

## Request List of Routine Program Changes 2016, Hawaii CZM Program

<b>Added (Attachment-I)</b>	
1)	HRS §§ 115-5(b), 115-9(a)(4), 115-9(b)(8) and 115-10
2)	HRS §§ 205A-2(c)(9)(D) and 205A-2(c)(9)(E)
3)	HRS § 266-2.2
4)	HAR § 11-23-24
5)	HAR § 11-54-4(e)
6)	HAR §§ 11-54-4(b), 11-54-11, 11-54-12 and 11-54-15
7)	HAR Chapter 11-55, Appendix M
8)	HAR §§ 11-55-34.05(b) to (f)
9)	HAR §§ 11-55-19(a)(9) and 11-55-19(a)(10)
10)	HAR Chapter 13-60.4
11)	HAR Chapter 13-60.8
12)	HAR Chapter 13-95.1
13)	HAR §§ 13-124-11, 13-124-12, and 13-124-13
14)	HAR Chapter 13-190.1
15)	HAR § 13-251-33 to § 13-251-35, and § 13-251-53
16)	Title MC-15, Chapter 111
17)	Maui County Code (MCC) § 18.20.135
18)	MCC § 16.26.3306
<b>Modified (Attachment-II)</b>	
19)	Kauai County Ordinance 979, Article 27, Chapter 8, Kauai County Code 1987
20)	HAR §§ 11-54-1, 11-54-1.1, 11-54-4(b), 11-54-5.1, 11-54-5.2, 11-54-6 to 11-54-9, 11-54-9.1 and 11-54-10
21)	HAR §§ 11-54-1, 11-54-5.1, 11-54-6, and 11-54-8
22)	HAR §§ 11-55-01, 11-55-04, 11-55-19, 11-55-34.02(b), 11-55-34.04 and 11-55-34.08
23)	HAR § 11-55-01, 11-55-04, 11-55-15, 11-55-34.02, 11-55-34.04(b), 11-55-34.06, 11-55-34.08(j), 11-55-34.09(d) and (e), 11-55-34.11, 11-55-40, Appendices A through L
24)	HAR § 11-55-40
25)	HAR §§ 11-62-03, 11-62-05, 11-62-06, 11-62-07.1, 11-62-08, 11-62-09, 11-62-11, 11-62-24, 11-62-26, 11-62-27, 11-62-28, 11-62-31.1, 11-62-31.2, 11-62-32, 11-62-33.1, 11-62-34, 11-62-36, 11-62-37, 11-62-41, 11-62-42, 11-62-43, 11-62-44, 11-62-54.08, 11-62-55.03, 11-62-56, 11-62-57.02, 11-62-57.04, 11-62-82, and 11-62-83
26)	HAR §§ 13-124-2, 13-124-3, 13-124-4, 13-124-7, 13-124-8 and Exhibits 1-5
27)	HAR §§ 13-231-2 to 13-231-6, 13-231-8, 13-231-11, 13-231-13, 13-231-15, §§ 13-231-21 to 13-231-27, § 13-231-45, §§ 13-231-55 to 13-231-67, § 13-231-70, and §§ 13-231-85.5 to 13-231-89
28)	HAR §§ 13-251-36 to 13-251-46, §§ 13-251-48 to 13-251-52, §§ 13-251-57 to 13-251-58, and § 13-251-76
29)	HAR §§ 13-256-3 to 13-256-4
30)	HAR § 13-256-73.13
<b>Deleted (Attachment-III)</b>	
31)	HAR Chapter 13-60.3
32)	HAR § 13-126-22
33)	HAR Chapter 13-190
34)	HAR § 13-231-72, § 13-231-76, and § 13-231-90
35)	HAR §§ 13-251-31 to 13-251-32, § 13-251-47, § 13-251-56, §§ 13-251-59 to 13-251-60, and § 13-251-68

## **Added**

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

Relating to **Beach Transit Corridors**

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

Relating to **Beach Transit Corridors**

Session Laws of Hawaii (SLH) 2010, were made permanent by Act 120, SLH 2013.



EXECUTIVE CHAMBERS  
HONOLULU

NEIL ABERCROMBIE  
GOVERNOR

**GOV. MSG. NO. 1220**

June 14, 2013

The Honorable Donna Mercado Kim,  
President  
and Members of the Senate  
Twenty-Seventh State Legislature  
State Capitol, Room 409  
Honolulu, Hawaii 96813

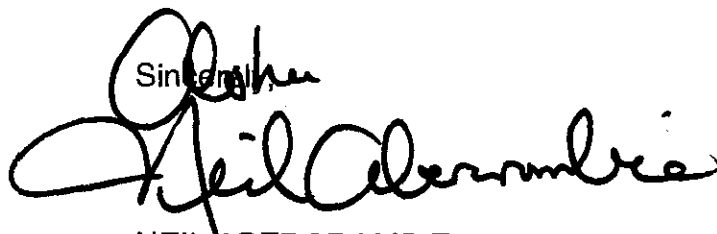
The Honorable Joseph M. Souki,  
Speaker and Members of the  
House of Representatives  
Twenty-Seventh State Legislature  
State Capitol, Room 431  
Honolulu, Hawaii 96813

Dear President Kim, Speaker Souki, and Members of the Legislature:

This is to inform you that on June 14, 2013, the following bill was signed into law:

HB17 HD1 SD2

RELATING TO COASTAL AREAS  
**ACT 120 (13)**

The image shows a handwritten signature in black ink. The signature is stylized and appears to read 'Neil Abercrombie'. There is a small, faint word 'Signed' written above the signature.

NEIL ABERCROMBIE  
Governor, State of Hawaii

Approved by the Governor

on JUN 14 2013

HOUSE OF REPRESENTATIVES  
TWENTY-SEVENTH LEGISLATURE, 2013  
STATE OF HAWAII

ACT 120

H.B. NO. 17  
H.D. 1  
S.D. 2

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## A BILL FOR AN ACT

RELATING TO COASTAL AREAS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 171-58.5, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "§171-58.5 Prohibitions. The mining or taking of sand,  
4 dead coral or coral rubble, rocks, soil, or other marine  
5 deposits seaward from the shoreline is prohibited with the  
6 following exceptions:

- 7 (1) The inadvertent taking from seaward of the shoreline  
8 of [such] these materials, [~~not in excess of one~~  
9 ~~gallon per person per day for reasonable, personal,~~  
10 ~~noncommercial use,~~] such as those inadvertently  
11 carried away on the body, and on clothes, toys,  
12 recreational equipment, and bags;
- 13 (2) For the replenishment or protection of public  
14 shoreline areas and adjacent public lands seaward of  
15 the shoreline, or construction or maintenance of state  
16 approved lagoons, harbors, launching ramps, or  
17 navigational channels with a permit authorized under  
18 chapter 183C;





1 (3) The clearing of [~~sueh~~] these materials from existing  
2 drainage pipes and canals and from the mouths of  
3 streams including clearing for the purposes under  
4 section 46-11.5; provided that the sand removed shall  
5 be placed on adjacent areas unless this placement  
6 would result in significant turbidity; [~~ex~~]

7 (4) The cleaning of areas seaward of the shoreline for  
8 state or county maintenance purposes including the  
9 purposes under section 46-12; provided that the sand  
10 removed shall be placed on adjacent areas unless  
11 [~~sueh~~] the placement would result in significant  
12 turbidity[~~-~~];

13 (5) The exercise of traditional cultural practices as  
14 authorized by law or as permitted by the department  
15 pursuant to article XII, section 7, of the Hawaii  
16 State Constitution; or

17 (6) For the response to a public emergency or a state or  
18 local disaster."

19 SECTION 2. Section 205A-44, Hawaii Revised Statutes, is  
20 amended by amending subsection (a) to read as follows:



1       "(a) The mining or taking of sand, dead coral or coral  
2 rubble, rocks, soil, or other beach or marine deposits from the  
3 shoreline area is prohibited with the following exceptions:

4       (1) The inadvertent taking from the shoreline area of the  
5 materials, ~~[not in excess of one gallon per person per~~  
6 ~~day, for reasonable, personal, noncommercial use,~~  
7 ~~provided that stricter provisions may be established~~  
8 ~~by the counties;]~~ such as those inadvertently carried  
9 away on the body, and on clothes, toys, recreational  
10 equipment, and bags;

11       (2) Where the mining or taking is authorized by a variance  
12 pursuant to this part;

13       (3) The clearing of ~~[the]~~ these materials from existing  
14 drainage pipes and canals and from the mouths of  
15 streams including clearing for the purposes under  
16 section 46-11.5; provided that the sand removed shall  
17 be placed on adjacent areas unless ~~[such]~~ the  
18 placement would result in significant turbidity; ~~[or]~~

19       (4) The cleaning of the shoreline area for state or county  
20 maintenance purposes, including the clearing for  
21 purposes under section 46-12; provided that the sand



1 removed shall be placed on adjacent areas unless the  
2 placement would result in significant turbidity[-];

3 (5) The taking of driftwood, shells, beach glass, glass  
4 floats, or seaweed;

5 (6) The exercise of traditional cultural practices as  
6 authorized by law or as permitted by the department  
7 pursuant to article XII, section 7, of the Hawaii  
8 State Constitution; or

9 (7) For the response to a public emergency or a state or  
10 local disaster."

11 SECTION 3. Act 160, Session Laws of Hawaii 2010, is  
12 amended by adding a new section to be appropriately inserted and  
13 to read as follows:

14 "SECTION 4A. This Act shall not be construed to modify or  
15 alter any agreement of the department of land and natural  
16 resources that was in effect or executed on the effective date  
17 of this Act."

18 SECTION 4. Act 160, Session Laws of Hawaii 2010, is  
19 amended by amending section 7 to read as follows:

20 "SECTION 7. This Act shall take effect upon its approval[+]  
21 ~~provided that on June 30, 2013, this Act shall be repealed and~~  
22 ~~sections 115-5, 115-9, and 205A-2(c), Hawaii Revised Statutes,~~

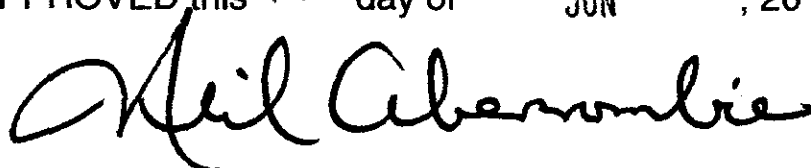


1 ~~shall be reenacted in the form in which they read one day prior~~  
2 ~~to the effective date of this Act]."~~

3 SECTION 5. Statutory material to be repealed is bracketed  
4 and stricken. New statutory material is underscored.

5 SECTION 6. This Act shall take effect on June 29, 2013.

APPROVED this 14 day of JUN, 2013



GOVERNOR OF THE STATE OF HAWAII



## A Bill for an Act Relating to Coastal Areas.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that there are many shoreline areas throughout the state where the overgrowth of vegetation inhibits lateral access and transit along the beach, thereby denying the public of use and enjoyment of the public domain. The area seaward of the shoreline is part of the State's conservation district and is regulated by the department of land and natural resources. Although natural vegetative overgrowth exists along beach areas, there is also evidence in many areas of vegetative overgrowth into the beach area induced or cultivated by private property owners. The department does not have the funding nor should it be financially responsible for the removal of induced or cultivated vegetation by private landowners which interfere or encroach seaward of the shoreline.

The legislature further finds that beach transit corridors are similar to public sidewalks in the sense that they are for public use. To maintain beach transit along the shoreline, provisions similar to those pertaining to the maintenance of sidewalks are needed when induced or cultivated vegetation interferes or encroaches into the beach transit corridor.

The purpose of this Act is to reaffirm a longstanding public policy of extending to public use and ownership as much of Hawaii's shoreline as is reasonably possible by ensuring the public's lateral access along the shoreline, by requiring the removal of the landowners' induced or cultivated vegetation that interferes or encroaches seaward of the shoreline.

SECTION 2. Chapter 115, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§115- Duty to maintain access within beach transit corridors.** (a) The department of land and natural resources shall maintain access within beach transit corridors under this chapter and chapter 183C, by requiring private property owners to ensure that beach transit corridors abutting their lands shall be kept passable and free from the landowner's human-induced, enhanced, or unmaintained vegetation that interferes or encroaches in the beach transit corridors.

(b) In addition to the criminal penalties in section 115-9, the department is authorized to issue notice to landowners who fail to maintain access within beach transit corridors, as set out in subsection (a), abutting their property. If any landowner fails to remove the landowner's human-induced, enhanced, or unmaintained vegetation within twenty-one days of notice being issued, the department shall take any action authorized under section 183C-7 as necessary to maintain access within beach transit corridors; provided that if the landowner contests the basis upon which the notice was issued prior to the expiration of the notice period, the department's enforcement actions under section 183C-7 shall be tolled until the final resolution of the contested matter.

(c) As used in this section, "landowner" means the record owner of the property or the record owner's agent, including a lessee, tenant, property manager, agent, or trustee."

SECTION 3. Section 115-5, Hawaii Revised Statutes, is amended to read as follows:

**"[§115-5] Transit area and public Beach transit corridor defined.** (a) The right of transit ~~along the shoreline exists below the private property line which is defined as being along the upper reaches of the wash of waves, usually evidenced by the edge of vegetation or by the debris left by the wash of waves,~~ shall exist seaward of the shoreline and this area shall be defined as a beach transit corridor. For purposes of this section, "shoreline" shall have the same meaning as in section 205A-1.

However, in areas of cliffs or areas where the nature of the topography is such that there is no reasonably safe transit for the public along the shoreline below the private property lines, the counties by condemnation ~~[shall]~~ may establish along the makai boundaries of the property lines public transit corridors which shall be not less than six feet wide.

(b) Along beach transit corridors where the abutting landowner's human-induced, enhanced, or unmaintained vegetation interferes or encroaches with beach transit corridors, the department of land and natural resources may require the abutting landowner to remove the landowner's interfering or encroaching vegetation."

SECTION 4. Section 115-9, Hawaii Revised Statutes, is amended to read as follows:

**"[§115-9] Obstructing access to public property; penalty.** (a) A person commits the offense of obstructing access to public property if the person, by action or by having installed a physical impediment, intentionally prevents a member of the public from traversing:

- (1) A public right-of-way;
- (2) A transit area; ~~[or]~~
- (3) A public transit corridor; or
- (4) A beach transit corridor;

and thereby obstructs access to and along the sea, the shoreline, or any inland public recreational area.

