only seven days; notification of intention; acceptance. (a) An applicant for a temporary mooring permit to moor the applicant's vessel in a temporarily vacant berth or offshore mooring who has been offered the use of a berth or mooring area pursuant to this subchapter shall, within seven days after the offer was made by telephone, personal service, or mail, notify the department of the applicant's intention to accept, or decline the offer. If the applicant declines the offer the applicant's application for a temporary mooring permit shall be void and the berth or mooring area shall be offered to the next senior applicant in accordance with these rules.

(b) An applicant who has notified the department of the applicant's intention to accept the offer shall accept the offer by:

- (1) Securing a temporary mooring permit for use of the berth or mooring area offered within seven days after the date the offer was made;
- (2) Moving the applicant's vessel into the assigned berth or mooring area within seven days after the date the offer was made by telephone, personal service, or mail, whichever event is earlier; and
- (3) Otherwise complying with the requirements of section 200-9, Hawaii Revised Statutes.

The applicant's application for a use permit and the applicant's notice of intention to accept the offer shall be void if the applicant fails to secure a use permit and to move the applicant's vessel into the applicant's assigned berth or mooring area within seven days as prescribed herein and the use permit shall then be offered to the next senior applicant for the type of berth or mooring available in accordance with the rules. [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

~~[§13-231-90 Offer of category I (breakwater) berth Ala Wai harbor. An applicant for a regular mooring permit may be offered a mooring buoy on the breakwater. The breakwater moorings have no water, electricity, roadway, or walkway. Access to the moorings is across the water from the 700 mole by boat.~~

~~There is no way that emergency vehicles can reach the area, and the only toilet and shower facilities are located on the 700 mole. Principal habitation, stay aboard, and vacation permits are not available. The offer of a mooring buoy on the breakwater will follow the requirements of section 13 231 88 with the exception that acceptance or rejection of the mooring buoy on the breakwater will not alter the applicant's seniority for a regular mooring permit for any other category that the applicant enjoys.]"~~

[R]

EXHIBIT "A"

CONTENTS DESCRIPTION OF THE AGREEMENT OF BOATOWNER
PURSUANT TO SECTION 13-231-2 OF THE SMALL BOAT
HARBORS REGULATIONS, INCLUDING OFFSHORE MOORING

An agreement effectuating provisions of Section 13-231-2 of the small boat harbors rules, including offshore mooring, may contain the following terms, covenants and conditions:

1. The owner's certification of all information contained in the application and submitted by him, as being true.
2. The owner's covenant to abide by any and all provisions of the small boat harbors rules, including offshore mooring, and the incorporation by reference of such rules into the agreement.
3. The owner's authorization of the state to assign and reassign berths and spaces for his vessel in accordance with section 13-231-7 of the small boat harbors rules, including offshore mooring.
4. A provision stating that all persons signing the agreement shall be jointly and severally liable for the full performance of all terms, covenants and conditions thereof.
5. The owner's authorization of the state to board his vessel to effect reasonable inspection in the manner and pursuant to procedures set out in section 13-231-8 of the small boat harbors rules, including offshore mooring.
6. The owner's covenant to pay all applicable fees and charges, and his authorization of the state to assess collection and service charges for the delinquent payment thereof.
7. The owner's covenant to indemnify the state and its officers and employees for damages and injuries arising out of the owner's exercise of privileges granted by the use permit.
8. A provision that the term of the agreement and use permit shall terminate upon expiration of the period stated therein pursuant to section 13-231-5 of the small boat harbors rules, including offshore mooring, thereby requiring a renewal of the agreement and use permit in order that the owner may continue to use the small boat harbor and its facilities.
9. A provision that the use permit with its attendant privileges is revocable and cancellable in accordance with sections 13-231-9 and 13-231-10 of the small boat harbors rules, including offshore mooring; and the owner's covenant to pay, upon his failure to promptly remove his vessel from the small boat harbor upon revocation, cancellation or termination of the use

permit, a reasonable sum to be established between the parties and to be made a part of the agreement, as liquidated damages.

10. The owner's authorization of the state to reasonably effect the removal of his vessel pursuant to sections 13-231-10 and/or 13-231-17 of the small boat harbors rules, including offshore mooring.
11. The owner's covenant to pay all costs and attorney's fees, including costs of collection of delinquent fees and charges in the event the state is forced to institute a suit against the owner of his violation of any and all provisions of the small boat harbors rules, including offshore mooring, and/or the agreement, and is successful in such suit.
12. A provision stating that neither the agreement, use permit or the privileges attendant thereto is assignable nor in any way transferable, in part or in its entirety.
13. An open provision to enable the state and the owner to negotiate additional terms, covenants and conditions as may be proper under the particular circumstances, including but not limited to provisions requiring sufficient comprehensive liability insurance coverage at a minimum of \$500,000 per occurrence as approved by the department and performance and/or compliance bonds in such amounts as may be warranted under the circumstances.
14. A provision that in the event the fees and charges which shall have accrued in favor of the department shall not be paid as provided in these small boat harbors rules, including offshore mooring, the department may, after reasonable notice, take possession of the vessel, its tackle, apparel, fixtures, equipment and furnishings, and may retain such possession until all charges then owing and any charges which shall thereafter accrue are fully paid and the remedy thus provided is in addition to and not in lieu of any other remedies which the department may have by virtue of statute or otherwise.

STATE OF HAWAII
DLNR - DIVISION OF BOATING
AND OCEAN RECREATION

VESSEL INSPECTION REPORT

DATE: _____

OWNER: _____

PERSON(S) PRESENT FOR INSPECTION: _____

VESSEL NAME: _____ REG/DOC # _____ EXP. DATE: _____

REGISTERED /DOCUMENTED USE: _____

DESCRIPTION OF VESSEL: _____

PROPULSION: _____ NET TONNAGE (commercial only): _____

RADIO - TYPE(S) & CALL SIGN: _____ EPIRB ABOARD? _____

Each item shall meet applicable U.S. COAST GUARD,
AMERICAN BOAT & YACHT COUNCIL STANDARDS AND
DEPARTMENT OF LAND AND NATURAL RESOURCES ADMINSTRATIVE RULES.

[=====]
=====]

INSPECTION ITEM	PASSED	NOT PASSED	N/A	REMARKS
CERTIFICATE/DOCUMENT ABOARD				
REG/DOC NO. PROPERTY DISPLAYED				
MFG'S SER. NO. DISPLAYED				
SAFETY EQUIPMENT				
PFD'S				
VISUAL DISTRESS SIGNAL(S)				
HORN, WHISTLE [&] AND/OR BELL				
PLACARDS [-]: TRASH, OIL				
FIRE EXTINGUISHER(S)				
PROPER LIGHTS				
BILGE PUMPING DEVICE				
OIL IN [BILGE] BILGE				
OIL ABSORBENT PADS OPERATIVE				
OTHER FUELS PROPERLY VENTED				
PROPULSION				
ENGINE ABOARD				
ENGINE OPERATIVE/APPROP. SIZE				
BACKFIRE FLAME ARRESTER				
ENGINE COMPARTMENT VENTILATED				
FUEL COMPARTMENT VENTILATED				
EXHAUST SYSTEM				
SPARS OPERATIVE				
RIGGING OPERATIVE				
APPROPRIATE SAILS ABOARD				
MARINE SANITATION DEVICE ABOARD				
HOLDING TANK - TYPE				
FLOW THROUGH				
PROPERLY INSTALLED				

(Continued on reverse side)

(Continued from reverse side)

[=====]
=====]

INSPECTION ITEM	PASSED	NOT PASSED	N/A	REMARKS
ADEQUATE STEERING/RUDDER OPER.				
HULL/PROP/RUDDER CLEAN FOR USE				
ADEQUATE EXITS				
UNSECURED OPEN'GS/HULL/DECK/CAB				
RECONSTRUCTION/SURVEY/INSURANCE				
CHAFE GEAR				
GROUND TACKLE				
[WATER BACKFLOW DEVICE]				
GENERAL APPEARANCE				
REASONABLE CLEANLINESS				
ANIMAL ABOARD				
HOW MANY LIVING ABOARD?				

COMMENTS: _____

I inspected the vessel described on the front of this form on _____
[19] 20 ___ at _____ (AM) (PM) at _____. I have
observed the vessel described on the front of this form move by its own
propulsion (POWER/SAIL), at an adequate speed indicating that the vessel
was in good operating condition, from _____ to
_____, the route designated by the harbor agent for this
vessel. I have personally inspected every item on the checklist on the
front and reverse side of this form for the vessel described therein and
(CONSIDER / DO NOT CONSIDER) it to be in good material and operating
condition in accordance with the requirements [~~contain~~] contained in the
Hawaii Administrative Rules, Department of Land and Natural Resources,
State of Hawaii. I further certify that the vessel's length (end to end
over deck: LOD) is _____ feet _____ inches; and [~~overall~~] length overall
(including extension such as bowsprit: LOA) is _____ feet _____ inches.

Date signed: _____ Signature: _____

Name typed or printed: _____

Company Name: _____

Address: _____

City: _____ State: _____ Zip: _____

[H. Ph.: _____ B. Ph.: _____ Other Ph.: _____]

Contact Phone No: _____

PERMIT NO. _____ PERMIT EXPIRATION DATE: _____

2. Material, except source notes, to be repealed is bracketed and stricken. New material is underscored.

3. Additions to update source notes to reflect these amendments are not underscored.

4. The amendments and compilation of chapter 13-231, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on _____ by the Board of Land and Natural Resources, and filed with the Office of the Lieutenant Governor.

WILLIAM J. AILA, JR.
Chairperson
Board of Land and Natural Resources

APPROVED FOR PUBLIC HEARING:

Deputy Attorney General

Rules Amending Title 13
Hawaii Administrative Rules

DATE

1. Chapter 13-251, Hawaii Administrative Rules, entitled "Waikiki and Kaanapali Ocean Waters" is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 11

OCEAN RECREATION AND COASTAL AREAS

PART III

OCEAN WATERS, NAVIGABLE STREAMS AND BEACHES

CHAPTER 251

[~~WAIKIKI AND KAA NAPALI OCEAN WATERS~~] COMMERCIAL
ACTIVITIES ON STATE OCEAN WATERS, NAVIGABLE STREAMS,
AND BEACHES

Subchapter 1 [~~Catamaran Captain, Canoe Captain,
Canoe Second Captain, Surfboard
Instructor, Sailboard Instructor
And Commercial Motorboat Operator
Permits~~] Commercial Activities on
Ocean Waters of the State

§13-251-1 Use Permits

~~§13-251-2 What persons shall not receive permits~~

~~§13-251-3 Special restrictions~~

~~§13-251-4 Learner steersperson permits~~

~~§13-251-5 Application for operator permit~~

- ~~§13-251-6 Examination of applicants~~
~~§13-251-7 Operator permits issued to catamaran
captains, canoe captains, canoe second
captains, surfboard instructors, sail
board instructors and commercial
motorboat operators~~
~~§13-251-8 Operator permit to be carried onboard and
exhibited upon demand~~
~~§13-251-9 Duplicate certificate~~
~~§13-251-10 Expiration of operator permit~~
~~§13-251-11 Records to be kept by the department]~~
§13-251-2 Insurance requirements
§13-251-3 Reissuance of a registration certificate
and/or commercial use permit

~~[§§13-251-12 to §13-251-15] §§13-251-4 to §13-251-35
(Reserved)~~

Subchapter 2 ~~[Suspension or revocation of
permits] Repealed~~

Subchapter 3 ~~[Violation of operator permit
provisions] Repealed~~

Subchapter 4 ~~[Owners of Passenger Carrying
Vessels, For Rent Surfboards, For
Rent Sailboards, For Charter or
Rent Motorboats and For Rent
Watersports Equipment Proof of
Financial Responsibility] Repealed~~

~~[§§13-251-33 to §13-251-35 (Reserved)]~~

Subchapter 5 ~~[Registration] Waikiki and
Kā'anapali Catamarans~~

- §13-251-36 Application for a catamaran registration certificate and/or commercial use permit
- §13-251-37 Grounds for refusing [~~registration~~] an application for a registration certificate and/or commercial use permit
- §13-251-38 Registration certificate and/or commercial use permit indices
- §13-251-39 Department to issue registration certificate and/or commercial use permit
- §13-251-40 Registration certificates and/or commercial use permits to be exhibited upon demand
- §13-251-41 Identification of catamarans [~~vessels, surfboards, sailboards or water sports equipment~~] with a [registered] registration certificate and/or commercial use permit [by the department]
- §13-251-42 Expiration of registration certificate and/or commercial use permit
- §13-251-43 Application for renewal of registration certificate and/or commercial use permit
- §13-251-44 Notice of change of address
- §13-251-45 [~~Registration expires on transfer of ownership, exception~~] Transfer of registration certificate and/or commercial use permit
- §13-251-46 New owner must secure new registration certificate and/or commercial use permit
- §13-251-47 [~~Operation of vessels without proper identification~~] Repealed
- §13-251-48 Operation of a catamaran [~~vessel or renting of surfboards, sailboards or water sports equipment~~] when registration certificate and/or commercial use permit suspended or revoked

