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

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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'ehi 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 [~~Keehi~~] Ke'ehi small boat harbors. (a) This section is applicable in all small boat harbors, except Ala Wai and [~~Keehi~~] 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[~~,~~]. [~~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[~~,~~] 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[~~,~~]. [~~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[~~,~~] 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 [~~Keehi~~] 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 [~~Keehi~~] 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 [~~Keehi 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 [~~Keehi~~] 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 furthermost 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 Keehi 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 [~~Manele~~] 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 furthermost 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 Waikīkī 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:

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

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

[~~(c)~~] (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[~~,~~] 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 Hecia Kea harbors~~] small boat harbor: six [~~each, except that for Hecia 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[~~,~~]; 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[~~,~~]
(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~~] Ke'ehi - [~~none~~] 3
(3) [~~Heeia~~] He'eia Kea [~~7~~] as provided for in section 13-256-73.1
(4) Maunalua Bay - 5
(5) [~~Mala~~] Māla - 15
(6) [~~Kihei~~] Kihei - 15
(7) [~~Manele~~] Mānele - 3

(8) Kaunakakai - 5
(9) [~~Kukuiula~~] Kukui'ula - 6
(10) [~~All others~~] Lahaina - [~~no limit.~~] none
(11) Mā'alaea - none
(12) Kīkīaola - 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 Kechi,~~] 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(c)(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, [~~Keehi, 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.

CATEGORIES	[~~PIER/CATWALK LENGTH/TYPE~~]	VESSELS ELIGIBLE TO MOOR
A	[~~25' Floating piers~~]	[~~From~~] 20' to 28' in length
B	[~~30' Floating~~ piers] [~~30' Fixed piers~~]	[~~" 28' to 34' " "~~] [~~"~~] 28' to 35' " "
C	[~~40' Floating piers~~]	[~~" 35' to 44' " "~~] [~~"~~] 35' to 45' " "

	[~~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

[~~CATEGORIES~~	~~PIER/CATWALK LENGTH/TYPE~~	~~VESSELS ELIGIBLE TO MOOR~~
~~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.~~
~~T~~	~~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.~~

~~CATEGORIES~~	~~PIER/CATWALK LENGTH/TYPE~~	~~VESSELS ELIGIBLE TO MOOR~~
~~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.

CATEGORIES	PIER/CATWALK LENGTH/TYPE	VESSELS ELIGIBLE TO MOOR
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.~~

~~CATEGORIES~~	~~PIER/CATWALK BULKHEAD/TYPE~~	~~VESSELS ELIGIBLE TO MOOR~~
~~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 20' 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.

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

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

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

[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 <u>at a minimum of $500,000 per occurrence as approved by the department</u> 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.

EXHIBIT "B" July 2012

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 [~~BILE~~] 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 Statues, 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