(b) Physical impediments that may prevent traversing include but are not limited to the following:

- (1) Gates;
- (2) Fences;
- (3) Walls;
- (4) Constructed barriers;
- (5) Rubbish;
- (6) Security guards; ~~[and]~~
- (7) Guard dogs or animals; ~~and~~
- (8) A landowner's human-induced, enhanced, or unmaintained vegetation that interferes or encroaches within beach transit corridors.

(c) Obstructing access to public property is a misdemeanor.

(d) Minimum fines for violation under this section shall be as follows:

- (1) \$1,000 for a second conviction; and
- (2) \$2,000 for any conviction after a second conviction.
- (e) As used in this section:

"Landowner" means the record owner of the property or the record owner's agent, including a lessee, tenant, property manager, or trustee.

"Person" means a natural person or a legal entity.

"Public recreational area" means public lands or bodies of water opened to the public for recreational use."



SECTION 5. Section 205A-2, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Policies

- (1) Recreational resources;
  - (A) Improve coordination and funding of coastal recreational planning and management; and
  - (B) Provide adequate, accessible, and diverse recreational opportunities in the coastal zone management area by:
    - (i) Protecting coastal resources uniquely suited for recreational activities that cannot be provided in other areas;
    - (ii) Requiring replacement of coastal resources having significant recreational value including, but not limited to, surfing sites, fishponds, and sand beaches, when such resources will be unavoidably damaged by development; or requiring reasonable monetary compensation to the State for recreation when replacement is not feasible or desirable;
    - (iii) Providing and managing adequate public access, consistent with conservation of natural resources, to and along shorelines with recreational value;
    - (iv) Providing an adequate supply of shoreline parks and other recreational facilities suitable for public recreation;
    - (v) Ensuring public recreational uses of county, state, and federally owned or controlled shoreline lands and waters having recreational value consistent with public safety standards and conservation of natural resources;
    - (vi) Adopting water quality standards and regulating point and nonpoint sources of pollution to protect, and where feasible, restore the recreational value of coastal waters;
    - (vii) Developing new shoreline recreational opportunities, where appropriate, such as artificial lagoons, artificial beaches, and artificial reefs for surfing and fishing; and
    - (viii) Encouraging reasonable dedication of shoreline areas with recreational value for public use as part of discretionary approvals or permits by the land use commission, board of land and natural resources, and county authorities; and crediting such dedication against the requirements of section 46-6f.
- (2) Historic resources;
  - (A) Identify and analyze significant archaeological resources;
  - (B) Maximize information retention through preservation of remains and artifacts or salvage operations; and
  - (C) Support state goals for protection, restoration, interpretation, and display of historic resources.
- (3) Scenic and open space resources;
  - (A) Identify valued scenic resources in the coastal zone management area;
  - (B) Ensure that new developments are compatible with their visual environment by designing and locating such developments to minimize the alteration of natural landforms and existing public views to and along the shoreline;
  - (C) Preserve, maintain, and, where desirable, improve and restore shoreline open space and scenic resources; and

- (D) Encourage those developments that are not coastal dependent to locate in inland areas.
- (4) Coastal ecosystems;
  - (A) Exercise an overall conservation ethic, and practice stewardship in the protection, use, and development of marine and coastal resources;
  - (B) Improve the technical basis for natural resource management;
  - (C) Preserve valuable coastal ecosystems, including reefs, of significant biological or economic importance;
  - (D) Minimize disruption or degradation of coastal water ecosystems by effective regulation of stream diversions, channelization, and similar land and water uses, recognizing competing water needs; and
  - (E) Promote water quantity and quality planning and management practices that reflect the tolerance of fresh water and marine ecosystems and maintain and enhance water quality through the development and implementation of point and nonpoint source water pollution control measures.
- (5) Economic uses;
  - (A) Concentrate coastal development in appropriate areas;
  - (B) Ensure that coastal dependent development such as harbors and ports, and coastal related development such as visitor industry facilities and energy generating facilities, are located, designed, and constructed to minimize adverse social, visual, and environmental impacts in the coastal zone management area; and
  - (C) Direct the location and expansion of coastal dependent developments to areas presently designated and used for such developments and permit reasonable long-term growth at such areas, and permit coastal dependent development outside of presently designated areas when:
    - (i) Use of presently designated locations is not feasible;
    - (ii) Adverse environmental effects are minimized; and
    - (iii) The development is important to the State's economy.
- (6) Coastal hazards;
  - (A) Develop and communicate adequate information about storm wave, tsunami, flood, erosion, subsidence, and point and nonpoint source pollution hazards;
  - (B) Control development in areas subject to storm wave, tsunami, flood, erosion, hurricane, wind, subsidence, and point and nonpoint source pollution hazards;
  - (C) Ensure that developments comply with requirements of the Federal Flood Insurance Program; and
  - (D) Prevent coastal flooding from inland projects.
- (7) Managing development;
  - (A) Use, implement, and enforce existing law effectively to the maximum extent possible in managing present and future coastal zone development;
  - (B) Facilitate timely processing of applications for development permits and resolve overlapping or conflicting permit requirements; and
  - (C) Communicate the potential short and long-term impacts of proposed significant coastal developments early in their life



cycle and in terms understandable to the public to facilitate public participation in the planning and review process[~~1~~].

- (8) Public participation;
- (A) Promote public involvement in coastal zone management processes;
- (B) Disseminate information on coastal management issues by means of educational materials, published reports, staff contact, and public workshops for persons and organizations concerned with coastal issues, developments, and government activities; and
- (C) Organize workshops, policy dialogues, and site-specific mediations to respond to coastal issues and conflicts[~~1~~].
- (9) Beach protection;
- (A) Locate new structures inland from the shoreline setback to conserve open space, minimize interference with natural shoreline processes, and minimize loss of improvements due to erosion;
- (B) Prohibit construction of private erosion-protection structures seaward of the shoreline, except when they result in improved aesthetic and engineering solutions to erosion at the sites and do not interfere with existing recreational and waterline activities; ~~and~~
- (C) Minimize the construction of public erosion-protection structures seaward of the shoreline[~~1~~];
- (D) Prohibit private property owners from creating a public nuisance by inducing or cultivating the private property owner's vegetation in a beach transit corridor; and
- (E) Prohibit private property owners from creating a public nuisance by allowing the private property owner's unmaintained vegetation to interfere or encroach upon a beach transit corridor.
- (10) Marine resources;
- (A) Ensure that the use and development of marine and coastal resources are ecologically and environmentally sound and economically beneficial;
- (B) Coordinate the management of marine and coastal resources and activities to improve effectiveness and efficiency;
- (C) Assert and articulate the interests of the State as a partner with federal agencies in the sound management of ocean resources within the United States exclusive economic zone;
- (D) Promote research, study, and understanding of ocean processes, marine life, and other ocean resources ~~in order~~ to acquire and inventory information necessary to understand how ocean development activities relate to and impact upon ocean and coastal resources; and
- (E) Encourage research and development of new, innovative technologies for exploring, using, or protecting marine and coastal resources.<sup>23</sup>

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 7. This Act shall take effect upon its approval; provided that on June 30, 2013, this Act shall be repealed and sections 115-5, 115-9, and

205A-2(c), Hawaii Revised Statutes, shall be reenacted in the form in which they read one day prior to the effective date of this Act.

(Approved June 2, 2010.)

#### Note

1. Edited pursuant to HRS §23G-16.5.

### ACT 161

S.B. NO. 2115

A Bill for an Act Relating to Preaudits for Proposed Payments.

*Be It Enacted by the Legislature of the State of Hawaii:*

#### PART I

SECTION 1. The legislature finds that like the University of Hawaii, the department of education should be required to preaudit all proposed payments of \$10,000 or more, but should have preaudit flexibility for proposed payments of less than \$10,000. The legislature also finds that the fiscal autonomy previously granted to the University of Hawaii and the department of education until June 30, 2011, should be extended.

The purpose of this Act is to:

- (1) Clarify that the department of education is required to preaudit proposed payments of \$10,000 or more;
- (2) Require the University of Hawaii and the department of education to preaudit samples of proposed payments of less than \$10,000 to determine the propriety of expenditures and compliance with applicable laws, executive orders, and rules, as their respective chief financial officers determine to be appropriate; and
- (3) Extend the fiscal autonomy granted to the University of Hawaii and the department of education until June 30, 2015.

#### PART II

SECTION 2. This part amends section 40-1, Hawaii Revised Statutes, in the form in which it will read after it is repealed and reenacted under Act 58, Session Laws of Hawaii 2004, as amended, on June 30, 2010.

SECTION 3. Section 40-1, Hawaii Revised Statutes, is amended<sup>1</sup> to read as follows:

**"§40-1 Comptroller to supervise accounts, etc.** (a) The comptroller shall be the general accountant of the State[~~1~~] and [he] shall cause to be recorded every receipt and disbursement of money made to, by, or through the treasury. [He] The comptroller shall have the power to withhold any disbursement for which no appropriation has been made or which would cause a specific appropriation to be exceeded.

(b) With respect to the executive branch, [he] except the University of Hawaii until June 30, 2015, and the department of education until June 30, 2015, the comptroller shall have complete supervision of all accounts. [He] The comptroller shall preaudit<sup>2</sup> all proposed payments of \$10,000 or more to determine the propriety of expenditures and compliance with [seeh] executive

**CHAPTER 115**  
**PUBLIC ACCESS TO COASTAL AND INLAND RECREATIONAL**  
**AREAS**

Section

- 115-1 Findings and purpose
- 115-2 Acquisition of lands for public rights-of-way and public transit corridors
- 115-3 Criteria for public rights-of-way
- 115-3.5 Restricting passage over rights-of-way
- 115-4 Right of transit along shorelines
- 115-5 Beach transit corridor defined
- 115-6 Procedure
- 115-7 State and county co-sponsorship of programs
- 115-8 Expending agency
- 115-9 Obstructing access to public property; penalty
- 115-10 Duty to maintain access within beach transit corridors; remedies

**Note**

Chapter heading amended by L 1977, c 164, §2.

**Cross References**

Statewide trail and access system, see chapter 198D.

**Law Journals and Reviews**

Beach Access: A Public Right? 23 HBJ 65.

Public Beach Access: A Right for All? Opening the Gate to Iroquois Point Beach. 30 UH L. Rev. 495.

**Case Notes**

Existence of chapter does not preclude private right of action to force beach access. 65 H. 383, 652 P.2d 1130.

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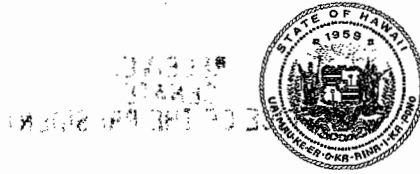
[Next](#)



# **Added**

## **3) HRS § 266-2.2**

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



GOV. MSG. NO 1186

12 19 2013  
EXECUTIVE CHAMBERS  
HONOLULU

NEIL ABERCROMBIE  
GOVERNOR

May 21, 2013

The Honorable Donna Mercado Kim,  
President  
and Members of the Senate  
Twenty-Seventh State Legislature  
State Capitol, Room 409  
Honolulu, Hawaii 96813

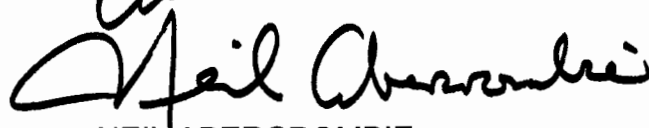
The Honorable Joseph M. Souki,  
Speaker and Members of the  
House of Representatives  
Twenty-Seventh State Legislature  
State Capitol, Room 431  
Honolulu, Hawaii 96813

Dear President Kim, Speaker Souki, and Members of the Legislature:

This is to inform you that on May 21, 2013, the following bill was signed into law:

SB1207 HD2 CD1

RELATING TO TRANSPORTATION  
**ACT 086 (13)**

*Aloha*  
Sincerely,  
  
NEIL ABERCROMBIE  
Governor, State of Hawaii

Approved by the Governor

on MAY 21 2013

THE SENATE  
TWENTY-SEVENTH LEGISLATURE, 2013  
STATE OF HAWAII

ACT 086  
S.B. NO. 1207  
H.D. 2  
C.D. 1

## A BILL FOR AN ACT

RELATING TO TRANSPORTATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

- 1 SECTION 1. Chapter 266, Hawaii Revised Statutes, is  
2 amended by adding a new section to be appropriately designated  
3 and to read as follows:  
4 "§266- Exemption from conservation district permitting  
5 and site plan approval requirements. Notwithstanding any law to  
6 the contrary, all work involving submerged lands used for state  
7 commercial harbor purposes shall be exempt from any permitting  
8 and site plan approval requirements established for lands in a  
9 conservation district."
- 10 SECTION 2. New statutory material is underscored.
- 11 SECTION 3. This Act shall take effect upon its approval.

APPROVED this 21 day of MAY, 2013



GOVERNOR OF THE STATE OF HAWAII

**[\$266-2.2] Exemption from conservation district permitting and site plan approval requirements.** Notwithstanding any law to the contrary, all work involving submerged lands used for state commercial harbor purposes shall be exempt from any permitting and site plan approval requirements established for lands in a conservation district. [L 2013, c 86, §1]

[Previous](#)[Vol05\\_Ch0261-0319](#)[Next](#)

# **Added**

## **4) Hawaii Administrative Rules (HAR) § 11-23-24**

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

DEPARTMENT OF HEALTH

Amendments to Chapter 11-23  
Hawaii Administrative Rules

October 21, 2000

SUMMARY

1. A new §11-23-24 is added.

§11-23-24 Timely processing. (a) This section applies to each written application under sections 11-23-08, 11-23-12, 11-23-13, 11-23-16, 11-23-17, and 11-23-19.

(b) The director shall approve, approve with conditions, or deny a complete application and notify the applicant accordingly within one hundred eighty days after the receipt of the complete application. Otherwise, the application is deemed automatically approved on the one hundred eighty-first day.

(c) The director shall determine and notify an applicant of the completeness or deficiency of an application covered by this section, including payment of required fees, within forty-five days of receipt of application. Failure by the applicant to provide additional information, pay the fee, or correct a deficiency for completeness of the application is sufficient ground to suspend or terminate review of the application. The director shall determine and notify an applicant of the completeness of a revised application covered by this section, including payment of required fees, within thirty days of receipt of the revision.

(d) Notice to the applicant shall be complete upon mailing, facsimile transmission, or electronic mail transmission.

(e) The period for the director's action includes all calendar days, but if the period ends on a Saturday, Sunday, or state holiday, the period extends to the next working day.