- §13-251-49 Authority of department to suspend or
revoke registration certificate and/or
commercial use permit
- §13-251-50 Duplicate registration certificate and/or
commercial use permit
- §13-251-51 [~~Catamaran registration limitations~~]
Repealed
- §13-251-52 Allocation of catamaran [~~registrations~~]
registration certificates and/or
commercial use permits
- §13-251-53 Catamarans; mooring of
§§~~[13-251-53]~~ 13-251-54 to 13-251-55 (Reserved)

Subchapter 6 [~~Rules of the Road~~] Waikiki and
Kā'anapali beach and ocean
waters

- §13-251-56 [~~Rules of the road~~] Repealed
- §13-251-57 [~~Waikiki restricted areas~~] Waikiki ocean
waters
- §13-251-58 [~~Kaanapali ocean waters, general-
restrictions~~] Kā'anapali beach and
ocean waters
- §13-251-59 [~~Intoxication~~] Repealed
- §13-251-60 [~~Careless operation~~] Repealed
- §§13-251-61 to ~~[13-251-65]~~ 13-251-75 (Reserved)

Subchapter 7 [~~Special operating restrictions~~]
Repealed

Subchapter 8 Soliciting Prohibited in or on
[~~Waikiki and Kaanapali~~] Waikiki
and Kā'anapali Ocean Waters

§13-251-76 Commercial Activities

Historical note. [~~This chapter is based on
catamaran captain, canoe captain, canoe second captain
and surfboard instructor permits, owners of for rent~~

~~surfboards and passengers carrying vessels proof of financial responsibility, registrations rules of the road, special operating restrictions and soliciting prohibited in or on Waikiki shore waters of the Hawaii Shore Waters Rules, effective November 6, 1981, and as amended thereafter, under the jurisdiction of the Department of Transportation, Harbors Division.]~~ 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, SLH 1991. [Eff 2/24/94; am and comp]

SUBCHAPTER 1

~~[CATAMARAN CAPTAIN, CANOE CAPTAIN, CANOE SECOND CAPTAIN, SURFBOARD INSTRUCTOR, SAILBOARD INSTRUCTOR AND COMMERCIAL MOTORBOAT OPERATOR PERMITS]~~ COMMERCIAL ACTIVITIES ON THE NAVIGABLE WATERS OF THE STATE

§13-251-1 Use [Permits] permits. ~~[Catamaran captains, canoe captains, canoe second captains, surfboard instructors, sailboard instructors and commercial motorboat operators shall have an operator permit.]~~

~~(a) No person shall navigate a catamaran or canoe as catamaran captain, canoe captain, or canoe second captain on a vessel carrying passengers for hire, or operate as a surfboard or sailboard instructor for compensation in or upon Waikiki or Kaanapali ocean waters unless the person has a valid permit under this part.~~

~~(b) No person shall navigate a commercial motorboat in or upon Kaanapali ocean waters unless the person has a valid permit under this part.~~

~~(c) No permit is required for captains navigating catamarans carrying passengers for hire who, while cruising, enter Waikiki or Kaanapali ocean~~

~~waters other than restricted waters described in sections 13-251-57 and 13-251-58, and do not load or unload passengers in or on Waikiki or Kaanapali ocean waters or shores.]~~ (a) 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 corresponding and reasonable benefits and returns to the public.

(b) No person shall engage in any business or commercial activity on the navigable waters of the state without:

- (1) Prior written approval from the board or its authorized representatives; or
- (2) The proper execution of an agreement with the department.

[Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

~~[§13-251-2 What persons shall not receive permits. The department shall not issue an operator permit to any person:~~

- ~~(1) Who is under the age of twenty one years for a catamaran captain or commercial motorboat operator, or under the age of twenty years for a canoe captain, or under the age of eighteen for a canoe second captain, or surfboard or sailboard instructor;~~
- ~~(2) Whose permit has been suspended or revoked, while the suspension or revocation is in effect;~~
- ~~(3) Who is a habitual drunkard, or a habitual user of narcotic or other drugs, to a degree which renders the person incapable of safely operating as a permittee;~~
- ~~(4) Who has previously been adjudged to be afflicted with or suffering from any mental disability or disease and who has not at the time of application been restored to competency as provided by law, such as to~~

- ~~render the person incapable of safely operating as a permittee;~~
- ~~(5) Who is required by this chapter to pass an examination or re-examination and has failed to do so, or~~
- ~~(6) Who the chairperson has good cause to believe is incapable of operating as a permittee without substantially jeopardizing public safety and welfare.] [R]~~

~~[§13-251-3 Special restrictions. (a) The department, upon issuing an operator permit, shall indicate thereon the class of permit so issued and shall appropriately examine each applicant according to the class.~~

~~(b) The department shall not issue a catamaran captain permit unless the applicant has a valid Coast Guard license to operate sailing catamarans carrying passengers for hire, and has a minimum of ninety working days catamaran sailing experience in Waikiki ocean waters, Zone A, or Kaanapali ocean waters, as appropriate, attested to by two persons holding valid catamaran captain permits issued by the department.~~

~~(c) The department shall not issue a canoe captain permit unless the department is fully satisfied as to the applicant's competency and fitness to receive the permit, and the applicant has a minimum of three years experience in canoe handling, possesses a current Red Cross advanced life saving certificate, knows elementary first aid, and is physically qualified to perform the duties the position requires, as evidenced by a written report of a physician's physical examination made no earlier than thirty days prior to the effective date of the permit.~~

~~(d) The department shall not issue a canoe second captain's permit unless the department is fully satisfied as to the applicant's competency and fitness to receive the permit, and the applicant has a minimum of eighteen months experience in canoe handling, possesses a current Red Cross advanced life saving certificate, knows elementary first aid, and is~~

~~physically qualified to perform the duties the position requires, as evidenced by a written report of a physician's examination made no earlier than thirty days prior to the effective date of the permit.~~

~~(e) The department shall not issue a senior surfboard instructor's permit or a sailboard instructor's permit unless the department is fully satisfied as to the applicant's competency and fitness to receive the permit, and the applicant has a minimum of three years surfboard or sailboard riding experience, as appropriate, possesses a current Red Cross advanced life saving certificate, knows elementary first aid, and is physically qualified to perform the duties the position requires, as evidenced by a written report of a physician's examination made no earlier than thirty days prior to the effective date of the permit.~~

~~(f) The department shall not issue a primary surfboard instructor's permit unless the department is fully satisfied as to the applicant's competency and fitness to receive the permit, and the applicant has a minimum of three years surfboard riding experience, possesses a current Red Cross advanced life saving certificate (on application for original permit only), knows elementary first aid, and is physically qualified to perform the duties the position requires, as evidenced by a written report of a physician's examination made no earlier than thirty days prior to the effective date of the permit.~~

~~(g) A primary surfboard instructor's permit for Waikiki shall entitle the permittee to instruct only in waters five feet or less in depth at mean low water and not in the outer surfbreak area.] [R]~~

~~[§13-251-4 Learner steersperson permits. Any person who is at least seventeen years of age may apply to the department for a learner steersperson permit. After the applicant has passed all parts of the applicable examination other than a canoe surfing test, the department may issue to the applicant a learner steersperson permit which shall entitle the~~

~~applicant to navigate a canoe, registered by the department and not carrying passengers for hire, in or upon Waikiki or Kaanapali ocean waters as appropriate.] [R]~~

~~[§13-251-5 Application for operator permit. (a) Every application for an operator permit shall be accompanied by the proper fee and payment of such fee shall entitle the applicant to not more than three attempts to pass any examination within a period of six months from the date of application.~~

~~(b) Every application shall include the full name, aliases, date of birth, sex, and resident address of the applicant and briefly describe the applicant, and the applicant's experience related to the vessel, surfboard, or sailboard the applicant wishes to use or operate. The application shall state whether the applicant has been issued a permit and, if so, when and whether the permit has ever been suspended or revoked, or whether an application has ever been refused and, if so, the date and reason for the suspension, revocation, or refusal. Two recent photographs shall be attached to the application.] [R]~~

~~[§13-251-6 Examination of applicants. (a) The department shall examine every applicant for an operator permit, except as otherwise provided in this section. The examination shall include a test of the applicant's knowledge of this chapter and shall include an actual demonstration of the applicant's ability to exercise ordinary and reasonable control in the operation of catamarans, canoes, surfboards, sailboards, or commercial motorboats, as the case may be, and such further written, physical, and mental examination as the department feels is necessary to determine the applicant's fitness to operate a catamaran, canoe, surfboard, sailboard, or motorboat safely upon the Waikiki or Kaanapali ocean waters as appropriate; provided that applicants for learner~~

~~steersperson permits shall not be required to pass the canoe surfing test.~~

~~(b) The department may issue without examination an operator permit to any person applying therefore who furnished evidence satisfactory to the department that the person is not disqualified under this chapter and that the person has previously been issued an operator permit by the department.] [R]~~

~~[§13-251-7 Operator permits issued to catamaran captains, canoe captains, canoe second captains, surfboard instructors, sailboard instructors and commercial motorboat operators. (a) An operator permit when issued by the department shall bear a distinguishing number assigned to the permit, the full name, date of birth, residence address, and brief description of the permittee, and a space upon which the permittee shall sign in ink the permittee's name immediately upon receipt of the permit. No permit shall be valid until it has been so signed by the permittee.~~

~~(b) Every operator permit shall bear the permittee's photograph showing the permittee's facial features, which shall be furnished by the permittee.] [R]~~

~~[§13-251-8 Operator permit to be carried on board and exhibited upon demand. Every permittee shall have the operator permit in the operator's immediate possession or at a place for safekeeping in the immediate vicinity at all times when operating as a permittee and shall display the same upon demand of a lifeguard, peace officer, or representative of the department.] [R]~~

~~[§13-251-9 Duplicate certificate. In the event that an operator permit issued under this subchapter is lost or destroyed, the permittee may obtain a duplicate or substitute thereof, upon payment of the~~

~~required fee, as provided by chapter 13-253, obtain a duplicate or substitute thereof.] [R]~~

~~§13-251-10 Expiration of operator permit. Every operator permit shall expire three years after its issuance. Application for a new permit shall be made as provided in section 13-251-5. The department may in its discretion, as provided in section 13-251-6, waive examination for renewal of a permit.] [R]~~

~~§13-251-11 Records to be kept by the department. (a) The department shall file every application for a permit received by it and shall maintain suitable records concerning permits issued. (b) The department shall file upon receipt, all accident reports and abstracts of records of convictions for violating this chapter. The department shall also maintain convenient records or make suitable notations so that an individual record of each licensee, showing the licensee's convictions and accidents, shall be readily ascertainable and available for the consideration by the department upon any application for renewal of license or permit and at other suitable times.] [R]~~

§13-251-2 Insurance requirements. A registration certificate and/or commercial use permit are subject to the insurance requirements of section 13-231-65.

