

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

October 24, 2014

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

Request Approval to Initiate Rule-Making Proceedings to Amend Hawaii Administrative Rules, Title 13, Section 13-256-73.13, Ahu O Laka Safety Zone Prohibiting the Possession of Alcohol, Disorderly Conduct and Prohibiting Persons Under The Influence of Alcohol, Narcotics or Drugs from Remaining in, or Entering, the Safety Zone on Three-day Weekends Involving a State Holiday. The rules can be reviewed online at <http://dlnr.hawaii.gov/dobor/draft-rules/> or can be reviewed in person at any small boat harbor from 8:00 am to 3:30 pm, Monday through Friday, except Holidays. (Exhibit A).

**PURPOSE:** To remove the sunset date and make HAR §13-256-73.13 permanent. HAR §13-256-73.13 identifies a safety zone around Ahu o Laka (also known as the Kaneohe Sandbar) in Kaneohe Bay to protect the public while visiting Ahu o Laka during three-day weekends involving a State holiday. HAR §13-256-73.13 prohibits possession, use, or consumption of alcohol in the safety zone; prohibits a person under the influence of alcohol, narcotics, or drugs from remaining in or entering the safety zone; and prohibits disorderly behavior while in the safety zone (See Exhibit A).

**STATUTE:** Hawaii Revised Statutes, §§ 200-2, 200-3, 200-4, 200-14, 200-14.5.

**BACKGROUND:**

In recent years, significant concerns grew regarding the safety and health of visitors to Ahu o Laka, particularly during holidays and weekends when large crowds consistently congregated in the area. During such times, drug and alcohol use, combined with overcrowding in the limited sandbar area, led to several instances of injury and even death.

Concern over the use of Ahu o Laka began in 2005, when, according to media accounts, a Labor Day concert of over 400 people with approximately 60-70 boats occupied the area, and led to a riot of approximately 40 to 45 people, resulting in the near-drowning of one woman, and the injury of her brother during his attempts to rescue her. During the riot, people were pushing, shoving, throwing bottles, and yelling. Division of Conservation and Resource Enforcement (DOCARE) officers spent an hour and a half breaking up fights and dispersing people.<sup>1</sup>

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<sup>1</sup> <http://archives.starbulletin.com/2005/11/04/news/story04.html>

Two free concerts were held at Ahu o Laka that year, drawing hundreds of visitors to the area. Both concerts ended in fights.<sup>2</sup>

In 2006, Senator Clayton Hee, citing the escalation of alcohol-related violence at Ahu o Laka, introduced Senate Bill No. 2004, which would have designated Ahu o Laka as a state monument, and led to rules to ban alcohol at the sandbar.<sup>3</sup> Residents of Kaneohe and Kahului supported this measure, and continued to voice concerns to their neighborhood boards over the pollution, violence, and desecration occurring in this culturally significant site. Many felt that Ahu o Laka was no longer a safe place for families to enjoy.<sup>4</sup> Although passed by the legislature, Senate Bill No. 2004 was subsequently vetoed by former governor Linda Lingle.<sup>5</sup>

On Labor Day 2007, the media reported that a confrontation involving dozens of people ended in an alleged stabbing with two men taken separately to Castle Medical Center and one treated by paramedics at Heeia Kea pier.<sup>6</sup> Due to this incident, the Department of Land and Natural Resources partnered with the U.S. Coast Guard to provide boater education and conduct equipment checks for the following Memorial Day, temporarily curbing the disorderly behavior observed at Ahu o Laka.<sup>7</sup>

However, on Memorial Day 2011, drinking and drug use at Ahu o Laka was again implicated in the death of a young man. During that day, over 200 boats and 500 people were reported to have congregated at Ahu o Laka, crowding the Heeia Kea Small Boat Harbor as people loaded and unloaded their boats. Although seven DOCARE officers were in place to monitor crowd activities that day, a later altercation at the boat harbor between the young man and another individual resulted in the young man's death, due to blunt force trauma and bleeding in his brain. A Honolulu Star-Advertiser article stated that the medical examiner eventually found alcohol and cocaine in the deceased's system.<sup>8</sup> This very recent incident, combined with the long history of drug and crowd-related violence at Ahu o Laka, indicated a strong and urgent necessity to better address the drinking and overcrowding at Ahu o Laka during upcoming 3-day holidays.