(f) The one hundred eighty day period for the director's action under subsection (b) applies to the director's initial decision and notice. The initial decision and notice do not become untimely if later there is a request for hearing, an actual hearing, a lawsuit, or other challenge to the initial decision which prevents it from becoming final.

(g) The time for the director's action and notice to the applicant shall be extended when allowed by section 91-13.5, HRS.

(h) Any automatic approval of construction or of a permit resulting from this section:

- (1) Is subject to the conditions in sections 11-23-16(a)(1) through 11-23-16(a)(3);


- (2) Is valid from the date of the automatic approval; and
- (3) Expires after one year.
- (i) Any injection well abandoned under an automatic approval shall be sealed in accordance with sections 3.4 through 3.9 of the Department of Land and Natural Resources' "Hawaii Well Construction and Pump Installation Standards" dated January 1997, copies of which are available for inspection at the department's environmental management division and district health offices. [Eff 10/21/00](Auth: HRS §§91-13.5, 340E-2, 340E-9) (Imp: HRS §91-13.5)



DEPARTMENT OF HEALTH


Amendments to chapter 11-23, Hawaii Administrative Rules, on the Summary page dated OCT 21 2000, were adopted on OCT 21 2000, following a public hearing held on May 25, 2000, after public notice was given in the Midweek on April 24, 2000.

These amendments shall take effect ten days after filing with the Office of the Lieutenant Governor.

  
\_\_\_\_\_  
BRUCE S. ANDERSON, Ph.D., M.P.H.  
Director  
Department of Health

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Deputy Attorney General

  
\_\_\_\_\_  
BENJAMIN J. CAYETANO  
Governor  
State of Hawaii

Date: 10/9/2000

OCT 11 2000

Filed

LIEUTENANT GOVERNOR'S  
OFFICE

'00 OCT 11 AM 10:32

**Added**

**5) HAR § 11-54-4(e)**

Relating to **Pesticide application**

DEPARTMENT OF HEALTH

Amendment and Compilation of Chapter 11-54  
Hawaii Administrative Rules

1. Chapter 54 of Title 11, Hawaii Administrative Rules, titled "Water Quality Standards," is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 54

WATER QUALITY STANDARDS

§11-54-1	Definitions
§11-54-1.1	General policy of water quality antidegradation
§11-54-2	Classification of state waters
§11-54-3	Classification of water uses
§11-54-4	Basic water quality criteria applicable to all waters
§11-54-5	Uses and specific criteria applicable to inland waters; definitions
§11-54-5.1	Inland water areas to be protected
§11-54-5.2	Inland water criteria
§11-54-6	Uses and specific criteria applicable to marine waters
§11-54-7	Uses and specific criteria applicable to marine bottom types
§11-54-8	Specific criteria for recreational areas
§11-54-9	Zones of mixing
§11-54-9.1	Water quality certification

soil reaching the receiving body of water is deemed to be acceptable.

- (d) In order to reduce a risk to public health or safety arising out of any violation or probable violation of this chapter, the director may post or order posted any state waters. Posting is the placement, erection, or use of a sign or signs warning people to stay out of, avoid drinking, avoid contact with, or avoid using the water. This posting authority shall not limit the director's authority to post or order posting in any other appropriate case or to take any enforcement action.

(e) Pesticide application.

(1) As used in this section:

"Declared pest emergency situation" means an event defined by a public declaration by the President of the United States, state governor or, with the concurrence of the director, county mayor of a pest problem determined to require control through application of a pesticide beginning less than ten days after identification of the need for pest control.

"Pest" means

- (A) Any insect, rodent, nematode, fungus, weed, or
- (B) Any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organisms on or in living man or other living animals) which the Administrator declares to be a pest under 7 U.S.C. §136w(c)(1).

"Pesticide" means

- (A) Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest;
- (B) Any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant; and

- (C) Any nitrogen stabilizer, except that the term "pesticide" shall not include any article that is a "new animal drug" within the meaning of 21 U.S.C. 321(w), that has been determined by the Secretary of Health and Human Services not to be a new animal drug by a regulation establishing conditions of use for the article, or that is an animal feed within the meaning of 21 U.S.C. 321(x) bearing or containing a new animal drug.

The term "pesticide" does not include liquid chemical sterilant products (including any sterilant or subordinate disinfectant claims on such products) for use on a critical or semi-critical device, as defined in section 201 of 21 U.S.C. §321. For purposes of the preceding sentence, the term "critical device" includes any device which is introduced directly into the human body, either into or in contact with the bloodstream or normally sterile areas of the body and the term "semi-critical device" includes any device which contacts intact mucous membranes but which does not ordinarily penetrate the blood barrier or otherwise enter normally sterile areas of the body. The term "pesticide" applies to insecticides, herbicides, fungicides, rodenticides, and various other substances used to control pests. The definition encompasses all uses of pesticides authorized under FIFRA including uses authorized under sections 3 (registration), 5 (experimental use permits), 18 (emergency exemptions), 24(c) (special local needs registrations), and 25(b) (exemptions from FIFRA). Note: drugs used to control diseases of humans or animals (such as livestock, fishstock and pets) are not considered pesticides; such drugs are regulated by the

- Food and Drug Administration. Fertilizers, nutrients, and other substances used to promote plant survival and health are not considered plant growth regulators and thus are not pesticides. Biological control agents, except for certain microorganisms, are exempted from regulation under FIFRA. (Biological control agents include beneficial predators such as birds or ladybugs that eat insect pests, parasitic wasps, fish, etc).
- (2) Pesticide applications may be made to State waters if the pesticide applications are:
- (A) Registered by the U.S. Environmental Protection Agency and licensed by the state department of agriculture or other state agency regulating pesticides;
  - (B) Used for the purpose of controlling mosquito and other flying insect pests; controlling weed and algae pests; controlling animal pests; controlling forest canopy pests; or protecting public health or the environment in a declared pest emergency situation or as determined by the director;
  - (C) Applied in a manner consistent with the labeling of the pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act;
  - (D) Applied under permits issued pursuant to HRS chapter 342D;
  - (E) Applied in a manner so applicable narrative and numeric state water quality criteria as required in chapter 11-54 are met. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 10/2/04; am and comp 06/15/09; am and comp ] (Auth: HRS §§342D-1, 342D-4, 342D-5) (Imp: HRS §§342D-4, 342D-5)

HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 54

WATER QUALITY STANDARDS

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- §11-54-1 Definitions
- §11-54-1.1 General policy of water quality antidegradation
- §11-54-2 Classification of state waters
- §11-54-3 Classification of water uses
- §11-54-4 Basic water quality criteria applicable to all waters
- §11-54-5 Uses and specific criteria applicable to inland waters; definitions
- §11-54-5.1 Inland water areas to be protected
- §11-54-5.2 Inland water criteria
- §11-54-6 Uses and specific criteria applicable to marine waters
- §11-54-7 Uses and specific criteria applicable to marine bottom types
- §11-54-8 Specific criteria for recreational areas
- §11-54-9 Zones of mixing
- §11-54-9.1 Water quality certification
- §11-54-9.1.01 Water quality certification; contents of certification
- §11-54-9.1.02 Water quality certification; contents of application
- §11-54-9.1.03 Water quality certification; notice and hearing
- §11-54-9.1.04 Water quality certification; waiver
- §11-54-9.1.05 Water quality certification; adoption of new water quality standards
- §11-54-9.1.06 Water quality certification; inspection of facility or activity before operation

any other appropriate case or to take any enforcement action.

(e) Pesticide application.

(1) As used in this section:

"Declared pest emergency situation" means an event defined by a public declaration by the President of the United States, state governor or, with the concurrence of the director, county mayor of a pest problem determined to require control through application of a pesticide beginning less than ten days after identification of the need for pest control.

"Pest" means

- (A) Any insect, rodent, nematode, fungus, weed, or
- (B) Any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organisms on or in living man or other living animals) which the Administrator declares to be a pest under 7 U.S.C. §136w(c)(1).

"Pesticide" means

- (A) Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest;
- (B) Any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant; and
- (C) Any nitrogen stabilizer, except that the term "pesticide" shall not include any article that is a "new animal drug" within the meaning of 21 U.S.C. 321(w), that has been determined by the Secretary of Health and Human Services not to be a new animal drug by a regulation establishing conditions of use for the article, or that is an animal feed within the meaning of 21 U.S.C. 321(x) bearing or containing a new animal drug.



The term "pesticide" does not include liquid chemical sterilant products (including any sterilant or subordinate disinfectant claims on such products) for use on a critical or semi-critical device, as defined in section 201 of 21 U.S.C. §321. For purposes of the preceding sentence, the term "critical device" includes any device which is introduced directly into the human body, either into or in contact with the bloodstream or normally sterile areas of the body and the term "semi-critical device" includes any device which contacts intact mucous membranes but which does not ordinarily penetrate the blood barrier or otherwise enter normally sterile areas of the body. The term "pesticide" applies to insecticides, herbicides, fungicides, rodenticides, and various other substances used to control pests. The definition encompasses all uses of pesticides authorized under FIFRA including uses authorized under sections 3 (registration), 5 (experimental use permits), 18 (emergency exemptions), 24(c) (special local needs registrations), and 25(b) (exemptions from FIFRA).

Note: drugs used to control diseases of humans or animals (such as livestock, fishstock and pets) are not considered pesticides; such drugs are regulated by the Food and Drug Administration. Fertilizers, nutrients, and other substances used to promote plant survival and health are not considered plant growth regulators and thus are not pesticides. Biological control agents, except for certain microorganisms, are exempted from regulation under FIFRA. (Biological control agents include beneficial predators such as birds or ladybugs that eat insect pests, parasitic wasps, fish, etc).

- (2) Pesticide applications may be made to State waters if the pesticide applications are:

- (A) Registered by the U.S. Environmental Protection Agency and licensed by the state department of agriculture or other state agency regulating pesticides;
- (B) Used for the purpose of controlling mosquito and other flying insect pests; controlling weed and algae pests; controlling animal pests; controlling forest canopy pests; or protecting public health or the environment in a declared pest emergency situation or as determined by the director;
- (C) Applied in a manner consistent with the labeling of the pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act;
- (D) Applied under permits issued pursuant to HRS chapter 342D, if the Director requires such permits under HRS Chapter 342D; and
- (E) Applied in a manner so applicable narrative and numeric state water quality criteria as required in chapter 11-54 are met. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 10/2/04; am and comp 06/15/09; am and comp **OCT 21 2012** ] (Auth: HRS §§342D-1, 342D-4, 342D-5) (Imp: HRS §§342D-4, 342D-5)

§11-54-5 Uses and specific criteria applicable to inland waters. Inland water areas to be protected are described in section 11-54-5.1, corresponding specific criteria are set forth in section 11-54-5.2; water body types are defined in section 11-54-1. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09;

# Added

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

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

Department of Health

Rules Amending Title 11  
Hawaii Administrative Rules

(insert adoption date)

1. Chapter 54 of Title 11, Hawaii Administrative Rules, entitled "Water Quality Standards" is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 54

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§11-54-7	Uses and specific criteria applicable to marine bottom types
§11-54-8	Recreational criteria for all State waters
§11-54-9	Zones of mixing
§11-54-9.1	Water quality certification

§11-54-1

§11-54-9.1.01	Water quality certification; contents of certification
§11-54-9.1.02	Water quality certification; contents of water quality certification application
§11-54-9.1.03	Water quality certification; notice and hearing
§11-54-9.1.04	Water quality certification; waiver
§11-54-9.1.05	Water quality certification; adoption of new water quality standards
§11-54-9.1.06	Water quality certification; inspection of facility or activity before operation
§11-54-9.1.07	Water quality certification; notification to licensing or permitting agency
§11-54-9.1.08	Water quality certification; termination or suspension
§11-54-9.1.09	Water quality certification; review and advice
§11-54-10	Water quality analyses
§11-54-11	Schedule of compliance
§11-54-12	Intake credits
§11-54-13	Revision
§11-54-14	Severability
§11-54-15	Field citations; non-compliance

§11-54-1 Definitions. As used in this chapter:  
"Ambient conditions" means the water quality conditions that would occur in the receiving waters if these waters were not influenced by the proposed new human activity.

"Amphidromous" means aquatic life that migrate to and from the sea, but not specifically for reproductive purposes. Amphidromous aquatic life in Hawaiian streams are confined to fresh waters as adults, but their larval stages are partially or entirely spent in the ocean as part of the zooplankton.

be allowed upon securing approval in writing from the director, considering the environmental impact and the public interest pursuant to sections 342D-4, 342D-5, 342D-6, and 342D-50, HRS in accordance with the applicable provisions of chapter 91, HRS. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; am and comp 10/21/12; am and comp 12/6/13; am and comp ](Auth: HRS §174C, §§342D-1, 342D-4, 342D-5, Ch. 342E) (Imp: HRS §§342D-4, 342D-5, Ch. 342E)

§11-54-4 Basic water quality criteria applicable to all waters. (a) All waters shall be free of substances attributable to domestic, industrial, or other controllable sources of pollutants, including:

- (1) Materials that will settle to form objectionable sludge or bottom deposits;
- (2) Floating debris, oil, grease, scum, or other floating materials;
- (3) Substances in amounts sufficient to produce taste in the water or detectable off-flavor in the flesh of fish, or in amounts sufficient to produce objectionable color, turbidity or other conditions in the receiving waters;
- (4) High or low temperatures, biocides, pathogenic organisms, toxic, radioactive, corrosive, or other deleterious substances at levels or in combinations sufficient to be toxic or harmful to human, animal, plant, or aquatic life, or in amounts sufficient to interfere with any beneficial use of the water;

- (5) Substances or conditions or combinations thereof in concentrations which produce undesirable aquatic life; and
- (6) Soil particles resulting from erosion on land involved in earthwork, such as the construction of public works; highways; subdivisions; recreational, commercial, or industrial developments; or the cultivation and management of agricultural lands.

(b) The director is authorized to impose by order the penalties and fines and corrective measures as specified in chapters 342D and 342E, HRS, against any person who discharges or otherwise causes or allows water pollutants to enter State waters and cause violation of this chapter, unless that person acted in compliance with a permit or variance issued by the director pursuant to chapters 342D, HRS, for that person's discharges. Each day that the person has caused each water quality standard not to be met shall constitute a separate offense.

[(b)](c) To ensure compliance with paragraph (a)(4), all [state]State waters are subject to monitoring and to the following standards for acute and chronic toxicity and the protection of human health.