§13-251-3 Reissuance of a registration certificate and/or commercial use permit. (a) The department may reissue a registration certificate and/or commercial use permit provided that:

- (1) The gross receipts during the 12-month period under the registration certificate and/or commercial use permit for which the

application for reissuance has been submitted, equals or exceeds the following minimums as applicable:

- | | | |
|-----|---|------------------|
| (A) | <u>Catamarans used for bare boat (demise) charters and charter sail boats</u> | <u>\$ 7,000</u> |
| (B) | <u>Catamarans with a registration certificate and/or commercial use permit by the State or documented by the U. S. Coast Guard to carry six passengers or less, including charter fishing boats</u> | <u>\$15,000</u> |
| (C) | <u>Catamarans certified by the U. S. Coast Guard to carry seven to twenty-six passengers</u> | <u>\$45,000</u> |
| (D) | <u>Catamarans certified by the U. S. Coast Guard to carry twenty-seven to forty-nine passengers</u> | <u>\$85,000</u> |
| (E) | <u>Catamarans certified by the U. S. Coast Guard to carry fifty to ninety-nine passengers</u> | <u>\$125,000</u> |
| (F) | <u>Catamaran certified by the U. S. Coast Guard to carry more than ninety-nine passengers</u> | <u>\$250,000</u> |
| (G) | <u>Vessels engaged in another trade or business not delineated and governed by an appropriate paragraph above</u> | <u>\$ 7,000;</u> |

or

- (2) The registered certificate holder and/or commercial use permittee applies to the department in writing for reissuance of the registration certificate and/or commercial use permit and concurrently presents evidence that any failure to generate gross

receipts from the operation of the catamaran as prescribed in this subsection was due to:

- (A) The sinking, loss, or destruction of the catamaran;
- (B) The catamaran being inoperative in excess of 60 days due to disability of the registered certificate holder and/or commercial use permittee;
- (C) The catamaran was rendered inoperative in excess of 60 days due to damage to the catamaran, or due to the necessity of replacing essential parts and gear, provided that reasonable and diligent efforts to secure such items necessary to repair the catamaran or replace parts, is demonstrated to the satisfaction of the department; or
- (D) Where conditions and circumstances are demonstrated wherein a reissuance of the registration certificate and/or commercial use permit would be fair and warranted, and the application for reissuance is approved by the department; and

(3) All fees and charges due and payable to the department have been paid and no violations are outstanding.

(b) No registration certificate and/or commercial use permit whose registration certificate and/or commercial use permit has been terminated for cause shall be reissued; provided that the registered certificate holder and/or commercial use permittee may apply for, but not be automatically entitled to, a new registration certificate and/or commercial use permit after one year has expired from the date of termination of the registration certificate and/or commercial use permit, all fees and charges owing the State have been paid, and the registered certificate holder and/or commercial use permittee is in compliance with federal and state laws.

(c) A corporation or other business entity must have been in continuous commercial operation as

evidenced by the submission of monthly reports of gross receipts for a minimum of 12 months in order to retain their registration certificate and/or commercial use permit upon the transfer of any interest in that corporation and fee amounts in accordance with 13-253-1 are paid.

(d) No reissuance of a registration certificate or commercial use permit may be denied for a catamaran operating in Waikiki ocean waters without a prior hearing [Eff] (Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

~~§§13-251-12 to §13-251-15~~ §§13-251-4 to §13-251-35 (Reserved)

SUBCHAPTER 2

~~[SUSPENSION OR REVOCATION OF PERMITS]~~ REPEALED

~~§13-251-16 Authority of department to revoke operator permit. (a) The department may revoke any operator permit upon determining that the permittee failed to give the required or correct information in the application, committed any fraud in making such application, or repeatedly violated section 13-251-17.~~

~~(b) Upon revocation, the department shall immediately notify the permittee in writing and upon written request shall afford the permittee full and reasonable opportunity for a hearing.] [R]~~

~~§13-251-17 Authority of department to suspend operator permit. (a) The department may suspend the operator permit of a catamaran captain upon sufficient evidence that the permittee does not have a valid Coast Guard license.~~

~~(b) The department may suspend the operator permit of a canoe captain, second captain, surfboard instructor, sailboard instructor, operator of a commercial motorboat or learner steersperson upon sufficient evidence that the permittee:~~

- ~~(1) Has been convicted of violations of this chapter in such frequency and seriousness as to indicate a disregard for the safety of other persons on the waters;~~
- ~~(2) Is incompetent to operate canoes, surfboards, sailboards or motorboats for charter or rent, as the case may be;~~
- ~~(3) Has permitted an unlawful or fraudulent use of the permittee's license or permit; or~~
- ~~(4) Has violated this chapter.~~

~~(c) Upon suspension, the department shall immediately notify the permittee in writing and upon a written request shall afford the permittee full and reasonable opportunity for a hearing.] [R]~~

~~§13-251-18 Department may require re-examination. The department upon written notice of at least five days to the permittee, may require the permittee to submit to an examination if the department has good cause to believe that a permittee is incompetent or otherwise not qualified to retain an operator permit. Upon the conclusion of the examination, the department shall take action as may be appropriate and may suspend or revoke the permit of that person or may issue a permit subject to restriction. Refusal or neglect of the permittee to submit to this examination shall be grounds for suspension or revocation of the permit.] [R]~~

~~§13-251-19 Period of suspension or revocation.~~

~~(a) The department shall not suspend an operator permit for a period of more than one year, except as provided under section 13-251-27.~~

~~(b) Any person whose operator permit had been revoked shall not be entitled to have that permit or~~

~~privilege renewed or restored unless the revocation was for a cause which has been remedied, except that after one year from the date on which the revoked permit was surrendered to and received by the department, the person may apply for a new permit as provided by this chapter. However, the department shall not issue a new permit unless it is satisfied, after investigation, with the character and ability of the person.] [R]~~

~~[§13-251-20 Surrender and return of operator permit. The department, upon suspending or revoking an operator permit, shall require that the permit be surrendered to and be retained by the department, except that at the end of the suspension, the surrendered permit shall be returned to the permittee.] [R]~~

~~[§§13-251-21 to 13-251-25 (Reserved)] [R]~~

SUBCHAPTER 3

~~[VIOLATION OF OPERATOR PERMIT PROVISIONS] REPEALED~~

~~[§13-251-26 Unlawful use of operator permit. No person shall:~~

- ~~(1) Display, cause or permit to be displayed, or have in the person's possession, any cancelled, revoked, suspended, fictitious, or fraudulently altered permit;~~
- ~~(2) Lend the person's permit to any other person or knowingly permit the use thereof by another;~~
- ~~(3) Display or represent as one's own, any permit not issued to oneself;~~
- ~~(4) Fail or refuse to surrender any departmental permit to the department upon its lawful demand;~~

- ~~(5) Permit any unlawful use of a permit issued to that person;~~
- ~~(6) Do any act forbidden, or fail to perform any act required, by this chapter.] [R]~~

~~[§13-251-27 Operating while operator permit suspended or revoked. (a) No person shall operate as a permittee at a time when the privilege is suspended or revoked.~~

~~(b) The department shall extend the operator's suspension for a period equal to the original suspension upon receiving a record of that person's conviction for operating while the person's operator permit was suspended. If the conviction was for operating while a permit was revoked, the department shall not issue a new permit for an additional period of one year from the date the person would otherwise have been entitled to apply for a new permit.] [R]~~

~~[§13-251-28 Permitting unauthorized person to operate catamaran or canoe. No person shall authorize or permit a catamaran or canoe carrying passengers for hire to be navigated in or upon Waikiki or Kaanapali ocean waters by any person who is not authorized by this chapter to do so.] [R]~~

~~[§§13-251-29 to 13-251-30 (Reserved)] [R]~~

SUBCHAPTER 4

~~[OWNERS OF PASSENGER CARRYING VESSELS, FOR RENT SURFBOARDS, FOR RENT SAILBOARDS, FOR CHARTER OR RENT MOTORBOATS AND FOR RENT WATERSPORTS EQUIPMENT PROOF OF FINANCIAL RESPONSIBILITY] REPEALED~~

~~§13-251-31 Owner of passenger carrying vessels, for rent surfboards, for rent sailboards, for charter or rent motorboats, or for rent water sports equipment to give proof of financial responsibility. (a) It shall be unlawful for the owner of any:~~

- ~~(1) Vessel carrying passengers for hire to authorize or knowingly permit that vessel to be navigated in or upon Waikiki or Kaanapali ocean waters, unless the owner has registered the catamaran as prescribed in this subchapter, except that this paragraph shall not apply to cruising vessels as described in section 13-251-1;~~
- ~~(2) Surfboard or sailboard engaged in the business of renting surfboards or sailboards for use in Waikiki or Kaanapali ocean waters, to rent a surfboard or sailboard, unless the owner has registered the surfboard or sailboard as prescribed in this subchapter. The department shall not register any vessel, surfboard, or sailboard unless the owner gives proof of financial responsibility as provided by this chapter. The department shall cancel the registration of any vessel, surfboard, or sailboard whenever the department ascertains that the owner has failed to or is unable to give and maintain proof of financial responsibility;~~
- ~~(3) Water sports equipment engaged in the business of renting water sports equipment for use in Waikiki or Kaanapali ocean waters to rent water sports equipment, unless the owner has registered the water sports equipment as prescribed in this subchapter. The department shall not register any water sports equipment unless the owner gives proof of financial responsibility as provided by this subchapter. The department shall cancel the registration of any water sports equipment whenever the department ascertains that the owner has failed to or~~

~~is unable to give and maintain proof of financial responsibility;~~

- ~~(4) Water sports equipment engaged in the business of renting water sports equipment for use in Waikiki or Kaanapali ocean waters to rent water sports equipment, unless the owner has registered the water sports equipment as prescribed in this subchapter. The department shall not register any water sports equipment unless the owner gives proof of financial responsibility as provided by this subchapter. The department shall cancel the registration of any water sports equipment whenever the department determines that the owner has failed to or is unable to give and maintain proof of financial responsibility.~~

~~(b) The owner shall submit to the department evidence that there has been issued to the owner by an insurance carrier authorized to do business in the State, and naming the State as an additional insured, a public liability insurance policy or policies covering the operations under the permits issued in accordance with this chapter and with the following minimum coverages:~~

- ~~(1) In the case of vessels carrying passengers for hire, the following amounts for bodily injury and damage to property per occurrence:~~
- ~~(A) \$100,000 for vessels authorized to carry not more than six passengers;~~
 - ~~(B) Not less than \$300,000 for vessels authorized to carry more than six passengers, but less than twenty six;~~
 - ~~(C) Not less than \$500,000 for vessels authorized to carry more than twenty five passengers;~~
- ~~(2) In the case of surfboard or sailboard operations, the amount of \$50,000 for bodily injury or death per person, subject to the total coverage in any one accident of \$100,000 for bodily injury or death;~~

- ~~(3) In the case of motorboat operations, the amount of \$100,000 for bodily injury or death per person, subject to the total coverage in any one accident of \$500,000 for bodily injury or death;~~
- ~~(4) In the case of water sports equipment operations, the amount of \$100,000 for bodily injury or death per person, subject to the total coverage in any one accident of \$300,000 for bodily injury or death.~~
- ~~(c) The owner shall maintain the policy or policies in full force and effect during all times that the owner is engaged in the businesses described in subsection (a), unless the owner has given proof of financial responsibility as provided in section 13-251-32.] [R]~~

~~[§13-251-32 Owner of passenger carrying vessels, for rent surfboards, for rent sailboards, for rent motorboats, and for rent water sports equipment when no policy obtained. (a) The department shall not register any vessel, surfboard, sailboard, motorboat, or water sports equipment rented, chartered or used for carrying passengers, as the case may be, in Waikiki or Kaanapali ocean waters if the owner thereof has not given proof of financial responsibility as provided in section 13-251-31; provided no such proof is necessary if the owner demonstrates, to the satisfaction of the department, the financial ability to respond to claims for damages as follows:~~

- ~~(1) If the owner applies for registration of surfboards or sailboards, in the sum of at least \$50,000 per person injured or killed in a surfboard or sailboard operation, subject to the total coverage in any one accident of \$100,000 for bodily injury or death; or~~
- ~~(2) If the owner applies for the registration of any vessel carrying passengers for hire, in the following sums for bodily injury or death per occurrence:~~

- ~~(A) \$100,000 for vessels authorized to carry not more than six passengers;~~
~~(B) Not less than \$300,000 for vessels authorized to carry more than six passengers but less than twenty-six;~~
~~(C) Not less than \$500,000 for vessels authorized to carry more than twenty-five passengers;~~
~~(3) In the case of motorboat operations, the amount of \$100,000 for bodily injury or death per person, subject to the total coverage in any one accident of \$500,000; or~~
~~(4) In the case of water sports equipment operations, the amount of \$100,000 for bodily injury or death per person, subject to the total coverage in any one accident of \$300,000.~~
~~(b) The department shall cancel the registration of any vessel, surfboard, sailboard, motorboat or water sports equipment whenever the department determines that the owner has failed or is unable to comply with the requirements of this section.] [R~~
~~]~~

~~[[§13-251-33 to 13-251-35 (Reserved)]]~~

SUBCHAPTER 5

[REGISTRATION] WAIKIKI AND KĀ'ANAPALI CATAMARANS

§13-251-36 Application for a catamaran registration certificate and/or commercial use permit.