At its June 23, 2011 meeting, the Board of Land and Natural Resources (Board) adopted section HAR §13-256-73.13 as an emergency rule which was then signed and filed with the Office of the Lieutenant Governor on the same date due to an imminent peril to the public's health and safety. The emergency rule ended one hundred twenty days later without renewal.

On July 27, 2012, the Board approved the adoption of HAR §13-256-73.13 with the recommendation that the rule contain a sunset date of three years from adoption. Since its

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<sup>2</sup> <http://the.honoluluadvertiser.com/article/2005/Nov/03/ln/FP511030316.html/>

<sup>3</sup> <http://the.honoluluadvertiser.com/article/2007/Sep/10/ln/hawaii709100329.html/>

<sup>4</sup> <http://www1.honolulu.gov/refs/nco/nb30/07/30sepmin.htm;>

<http://www1.honolulu.gov/refs/nco/nb29/06/29marmin.htm>

<sup>5</sup> <http://the.honoluluadvertiser.com/article/2007/Sep/10/ln/hawaii709100329.html/>

<sup>6</sup> <http://archives.starbulletin.com/2007/09/05/news/story07.html>

<sup>7</sup> <http://archives.starbulletin.com/2008/05/24/news/story07.html>

<sup>8</sup> [http://www.staradvertiser.com/news/breaking/No\\_charges\\_will\\_be\\_filed\\_in\\_Memorial\\_Day\\_fight\\_death.html](http://www.staradvertiser.com/news/breaking/No_charges_will_be_filed_in_Memorial_Day_fight_death.html)

adoption, the rule has been successfully implemented and enforced by DOCARE officers to the benefit of the general public. Therefore (DOBOR) believes that the prohibition of alcohol within the Ahu O Laka Safety Zone on certain 3 day weekends has had a positive impact on recreation and safety within Kaneohe Bay and should be made a permanent part of the Hawaii Administrative Rules.

REMARKS:

DOBOR has complied with its responsibility to consult the Office of the Prosecutor of the City and County of Honolulu, as well as the Kaneohe Bay Regional Council (KBRC), for their input on drafting the amendment to HAR §13-256-73.13 prior to public hearing. Either the entities were unavailable, or had no further comment or recommendations.

On October 6, 2014 DOBOR reached out to the Office of the Prosecutor of the City and County of Honolulu for comment on removing the sunset date from HAR §13-256-73.13 pursuant to the Intermediate Court of Appeals of the State of Hawaii's decision in State v. Bereday finding that the city and county had jurisdiction over certain activities in near-shore waters. State v. Bereday, 120 Haw. 486, 493, 210 P.3d 9, 16 (Ct. App. 2009). Additionally DOBOR solicited comment from the Prosecutor's office based on a previous informal agreement to consult with the Office of the Prosecutor on revisions to any DOBOR rule containing criminal liability that could potentially be prosecuted by the City and County of Honolulu. The Prosecutor's office responded on October 9, 2014 that they had no comments or recommendations regarding the proposed amendment to HAR §13-256-73.13.

Hawaii Revised Statutes §200-39(e) states that: "All rules adopted by the department with regard to Kaneohe Bay shall be drafted in consultation with the Kaneohe Bay regional council." However, the KBRC currently has an insufficient number of members to form a quorum and can provide no foreseeable date at which they will be available to provide input on the proposed amendment. DOBOR will consult with the KBRC on the proposed amendment if KBRC forms a quorum during the rule making process. However, given the necessity of removing the language regarding the sunset date from HAR §13-256-73.13 before the date occurs, and the uncertainty of when, and if KBRC will form a quorum, DOBOR requests permission to proceed to public hearings without consulting the KBRC at this time.

RECOMMENDATION:

That the Board:

1. Grant the Division of Boating and Ocean Recreation approval to initiate rule-making proceedings regarding amendment to HAR §13-256-73.13.

Respectfully submitted,



Edward R. Underwood  
Administrator

Attachment: Exhibit A

APPROVED FOR SUBMITTAL



William J. Aila, Jr.  
Chairperson and Member