(1) As used in this section:

"Acute Toxicity" means the degree to which a pollutant, discharge, or water sample causes a rapid adverse impact to aquatic organisms. The acute toxicity of a discharge or receiving water is measured using the methods in section 11-54-10, unless other methods are specified by the director.

"Chronic Toxicity" means the degree to which a pollutant, discharge, or water sample causes a long-term adverse impact to aquatic organisms, such as a reduction in growth or reproduction. The chronic toxicity of a discharge or receiving water is measured using the methods in section 11-54-10, unless other methods are specified by the director.

§11-54-11 Schedule of compliance. (a) A schedule of compliance is an NPDES implementation tool that applies to the implementation of water quality standards through NPDES permits only.

(b) The director may issue a schedule of compliance in an individual NPDES permit for the implementation of effluent limits derived from the water quality criteria in this chapter if the director makes a finding that the discharger cannot immediately comply with the water quality based effluent limitations upon the effective grant of the permit.

(c) A schedule of compliance may be included in an individual NPDES permit issued by the director pursuant to chapter 342D, HRS.

(d) A schedule of compliance in an NPDES permit is allowed only for water quality-based effluent limits based upon a new, revised, or newly interpreted water quality standard and must:

- (1) Comply with the provisions in 40 CFR section 122.47, revised as of July 1, 2014, and;
- (2) Include an enforceable final effluent limitation that is within the timeframe allowed as specified in sections 11-55-08(a)(2)(B), 11-55-15(d), 11-55-21, 11-55-22, 11-55-23(10), and 11-55-34.07(3)(B).
- (3) Require compliance as soon as possible.

(e) A schedule of compliance that exceeds one year in duration must set forth interim requirements, specific dates to meet interim requirements, and a date by which the required water quality-based effluent limitation must be achieved. [Eff and comp ] Auth: HRS §§342D-4, 342D-5, 342D-53, Ch. 342E) (Imp: HRS §§342D-4, 342D-5, 342D-6, Ch. 342E)

§11-54-12 Intake credits. (a) An intake credit is an NPDES implementation tool that applies to the implementation of water quality standards through NPDES permits only.



(b) As used in this section:

"Background pollutant concentration" means the water body concentration immediately upstream/upcurrent of a permitted discharge, regardless of whether those pollutants are natural or result from anthropogenic upstream activity.

"Intake pollutant" means the background pollutant concentration that is present in the intake water body, which must be the same water body as the receiving water for the discharge at the time it is withdrawn from such waters.

"Same body of water" means an intake pollutant is considered to be from the "same body of water" as the discharge if the department finds that the intake pollutant would have reached the vicinity of the outfall point in the receiving water within a reasonable period of time had it not been removed by the permittee. This finding may be deemed established if:

- (1) The background pollutant concentration in the receiving water (excluding any amount of the pollutant in the facility's discharge) is similar to that in the intake water; and
- (2) There is a direct hydrologic connection between the intake and discharge points; and
- (3) Water quality characteristics (e.g. temperature, pH, hardness) are similar in the intake and receiving waters.

The department may consider other site-specific factors relevant to the transport and fate of the pollutant in deciding whether a pollutant would or would not have reached the vicinity of the outfall point in the receiving water within a reasonable period had it not been removed by the permittee.

(c) The director may, upon request of the discharger, adjust water quality-based effluent limitations or standards to reflect credit for intake pollutants in the discharger's intake water only:

- (1) To the extent necessary to meet the applicable limitation or standard, up to a

maximum value equal to the intake pollutant value; and

- (2) If there is no net increase in the concentration of the intake pollutant for which the credit is given. A discharger may add to the mass of the background pollutant concentration if an equal or greater mass is removed prior to discharge, so there is no net addition of the pollutant in the discharge compared to the intake water.

(d) Intake credit is not applicable to any pollutant for which a Total Maximum Daily Load (TMDL) and waste load allocation (WLA) have been developed and have been approved by the U.S. Environmental Protection Agency unless the TMDL and WLA provide for such an intake credit.

(e) The director shall grant credit for water quality-based effluent limits only if:

- (1) One hundred per cent of the intake water containing the intake pollutant is withdrawn from the same body of water into which the discharge is made;
- (2) The facility does not chemically or physically alter the intake pollutant in a manner that would cause adverse water quality impacts to occur that would not occur if the pollutant was left in-stream;
- (3) The timing and location of the discharge would not cause adverse water quality impacts to occur that would not occur if the intake pollutant were left in-stream; and,
- (4) The director finds that the discharge of intake pollutants into the same body of water will not adversely impact narrative or numeric water quality criteria specified in this chapter.

(f) Effluent limitations must be established so that they comply with all other applicable state and federal laws and regulations including water quality-based requirements and anti-degradation policies.

(g) All requests for the establishment of credit for intake pollutants shall be made on forms furnished by the department and shall be accompanied by:

- (1) Documentation showing a complete and detailed description of present conditions and how present conditions do not conform to standards; and
- (2) Documentation showing that the intake and discharge waterbodies are the "same body of water;" and
- (3) Documentation showing that pollutant(s) for which credits are being request actually come(s) from the intake water.

(h) Credit for intake pollutants shall be specified in the discharger's NPDES permit and shall become effective with the department's issuance of the permit for the specified permittee.

- (1) All permits that include intake credits issued by the department shall include monitoring of all influent, effluent, and ambient water to demonstrate that the conditions in this section are maintained during the permit term.
- (2) All credit for intake pollutants developed under this section shall be re-evaluated upon permit renewal.

(i) Credit for intake pollutants established under this section apply in the vicinity of the discharge for purposes of establishing permit limits for a specified pollutant for the specified permittee.

(j) All other water quality criteria established under this chapter continue to apply. [Eff and comp  
] Auth: HRS §§342D-4, 342D-5, 342D-53, Ch. 342E) (Imp: HRS §§342D-4, 342D-5, 342D-6, Ch. 342E)

§11-54-[11]13 Revision. These water quality criteria are based upon the best currently available data. Studies made in connection with the implementation

program may suggest improvements to this chapter. For this reason, the chapter will be subject to periodic review and, where necessary, to change. Any change will be made only after public hearing, held in compliance with chapter 91, HRS and the rules of practice and procedures of the department. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; comp 12/6/13; ren §11-54-11 and comp ] (Auth: HRS §§342D-1, 342D-4, 342D-5, Ch. 342E) (Imp: HRS §§342D-4, 342D-5, Ch. 342E)

§11-54-[12]14 Severability. If any provisions of this chapter, or the application thereof to any person or circumstances, is held invalid, the invalidity does not affect other provisions or application of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; comp 12/6/13; ren §11-54-12 and comp ] (Auth: HRS §§342D-1, 342D-4, 342D-5, Ch. 342E) (Imp: HRS §§342D-4, 342D-5, Ch. 342E)

§11-54-15 Field citations; non-compliance.  
(a) This section authorizes field citations to effectively and quickly settle easily verifiable violations of chapter 342D, HRS, and this chapter. Settlements under this section are an additional remedy and do not supplant the director's authority to issue orders under section 342D-9, HRS.

(b) Offer to settle.

(1) A field citation is an offer to settle an administrative case against a specific violation on a specific day. Instead of issuing a formal notice and finding of violation and order, the director may, in the director's sole discretion, through any authorized employee, issue a field citation by personal service or certified mail to:

- (A) Any person who discharges or otherwise causes or allows water pollutants to enter State waters and cause violation of this chapter, unless that person acted in compliance with a permit or variance issued by the director pursuant to chapter 342D for that person's discharges;
- (B) Any person who fails to correctly install, implement, maintain, or repair site best management practices as called for in this chapter;
- (C) Any person who violates monitoring requirements as required by the director;
- (D) Any person who violates record keeping requirements as required by the director.

(2) A field citation shall indicate the following amounts for violations:

- (A) \$500 for any person who violates paragraph (a)(1)(A), (B), or (C) for first violation, and \$2,000 for a subsequent violation; and
- (B) \$100 for any person who violates paragraph (a)(1)(D) for first violation, and \$200 for a subsequent violation.

(c) Resolution of field citation.

(1) A person issued a field citation may accept the citation by:

- (A) Signing the field citation;

- (B) Paying the full amount indicated on the field citation. Payment shall be made to the "State of Hawaii" in the form of a pre-printed check, cashier's check, money order, or as otherwise specified by the director;
    - (C) Mailing or delivering the signed citation and full payment to the clean water branch in Honolulu or to the district health office for the county where the violation occurred. The department must receive the signed field citation and full payment within twenty days after the person receives the field citation; and
    - (D) Correction within seven (7) days, or unless otherwise specified on the field citation, of the violation of this chapter.
  - (2) By signing the field citation, the person to whom it was issued agrees to:
    - (A) Give up the right to a contested case hearing under chapter 91 or 342D, HRS, or otherwise challenge the field citation;
    - (B) Pay the full amount indicated; and
    - (C) Correct the violation.
  - (3) If the field citation is not accepted in compliance with paragraph (1), the director may seek for that cited violation any remedies available under this chapter; chapter 342D, HRS; or any other law. For all other violations the director retains authority to seek any available remedies.
  - (d) Form of citation. The department shall prescribe a field citation form." [Eff and compiled ] (Auth: HRS §§342D-1, 342D-4, 342D-5, Ch. 342E) (Imp: HRS §§342D-4, 342D-5, Ch. 342E)

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

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

4. These amendments to and compilation of chapter 11-54, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

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

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LINDA ROSEN, M.D.  
M.P.H.  
Director of Health

APPROVED AS TO FORM:

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EDWARD G. BOHLEN  
Deputy Attorney General

DEPARTMENT OF HEALTH  
Amendment and Compilation of Chapter 11-54  
Hawaii Administrative Rules

**NOV 15 2014**

SUMMARY

1. Title amended.
2. §11-54-2 is amended.
3. §11-54-3 is amended.
4. §11-54-4 is amended.
5. §11-54-5.1 is amended.
6. §11-54-6 is amended.
7. §11-54-8 is amended.
8. §11-54-11 is amended.
9. §11-54-12 is amended.
10. §11-54-13 is amended.
11. §11-54-14 is amended.



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§11-54-4 Basic water quality criteria applicable to all waters. (a) All waters shall be free of substances attributable to domestic, industrial, or other controllable sources of pollutants, including:

- (1) Materials that will settle to form objectionable sludge or bottom deposits;
- (2) Floating debris, oil, grease, scum, or other floating materials;
- (3) Substances in amounts sufficient to produce taste in the water or detectable off-flavor in the flesh of fish, or in amounts sufficient to produce objectionable color, turbidity or other conditions in the receiving waters;
- (4) High or low temperatures, biocides, pathogenic organisms, toxic, radioactive, corrosive, or other deleterious substances at levels or in combinations sufficient to be toxic or harmful to human, animal, plant, or aquatic life, or in amounts sufficient to interfere with any beneficial use of the water;
- (5) Substances or conditions or combinations thereof in concentrations which produce undesirable aquatic life; and
- (6) Soil particles resulting from erosion on land involved in earthwork, such as the construction of public works; highways; subdivisions; recreational, commercial, or industrial developments; or the cultivation and management of agricultural lands.

(b) The director is authorized to impose by order the penalties and fines and corrective measures as specified in chapters 342D and 342E, HRS, against any person who discharges or otherwise causes or allows water pollutants to enter State waters and cause violation of this chapter, unless that person acted in compliance with a permit or variance issued by the director pursuant to chapters 342D, HRS, for

that person's discharges. Each day that the person has caused each water quality standard not to be met shall constitute a separate offense.

(c) To ensure compliance with paragraph (a)(4), all State waters are subject to monitoring and to the following standards for acute and chronic toxicity and the protection of human health.

(1) As used in this section:

"Acute Toxicity" means the degree to which a pollutant, discharge, or water sample causes a rapid adverse impact to aquatic organisms. The acute toxicity of a discharge or receiving water is measured using the methods in section 11-54-10, unless other methods are specified by the director.

"Chronic Toxicity" means the degree to which a pollutant, discharge, or water sample causes a long-term adverse impact to aquatic organisms, such as a reduction in growth or reproduction. The chronic toxicity of a discharge or receiving water is measured using the methods in section 11-54-10, unless other methods are specified by the director.

"Dilution" means, for discharges through submerged outfalls, the average and minimum values calculated using the models in the EPA publication, Initial Mixing Characteristics of Municipal Ocean Discharges (EPA/600/3-85/073, November, 1985), or in the EPA publication, Expert System for Hydrodynamic Mixing Zone Analysis of Conventional and Toxic Submerged Single Port Discharges (Cormix 1) (EPA/600/3-90/012), February, 1990.

"In-Stream Waste Concentration" (IWC) means the concentration of a toxicant in the receiving water, or for a discharge, the concentration of the effluent after minimum dilution authorized by the department. A discharge of one hundred divided by the minimum dilution is the IWC when the dilution is authorized by the director. A discharge of one hundred per cent effluent is the

§11-54-11 Schedule of compliance. (a) A schedule of compliance is an NPDES implementation tool that applies to the implementation of water quality standards through NPDES permits only.

(b) The director may issue a schedule of compliance in an individual NPDES permit for the implementation of effluent limits derived from the water quality criteria in this chapter if the director makes a finding that the discharger cannot immediately comply with the water quality based effluent limitations upon the effective grant of the permit.

(c) A schedule of compliance may be included in an individual NPDES permit issued by the director pursuant to chapter 342D, HRS.

(d) A schedule of compliance in an NPDES permit is allowed only for water quality-based effluent limits based upon a new, revised, or newly interpreted water quality standard and must:

- (1) Comply with the provisions in 40 CFR section 122.47, revised as of July 1, 2014, and;
- (2) Include an enforceable final effluent limitation that is within the timeframe allowed as specified in sections 11-55-08(a)(2)(B), 11-55-15(d), 11-55-21, 11-55-22, 11-55-23(10), and 11-55-34.07(3)(B).
- (3) Require compliance as soon as possible.

(e) A schedule of compliance that exceeds one year in duration must set forth interim requirements, specific dates to meet interim requirements, and a date by which the required water quality-based effluent limitation must be achieved. [Eff and comp NOV 1 5 2014 ] Auth: HRS §§342D-4, 342D-5, 342D-53, Ch. 342E) (Imp: HRS §§342D-4, 342D-5, 342D-6, Ch. 342E)

§11-54-12 Intake credits. (a) An intake credit is an NPDES implementation tool that applies to the implementation of water quality standards through NPDES permits only.

(b) As used in this section:

"Background pollutant concentration" means the water body concentration immediately upstream/upcurrent of a permitted discharge, regardless of whether those pollutants are natural or result from anthropogenic upstream activity.