- (a) No person shall [÷]
[+1] [Offer] offer for hire, navigate, operate, or sail a catamaran [er canoe carrying passengers boarded or to be disembarked in or] on [Waikiki] Waikiki or [Kaanapali] Kā'anapali ocean waters and beach [shores]

without either a registration certificate or a commercial use permit;

- ~~[(2) Permit the use of a surfboard, sailboard or motorboat for compensation in and on the Waikiki or Kaanapali ocean waters and shores;~~
- ~~(3) Permit the use of water sports equipment for compensation in and on the Waikiki or Kaanapali ocean waters and shores; or~~
- ~~(4) As the owner of a vessel, surfboard, sailboard, motorboat or water sports equipment, permit or authorize those operations described in paragraphs (1), (2), or (3); unless the vessel, surfboard, sailboard or water sports equipment has been properly registered with the department.]~~

(b) The registration certificate and/or commercial use permit shall be initiated by the owner upon appropriate forms furnished by the department in accordance with those procedures that the department may reasonably prescribe. [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

§13-251-37 Grounds for refusing [registration-] an application for a registration certificate and/or commercial use permit. (a) The department shall refuse a registration certificate and/or commercial use permit, or any transfer of registration certificate and/or commercial use permit, upon a finding that:

- (1) The application contains any false or fraudulent statement, the applicant has failed to furnish required information or reasonable additional information requested by the department, or the applicant is not entitled to a registration certificate and/or commercial use permit under this subchapter;

- (2) The catamaran [~~vessel, surfboard, sailboard or water sports equipment~~] is unsafe to be operated upon the [~~Waikiki or Kaanapali~~] Waikiki or Kā'anapali ocean waters;
- (3) The registration certificate and/or commercial use permit of the catamaran [~~vessel, surfboard, sailboard or water sports equipment~~] stands suspended or revoked for any reason as provided in this subchapter;
- (4) The required fee has not been paid;
- (5) Any catamaran:
 - (A) Engaged in carrying more than six passengers does not have a valid Coast Guard certificate of inspection; or
 - (B) Engaged in carrying six or less passengers does not have a record of a condition survey, by a marine surveyor as defined in section 13-231-45, undertaken within ninety days prior to application for registration or renewal of registration, attesting that the vessel:
 - (i) Is in good material and operating condition;
 - (ii) The minimum required Coast Guard safety equipment is on board;
 - (iii) The catamaran is suitable to carry passengers in [~~Waikiki or Kaanapali~~] Waikiki or Kā'anapali ocean waters while being propelled solely by sail;
- (6) The catamaran cannot be safely navigated in [~~Waikiki or Kaanapali~~] Waikiki or Kā'anapali ocean waters, as appropriate, while being propelled by sail only;
- (7) The catamaran is equipped with auxiliary mechanical propulsion machinery using a propeller but does not have a propeller guard installed on the vessel[-] or a captain or crew member designated to be a look-out to ensure public safety approved by

- the department [~~permanently installed on the vessel~~];
- (8) The catamaran:
- (A) Is more than [~~forty-five~~] fifty feet in length for [~~Waikiki~~] Waikiki ocean waters operation;
 - [(B) Is more than sixty-five feet in length for Kaanapali ocean waters operation;
 - (C) Has a passenger capacity of more than forty-nine passengers;
- ~~(9) The catamaran will be used to transport passengers in a shuttle type service wherein passengers will be disembarked at a point other than at or near the embarkation point;~~
- (9) [~~(10)~~] The applicant for a catamaran registration certificate and/or commercial use permit holds a valid registration certificate and/or commercial use permit issued by the department in accordance with this subchapter for another catamaran authorized to be used on [~~Waikiki or Kaanapali~~] Waikiki or Kā'anapali ocean waters as applicable;
- (10) [~~(11)~~] The owner has not furnished proof of financial responsibility as prescribed in this subchapter;
- (11) [~~(12)~~] The owner of a catamaran holds a valid registration certificate and/or commercial use permit issued by the department in accordance with this subchapter for another catamaran authorized to be used on [~~Waikiki or Kaanapali~~] Waikiki or Kā'anapali ocean waters, as applicable;
- or
- ~~[(13) The operator of any vessel, surfboard, sailboard, or water sports equipment does not hold a valid operator permit; or]~~
- (12) [~~(14)~~] Any other grounds provided by this subchapter warrants refusal of the registration certificate and/or commercial

use permit or transfer of registration and/or commercial use permit.

(b) The department shall notify the owner in writing of the refusal. [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

§13-251-38 Registration certificate and/or commercial use permit indices. (a) The department shall receive [~~applications~~] an application for a registration certificate and/or commercial use permit [~~of~~] for catamarans [~~vessels, surfboards, sailboards, and water sports equipment~~] and when satisfied [~~of~~] with the [~~genuineness~~] accuracy, validity and regularity thereof, shall [~~register~~] provide a registration certificate and/or commercial use permit for the catamaran [~~vessel, surfboard, sailboard, or water sports equipment,~~] and keep a record of that registration certificate and/or commercial use permit.

(b) The total number of valid catamaran registration certificates and/or commercial use permits issued under this subchapter shall be issued according to 13-251-51.

(c) An owner may apply for a future vacancy, as prescribed in section 13-251-52, if registration certificates and commercial use permits continue to be issued. [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

§13-251-39 Department to issue registration certificate and/or commercial use permit. [~~(a) The department shall issue a registration certificate upon registering a vessel, surfboard, sailboard or water sports equipment.~~]

[~~(b)~~] The registration certificate and/or commercial use permit shall be issued to the owner, and shall contain the date issued, the name and

address of the owner, the [~~registration~~] number or other [~~vessel, surfboard, sailboard or water sports equipment~~] identification, and the description of the [~~vessel, surfboard, sailboard or water sports equipment~~] catamaran as determined by the department. [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

§13-251-40 Registration certificates and/or commercial use permits to be exhibited upon demand. Registration certificates and/or commercial use permit shall be shown upon demand of a [~~police~~] law enforcement officer, lifeguard, or [~~a~~]an authorized representative of the department. [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

§13-251-41 Identification of catamarans [~~vessels, surfboards, sailboards or water sports equipment~~] with a [~~registered~~] registration certificate and/or commercial use permit. [~~by the department.~~] [~~(a)~~] A name, or number, or both, prescribed by law or adopted by the owner with prior approval of the department shall be painted on, or attached to each side of the bow of each catamaran[~~-canoe, or motorboat~~] registered and/or commercial use permitted by the department, in a manner prescribed by the department and in a color which contrasts with the background in order that the name, or number, or both, may be completely visible and legible. Any lettering shall be no less than three inches in height. [~~The department may issue a decal at the time of initial registration and upon renewal. The decal shall be placed three inches aft of and in line with the name or number on the right (starboard) side.~~

(~~b~~) ~~Surfboards, sailboards and water sports equipment registered by the department shall be marked by the owner with a distinctive mark or a mark~~

~~together with a color or combination of colors adopted by the owner with the prior approval of the department to make the owner's surfboards, sailboards, or water sports equipment distinguishable. The department may issue a decal at the time of initial registration and upon renewal. The decal shall be affixed to a registered surfboard, sailboard or water sports equipment in a manner prescribed by the department.]~~
 [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

§13-251-42 Expiration of registration certificate and/or commercial use permit. Every catamaran [~~vessel, surfboard, sailboard, or water sports equipment~~] registration certificates and/or commercial use permit under this part shall expire:

- (1) One year after the effective date of the registration certificate and/or commercial use permit; or
- (2) When ownership has been transferred except as provided in section 13-251-45. [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

§13-251-43 Application for renewal of registration certificate and/or commercial use permit. Application for renewal of a [~~vessel, surfboard, sailboard, or water sports equipment~~] registration certificates and/or commercial use permit shall be made by the owner upon proper application and by payment of the registration certificates and/or commercial use permit fee. [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

§13-251-44 Notice of change of address.

Whenever any person moves from the address stated on a registration certificate and/or commercial use permit or pending application for a [~~vessel, surfboard, sailboard, or watersports equipment~~] registration certificate and/or commercial use permit, the person shall notify the department in writing of the person's old and new addresses within seven days of the change in address. [Eff 2/24/94; am and comp]
(Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

§13-251-45 [~~Registration expires on transfer of ownership; exception.~~] Transfer of registration certificate and/or commercial use permit. (a)
Whenever the individual owner of a catamaran [~~registered vessel, surfboard, sailboard, or water sports equipment~~] transfers or assigns the individual owner's title or interest, or the title or interest [~~of an owner~~] passes to another owner other than by voluntary transfer, the registration certificate and/or commercial use permit of the catamaran [~~vessel, surfboard, sailboard or water sports equipment~~] shall expire; provided, that upon the incapacitation or death of the individual owner, the registration certificate and/or commercial use permit may be transferred to a spouse or other member of the immediate family if the individual inherits the catamaran as provided by law and no transfer fee shall apply.

(b) Registration issued to individuals.

- (1) A registration certificate and/or commercial use permit issued to a sole proprietor may transfer the ownership of the vessel from personal ownership to corporate or other business ownership without terminating the right to operate under the commercial use permit or existing registration certificate;
- (2) The existing commercial use permit or existing registration certificate shall be

reissued in a timely manner in the name of the transferee corporation or other business entity;

(3) No valid commercial use permit or existing registration certificate issued to an owner of a commercial catamaran operating in the Waikiki ocean waters shall be denied or revoked without a prior hearing in accordance with chapter 91, Hawaii revised statutes;

~~[(2)]~~ (4) An original registration certificate holder or commercial permittee holding a regular mooring permit, upon written application and approval by the department, may retain the mooring permit, provided that within 30 days the permittee moves into the small boat harbor another vessel owned by the permittee pursuant to the provisions of section 13-231-13; and

~~[(3)]~~ (5) An original registration certificate holder and/or commercial use permittee may, upon written application to and approval by the department, retain the registration certificate and/or commercial use permit, provided that within 30 days the permittee resumes operation with another vessel owned by the certificate holder or permittee pursuant to the provisions of sections 13-231-13 and 13-231-61.

(c) The following rights, conditions, and restrictions apply to a registration certificate and/or commercial use permit issued to a corporation or other business entity.

(1) Notwithstanding section 13-231-13, a corporation or other business entity holding a valid registration certificate and/or commercial use permit may transfer any or all stock or interest and retain the registration certificate and/or commercial use permit and all other valid small boat harbor use permits in effect on the date of transfer, provided that the corporation or

other business entity has been in continuous operation as evidenced by the submission of monthly reports of gross receipts for a minimum period of one full year and meets all requirements necessary for issuance of a registration certificate and/or commercial use permit. The department shall be notified within ten working days of:

- (A) All transactions that amount to a transfer of 10 per cent or more of the stock or interest in the firm by owners of record on the effective date of the current registration certificate and/or commercial use permit;
 - (B) The transfer of any stock or interest which results in a change of the principal stockholder or owner; and
 - (C) The business transfer fee is paid on or before the date of transfer in accordance with the provisions of section 13-234-33; and
- (2) A registration certificate and/or commercial use permit issued to a corporation or other business entity shall automatically expire:
- (A) Upon the voluntary or involuntary dissolution of the corporation or business entity;
 - (B) If the catamaran operated under the registration certificate and/or commercial use permit is sold or otherwise transferred and not replaced in accordance with the provisions of section 13-231-13(b); or
 - (C) If the registration certificate holder and/or commercial use permittee fails to operate the catamaran for which the registration certificate and/or commercial use permit is issued for a period in excess of sixty days, except as provided in section 13-231-61(a)(2), and except when the registration holder and/or commercial use permittee

provides advance notification to the department in writing that operations will be temporarily suspended for a specific period not to exceed four months. (Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

§13-251-46 New owner must secure new registration certificate and/or commercial use permit. A transferee shall obtain an original registration certificate and/or commercial use permit for a catamaran [~~vessel, surfboard, sailboard or water sports equipment~~] before operating or renting the same upon [~~Waikiki or Kaanapali~~] Waikiki or Kā'anapali ocean waters. [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

~~[§13-251-47 Operation of vessels without proper identification. No person shall operate, nor shall an owner permit to be operated upon the Waikiki or Kaanapali ocean waters, any vessel or rented surfboard, sailboard or water sports equipment required to be registered under this subchapter, unless there shall be attached, painted on, or otherwise displayed a valid distinguishing name, number, or mark as required by this subchapter.] [R~~

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§13-251-48 Operation of a catamaran [vessel or renting of surfboard, sailboards, or water sports equipment] when registration certificate and/or commercial use permit suspended or revoked. No person shall operate [~~nor shall an owner knowingly permit to be operated~~] upon the [~~Waikiki or Kaanapali~~] Waikiki or Kā'anapali ocean waters any catamaran