"Intake pollutant" means the background pollutant concentration that is present in the intake water body, which must be the same water body as the receiving water for the discharge at the time it is withdrawn from such waters.

"Same body of water" means an intake pollutant is considered to be from the "same body of water" as the discharge if the department finds that the intake pollutant would have reached the vicinity of the outfall point in the receiving water within a reasonable period of time had it not been removed by the permittee. This finding may be deemed established if:

- (1) The background pollutant concentration in the receiving water (excluding any amount of the pollutant in the facility's discharge) is similar to that in the intake water; and
- (2) There is a direct hydrologic connection between the intake and discharge points; and
- (3) Water quality characteristics (e.g. temperature, pH, hardness) are similar in the intake and receiving waters.

The department may consider other site-specific factors relevant to the transport and fate of the pollutant in deciding whether a pollutant would or would not have reached the vicinity of the outfall point in the receiving water within a reasonable period had it not been removed by the permittee.

(c) The director may, upon request of the discharger, adjust water quality-based effluent limitations or standards to reflect credit for intake pollutants in the discharger's intake water only:

- (1) To the extent necessary to meet the applicable limitation or standard, up to a

maximum value equal to the intake pollutant value; and

- (2) If there is no net increase in the concentration of the intake pollutant for which the credit is given. A discharger may add to the mass of the background pollutant concentration if an equal or greater mass is removed prior to discharge, so there is no net addition of the pollutant in the discharge compared to the intake water.

(d) Intake credit is not applicable to any pollutant for which a Total Maximum Daily Load (TMDL) and waste load allocation (WLA) have been developed and have been approved by the U.S. Environmental Protection Agency unless the TMDL and WLA provide for such an intake credit.

(e) The director shall grant credit for water quality-based effluent limits only if:

- (1) One hundred per cent of the intake water containing the intake pollutant is withdrawn from the same body of water into which the discharge is made;
- (2) The facility does not chemically or physically alter the intake pollutant in a manner that would cause adverse water quality impacts to occur that would not occur if the pollutant was left in-stream;
- (3) The timing and location of the discharge would not cause adverse water quality impacts to occur that would not occur if the intake pollutant were left in-stream; and,
- (4) The director finds that the discharge of intake pollutants into the same body of water will not adversely impact narrative or numeric water quality criteria specified in this chapter.

(f) Effluent limitations must be established so that they comply with all other applicable state and federal laws and regulations including water quality-based requirements and anti-degradation policies.

(g) All requests for the establishment of credit for intake pollutants shall be made on forms furnished by the department and shall be accompanied by:

- (1) Documentation showing a complete and detailed description of present conditions and how present conditions do not conform to standards; and
- (2) Documentation showing that the intake and discharge waterbodies are the "same body of water;" and
- (3) Documentation showing that pollutant(s) for which credits are being request actually come(s) from the intake water.

(h) Credit for intake pollutants shall be specified in the discharger's NPDES permit and shall become effective with the department's issuance of the permit for the specified permittee.

- (1) All permits that include intake credits issued by the department shall include monitoring of all influent, effluent, and ambient water to demonstrate that the conditions in this section are maintained during the permit term.
- (2) All credit for intake pollutants developed under this section shall be re-evaluated upon permit renewal.

(i) Credit for intake pollutants established under this section apply in the vicinity of the discharge for purposes of establishing permit limits for a specified pollutant for the specified permittee.

(j) All other water quality criteria established under this chapter continue to apply. [Eff and comp NOV 15 2014 ] Auth: HRS §§342D-4, 342D-5, 342D-53, Ch. 342E) (Imp: HRS §§342D-4, 342D-5, 342D-6, Ch. 342E)

§11-54-13 Revision. These water quality criteria are based upon the best currently available data. Studies made in connection with the implementation program may

suggest improvements to this chapter. For this reason, the chapter will be subject to periodic review and, where necessary, to change. Any change will be made only after public hearing, held in compliance with chapter 91, HRS and the rules of practice and procedures of the department. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; comp 12/6/13; ren §11-54-11 and comp NOV 15 2014 ] (Auth: HRS §§342D-1, 342D-4, 342D-5, Ch. 342E) (Imp: HRS §§342D-4, 342D-5, Ch. 342E)

§11-54-14 Severability. If any provisions of this chapter, or the application thereof to any person or circumstances, is held invalid, the invalidity does not affect other provisions or application of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable. [Eff 11/12/82; am and comp 10/6/84; am and comp 04/14/88; am and comp 01/18/90; am and comp 10/29/92, am and comp 04/17/00; am and comp 10/2/04; comp 06/15/09; comp 10/21/12; comp 12/6/13; ren §11-54-12 and comp NOV 15 2014 ] (Auth: HRS §§342D-1, 342D-4, 342D-5, Ch. 342E) (Imp: HRS §§342D-4, 342D-5, Ch. 342E)

§11-54-15 Field citations; non-compliance.  
(a) This section authorizes field citations to effectively and quickly settle easily verifiable violations of chapter 342D, HRS, and this chapter. Settlements under this section are an additional remedy and do not supplant the director's authority to issue orders under section 342D-9, HRS.



- (b) Offer to settle.
- (1) A field citation is an offer to settle an administrative case against a specific violation on a specific day. Instead of issuing a formal notice and finding of violation and order, the director may, in the director's sole discretion, through any authorized employee, issue a field citation by personal service or certified mail to:
  - (A) Any person who discharges or otherwise causes or allows water pollutants to enter State waters and cause violation of this chapter, unless that person acted in compliance with a permit or variance issued by the director pursuant to chapter 342D for that person's discharges;
  - (B) Any person who fails to correctly install, implement, maintain, or repair site best management practices as called for in this chapter;
  - (C) Any person who violates monitoring requirements as required by the director;
  - (D) Any person who violates record keeping requirements as required by the director.
- (2) A field citation shall indicate the following amounts for violations:
  - (A) \$500 for any person who violates paragraph (a)(1)(A), (B), or (C) for first violation, and \$2,000 for a subsequent violation; and
  - (B) \$100 for any person who violates paragraph (a)(1)(D) for first violation, and \$200 for a subsequent violation.
- (c) Resolution of field citation.
- (1) A person issued a field citation may accept the citation by:
  - (A) Signing the field citation;

- (B) Paying the full amount indicated on the field citation. Payment shall be made to the "State of Hawaii" in the form of a pre-printed check, cashier's check, money order, or as otherwise specified by the director;
  - (C) Mailing or delivering the signed citation and full payment to the clean water branch in Honolulu or to the district health office for the county where the violation occurred. The department must receive the signed field citation and full payment within twenty days after the person receives the field citation; and
  - (D) Correction within seven (7) days, or unless otherwise specified on the field citation, of the violation of this chapter.
- (2) By signing the field citation, the person to whom it was issued agrees to:
- (A) Give up the right to a contested case hearing under chapter 91 or 342D, HRS, or otherwise challenge the field citation;
  - (B) Pay the full amount indicated; and
  - (C) Correct the violation.
- (3) If the field citation is not accepted in compliance with paragraph (1), the director may seek for that cited violation any remedies available under this chapter; chapter 342D, HRS; or any other law. For all other violations the director retains authority to seek any available remedies.
- (d) Form of citation. The department shall prescribe a field citation form." [Eff and compiled NOV 15 2014 ] (Auth: HRS §§342D-1, 342D-4, 342D-5, Ch. 342E) (Imp: HRS §§342D-4, 342D-5, Ch. 342E)

Amendments and compilation of chapter 54, title 11, Hawaii Administrative Rules, on the Summary Page dated **NOV 15 2014** were adopted on **NOV 15 2014** following a public hearing held on October 2, 2014, after public notice was given in the Honolulu Star-Advertiser, Hawaii Tribune-Herald, West Hawaii Today, The Maui News, and The Garden Isle on August 28, 2014.

The adoption of chapter 11-54 shall take effect ten days after filing with the Office of the Lieutenant Governor



LINDA ROSEN, M.D.  
M.P.H.  
Director of Health



NEIL ABERCROMBIE  
Governor  
State of Hawaii

Dated: 11-5-14

Filed

APPROVED AS TO FORM:



EDWARD G. BOHLEN  
Deputy Attorney General

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LIEUTENANT GOVERNOR'S  
OFFICE

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# **Added**

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

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

DEPARTMENT OF HEALTH

Amendment and Compilation of Chapter 11-55  
Hawaii Administrative Rules

1. Chapter 55 of Title 11, Hawaii Administrative Rules, titled "Water Pollution Control," is amended and complied to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 55

WATER POLLUTION CONTROL

§11-55-01	Definitions
§11-55-02	General policy of water pollution control
§11-55-03	General prohibition
§11-55-04	Application for NPDES permit, notice of intent, or conditional "no exposure" exclusion
§11-55-05	Receipt of federal information
§11-55-06	Transmission of information to Regional Administrator
§11-55-07	Identity of signatories to NPDES forms
§11-55-08	Formulation of tentative determinations and draft permit
§11-55-09	Public notice of applications
§11-55-10	Fact sheet
§11-55-11	Notice to other government agencies
§11-55-12	Public access to information
§11-55-13	Public hearings
§11-55-14	Public notice of public hearings
§11-55-15	Issuance of NPDES permits
§11-55-16	Modification or revocation and reissuance of NPDES permits

§11-55-17	Termination of permits and denial of renewal
§11-55-18	Reporting discontinuance or dismantlement
§11-55-19	Application of effluent standards and limitations, water quality standards, and other requirements
§11-55-20	Effluent limitations in issued NPDES permits
§11-55-21	Schedule of compliance in issued NPDES permits
§11-55-22	Compliance schedule reports
§11-55-23	Other terms and conditions of issued NPDES permits
§11-55-24	National pretreatment standards and users of publicly owned treatment works
§11-55-25	Transmission to Regional Administrator of proposed NPDES permits
§11-55-26	Transmission to Regional Administrator of issued NPDES permits
§11-55-27	Renewal of NPDES permits
§11-55-28	Monitoring
§11-55-29	Recording of monitoring activities and results
§11-55-30	Reporting of monitoring results
§11-55-31	Sampling and testing methods
§11-55-32	Malfunction, maintenance, and repair of equipment
§11-55-33	Agency board membership
§11-55-34	General permit definitions
§11-55-34.01	General permit policy
§11-55-34.02	General permit authority and adoption
§11-55-34.03	General permit terms
§11-55-34.04	General permit conditions
§11-55-34.05	Requiring an individual permit
§11-55-34.06	Relationship of general and individual permits
§11-55-34.07	Degree of waste treatment
§11-55-34.08	Notice of intent
§11-55-34.09	Notice of intent review, notice of general permit coverage, additional conditions, terms, renewals, effective dates, and automatic coverage

§11-55-34.10	Review of coverage issues and notice of intent and notice of general permit coverage decisions
§11-55-34.11	Notice of general permit coverage modification, revocation and reissuance, and termination
§11-55-34.12	General permit compliance
§11-55-35	Penalties and remedies
§11-55-36	Hearings and appeals
§11-55-37	Severability clause
§11-55-38	Repealed
§11-55-39	Public interest
§11-55-40	Field Citations
Appendix A	Department of Health Standard General Permit Conditions
Appendix B	NPDES General Permit Authorizing Discharges of Storm Water Associated with Industrial Activities
Appendix C	NPDES General Permit Authorizing Discharges of Storm Water Associated with Construction Activity
Appendix D	NPDES General Permit Authorizing Discharges of Treated Effluent from Leaking Underground Storage Tank Remedial Activities
Appendix E	NPDES General Permit Authorizing Discharges of Once Through Cooling Water Less Than One (1) Million Gallons Per Day
Appendix F	NPDES General Permit Authorizing Discharges of Hydrotesting Waters
Appendix G	NPDES General Permit Authorizing Discharges Associated with Construction Activity Dewatering
Appendix H	NPDES General Permit Authorizing Discharges of Treated Process Wastewater Associated with Petroleum Bulk Stations and Terminals
Appendix I	NPDES General Permit Authorizing Discharges of Treated Process

§11-55-01

	Wastewater Associated with Well Drilling Activities
Appendix J	NPDES General Permit Authorizing Occasional or Unintentional Discharges from Recycled Water Systems
Appendix K	NPDES General Permit Authorizing Discharges of Storm Water from Small Municipal Separate Storm Sewer Systems
Appendix L	NPDES General Permit Authorizing Discharges of Circulation Water from Decorative Ponds or Tanks
Appendix M	NPDES General Permit Authorizing Point Source Discharges from the Application of Pesticides

Historical Note: Chapter 55 of Title 11 is based substantially on Public Health Regulations, Chapter 37, Water Pollution Control, Department of Health, State of Hawaii. [Eff 5/25/74, am 1/20/75, 8/19/75, 1/31/81; R 11/27/81]

§11-55-01 Definitions

"13 CFR" means the Code of Federal Regulations, Title 13, Business Credit and Assistance, revised as of January 1, 2011 unless otherwise specified.

"40 CFR" means the Code of Federal Regulations, Title 40, Protection of Environment, revised as of [July 1, 2006] July 1, 2011 unless otherwise specified.

"Act" means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Public Law 92-500, as amended by Public Law 95-217, Public Law 95-483 and Public Law 97-117, 33 U.S.C. 1251 et. seq.

"Action threshold" means the point at which pest populations or environmental conditions necessitate that pest control action be taken based on economic, human health, aesthetic, or other effects. An action threshold may be based on current and/or past



DEPARTMENT OF HEALTH

Amendment and Compilation of Chapter 11-55

Hawaii Administrative Rules

**OCT 11 2012**

SUMMARY

1. §11-55-01 is amended.
2. §11-55-04 is amended.
3. §11-55-19 is amended.
4. §11-55-34.02 is amended.
5. §11-55-34.04 is amended.
6. §11-55-34.08 is amended.
7. Appendix M is new.
8. Chapter 55 is complied.

## CHAPTER 11-55 APPENDIX M

### NPDES GENERAL PERMIT AUTHORIZING POINT SOURCE DISCHARGES FROM THE APPLICATION OF PESTICIDES

August 2012

#### 1. Coverage under this General Permit.

This permit covers any Operator of a point source discharge of pollutants (i.e., discharge) resulting from the application of pesticides that meets the eligibility requirements identified in section 1(a) of this pesticide general permit (PGP) and if so required, submits a Notice of Intent (NOI) in accordance with section 1(e) of this general permit. For the purpose of this permit, an Operator is defined in section 11-55-01 to mean any entity associated with the application of pesticides which results in a discharge to state waters that meets either of the following two criteria: (1) any entity who performs the application of a pesticide or who has day-to-day control of the application (i.e., they are authorized to direct workers to carry out those activities); or (2) any entity with control over the decision to perform pesticide applications including the ability to modify those decisions. Operators identified in (1) above are referred to in this permit as Applicators while Operators identified in (2) are referred to in this permit as Decision-makers. As defined, more than one Operator may be responsible for complying with this permit for any single discharge from the application of pesticides.