~~[vessel or rented surfboard, sailboard, or water sports equipment,]~~ in which the registration and/or commercial use permit ~~[of which]~~ has been suspended or revoked. [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

§13-251-49 Authority of department to suspend or revoke registration certificate and/or commercial use permit. (a) The department may suspend or revoke the registration certificate and/or commercial use permit of a catamaran ~~[vessel, surfboard, sailboard, or water sports equipment]~~ whenever:

- (1) The department is satisfied that the registration certificate and/or commercial use permit was fraudulently or erroneously issued;
- (2) The department determines that a registered and/or commercial use permitted catamaran ~~[vessel]~~ is unsafe to be operated upon the ~~[Waikiki or Kaaanapali]~~ Waikiki or Kā'anapali ocean waters;
- (3) A registered and/or commercial use permitted catamaran ~~[vessel]~~ has been sold, dismantled, or wrecked, provided that the owner of the catamaran ~~[vessel]~~ at the time it was sold, dismantled, or wrecked may, upon written application to and approval by the department, transfer the registration certificate and/or commercial use permit to another catamaran ~~[vessel]~~ of like characteristics and ownership if the replacement catamaran ~~[vessel]~~ is in operation within ~~[ninety]~~ one-hundred twenty days of the transfer;
- (4) The owner of any ~~[for rent surfboard, for rent sailboard or water sports equipment, or vessel]~~ catamaran carrying passengers for hire has failed or is unable to give proof

of financial responsibility as provided in this subchapter;

(5) Any catamaran's Coast Guard Certificate of Inspection has expired; or

~~[(6) Any registered vessel boards passengers on Waikiki or Kaanapali ocean waters for a shuttle type service and disembarks the passengers at a point other than at or near the point of boarding; or]~~

~~[(7)]~~ (6) A ~~[registered vessel]~~ catamaran has not been engaged in carrying passengers for hire in ~~[Waikiki or Kaanapali]~~ Waikiki or Kā'anapali ocean waters for a period of thirty consecutive days ~~[-]~~ unless actively making repairs in accordance with United States Coast Guard requirements and approved by the department.

(b) Upon suspending or revoking the registration certificate and/or commercial use permit of a catamaran ~~[vessel, surfboard, sailboard or water sports equipment]~~ the department shall immediately notify the owner in writing of the reason for the suspension or revocation.

(c) For catamarans operating in Waikiki ocean waters, no registration certificate or commercial use permit may be revoked without a prior hearing in accordance with chapter 91, Hawaii revised statutes. [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

§13-251-50 Duplicate registration certificate and/or commercial use permit. In the event that a registration certificate and/or commercial use permit issued under the provisions of this part is lost or destroyed, the registration certificate ~~[holder]~~ and/or commercial use permit holder may, upon the payment of the required fee, obtain a duplicate or substitute. [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-

24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

§13-251-51 Catamaran registration limitations.

(a) The total number of valid catamaran registrations issued under this subchapter shall not exceed four at any one time for Waikiki ocean waters or ten at any one time for Kaanapali ocean waters. An owner may apply for a future vacancy, as prescribed in section 13-251-52, if future catamarans are registered.

(b) Notwithstanding this section, all owners of catamarans holding valid registrations or commercial use permits to operate upon Waikiki ocean waters [~~on November 6, 1981, and all owners of catamarans operating upon or under construction for operation upon~~] or Kaanapali ocean waters on the effective date of these rules [~~, except catamarans engaged in a shuttle-type service,~~] may continue operations and be permitted to apply for and renew their registration certificate or commercial use permit subject to compliance with all other conditions set forth in this chapter until their total number is reduced by attrition or other means to the numbers in subsection

(a). [Eff 2/24/94; am and comp]
(Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-251-52 Allocation of catamaran [registrations] registration certificates and/or commercial use permits.

(a) Application for a catamaran registration certificate and/or commercial use permit; period of validity; renewal of application.

- (1) The first owner to file an application may be offered a catamaran registration certificate and/or commercial use permit as prescribed under subsection (e) if the maximum number of catamaran [registrations] registration certificates and/or commercial use permits authorized by section 13-251-51

has not been issued and provided that no prior requests therefor are pending as provided in this section.

- (2) If the maximum number of catamaran ~~[registrations]~~ registration certificates and/or commercial use permits permitted by section 13-251-51 has been issued and is valid, an owner's application for a catamaran registration certificate and/or commercial use permit shall be retained and honored when the total number of valid catamaran ~~[registrations]~~ registration certificates and/or commercial use permit is less than the maximum limit and the issuance of an additional catamaran registration certificate and/or commercial use permit is authorized pursuant to these rules.

- (A) An application for the issuance of a catamaran registration certificate and/or commercial use permit shall be made in writing to the department by the owner on a form provided by the department. The department shall accept the application for consideration by endorsing it and entering the filing time and date on the application form submitted. One copy shall be given to the applicant. The time and date the application is endorsed by the department shall be the filing date and the effective date of the application for consideration and shall establish the applicant's seniority or priority over later applicants, if the application remains valid. No application shall be accepted unless and until the application fee prescribed in these rules is paid by the applicant and review thereof has been conducted pursuant to subsection (b).

- (B) An application shall continue in full force and effect for a period ending one year from the effective date of the application, except as provided in subparagraph (C) of this subsection, or unless sooner terminated in accordance with these rules. An application is void after the date of expiration.
 - (C) An application may be renewed within a ninety day period preceding its expiration date. An application properly renewed prior to its expiration date shall be valid for a period ending one year from the expiration date of the previous application. No application for renewal shall be accepted until the fee prescribed in these rules is paid by the applicant.
 - ~~[(D) It is the policy of the department to mail an application renewal notice to an applicant prior to the expiration of the applicant's application, at the address furnished to the department under section 13-251-52(d). However, the applicant is responsible for the timely renewal of an application without receipt of a renewal notice from the department.]~~
- (b) Review and acceptance or rejection of applications.
- (1) The department shall examine and determine the ~~[genuineness and regularity]~~ accuracy, validity, and regularity of each application and may conduct any investigation it deems necessary for its examination and determination, and it may require additional information from the applicant necessary to determine the genuineness and regularity of the application.
 - (2) The department shall reject any application that contains a material misstatement or

where the applicant has failed to disclose any material fact on the application.

- (3) An application shall not be accepted for consideration, and shall be rejected if:
 - (A) The application fee is not paid at the time application is made;
 - (B) The applicant is delinquent in the payment of any moneys due and payable to the department; or
 - (C) The applicant has pending a citation for violation of any of the department's rules.

(c) Upon rejection of an application, the department shall inform the applicant, in writing within a reasonable time:

- (1) That the application has not been accepted for consideration;
- (2) That the application has been rejected; and
- (3) Of the department's reasons for rejection. An applicant may cure the defect and re-apply.

(d) Applicant required to furnish address and report changes; effect of failure to report changes.

- (1) An applicant shall include the applicant's address in the application to the department for a catamaran registration certificate and/or commercial use permit.
- (2) An applicant shall immediately notify the department in writing of any changes in the applicant's address in order to maintain the validity of an application.
- (3) An application shall be void if the department is unable to reach the applicant to offer the applicant a catamaran registration certificate and/or commercial use permit at the address:
 - (A) Appearing on the application; or
 - (B) Furnished in writing to the department by the applicant as a change of address subsequent to submitting the application.

(e) Withdrawal of application; effect if application has become void, expires, or been withdrawn.

- (1) An application may be withdrawn by an applicant upon written notice to the department.
- (2) An applicant who withdraws an application or whose application has expired or becomes void may submit a new application for acceptance by the department. Seniority begins on the date the new application is accepted for consideration as provided in subsection (a) (2) (A).

(f) Priority in allocation of catamaran ~~registrations~~ registration certificates and/or commercial use permits. When the total number of valid catamaran ~~registrations~~ registration certificates and/or commercial use permits ~~is~~ are less than the maximum limit authorized by section ~~[13-251-51]~~ 13-251-38, the department ~~shall~~ may offer a catamaran registration certificate and/or commercial use permit to the senior applicant eligible to receive such a registration certificate and/or commercial use permit.

(g) Notice to owner of available catamaran registration certificate and/or commercial use permit. When an offer of a catamaran registration certificate and/or commercial use permit is provided for in this section, the department shall deliver the offer or send it by certified mail - return receipt requested, addressed to the applicant eligible to receive the offer at the address furnished to the department in writing by the applicant.

(h) Offer of catamaran registration certificate and/or commercial use permit valid only fourteen days; written notice of intention; acceptance.

- (1) An applicant may decline an offer of a catamaran registration certificate and/or commercial use permit and retain the applicant's seniority if the offer is declined in writing, addressed to and received by the department not later than

fourteen days after the date of receipt of the offer. An applicant who declines an offer in writing and retains seniority pursuant to this subsection, shall not be considered for another offer on the basis of the applicant's seniority until six months have elapsed since the date of the last refusal.

- (2) If an applicant decides to accept the offer of a catamaran registration certificate and/or commercial use permit, the applicant shall either:
 - (A) Deliver a written notice of intention to accept the offer to the department within fourteen days after the receipt of the offer; or
 - (B) Accept the offer by securing a catamaran registration certificate and/or commercial use permit within fourteen days after the receipt of the offer.
- (3) The applicant's application for a catamaran registration certificate and/or commercial use permit and the offer by the State of a catamaran registration certificate and/or commercial use permit shall be void if the applicant fails to either secure a catamaran registration certificate and/or commercial use permit or give written notice of intent to accept the offer within fourteen days after the receipt of the offer. The registration certificate and/or commercial use permit shall then be offered to the next senior applicant pursuant to this section.
- (4) An applicant who cannot immediately accept the offer but has delivered a written notice of intention to accept to the department pursuant to subsection (a)(2) shall accept the offer by securing a catamaran registration certificate and/or commercial use permit as prescribed in section 13-251-36 within fourteen days after the applicant

- mails or personally delivers the notice of intention to accept to the department.
- (5) Except as provided in subsection (h)(6) if the applicant fails to secure a catamaran registration certificate and/or commercial use permit within fourteen days, the application for a catamaran registration certificate and/or commercial use permit, the offer of a catamaran registration certificate and/or commercial use permit, and the notice of intention to accept the offer shall be void, and the catamaran registration certificate and/or commercial use permit shall then be offered to the next senior applicant in accordance with these rules.
- (6) The department may extend the deadline for acceptance prescribed in subsection (h)(2), if the applicant presents evidence to the department that the granting of additional time for compliance is reasonable and essential to prevent undue hardship; provided that any extension of time for compliance shall not exceed a period of 120 days from the date the department received from the applicant a written notice of intention to accept the offer of a catamaran registration certificate and/or commercial use permit.
- (7) Because time is of the essence, the offer delivered or mailed to an applicant pursuant to subsection (g) shall contain a statement that the offer will lapse unless accepted in accordance with the procedures of this section. [Eff 2/24/94; am and comp]
(Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

§13-251-53 Catamarans; mooring of. Catamarans for which a commercial use permit or registration

certificate has been issued by the department may moor on Waikīkī beach or Waikīkī ocean waters provided that:

(a) Approval is obtained from the board of land and natural resources regarding the type and location of the mooring to be installed on Waikīkī beach or ocean waters for the purpose of securing the catamaran while embarking and disembarking passengers. The fee for this mooring and use of the beach shall be included in the commercial use or registration certificate fee of section 13-253-1.1. Operators shall assume all responsibility and liability for their moorings and operations, indemnify and defend the State, and carry general liability insurance in accordance with section 13-231-65.

(b) Operators shall obtain all applicable permits required to install moorings on Waikīkī beach or ocean waters.

(c) Operators shall lower the catamarans' sails to prevent obstructing the view from lifeguard stations upon the request of a Honolulu city and county lifeguard. [Eff _____] (Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

§§13-251-[53]54 to 13-251-55 (Reserved)

SUBCHAPTER 6

[RULES OF THE ROAD] WAIKĪKĪ AND KĀ'ANAPALI BEACH AND OCEAN WATERS

~~§13-251-56 Rules of the road. All vessels shall be operated in accordance with the "Navigation Rules, International Inland" as set forth in U.S. Department of Transportation, United States Coast Guard, COMDTINST M16672.2A of 23 December 1983, and subsequent revisions thereto, which is incorporated herein by reference.] [R _____]~~

§13-251-57 [~~Waikiki restricted areas~~] Waikiki ocean waters. [~~(a)~~] Waikiki ocean waters means the area shown on Exhibit 1, dated May 1, 2012, located at the end of this subchapter. The boundaries are as follows:

Beginning at the point where the mean high water mark intersects a line perpendicular to the shoreline below the Diamond Head Lighthouse; then in the 'Ewa direction along the mean high water mark to the makai boundary of the Ala Wai Small Boat Harbor and buoy R"8"; then west across the channel to the seawall on the Diamond Head side of Magic Island; then following along the mean high water mark to the seaward prolongation of the parking lot on the 'Ewa side of Magic Island; then along the edge of the reef to the revetment on the Waikiki side of the Kewalo Basin entrance channel; then along a straight line to the Kewalo Basin entrance channel buoy R"2"; then southeasterly along a straight line to the Ala Wai boat harbor entrance lighted buoy R"4"; then along a straight line to the Diamond Head buoy R"2"; then along a straight line the point of beginning.