## CHAPTER 11-55 APPENDIX M

For purposes of this permit, all Operators are defined as either an Applicator or a Decision-Maker or both an Applicator and a Decision-maker.

When an Operator is both an Applicator and a Decision-maker, the Operator must comply with all applicable requirements imposed on both Applicators and Decision-makers. When the permit references all "Operators," both Applicators and Decision-makers must comply.

### (a) Activities Covered.

This permit is available to Operators who discharge to state waters from the application of (1) biological pesticides or (2) chemical pesticides that leave a residue (collectively called pesticides), when the pesticide application is for at least one of the following pesticide use patterns:

- (1) Mosquito and Other Flying Insect Pest Control - to control public health/nuisance and other flying insect pests that develop or are present during a portion of their life cycle in or above standing or flowing water. Public health/nuisance and other flying insect pests in this use category include mosquitoes and black flies.
- (2) Weed and Algae Pest Control - to control weeds, algae, and pathogens that are pests in water and at water's edge, including ditches and/or canals.
- (3) Animal Pest Control -to control animal pests in water and at water's edge.

## CHAPTER 11-55 APPENDIX M

Animal pests in this use category include, but are not limited to, fish, lampreys, insects, mollusks, and pathogens.

- (4) Forest Canopy Pest Control - application of a pesticide to a forest canopy to control the population of a pest species (e.g., insect or pathogen) where to target the pests effectively, a portion of the pesticide unavoidably will be applied over and deposited to water.

- (b) Limitations on Coverage under this General Permit

- (1) Discharges to Water Quality Impaired Waters.

Except for discharges from pesticide applications made in response to a declared pest emergency situation or as determined by the director, Operators are not eligible for coverage under this permit for any discharges from a pesticide application to state waters if the water is identified as impaired by a substance which either is an active ingredient in that pesticide or is a degradate of such an active ingredient. For purposes of this general permit, impaired waters are those that have been identified by the State pursuant to Section 303(d) of the CWA as not meeting applicable State water quality standards. Impaired waters, for the purposes of this

## CHAPTER 11-55 APPENDIX M

general permit consist of both waters with EPA-approved Total Maximum Daily Loads (TMDLs) and waters for which EPA has not yet approved a TMDL. Coverage under this general permit is allowed for discharges to impaired waters listed generically for "pesticides" where the specific pesticide for which the waterbody is impaired has not been identified and without additional information suggesting that the waterbody is impaired for a specific active ingredient or degradate of the active ingredient.

- (2) Discharges to state waters classified by the department as "class 1, inland waters," "class AA, marine waters," and areas restricted in accordance with the State's "No Discharge" policy in chapter 11-54 entitled "Water Quality Standards."

Operators are not eligible for coverage under this permit for discharges from a pesticide application to state waters classified by the department as "class 1, inland waters," "class AA, marine waters," and areas restricted in accordance with the State's "No Discharge" policy in chapter 11-54 entitled "Water Quality Standards."

Except for discharges from the following pesticide applications:

## CHAPTER 11-55 APPENDIX M

- (A) made in response to a declared pest emergency situation or as determined by the director;
  - (B) to protect the public health or the environment that either do not degrade water quality or only degrade water quality on a short term basis; or
  - (C) to maintain water flow in agricultural irrigation ditches and canals if the pesticide application is for the activity covered in 1(a)(2) (i.e., weed and algae pest control) or is for the activity covered in 1(a)(3) (i.e., animal pest control) in flooded agricultural fields.
- (3) Discharges to surface drinking water sources (for domestic use) and their tributaries up-stream are not eligible for coverage under this permit. Such discharges will require coverage under an individual NPDES permit.

Except in the following conditions:

- (A) made in response to a declared pest emergency situation or as determined by the director; or
- (B) the following:
  - (i) the NOI indicates whether the proposed application may

## CHAPTER 11-55 APPENDIX M

discharge to surface  
drinking water sources; and

- (ii) the application to surface drinking water sources is consistent with the FIFRA label, including but not limited to, following any distance restriction and intended use; and
- (iii) the Decision-maker provides the owner (e.g., municipality, private) of the surface drinking water source the following information, including but not limited to: the pesticide(s) to be applied, general location, and approximate frequency and the department receives written consent from the owner of the surface drinking water source for such discharges; and
- (iv) the Operator adheres to the Safe Drinking Water Act and safe drinking water regulations; and
- (v) the Operator shall coordinate with the owner of the surface drinking water source to prevent pesticide-treated water from entering the drinking water intake

55-M-6

## CHAPTER 11-55 APPENDIX M

and distribution system  
(e.g., the valve to the  
drinking water source is  
shut, or by diversion).

- (4) Discharges Currently or Previously  
Covered by another Permit.

Discharges are not eligible for  
coverage under this permit if any of  
the following circumstances apply:

- (A) The discharge is covered by  
another NPDES permit, or
- (B) The discharge was included in a  
permit that in the past five (5)  
years has been or is in the  
process of being denied,  
terminated, or revoked by the  
State or EPA (this does not apply  
to the routine reissuance of  
permits every five (5) years).

- (5) Individual Permit

The Director may require any Operator  
authorized by this general permit to  
apply for and obtain an individual  
permit, in accordance with sections 11-  
55-34.05 and 11-55-34.10.

- (c) Term of General Permit

- (1) This general permit becomes effective  
when section 11-55-34.02(b)(12) becomes  
effective ten days after filing with  
the office of the lieutenant governor.



## CHAPTER 11-55 APPENDIX M

Hereinafter, the date when section 11-55-34.02(b)(12) becomes effective (i.e., ten days after filing with the office of the lieutenant governor) shall be referred to as "the effective date of the permit." This general permit expires five years after the effective date or when amendments to section 11-55-34.02(b)(12) are adopted, whichever is earlier.

- (2) A notice of general permit coverage under this general permit expires:
  - (C) Five years after the effective date of this general permit;
  - (D) When the notice of general permit coverage specifies; or
  - (E) When amendments to section 11-55-34.02(b)(12) are adopted,

Whichever is earliest, unless the notice of general permit coverage is administratively extended under section 11-55-34.09(d).

- (d) How to Obtain Authorization.

The following discharges, consistent with the activities covered in section 1(a) and limitations on coverage under this general permit in section 1(b), are automatically authorized by this permit beginning when section 11-55-34.02(b)(12) becomes effective ten days after filing with the office of the lieutenant governor:

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- (1) Eligible discharges made prior to the Notice of Intent submission deadline. See Table 2;
- (2) Eligible discharges for which submission of an NOI is not required. See sections 1(e) and 1(f).

To obtain authorization under this permit for all other eligible discharges, a Decision-maker must submit a timely, complete, and accurate NOI consistent with the requirements of sections 1(e) and 1(f), be issued a Notice of General Permit Coverage (NGPC) and meet all conditions of the NGPC, unless the Operator claimed automatic coverage in writing under the automatic provision of section 11-55-34.09(e)(2) and assumes the risks in section 11-55-34.09(f); and this general permit to the satisfaction of the department.

- (e) Decision-makers Required to Submit an NOI.

Any "Decision-maker Who is or Will be Required to submit an NOI" is identified in Table 1.

For calculating annual treatment area totals for purposes of determining if an NOI must be submitted, see the definition for, "annual treatment area threshold" in section 11-55-01.

An NOI provides notice to the State that a Decision-maker intends to discharge to state waters from pesticide application activities eligible for coverage under this permit.

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Information required to be provided is on the NOI form. The NOI must identify the pest management area where the Decision-maker will conduct activities resulting in discharges to state waters to be covered under this permit.

If required to submit an NOI, a Decision-maker must submit the NOI once, in accordance with the deadlines in Section 1(f), Table 2. The Decision-maker must submit an updated NOI if the criteria in section 1(f), Table 3 are met. Late NOIs may be accepted, but authorization to discharge will not be retroactive.

Coverage will be available for the duration of this general permit for Decision-makers who file an NOI and are issued an NGPC and who meet all conditions of the NGPC and this general permit to the satisfaction of the department or for those rightfully (refer to the risks in section 11-55-34.09(f)) claiming coverage in writing under the automatic provision of section 11-55-34.09(e)(2), including the Decision-makers' employees, contractors, subcontractors, and other agents, for all activities identified on the NOI unless coverage is terminated pursuant to appendix A of chapter 11-55. If a submitted NOI is not timely, accurate, or complete, and an NGPC is not issued or any condition not met, any employee, contractor, subcontractor or other entity that discharges is not covered by this permit.

Applicators who are not also Decision-makers do not need to submit an NOI, however they

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are still required to comply with other requirements, as applicable in this general permit.

### (f) Discharge Authorization Date

Except for discharges identified in Tables 1 through 3, any Operator with eligible discharges is automatically authorized to discharge under this permit without submission of an NOI. Decision-makers with eligible discharges identified in Tables 1 through 3 are authorized under this permit consistent with the requirements in those tables.

On the basis of a review of an NOI or other information, the Director may delay authorization to discharge beyond any timeframe identified in Table 2, determine that additional technology-based and/or water quality-based effluent limitations or other conditions are necessary, or deny coverage under this permit and require submission of an application for an individual NPDES permit, as detailed in section 1(b)(5).

All Operators with eligible discharges are authorized for permit coverage up until 60 calendar days from the effective date of the permit without submission of an NOI. Hereinafter, the 60 calendar day timeframe provided after the effective date of the permit shall be referred to as the "adjustment period." After the adjustment period, all Operators with eligible discharges for which an NOI is not required

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also are automatically covered under this permit. By the adjustment period, all Decision-makers with eligible discharges for which an NOI is required are required to submit an NOI consistent with the earliest applicable due date identified in Table 2. Decision-makers may submit multiple NOIs with different activities on each of those NOIs when a pesticide use pattern is not already covered within the same treatment area under another NOI.

Decision-makers who are required to submit an NOI must begin complying with Section 2(b) when section 11-55-34.02(b)(12) becomes effective ten days after filing with the office of the lieutenant governor.

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Table 1. Decision-makers Required to Submit NOIs

PGP Section/ Pesticide Use	Which Decision- makers Must Submit NOIs?	For Which Pesticide Application Activities?
All four use patterns identified in section 1(a)	Any Decision-maker with an eligible discharge to water quality impaired waters; class 1, inland or class AA, marine waters, or areas restricted in accordance with the State's "no discharge" policy; or to surface drinking waters and their tributaries up- stream consistent with sections 1(b)(1), 1(b)(2), or 1(b)(3).	Activities resulting in a discharge to water quality impaired waters, class 1, inland or class AA, marine waters, or areas restricted in accordance with the State's "no discharge" policy, or to surface drinking waters and their tributaries up-stream.
1(a)(1) - Mosquito and Other Flying Insect Pest Control	Any Federal or State government entities for which pest management for land resource stewardship is an integral part of the organization's operations.	All mosquito and other flying insect pest control activities resulting in a discharge to state waters.
	Mosquito control districts, or similar pest control districts.	All mosquito and other flying insect pest control activities

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		resulting in a discharge to state waters.
	Counties or other entities that exceed the annual treatment area threshold identified here.	Adulticide treatment if more than 6,400 acres during a calendar year. {1}
1(a)(2) - Weed and Algae Pest Control	Any Federal or State government entities for which pest management for land resource stewardship is an integral part of the organization's operations.	All weed and algae pest control activities resulting in a discharge to state waters.
	Irrigation and weed control districts, or similar pest control districts.	All weed and algae pest control activities resulting in a discharge to state waters.
	Counties or other entities that exceed the annual treatment area threshold identified here.	Treatment during a calendar year if more than either: 20 linear miles OR 80 acres of water. {2}
1(a)(3) - Animal Pest Control	Any Federal or State government entities for which pest management for land resource	All animal pest control activities resulting in a discharge to state waters.

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	stewardship is an integral part of the organization's operations.	
	Counties or other entities that exceed the annual treatment area threshold identified here.	Treatment during a calendar year if more than either: 20 linear miles OR 80 acres of water. {2}
1(a)(4) - Forest Canopy Pest Control	Any Federal or State government entities for which pest management for land resource stewardship is an integral part of the organization's operations.	All forest canopy pest control activities resulting in a discharge to state waters.
	Counties or other entities that exceed the annual treatment area threshold identified here.	Treatment if more than 6,400 acres during a calendar year. {1}



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Table 2. NOI Submittal Deadlines and Discharge Authorization Dates for Discharges from the Application of Pesticides

After the adjustment period, any eligible discharge for which an NOI is required must submit an NOI consistent with the earliest due date identified below. If the Director receives an NOI at least 30 calendar days before the end of the adjustment period, uninterrupted coverage may continue {3}. NOI due dates for any discharges occurring on or after the adjustment period are as follows:		
Operator Type	NOI Submission Deadline	Discharge Authorization Date {3}
Any Decision-maker with a discharge in response to a Declared Pest Emergency for which that activity triggers the NOI requirement identified in Section 1(e).	At least 30 calendar days after beginning discharge.	Immediately upon beginning to discharge for activities conducted in response to a Declared Pest Emergency Situation {4}.
Any Decision-maker that exceeds any annual treatment area threshold.	At least 30 calendar days before exceeding an annual treatment area threshold.	Upon NGPC issuance {5} or if the operator claimed automatic coverage in writing under the automatic provision of section 11-55-34.09(e)(2) and assumes the risks in section 11-55-34.09(f).