The [~~areas in Waikiki~~] Waikiki ocean waters are reserved primarily for use by bathers, [~~and~~] swimmers, surfers, snorkelers, and other recreational uses and subject to restrictions set forth in this section. No person shall operate a vessel or watercraft within the Waikiki ocean waters within 500 feet of the shoreline at a speed in excess of slow-no-wake. Vessel operators shall exercise caution while transiting the area due to heavy use by swimmers. This section shall not apply in the event of an emergency, or to law enforcement or rescue craft, or vessels participating under a valid regatta permit issued by the department or the Coast Guard. No person shall navigate a catamaran or canoe as a catamaran captain or canoe captain on a vessel carrying passengers for hire or for compensation in or upon Waikiki ocean waters

unless the person meets the following minimum Requirements:

1. Be at least eighteen years of age or older;
2. Possess a current first aid and CPR certificate;
3. Waikiki catamaran captains shall have a minimum of ninety days experience navigating within Waikiki ocean waters; and
4. Waikiki canoe captains shall have a minimum of one year experience as a steersperson and a minimum of ninety days navigating within Waikiki ocean waters.

~~[(b) Zone A, Waikiki ocean waters.~~

- ~~(1) Zone A, Waikiki ocean waters means the area confined by the boundaries shown on Exhibit "B-1", June 1, 1981, located at the end of this chapter, which boundaries are described as follows:~~

~~Beginning at the makai Ewa corner of the natatorium; then seaward on a prolongation of the Ewa wall of the natatorium to the outer edge of the reef; then along the reef in the mauka direction to the seaward end of the Kapahulu drainage groin; then seaward along a straight line connecting the seaward end of the Kapahulu drainage groin and the Ala Wai boat harbor entrance lighted buoy (Red "2"); then mauka on a prolongation of the Diamond Head boundary line of Fort DeRussy to the mean high water mark of the beach adjacent to the boundary line; then along the mean high water mark in the Diamond Head direction to the mauka Ewa side of the natatorium; then along the Ewa side of the natatorium in a seaward direction to, and ending at, the point of beginning;~~

~~(2) Restrictions:~~

- ~~(A) No person shall navigate or moor a vessel in or on the Waikiki ocean~~

~~waters, except that outrigger canoes operated by a duly organized canoe club, or a sailing catamaran, or a manually propelled outrigger canoe may be navigated, moored, or anchored in those waters if the vessel has been registered in accordance with this subchapter and is under the immediate control of an operator who has been issued a permit by the department to navigate in the waters. Notwithstanding this subsection, a sailing catamaran may temporarily operate in Zone A, Waikiki ocean waters, as a power-driven catamaran when necessary to protect life or property and is that vessel is registered by the department to operate in Waikiki ocean waters and under the immediate control of an operator who has been issued a valid permit by the department.~~

- ~~(B) No person shall navigate or moor a catamaran in or on the waters of Zone A or on the shore below the mean high water mark if four catamarans are navigating or moored in such zone;~~
- ~~(C) The minimum distance separating any two catamarans moored in Zone A shall be eighty feet, and~~
- ~~(D) There shall be no surfing in the zone between the water's edge and a point fifty yards seaward therefrom, except for learners while receiving initial instructions under the direct supervision of a primary or senior surfboard instructor who has a~~

~~permit issued by the department as provided by subchapter 1.~~

~~(c) Zone B, Waikiki ocean waters.~~

~~(1) Zone B, Waikiki ocean waters, means the area confined by the boundaries shown on Exhibit "C", June 1, 1981, located at the end of this chapter, which boundaries are described as follows:~~

~~Beginning at a point where the Diamond Head side of the boundary of Fort DeRussy intersects the mean high water mark, then seaward on a prolongation of that boundary line to a straight line connecting the Ala Wai boat harbor entrance lighted buoy (Red "2") and the Ewa end of the Kapahulu drainage groin, then to the Ewa direction to the makai Ewa corner of the breakwater makai of the Hawaiian Village rainbow tower, then Ewa along the breakwater to the mean high water mark, then along the mean high water mark, in a mauka Diamond Head direction to, and ending at, the point of beginning,~~

~~(2) Restrictions: No person shall navigate, moor, or anchor a vessel in or on the waters of Zone B, except that a manually propelled outrigger canoe or a catamaran propelled by sail may be operated in those waters if the vessel has been registered in accordance with this subchapter, or that a catamaran propelled by sail capable of carrying six persons or less, with a valid permit to operate within Waikiki ocean waters under the provisions of section 13-251-51, may anchor overnight in the area adjacent to the groin in the vicinity of the Ala Wai Heliport. Notwithstanding this subsection, vessels operating from the Hilton~~

~~Hawaiian Village pier are exempt from the restrictions in this paragraph~~

~~(d) Zone C, Waikiki ocean waters.~~

- ~~(1) Zone C, Waikiki ocean waters, means the area confined by the boundaries shown on Exhibit "D", June 1, 1981, located at the end of this chapter, which boundaries are described as follows:~~

~~Beginning at the makai Ewa corner of the concrete drainage groin located seaward of the junction of Kapahulu and Kalakaua Avenues, then to a point one hundred sixty yards in the Diamond Head direction on a straight line at right angles to the long axis of the groin, then to a point one hundred yards seaward on a straight line parallel to the long axis of the groin, then to a point three hundred ten yards in the Ewa direction on a straight line at right angles to the long axis of the groin, then in the shoreward direction on a straight line parallel to the long axis of the groin to the point where this line meets the concrete seawall, then in the Diamond Head direction to, and ending at, the point of beginning.~~

- ~~(2) Restrictions: No person shall navigate or moor a vessel or navigate or otherwise use a surfboard in or on the waters of Zone C, except that paipo boards not in excess of four feet in length and without skegs or any other fin-like projections protruding from the bottom of the boards are permitted to be used on the waters.~~

~~(e) Zone D, Waikiki ocean waters.~~

- ~~(1) Zone D, Waikiki ocean waters, means the area confined by the boundaries shown on Exhibit "E", June 1, 1981, located at the end of this chapter, which boundaries are described as follows:~~

~~Beginning at a point where the Diamond Head wall of the Natatorium intersects the mean high water mark, then along the wall in a seaward direction to the makai Diamond Head corner, then in a Diamond Head direction on a straight line to the seaward end of the first groin Diamond Head of the Sans Souci pier, then in a mauka direction along the groin to the mean high water mark, then in an Ewa direction along the mean high water mark to, and ending at, the point of beginning.~~

- ~~(2) Restrictions: No person shall navigate or moor a vessel in or on the waters of Zone D, except that a manually propelled outrigger canoe operated by a duly organized canoe club, or a commercially operated manually propelled outrigger canoe may be navigated in these waters if the vessel has been registered in accordance with this chapter and is under immediate control of an operator who has a valid permit issued by the department in accordance with subchapter 1.~~

~~(f) Zone E, Waikiki ocean waters. Zone E is the area encompassed by the boundaries of the zone shown on Exhibit "C-1", dated May 15, 1990, and located at the end of this subchapter. The boundaries of Zone E are described as follows:~~

~~Beginning at the shoreline on the western edge of the Kapahulu Groin, then to the intersection of the Kapahulu Groin and the Kuhio Beach seawall, then in a westerly direction along the seaward edge of the Kuhio Beach seawall to the groin fronting the Honolulu Police substation, then along the Kuhio Beach shoreline to the point of beginning.~~

~~Zone E is designated as a swimming, bathing and wading zone. No person shall engage in fishing by any~~

~~means or device from the Kuhio seawall to the shoreline between the Kapahulu Groin and the Ewa groin.]~~

(a) Zone A is described as follows:

Beginning at the breakwater makai of the Hilton Hawaiian Village rainbow tower; then following the mean high water mark northwesterly to the Duke Kahanamoku Lagoon; then southerly to 21°16'25.36"N, 157°50'12.15"W; then in a straight line ending at the starting point;

(1) Restrictions: No person shall navigate, moor, or anchor a vessel in or on the waters of Zone A, except that a manually propelled outrigger canoe or a catamaran propelled by sail may be operated in those waters if the vessel has been issued a permit by the department, or that a catamaran propelled by sail capable of carrying six persons or less, with a valid permit to operate within Waikiki ocean waters under the provisions of section 13-251-52, may anchor overnight in the area adjacent to the groin in the vicinity of the Ala Wai Heliport. Notwithstanding this subsection, vessels operating from the Hilton Hawaiian Village pier are exempt from the restrictions in this paragraph.

(b) Zone B is described as follows:

Beginning at the breakwater makai of the Hawaiian Village rainbow tower; then along the mean high water mark in the Diamond Head direction to the mauka 'Ewa side of the natatorium; then seaward along the 'Ewa wall of the natatorium to the outer edge of the reef at 21°15'52.26"N, 157°49'31.67"W; then along the reef in the north direction to the seaward end of the wall at Kapahulu; then in a straight line eastward ending at the starting point;

(1) Restrictions:

(A) No person shall navigate or moor a vessel in or on the Waikiki ocean waters, except that outrigger canoes

operated by a duly organized canoe club, or a sailing catamaran, or a manually propelled outrigger canoe may be navigated, moored, or anchored in those waters if the vessel has been issued a permit by the department to navigate in the waters.

Notwithstanding this subsection, a sailing catamaran may temporarily operate in Zone D as a power-driven catamaran when necessary to protect life or property and is that vessel is registered by the department to operate in Waikiki ocean waters and under the immediate control of an operator who has been issued a valid permit by the department;

- (B) No person shall navigate or moor a catamaran in or on the waters of Zone B or on the shore below the mean high water mark if four catamarans are navigating or moored in such zone;
- (C) The minimum distance separating any two catamarans moored in Zone B shall be eighty feet; and
- (D) For this subchapter, surfboards are not considered to be a vessel.

(c) Zone C is described as follows:

Beginning at the end of the 'Ewa groin at the Duke Kahanamoku statue; then following the groin shoreward and along the Kūhiō Beach shoreline to the mauka end of the wall at Kapahulu; then to the end of the wall; then following the seawall in a northward direction to the point of beginning.

- (1) Restrictions: Zone C is designated as a swimming, bathing and wading zone. No person shall engage in fishing by any means or device from the Kūhiō seawall to the shoreline between the wall at Kapahulu and the 'Ewa groin.

(d) Zone D is described as follows:

Beginning at the makai-'Ewa corner of the wall at Kapahulu; then 160 yards in the Diamond Head direction on a straight line perpendicular to the beach to 21°16'11.35"N, 157°49'24.49"W; then 100 yards seaward on a straight line ending at 21°16'10.43"N, 157°49'27.89"W; then 310 yards in the 'Ewa direction on a straight line ending at 21°16'19.32"N, 157°49'30.27"W; then 100 yards shoreward to 21°16'20.27"N, 157°49'26.90"W; then in a straight line back to the point of beginning.

(1) Restrictions: No person shall navigate or moor a vessel or navigate or otherwise use a surfboard in or on the waters of Zone D, except that paipo boards not in excess of four feet in length and without skegs or any other fin-like projections protruding from the bottom of the boards are permitted to be used on the waters.

(e) Zone E is described as follows:

Beginning at a point where the Diamond Head wall of the Natatorium intersects the mean high water mark at 21°15'50.66"N, 157°49'18.30"W; then following the mean high water mark in a Diamond Head direction to the Colony Surf hotel at 21°15'44.76"N, 157°49'17.45"W; then in a seaward direction to 21°15.44.16"N, 157°49'19.32"W; then north to the makai-Diamond Head corner of the Natatorium; then in a straight line to the point of beginning.

(1) Restrictions: No person shall navigate or moor a vessel in or on the waters of Zone E, except that a manually propelled outrigger canoe operated by a duly organized canoe club, or a commercially operated manually propelled outrigger canoe may be navigated in these waters if the vessel has been registered in accordance with this chapter and is under immediate control of an operator who has a valid permit issued by the department in accordance with subchapter 1. [Eff 2/24/94; am and comp]



EXHIBIT 1: WAIKIKI OCEAN WATERS
 Ocean Recreation Management Area

Zones A - E: Swimming, Wading, and other recreational and commercial uses. For a complete list, see §13-251-57 HAR. Zone locations are approximate. Map Date: May 1, 2012

(Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

§13-251-58 [~~Kaanapali ocean waters, general restrictions~~] Kā'anapali beach and ocean waters. (a) [~~The Kaanapali ocean waters are subject to the following restrictions.~~] This section shall not apply in the event of an emergency, to law enforcement or rescue craft, to vessels participating under a valid ocean waters permit issued by the department, or to Hawaiian design canoes engaged in crew training. The Kā'anapali beach and ocean waters are shown on Exhibit "2", dated May 1, 2012, located at the end of this subchapter. The boundaries are as follows:

Beginning at a point on the northern end of Kā'anapali Beach and ocean waters located at 20°57'8.86"N, 156°41'33.68"W; then shoreward to the mean high water mark at 20°57'2.72"N, 156°41'25.33"W; then southward to the mean high water mark of the extended centerline of Wahikuli Road at 20°53'42.57"N, 156°41'6.44"W; then seaward to 20°53'42.75"N, 156°41'16.44"W; then north generally running parallel to the beach at 20°54'2.64"N, 156°41'16.43"W; then to 20°54'31.48"N, 156°41'32.99"W; then to 20°54'42.94"N, 156°41'51.26"W; then to 20°54'58.87"N, 156°41'58.32"W; then seaward of Black Rock at 20°55'40.15"N, 156°41'58.14"W; then to 20°56'11.79"N, 156°41'44.21"W; then to 20°56'52.51"N, 156°41'41.88"W; then to the point of beginning.

(b) Restrictions.

- (1) No person shall navigate any vessel at a speed in excess of "slow no wake" (five (5) miles per hour) within [~~five hundred~~] 500 feet of the shoreline;
- (2) No person shall navigate a motorboat within [~~two hundred~~] 200 feet of the shoreline, or designated swimming area, or within one hundred feet of a diver's flag, nor shall

any person navigate a commercial motorized vessel within [~~five hundred~~] 500 feet of the shoreline except within a designated ingress/egress corridor. Notwithstanding this paragraph, vessels engaged in fishing outside the designated ingress/egress corridors are exempt from the [~~two hundred~~] 200-foot shoreline restriction, provided that designated swimming areas are approached with caution and due care;

- (3) No person shall navigate a motorized vessel within [~~three hundred~~] 300 feet of a vessel engaged in fishing;
- (4) A vessel engaged in fishing shall not impede the passage of any vessel passing through a designated ingress/egress corridor;
- ~~(5) No person shall embark or disembark passengers on the beach to or from a catamaran registered to carry passengers for hire when the vessel exceeds sixty five feet in length or a passenger carrying capacity of forty nine persons unless prior permission to navigate is obtained from the department for each trip through these waters. Notwithstanding this paragraph, any company currently operating a catamaran which exceeds sixty five feet in length or a passenger carrying capacity of forty nine persons, which is in business on Kaanapali ocean waters and properly registered with the department of commerce and consumer affairs as of the effective date of these rules may apply for and renew its permit so long as the company remains in business, remains properly registered with the department of commerce and consumer affairs, and complies with the rules of that department;~~
- ~~(6)~~ (5) No person shall anchor or moor a vessel, barge, platform, or raft within [~~two hundred~~] 200 feet of the shoreline or a designated ingress/egress corridor; and

~~[(7)]~~ (6) No person shall navigate or moor a vessel engaged in commercial use unless the vessel has been registered and the owner has a valid permit issued in accordance with this chapter; however, commercial vessels solely transiting through the ~~[Kaanapali]~~ Kā'anapali ocean waters shall not be required to be registered or have a commercial permit.

(7) Vessels holding a valid ocean recreation management area commercial use permit may use a state small boat harbor or boat launching ramp when winds are in excess of 25 miles per hour and/or during periods of high surf warnings as indicated by the National Weather Service would prevent safe access to the shoreline through a designated ingress or egress zone;

(8) The vessel operator or master shall afford the department prior notice of the presence or threat of such conditions and shall be subject to local direction and control as necessary to avoid conflict with other users of the facility; and

(9) Use of a state boating facility in accordance with this section shall not affect the permittee's right to use such boating facilities in the absence of such conditions as permitted by law.

~~(b) Zone A, Kaanapali ocean waters.~~

~~(1) This zone is designated primarily for swimming, bathing, snorkeling and diving, and means the area confined by the boundaries shown and described in Exhibit "E(1)", July 9, 1984, located at the end of this chapter, which boundaries are described as follows:~~

~~Beginning at a point on the vegetation line six hundred fifty feet north along the mean high water mark from the intersection of the extended centerline of Kaniau Road and the vegetation line; thence running by~~

~~azimuths measured clockwise from True South: 080 degrees for a distance of two hundred feet; 146 degrees 30 minutes for a distance of three thousand seven hundred fifty feet; 206 degrees to a point on the vegetation line; thence southward along the vegetation line to the point of beginning.~~

~~(2) No person shall navigate or moor a vessel, surfboard, sailboard or any other water recreational device in or on the waters of Zone A, provided that this restriction shall not apply to:~~

~~(A) Paipo boards not in excess of four feet in length and without skegs or any other fin like projections protruding from the bottom of the boards;~~

~~(B) Hawaiian design club canoes engaged in crew training; and~~

~~(C) Vessels engaged in fishing during periods of low use of the beach.~~

~~(c) Zone B, Kaanapali ocean waters~~

~~(1) This zone is an area designed primarily for swimming, bathing, snorkeling and diving, and means the area confined by the boundaries shown on Exhibit "E(1)", July 9, 1984, located at the end of this chapter and defined as:~~

~~Beginning at a point on the vegetation line seven hundred fifty feet south along the vegetation line from the southernmost tip of Keka'a Point shoreline, thence running by azimuths measured clockwise from True South: 068 degrees for a distance of two hundred feet; 156 degrees for a distance of two hundred fifty feet; 078 degrees 30 minutes for a distance of three hundred fifty feet; 156 degrees for a distance of six hundred feet; 221 degrees for a distance of five hundred feet; 287 degrees to a point on the vegetation line; thence southward along the vegetation line to the point of beginning.~~

- ~~(2) The same restrictions and exceptions thereof applicable to Zone A are applicable to Zone B.~~
- ~~(d) Ingress/Egress zones.~~
- ~~(1) These zones shall be established at intervals along the shoreline to provide beach access, through corridors, for all vessels governed by this chapter. Each zone shall be five hundred feet wide at the shoreline and shall extend seaward for a distance of five hundred feet.~~
- ~~Zone number one begins at the point where the north bank of Wahikuli Stream intersects the vegetation line; then northward along the vegetation line for a distance of five hundred feet.~~
- ~~Zone number two begins at a point on the vegetation line which is two thousand three hundred feet north along the vegetation line from a point where the north bank of Wahikuli Stream intersects the vegetation line; then northward along the vegetation line for a distance of five hundred feet.~~
- ~~Zone number three begins at a point on the vegetation line which is two thousand four hundred feet south along the vegetation line from the vegetation line of the southernmost tip of Keka 'a Point shoreline; then southward along the vegetation line for a distance of five hundred feet.~~
- ~~Zone number four begins at a point on the vegetation line which is seven hundred fifty feet south along the vegetation line from the vegetation line from the southernmost tip of Keka 'a Point shoreline; then southward along the vegetation line for a distance of five hundred feet.~~
- ~~Zone number five begins at a point on the vegetation line which is eight hundred twenty five feet north along the vegetation line from the vegetation line from the southernmost tip of Keka 'a Point shoreline,~~

- ~~then northward along the vegetation line for a distance of five hundred feet.~~
- ~~(2) No person shall navigate a vessel within an ingress/egress zone unless operating within an ingress/egress corridor, provided that this restriction shall not apply to Hawaiian design club canoes engaged in crew training;~~
- ~~(c) Ingress/Egress corridors.~~
- ~~(1) These corridors shall be contained within each ingress/egress zone. Each corridor shall be one hundred feet wide and shall be established daily by the users of the corridor to determine the best direction for approach to or departure from the shoreline under existing wind and sea conditions.~~
- ~~(2) No person shall:~~
- ~~(A) Navigate a commercial vessel or noncommercial motor powered vessel to or from the beach area unless using a designated ingress/egress corridor;~~
 - ~~(B) Navigate a catamaran, registered for carrying passengers for hire, in an ingress/egress corridor, or approach the shoreline within a distance of five hundred feet, if another catamaran is beached within the boundaries of the intended corridor of use;~~
 - ~~(C) Beach a catamaran, registered for carrying passengers for hire, in an ingress/egress corridor in excess of thirty minutes; and~~
 - ~~(D) Navigate a vessel within an ingress/egress corridor at a speed exceeding slow no wake. Slow no wake means as slow as possible without losing steerageway and so as to make the least possible wake. This would almost always mean speeds of less than five miles per hour.~~
- ~~(3) Exceptions to the restrictions for Ingress/Egress Zones are applicable to Ingress/Egress Corridors.]~~

(c) Zone A, designated primarily for swimming, bathing, snorkeling and diving, is described as follows:

Beginning at a point 300 feet south of Leialii Parkway; then 200 feet seaward; then northward to seaward prolongation of Kā'anapali Beachwalk at the north end of Hanaka'ō'ō Beach Park; then shoreward to the high water mark; then southward along the high water mark to the point of beginning.

(1) No person shall navigate or moor a vessel, surfboard, sailboard or any other water recreational device in or on the waters of Zone A, provided that this restriction shall not apply to:

- (A) Paipo boards not in excess of four feet in length and without skegs or any other fin-like projections protruding from the bottom of the boards;
- (B) Vessels engaged in fishing during periods of low use of the beach.

(d) Zone B, designated primarily for swimming, bathing, snorkeling and diving, is described as follows:

Beginning at a point on the high water mark on the seaward prolongation of the Kā'anapali Beach Public Access Trail south of Keka'a Point at 20°55'29.70"N, 156°41'42.70"W; then seaward to 20°55'29.79"N, 156°41'49.40"W; then northward to 20°55'39.12"N, 156°41'52.40"W; then to 20°55'43.58"N, 156°41'48.89"W; then shoreward to the high water mark; then following Black Rock southward along the high water mark to the point of beginning.

(1) The same restrictions and exceptions applicable to Zone A are applicable to Zone B.

(e) Ingress/egress zones.

(1) Zone 1 begins at the seaward prolongation of Kā'anapali Beachwalk at the north end of Hanaka'ō'ō Beach Park; then northward along

the vegetation line for a distance of 500 feet.

- (2) Zone 2 begins at a point on the vegetation line on the ocean-side of the Marriott's Maui Ocean Club Hotel; then northward along the vegetation line for a distance of 500 feet.
- (3) Zone 3 begins at a point on the vegetation line located north of the Westin Maui Hotel; then northward along the vegetation line for a distance of 500 feet.
- (4) Zone 4 begins at a point on the vegetation line located 575 feet south from the southernmost tip of Black Rock shoreline and south of the Ka'anapali Beach Public Access Trail; then southward along the vegetation line for a distance of 500 feet.
- (5) Zone 5 begins at a point on the vegetation line located north of the Black Rock shoreline, then northward along the vegetation line for a distance of 500 feet.

(f) These zones shall be established at intervals along the shoreline to provide beach access for all vessels governed by this chapter. Each zone shall be 500 feet wide at the shoreline and shall extend seaward for a distance of 500 feet.

(g) Users of the ingress/egress zones determine the best direction for approach to or departure from the shoreline under existing wind and sea conditions.