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Any Decision-maker otherwise required to submit an NOI as identified in Table 1.	At least 30 calendar days before any discharge for which an NOI is required.	Upon NGPC issuance {5} or if the Operator claimed automatic coverage in writing under the automatic provision of section 11-55-34.09(e)(2) and assumes the risks in section 11-55-34.09(f).
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Table 3. Change of Information, resulting in a Major Modification {6} of the NGPC, Submittal Deadlines and Discharge Authorization Dates

Operator Type	NOI Submission Deadline	Discharge Authorization Date
Any Decision-makers discharging to a class 1, inland water; class AA, marine water; or area restricted in accordance with the State's "no discharge" policy not specifically identified by name on a previously submitted NOI for this permit.	At least 30 calendar days before beginning to discharge in that newly identified class 1, inland water; class AA, marine water; or area restricted in accordance with the State's "no discharge" policy unless discharges are in response to a declared pest emergency in which case not later than 30 days after beginning discharge.	After reissuance of the NGPC to include the change {5}, unless discharges are in response to a declared pest emergency in which case coverage is available immediately upon beginning to discharge from activities conducted in response to declared pest emergency {4}.
Any Decision-maker with any discharge to state waters requiring permit coverage for a newly identified pest management	At least 30 calendar days before beginning to discharge in that newly identified pest management area or new pesticide	After reissuance of the NGPC to include the change {5}, unless discharges are in response to a declared pest

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area or new pesticide use pattern not identified on a previously submitted NOI for this permit. This includes changes in any treatment area, pesticide product, method or rate of application, or approximate dates of applications.	use pattern not identified on a previously submitted NOI for this permit unless discharges are in response to a declared pest emergency in which case not later than 30 days after beginning discharge.	emergency in which case coverage is available immediately upon beginning to discharge from activities conducted in response to declared pest emergency {4}.
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### Notes:

- {1} Treatment during a calendar year if more than 6,400 acres, as discussed for the categories "Mosquito and Other Flying Insect Pest Control" and "Forest Canopy Pest Control," refers to the total area to which pesticide applications (e.g. aerial spraying) are made, when any part of those areas is a state water and shall be treated as separate treatment areas to be additive in a calendar year. If the additive total areas in a calendar year to which pesticides application are made exceeds 6,400 acres, when any part of these areas is a state water, submittal of an NOI is required for those Decision-makers required to submit an NOI as identified in Table 1. For example, applying pesticides three times a year to the same three thousand acre site (i.e., total area to which pesticide applications are made, when any part of those areas is a state water)

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should be counted as nine thousand acres of treatment area.

- {2} For the categories "Weed and Algae Pest Control" and "Animal Pest Control", "20 linear miles" means 20 linear miles of river, stream, riverbank, or other linear water feature subject to coverage under this permit, counting each bank of the water feature separately if pesticides are applied to both banks. This means that applications four times a year to both banks of a three-mile long reach of stream will count as a total of twenty four linear miles (three miles \* two banks \* for applications per year = twenty four miles to which pesticides are applied in a calendar year) and require submission of an NOI. For applications made to the water of a linear water feature, the length of the reach or surface area may be used to determine if the annual treatment area threshold is exceeded. Treatment during a calendar year if more than "80 acres of water (i.e., surface area)" means application of pesticides to a waterbody surface area of greater than 80 acres.
- {3} On the basis of a review of an NOI or other information, the Director may delay authorization to discharge beyond any timeframe identified in Table 1, determine that additional technology-based and/or water quality-based effluent limitations or other conditions are necessary, or deny coverage under this permit and require submission of an application for an individual NPDES permit, as detailed in Section 1(b)(5).
- {4} To remain authorized, an NOI must be submitted no later than 30 calendar days after beginning discharge and result in issuance of an NGPC. At

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no time, during the processing the NOI, shall the time between the department's request for more information, and its receipt from the Decision-maker be longer than 30 calendar days. If longer than 30 calendar days, coverage under this general permit may be terminated automatically.

- {5} All requirements in the NGPC must be complied with and in the timeframe as specified, including this general permit and any additional requirements as determined by the State to the satisfaction of the department.
- {6} The department may require submittal of a new NOI if it is determined that the modification of the information is significant or more than one (1) change to the information used in the issuance of its NGPC is required.

### (g) Standard Conditions

The Decision-maker shall comply with the standard conditions as specified in appendix A of chapter 11-55, excluding biocides as identified in section 1.a.(4) of appendix A. In case of conflict between the conditions stated here and those specified in the standard general permit conditions, excluding biocides as identified in section 1.a.(4) of appendix A, the more stringent conditions shall apply.

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### (h) Other Federal and State Laws.

Operators must comply with all other applicable federal and state laws and regulations that pertain to pesticides. The pesticide must be registered by the EPA, licensed by the State Department of Agriculture or other lead state agency regulating pesticides, and used in a manner consistent with the labeling of the pesticide under the Federal, Insecticide, Fungicide, and Rodenticide Act (FIFRA). This permit does not negate the requirements under FIFRA and its implementing regulations to use registered pesticides consistent with the product's labeling. In fact, applications in violation of certain FIFRA requirements could also be a violation of the permit and therefore a violation of the CWA (e.g. exceeding label application rates). Additionally, other laws and regulations might apply to certain activities that are also covered under this permit (e.g., United States Coast Guard regulations).

### 2. Technology-Based Effluent Limitations

This Section includes technology-based effluent limitations applicable to all Operators, as defined in section 11-55-01, for any discharges authorized under this permit, with compliance required upon beginning such discharge. All Operators are classified as either "Applicators" or "Decision-makers," as defined in section 11-55-01, or both. Applicators must perform the tasks identified in section 2(a) - Applicators' Responsibilities. Decision-makers must perform

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the tasks identified in section 2(b) - Decision-makers' Responsibilities. There may be instances when a single entity acts as both an Applicator and a Decision-maker.

As stated in section 1(h), this general permit requires all Operators to comply with all other applicable federal or state laws and regulations that pertain to application of pesticides by the Operator.

### (a) Applicators' Responsibilities

To meet the effluent limitations of this permit, all Applicators must implement section 2(a) to minimize the discharge of pesticides to state waters from the application of pesticides, through the use of Pest Management Measures, as defined in section 11-55-01.

- (1) To the extent not determined by the Decision-maker, use only the amount of pesticide and frequency of pesticide application necessary to control the target pest, using equipment and application procedures appropriate for this task.
- (2) Maintain pesticide application equipment in proper operating condition, including requirement to calibrate, clean, and repair such equipment and prevent leaks, spills, or other unintended discharges.
- (3) Assess weather conditions (e.g. temperature, precipitation and wind



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speed) in the treatment area to ensure application is consistent with all applicable federal requirements.

### (b) Decision-makers' Responsibilities

#### For All Decision-makers

To meet the effluent limitations in section 2(b), all Decision-makers must minimize the discharge of pesticides to state waters from the application of pesticides, through the use of Pest Management Measures, as defined in section 11-55-01.

To the extent the Decision-maker determines the amount of pesticide or frequency of pesticide application, the Decision-maker must use only the amount of pesticide and frequency of pesticide application necessary to control the target pest.

For Any Decision-maker Who is or Will be Required to Submit an NOI

To meet the effluent limitations of this permit, prior to pesticide application, any Decision-maker who is or will be required to submit an NOI as required in section 1(e) must also implement sections 2(b)(1) - 2(b)(4) to minimize the discharge of pesticides to state waters from the application of pesticides, through the use of Pest Management Measures, as defined in section 11-55-01.

#### (1) Mosquito and Other Flying Insect Pest Control

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This section applies to discharges from the application of pesticides for mosquito and other flying insect pest control as defined in section 1(a)(1) of this general permit.

### (A) Identify the Problem.

Prior to the first pesticide application covered under this permit that will result in a discharge to state waters, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, any Decision-maker who is or will be required to submit an NOI must do the following for each pest management area, as defined in section 11-55-01:

- (i) Establish densities for larval and adult mosquito or flying insect pest populations or identify environmental condition(s), either current or based on historical data, to serve as action threshold(s) for implementing Pest Management Measures;
- (ii) Identify target pest(s) to develop Pest Management Measures based on developmental and behavioral

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considerations for each pest;

- (iii) Identify known breeding sites for source reduction, larval control program, and habitat management;
- (iv) Analyze existing surveillance data to identify new or unidentified sources of mosquito or flying insect pest problems as well as sites that have recurring pest problems; and
- (v) In the event there are no data for the pest management area in the past calendar year, use other available data as appropriate to meet the permit conditions in section 2(b)(1)(A) of this general permit.

### (B) Pest Management Options.

Prior to the first pesticide application covered under this permit that will result in a discharge to state waters, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, any Decision-maker who is or will be required to submit an NOI must select and implement efficient and effective

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means of Pest Management Measures that minimize discharges resulting from the application of pesticides to control mosquitoes or other flying insect pests. In developing the Pest Management Measures for each pest management area, the Decision-maker must evaluate the following management options, including a combination of these management options, considering impact to water quality, impact to non-target organisms, feasibility, and cost effectiveness:

- (i) No action
  - (ii) Prevention
  - (iii) Mechanical or physical methods
  - (iv) Cultural methods
  - (v) Biological control agents
  - (vi) Pesticides
- (C) Pesticide Use.

If a pesticide is selected to manage mosquitoes or flying insect pests, and application of the pesticide will result in a discharge to a state water, any Decision-maker who is or will be required to submit an NOI must:

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- (i) Conduct larval and/or adult surveillance in an area that is representative of the pest problem or evaluate existing larval surveillance data, environmental conditions, or data from adjacent area(s) prior to each pesticide application to assess the pest management area and to determine when the action threshold(s) is met;
- (ii) Reduce the impact on the environment and on non-target organisms by applying the pesticide only when the action threshold(s) has been met;
- (iii) In situations or locations where practicable and feasible for efficacious control, use larvicides as a preferred pesticide for mosquito or flying insect pest control when the larval action threshold(s) has been met; and
- (iv) In situations or locations where larvicide use is not practicable or feasible for efficacious control, use adulticides for mosquito or flying insect pest control

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when the adult action  
threshold(s) has been met.

### (2) Weed and Algae Pest Control

This section applies to discharges from the application of pesticides for control of weeds, algae, and pathogens as defined in section 1(a)(2) of this general permit.

#### (A) Identify the Problem.

Prior to the first pesticide application covered under this permit that will result in a discharge to state waters, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, any Decision-maker who is or will be required to submit an NOI must do the following for each pest management area, as defined in section 11-55-01:

- (i) Identify areas with pest problems and characterize the extent of the problems, including, for example, water use goals not attained (e.g. wildlife habitat, fisheries, vegetation, and recreation);
- (ii) Identify target pest(s);

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- (iii) Identify possible factors causing or contributing to the pest problem (e.g., nutrients, invasive species, etc.);
  - (iv) Establish any pest- and site-specific action threshold, as defined in HAR, Chapter 11-55-01, for implementing section 2(b)(2)(B); and
  - (v) In the event there are no data for the pest management area in the past calendar year, use other available data as appropriate to meet the permit conditions in section 2(b)(2)(A) of this general permit.
- (B) Pest Management Options.

Prior to the first pesticide application covered under this permit that will result in a discharge to state waters, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, any Decision-maker who is or will be required to submit an NOI must select and implement efficient and effective means of Pest Management Measures that minimize discharges resulting from the application of pesticides

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to pests. In developing the Pest Management Measures for each pest management area, the Decision-maker must evaluate the following management options, including a combination of these management options, considering impact to water quality, impact to non-target organisms, feasibility, and cost effectiveness:

- (i) No action
  - (ii) Prevention
  - (iii) Mechanical or physical methods
  - (iv) Cultural methods
  - (v) Biological control agents
  - (vi) Pesticides
- (C) Pesticide Use.

If a pesticide is selected to manage pests, and application of the pesticide will result in a discharge to state waters, any Decision-maker who is or will be required to submit an NOI must:

- (i) Conduct surveillance in an area that is representative of the pest problem prior to each pesticide application to assess the pest



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management area and to determine when the action threshold(s) is met; and

- (ii) Reduce the impact on the environment and non-target organisms by applying the pesticide only when the action threshold has been met.

### (3) Animal Pest Control

This section applies to discharges from the application of pesticides for control of animal pests as defined in section 1(a)(3) of this general permit.

#### (A) Identify the Problem.

Prior to the first pesticide application covered under this permit that will result in a discharge to state waters, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, any Decision-maker who is or will be required to submit an NOI must do the following for each pest management area, as defined in section 11-55-01:

- (i) Identify areas with pest problems and characterize the extent of the problems, including, for example,

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water use goals not attained  
(e.g. wildlife habitat,  
fisheries, vegetation, and  
recreation);

- (ii) Identify target pest(s);
- (iii) Identify possible factors causing or contributing to the problem (e.g., nutrients, invasive species);
- (iv) Establish any pest- and site-specific action threshold, as defined in section 11-55-01, for implementing section 2(b)(3)(B); and
- (v) In the event there are no data for the pest management area in the past calendar year, use other available data as appropriate to meet the permit conditions in section 2(B)(3)(A).

### (B) Pest Management Options.

Prior to the first pesticide application covered under this permit that will result in a discharge to state waters, and at least once each year thereafter prior to the first pesticide application during that calendar year, any Decision-maker who is or

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will be required to submit an NOI must select and implement efficient and effective means of Pest Management Measures that minimize discharges resulting from the application of pesticides to control pests. In developing the Pest Management Measures for each pest management area, the Decision-maker must evaluate the following management options, including a combination of these management options, considering impact to water quality, impact to non-target organisms, feasibility, and cost effectiveness:

- (i) No action
  - (ii) Prevention
  - (iii) Mechanical or physical methods
  - (iv) Biological control agents
  - (v) Pesticides
- (C) Pesticide Use.

If a pesticide is selected to manage pests, and application of the pesticide will result in a discharge to state waters, any Decision-maker who is or will be required to submit an NOI must:

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- (i) Conduct surveillance in an area that is representative of the pest problem prior to each application to assess the pest management area and to determine when the action threshold(s) is met; and
  - (ii) Reduce the impact on the environment and non-target organisms by evaluating site restrictions, application timing, and application method in addition to applying the pesticide only when the action threshold(s) has been met.
- (4) Forest Canopy Pest Control

This section applies to discharges from the application of pesticides for forest canopy pest control as defined in section 1(a)(4) of this general permit.

(A) Identify the Problem.

Prior to the first pesticide application covered under this permit that will result in a discharge to state waters, and at least once each calendar year thereafter prior to the first pesticide application in that calendar year, any Decision-maker who is or will be required to submit an NOI must do the

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following for each pest management area, as defined in section 11-55-01:

- (i) Establish any pest- and site-specific action threshold, as defined in section 11-55-01, for implementing section 2(b)(4)(B);
- (ii) Identify target pest(s) to develop Pest Management Measures based on developmental and behavioral considerations for each pest;
- (iii) Identify current distribution of the target pest and assess potential distribution in the absence of Pest Management Measures; and
- (iv) In the event there are no data for pest management area in the past calendar year, use other available data as appropriate to meet the permit conditions in section 2(B)(4)(A).