(h) No person shall:

- (1) Navigate a commercial vessel or noncommercial motorized vessel to or from the beach area unless using a designated ingress/egress zone;
- (2) Beach a catamaran, registered for carrying passengers for hire in an ingress/egress zone in excess of 30 minutes; and
- (3) Navigate a vessel within an ingress/egress zone at a speed exceeding slow-no-wake. [Eff 2/24/94; am 6/16/03; am and comp]



Maui



KA'ANAPALI BEACH AND OCEAN WATERS
INGRESS / EGRESS CHANNEL
SWIMMING AREA
Zone location is approximate
Map Date: May 1, 2012
§13-251-58 HAR



EXHIBIT 2: KA'ANAPALI BEACH AND OCEAN WATERS
Ocean Recreation Management Area

(Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24, 200-37) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24, 200-37)

~~§13-251-59 Intoxication. (a) No person who is under the influence of intoxicating liquor, narcotics, or other habit forming drug shall operate or be in actual physical control of any catamaran.~~

~~(b) No owner of any catamaran or any person in charge or in control of any catamaran shall authorize or knowingly permit the same to be operated by any person who is under the influence of intoxicating liquor, or narcotic, or other habit forming drug.] [R~~

~~]~~

~~§13-251-60 Careless operation. No person shall operate a catamaran in a careless or heedless manner so as to endanger other persons or the property of other persons.] [R~~

~~]~~

§§13-251-61 to 13-251-65 (Reserved)

SUBCHAPTER 7

~~[SPECIAL OPERATING RESTRICTIONS] REPEALED~~

~~§13-251-66 Canoe operation, required crew. (a) No person shall operate nor shall any owner authorize or permit a canoe carrying passengers for hire to engage in canoe surfing unless the canoe meets all requirements of these rules and a canoe captain and canoe second captain, each having a valid permit issued by the department, are aboard, provided, that a two man canoe shall have either a canoe captain or second captain on board.~~

~~(b) No person shall operate nor shall any owner authorize or permit a canoe to transport passengers for hire unless the canoe meets all requirements of these rules and a canoe captain or second captain, each having a valid permit issued by the department, is on board. In these instances the senior crew member aboard shall not permit the vessel to be utilized for canoe surfing unless a minimum crew as provided in subsection (a) is on board.] [R]~~

~~[§13-251-67 Catamaran crews. No person shall operate nor shall any owner authorize or permit a catamaran to transport passengers for hire, except cruising catamarans as described in section 13-251-1, unless the catamaran meets all requirements of these rules and a catamaran captain, having a permit issued by the department, and at least one other crew member are aboard.] [R]~~

~~[§13-251-68 Catamarans; mooring of. (a) Catamarans moored in a restricted area (13-251-57) shall be moored below the mean high water mark at catamaran moorings so designated by the department and in a manner approved by the department.~~

~~(b) Operators of catamarans moored in a restricted area (13-251-57{(1)}) shall lower the catamarans' sails to prevent obstructing the view from lifeguard stations upon request of a Honolulu city and county lifeguard.] [R]~~

~~[§13-251-69 Learner steersperson. (a) A learner steersperson shall steer an outrigger canoe engaged in canoe surfing only on a wave which is not carrying another canoe.~~

~~(b) A learner steersperson shall not steer an outrigger canoe carrying passengers for hire.] [R]~~

~~§§13-251-70 to 13-251-75 (Reserved)~~ [R]

SUBCHAPTER 8

SOLICITING PROHIBITED IN OR ON ~~[WAIKIKI AND KAA NAPALI]~~
WAIKIKI AND KĀ'ANAPALI OCEAN WATERS

§13-251-76 Commercial Activities. (a) No person shall engage in commercial activities of any kind in or on ~~[Waikiki]~~ Waikiki or ~~[Kaanapali]~~ Kā'anapali ocean waters and beach without a written permit or registration certificate from the board or its authorized representatives.

(b) "~~[Kaanapali]~~ Kā'anapali beach" means the area within ~~[Kaanapali]~~ Kā'anapali ocean waters that is situated between the shoreline and the mean high tide mark along the shores. ~~[Exhibits E(2A) through E(2D), dated February 22, 2002, located at the end of this chapter, are provided for reference, and depict the shoreline location of Kaanapali Beach as of September 12, 2001.]~~

(c) ~~[Kaanapali]~~ Kā'anapali beach is designated for public use for sunbathing, foot traffic, swimming, and other activities which, when engaged in, shall not unduly disrupt others from enjoying the beach.

(d) Constructing or placing any building or structure or storing any property, whether temporary, portable, or permanent, at ~~[Kaanapali]~~ Kā'anapali beach shall be prohibited, except where authorized by the department, and, in addition to any other remedies, unauthorized buildings, structures, or property may be removed by the department at the sole risk and cost of the owner.

(e) Vessel owners shall be prohibited from storing any vessel or associated equipment on ~~[Kaanapali]~~ Kā'anapali beach, unless authorized by the department.

(f) The following activities shall be prohibited on ~~[Kaanapali]~~ Kā'anapali beach:

- (1) Kite flying; and

(2) Kite surfing equipment.

(g) The maximum number of [~~Kaanapali~~] Kā'anapali commercial permits that may be issued for monohull vessels to embark and disembark passengers at [~~Kaanapali~~] Kā'anapali beach shall not be greater than five, but small craft used to shuttle passengers to and from a monohull vessel in the [~~Kaanapali~~] Kā'anapali ocean waters may be included under that vessel's commercial activity permit.

(h) Law enforcement and rescue vessels are exempt from the provisions of this section." [Eff 2/24/94; am 6/16/03; am and comp] (Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

2. Material, except source notes, to be repealed is bracketed and stricken. New material is underscored.

3. Additions to update source notes to reflect these amendments are not underscored.

4. The amendments and compilation of chapter 13-251, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on _____ by the Board of Land and Natural Resources, and filed with the Office of the Lieutenant Governor.

WILLIAM J. AILA, JR.,
Chairperson
Board of Land and Natural
Resources

APPROVED FOR PUBLIC HEARING:

Deputy Attorney General

Rules Amending Title 13
Hawaii Administrative Rules

DATE

1. Chapter 13-253, Hawaii Administrative Rules, entitled "Registration and Permit Fees," is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 11

OCEAN RECREATION AND COASTAL AREAS

PART III

OCEAN WATERS, NAVIGABLE STREAMS AND BEACHES

CHAPTER 253

CATAMARAN REGISTRATION CERTIFICATE, OTHER
REGISTRATION, AND COMMERCIAL USE PERMIT FEES

Historical note

- §13-253-1 Registration fees for canoes, surfboards,
and water sports equipment
- §13-253-1.1 Commercial use permit and catamaran
registration certificate fees
- §13-253-1.2 No additional fees
- §13-253-1.3 Gross receipts
- §13-253-2 Permit and registration certificate fees
- §13-253-3 Duplicate permit or certificate fee
- §13-253-4 When fees returnable
- §13-253-5 Repealed

Historical note. This chapter is based on registration and permit fees of the Hawaii Shore Waters Rules, dated November 6, 1981, and as amended thereafter, under the jurisdiction of the Department of Transportation, Harbors Division. 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, SLH 1991. [Eff 2/24/94; comp]

§13-253-1 Registration fees for canoes, surfboards, and water sports equipment. The following registration fees shall be paid to the department for the registration of ~~[catamarans,]~~ canoes, ~~[and]~~ surfboards, and water sports equipment that are used in a commercial operation~~[, subject to registration hereunder-]~~:

	<u>Original</u>	<u>Renewals</u>
[Catamarans, each vessel	\$5.00	\$3.50]
Canoes, each vessel	\$5.00	\$3.50
Surfboards, each board	[-10] \$1.00 [-10]	\$1.00
Water sports equipment	\$1.00	\$1.00

The minimum fee for surfboards shall be \$1. [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

§13-253-1.1 Commercial use permit and catamaran registration certificate fees. A monthly fee for a commercial use permit or a catamaran registration certificate shall be the greater of \$200.00 or 3% of the gross receipts per month. The monthly fee shall be payable to the department each month in advance. This fee shall be applicable to all commercial use permits and all catamaran registration certificates for state ocean waters or navigable streams. [Eff] (Auth: HRS §§200-2, 200-3, 200-4, 200-22,

200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24)

§13-253-1.2 No additional fees. (a) Fees required to be paid to the department for commercial activities in state ocean waters, including but not limited to ocean recreation management areas, shall be reported and paid in the following manner:

- (1) The report of gross receipts shall be submitted to and received by the department not later than the end of the month following the month covered by the report and shall be submitted on a form acceptable to the department.
- (2) A permittee possessing a harbor commercial use permit and a commercial use permit for state ocean waters or a navigable stream or a catamaran registration certificate, 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 for state ocean waters or a navigable stream or a catamaran registration certificate, provided that the payment made to the department is based on the total of gross receipts acquired under the harbor commercial use permit and the commercial use permit for state ocean waters or a navigable stream or a catamaran registration certificate.

(b) Delinquency in the payment of any fees owed to the department may result in revocation of the commercial use permit or catamaran registration certificate. [Eff _____] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24)

§13-253-1.3 Gross receipts. (a) "Gross receipts" as used in this chapter means all moneys paid or payable to the account of the commercial use permittee or catamaran registration certificate holder, for

services rendered, or resulting from trade, business, commerce, or sales by the vessel or water sports equipment owner when the services, trade, business, commerce, or sales has a direct relationship to the vessel.

(b) Each commercial permittee or catamaran registration certificate holder shall be responsible for submitting to the department a monthly statement of its gross receipts. [Eff _____] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24)

§13-253-2 Permit and registration certificate fees. A [~~\$2 permit~~] \$10.00 fee shall be paid to the department for the issuance or [~~renewal~~] re-issuance of [~~a~~] any commercial use permit [issued and renewed] or catamaran registration certificate pursuant to these rules. [Eff 2/24/94; am and comp _____] (Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

§13-253-3 Duplicate permit or certificate fee. A [~~\$1~~] \$10.00 fee shall be paid to the department for a duplicate permit or registration certificate [~~or permit~~] if such is lost or destroyed, provided that the duplicating fee for evidence of registration of surfboards will be [ten cents] \$1 for each board with a minimum of \$1 and \$1 for evidence of registration of canoes. [Eff 2/24/94; am and comp _____] (Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

§13-253-4 When fees returnable. Whenever the department, through error, collects any fee not required to be paid by these rules, the fee shall be refunded to the person paying the fee upon application made within a month after the date of the payment. [Eff 2/24/94; am and comp _____] (Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

~~the issuance of a catamaran registration as provided in section 13-251-36, the applicant shall pay to the department a nonrefundable application fee of \$5.]"~~

[R]

2. Material, except source notes, to be repealed is bracketed and stricken. New material is underscored.

3. Additions to update source notes to reflect these amendments are not underscored.

4. The amendments and compilation of chapter 13-253, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on _____ by the Board of Land and Natural Resources, and filed with the Office of the Lieutenant Governor.

WILLIAM J. AILA, JR.,
Chairperson
Board of Land and Natural Resources

APPROVED FOR PUBLIC HEARING:


Deputy Attorney General

Amendments to Title 13
Chapter 13-256
Hawaii Administrative Rules

SUMMARY

1. Sections 13-256-3 and 13-256-4 are amended.

1. Section 13-256-3, Hawaii Administrative Rules, is amended to read as follows:

"§13-256-3 Commercial [operator] use permit requirements. (a) All operators of commercial vessels, water craft or water sports equipment shall apply for a commercial [operator] use permit to be issued by the department. The applicant for such permit shall comply with the applicable provisions stated in [~~Hawaii Administrative Rules, and Ocean Waters, Navigable Streams and Beaches, Sections 13-251-1 through 13-251-20~~] sections 13-231-50 to 13-231-70. [~~A valid commercial use permit issued to the owner of a vessel to operate from state harbor or launching ramp facilities shall satisfy the commercial operator permit requirement of this section for the operation of that particular vessel.~~]

(b) The department [~~shall~~] may establish and maintain a Recreation Advisory Committee of not less than three for each recreation management area as defined in this chapter to review and make recommendations for commercial [operator permit] use permits to be issued by the department [~~as required by this section~~]. The department shall consider the recommendations of the Advisory Committee, but is not bound by the recommendations. Members of the Recreation Advisory Committee shall have not less than three years of experience in their area of specialty." [Eff 2/24/94; am] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24)

2. Section 13-256-4, Hawaii Administrative Rules, is amended to read as follows:

"§13-256-4 Commercial [Vessel] vessel and water sports equipment registration requirements. (a) All commercial vessels, water craft or water sports equipment shall be registered with the department for commercial use in compliance with [~~Sections 13-251-36 to 13-251-52~~] sections 13-231-50 to 13-231-70.

(b) Commercial use permits issued by the department for commercial vessels operating from state harbors or boating facilities are exempt from the requirements of this section. [Eff 2/24/94; am] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24)

3. Material, except source notes, to be repealed is bracketed and stricken. New material is underscored.

4. These amendments to sections 13-256-3 and 13-256-4, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on _____ by the Board of Land and Natural Resources, and filed with the Office of the Lieutenant Governor.

WILLIAM J. AILA, JR.,
Chairperson
Board of Land and Natural Resources

APPROVED FOR PUBLIC HEARING:


Deputy Attorney General