### (B) Pest Management Options.

Prior to the first pesticide application covered under this permit that will result in a

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discharge to state waters, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, any Decision-maker who is or will be required to submit an NOI must select and implement efficient and effective means of Pest Management Measures that minimize discharges resulting from the application of pesticides to control pests. In developing the Pest Management Measures for pest management area, the Decision-maker must evaluate the following management options, including a combination of these management options, considering impact to water quality, impact to non-target organisms, feasibility, and cost effectiveness:

- (i) No action
- (ii) Prevention
- (iii) Mechanical or physical methods
- (iv) Cultural methods
- (v) Biological control agents
- (vi) Pesticides

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### (C) Pesticide Use.

If a pesticide is selected to manage forestry pests, and application of the pesticide will result in a discharge to state waters, any Decision-maker who is or will be required to submit an NOI must:

- (i) Conduct surveillance in an area that is representative of the pest problem prior to each application to assess the pest management area and to determine when the pest action threshold is met;
- (ii) Reduce the impact on the environment and non-target organisms by evaluating the restrictions, application timing, and application methods in addition to applying the pesticide only when the action threshold(s) has been met; and
- (iii) Evaluate using pesticides against the most susceptible developmental stage.

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### 3. Water Quality-Based Effluent Limitations

All Operators must control discharges as necessary to meet applicable numeric and narrative state water quality standards, as required in chapter 11-54, for discharges authorized under this permit, with compliance required upon beginning such discharge.

If at any time an Operator becomes aware (e.g., through self-monitoring or by notification from the state or EPA), or the Director determines, that the Operator's discharge causes or contributes to an excursion of any applicable water quality standard, the Operator must take corrective action as required in section 6 and section 7 of appendix A, chapter 11-55, up to and including the ceasing of the discharge, if necessary.

### 4. Monitoring

#### (a) Visual Monitoring Requirements for Pesticide Applicators.

During any pesticide application with discharges authorized under this permit, all Applicators must, when considerations for safety and feasibility allow, visually assess the area to and around where pesticides are applied for possible and observable adverse incidents, as defined in section 11-55-01, caused by application of pesticides, including the unanticipated death or distress of non-target organisms and disruption of wildlife habitat, recreational or municipal water use.



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- (b) Visual Monitoring Requirements for all Operators.

During any Operator post-application surveillance of any pesticide application with discharges authorized under this permit, all Operators must visually assess the area to and around where pesticides were applied for possible and observable adverse incidents, as defined in section 11-55-01, caused by application of pesticides, including the unanticipated death or distress of non-target organisms and disruption of wildlife habitat, recreational or municipal water use.

### 5. Pesticide Discharge Management Plan

Any Decision-maker who is or will be required to submit an NOI, as required in section 1(e), and is a large entity, as defined in section 11-55-01, must prepare a Pesticide Discharge Management Plan (PDMP) by the time the NOI is submitted to the department, except (for which a PDMP is not required to be developed) any applications made in response to a Declared Pest Emergency Situation, as defined in section 11-55-01.

The PDMP does not contain effluent limitations; the effluent limitations are specified in sections 2 and 3 of this general permit. The PDMP documents how Decision-makers will implement the effluent limitations in sections 2 and 3 of this general permit, including the evaluation and selection of Pest Management Measures to meet those effluent limitations in order to minimize discharges. In the PDMP, Decision-makers may incorporate by reference any procedures or plans

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in other documents that meet the requirements of this general permit. If Decision-makers rely upon other documents to comply with the effluent limitations in this general permit, such as a pre-existing pest management plan, the Decision-makers must attach to the PDMP a copy of any portions of any documents that are used to document the implementation of the effluent limitations.

- (a) Contents of the Pesticide Discharge Management Plan.

The PDMP must include the following elements:

- (1) Pesticide Discharge Management Team

Decision-makers must identify all the persons (by name and contact information) that compose the team as well as each person's individual responsibilities, including:

- (A) Person(s) responsible for managing pests in relation to the pest management area
- (B) Person(s) responsible for developing and revising the PDMP; and
- (C) Person(s) responsible for developing, revising, and implementing corrective actions and other effluent limitation requirements.

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### (2) Problem Identification

#### (A) Pest problem description.

Document a description of the pest problem at the pest management area, including identification of the target pest(s), source(s) of the pest problem, and source of data used to identify the problem in sections 2(b)(1), 2(b)(2), 2(b)(3), and 2(b)(4).

#### (B) Action Threshold(s).

Describe the action threshold(s) for the pest management area, including data used in developing the action threshold(s) and method(s) to determine when the action threshold(s) has been met.

#### (C) General location map.

In the plan, include a general location map (e.g., USGS quadrangle map, a portion of a city or county map, or other map) that identifies the geographic boundaries of the area to which the plan applies and location of the state water and

#### (D) Water quality standards.

Document any water(s) identified as impaired by a substance which either is an active ingredient or

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a degradate of such an active ingredient.

### (3) Pest Management Options Evaluation

Decision-makers must document the evaluation of the pest management options, including combination of the pest management options, to control the target pest(s). Pest management options include the following: No action, prevention, mechanical/physical methods, cultural methods, biological control agents, and pesticides. In the evaluation, Decision-makers must consider the impact to water quality, impact to non-target organisms, feasibility, cost effectiveness, and any relevant previous Pest Management Measures.

### (4) Response Procedures.

Decision-makers must document the following procedures in the PDMP:

#### (A) Spill Response Procedures.

At a minimum, Decision-makers must have:

- (i) Procedures for expeditiously stopping, containing, and cleaning up leaks, spills, and other releases to state waters.

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Employees who may cause, detect, or respond to a spill or leak must be trained in these procedures and have necessary spill response equipment available. If possible, one of these individuals should be a member of the PDMP team.

- (ii) Procedures for notification of appropriate facility personnel, emergency response agencies, and regulatory agencies.

### (B) Adverse Incident Response Procedures.

At a minimum, Decision-makers must have:

- (i) Procedures for responding to any adverse incident resulting from pesticide applications;
- (ii) Procedures for notification of the adverse incident, both internal to the Decision-maker's agency/organization and external.

Contact information for state/federal permitting agency, nearest emergency

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medical facility, and nearest hazardous chemical responder must be in locations that are readily accessible and available.

### (5) Signature Requirements.

Decision-makers must sign, date and certify the PDMP in accordance with section 15 of appendix A, chapter 11-55.

### (b) Pesticide Discharge Management Plan Modifications.

Decision-makers must modify the PDMP whenever necessary to address any of the triggering conditions for corrective action in section 6(a) or when a change in pest control activities significantly changes the type or quantity of pollutants discharged. Changes to the PDMP must be made before the next pesticide application that results in a discharge, if practicable, or if not, no later than 90 calendar days after any change in pesticide application activities. The revised PDMP must be signed and dated in accordance with section 15 of appendix A, chapter 11-55.

### (c) Pesticide Discharge Management Plan Availability.

Decision-makers must retain a copy of the current PDMP, along with all supporting maps and documents, at each address provided in the NOI. The PDMP and all supporting

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documents must be readily available, upon request, and copies of any of these documents provided, upon request, to the state, EPA, or local agency governing discharges or pesticide applications within their respective jurisdictions; and representatives of the United States Fish and Wildlife Service (FWS) or the National Marine Fisheries Service (NMFS). The Director may provide copies of the PDMP or other information related to this permit that is in its possession to members of the public. Any Confidential Business Information (CBI), as defined in 40 CFR Part 2, may be withheld from the public provided that a claim of confidentiality is properly asserted and documented in accordance with 40 CFR Part 2; however, CBI must be submitted to the Director, if requested, and may not be withheld from those staff within EPA, FWS, and NMFS cleared for CBI review.

### 6. Corrective Action

All Operators must comply with the provisions of section 6 for any discharges authorized under this general permit, with compliance required upon beginning such discharge.

- (a) Situations Requiring Revision of Pest Management Measures.  
Operators must review and, as necessary, revise the evaluation and selection of Pest Management Measures consistent with section 2(a) and 2(b) for the following situations:

- (1) An unauthorized release or discharge associated with the application of

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pesticides (e.g., spill, leak, or discharge not authorized by this or another NPDES permit) occurs.

- (2) Operators become aware, or the Director concludes, that Pest Management Measures are not adequate/sufficient for the discharge to meet applicable water quality standards.
  - (3) Any monitoring activities indicate failure to meet applicable technology-based effluent limitations in section 2.
  - (4) An inspection or evaluation of activities by the Director, an EPA official, local, or state entity, reveals that modifications to the Pest Management Measures are necessary to meet the effluent limitations in this general permit.
  - (5) Any Operator observes or is otherwise made aware of an adverse incident as defined in section 11-55-01.
- (b) Corrective Action Deadlines.

If an Operator determines that changes to Pest Management Measures are necessary to eliminate any situation identified in section 6(a), such changes must be made before or, if not practicable, as soon as possible after the next pesticide application that results in a discharge.



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### (c) Effect of Corrective Action.

The occurrence of a situation identified in section 6(a) of this general permit may constitute a violation of the permit. Correcting the situation according to section 6(a) of this general permit does not absolve the Operator of liability for any original violation. However, failure to comply with Section 6(a) of this general permit constitutes an additional permit violation. The Director will consider the appropriateness and promptness of corrective action in determining enforcement responses to permit violations.

The Director, EPA or a court may impose additional requirements and schedules of compliance, including requirements to submit additional information concerning the condition(s) triggering corrective action or schedules and requirements more stringent than specified in this permit. Those requirements and schedules will supersede those of Section 6(a) of this general permit if such requirements conflict.

### (d) Adverse Incident Documentation and Reporting

#### (1) Twenty-Four (24) Hour Adverse Incident Notification

##### (A) Adverse Incident Notification Required

Except as provided for in section 6(d)(4), if an Operator observes or is otherwise made aware of an

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adverse incident, as defined in section 11-55-01, which may have resulted from a discharge from a pesticide application, the Operator must immediately notify the Director. This notification must be made by telephone to the Clean Water Branch at (808) 586-4309 during regular office hours, which are Monday through Friday (excluding holidays) from 7:45 a.m. until 4:15 p.m. or the Hawaii State hospital Operator at (808) 247-2191 outside of regular office hours, within 24 hours of the Operator becoming aware of the adverse incident; and State Department of Agriculture or other state lead agency for pesticide regulation and must include at least the following information:

- (i) The caller's name and telephone number;
- (ii) Operator name and mailing address;
- (iii) If covered under an NOI, the NPDES file number, if applicable;
- (iv) The name and telephone number of a contact person, if different than the person providing the 24-hour notice;

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- (v) How and when the Operator became aware of the adverse incident;
- (vi) Description of the location of the adverse incident;
- (vii) Description of the adverse incident identified and the pesticide product, including EPA pesticide registration number, for each product applied in the area of the adverse incident;
- (viii) Description of any steps the Operator has taken or will take to correct, repair, remedy, clean up, or otherwise address any adverse effects; and
- (ix) If known, the identity of any other Operators authorized for coverage under this permit for discharges from the pesticide application activities that resulted in the adverse incident.

If an Operator is unable to notify the Clean Water Branch within 24 hours, the Operator must do so as soon as possible and also provide an appropriate rationale for why the Operator was unable to provide such notification within 24 hours.

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The adverse incident notification and reporting requirements are in addition to what the registrant is required to submit under FIFRA section 6(a)(2) and its implementing regulations at 40 CFR Part 159.

### (B) Adverse Incident Notification Not Required

Reporting of adverse incidents is not required under this permit in the following situations:

- (i) An Operator is aware of facts that indicate that the adverse incident was not related to toxic effects or exposure from the pesticide application;
- (ii) An Operator has been notified by the Director, and retains such notification, that the reporting requirement has been waived for this incident or category of incidents;
- (iii) An Operator receives information of an adverse incident, but that information is clearly erroneous; or

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- (iv) An adverse incident occurs to pests that are similar in kind to potential target pests identified on the FIFRA label.

### (2) Thirty (30) Calendar Day Adverse Incident Written Report.

Except as provided for in section 6(d)(4), within 30 calendar days of a reportable adverse incident pursuant to section 6(d)(1), Operators must provide a written report of the adverse incident to the Clean Water Branch and to the State Department of Agriculture or other state lead agency for pesticide regulation. The adverse incident report must include at least the following information:

- (A) Information required to be provided in Section 6(d)(1);
- (B) Date and time the Operator notified the Clean Water Branch and the State Department of Agriculture of the adverse incident and who the Operator spoke with and any instructions you received;
- (C) Location of incident, including the names of any waters affected and appearance of those waters (sheen, color, clarity, etc.);

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- (D) A description of the circumstances of the adverse incident including species affected, estimated number of individual and approximate size of dead or distressed organisms;
- (E) Magnitude and scope of the affected area (e.g. aquatic square area or total stream distance affected);
- (F) Pesticide application rate; intended use site (e.g., on the bank, above waters, or directly to water); method of application; and the name of pesticide product and EPA registration number;
- (G) Description of the habitat and the circumstances under which the adverse incident occurred (including any available ambient water data for pesticides applied);
- (H) If laboratory tests were performed, an indications or which test(s) were performed, and when; additionally, a summary of the test results must be provided within five (5) calendar days after they become available if not available at the time of submission of the 30-day report;
- (I) Description of actions to be taken to prevent recurrence of adverse incidents; and

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(J) Signature, date, and certification in accordance with section 15 of appendix A, chapter 11-55.

(3) Adverse Incident to Threatened or Endangered Species or Critical Habitat

Notwithstanding any of the other adverse incident notification requirements of this section, if an Operator becomes aware of an adverse incident affecting a federally-listed threatened or endangered species or its federally-designated critical habitat, which may have resulted from a discharge from the Operator's pesticide application, the Operator must immediately notify the NMFS in the case of an anadromous or marine species, or the FWS in the case of a terrestrial or freshwater species. This notification must be made by telephone immediately upon the Operator becoming aware of the adverse incident and must include at least the following information:

- (A) The caller's name and telephone number;
- (B) Operator name and mailing address;
- (C) The name of the affected species;
- (D) How and when the Operator became aware of the adverse incident;

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- (E) Description of the location of the adverse incident;
- (F) Description of the adverse incident and the pesticide product, including the EPA pesticide registration number for each product applied in the area of the adverse incident; and
- (G) Description of any steps the Operator has taken or will take to alleviate the adverse impact to the species.

Additional information on federally-listed threatened or endangered species and federally-designated critical habitat is available from NMFS ([www.nmfs.noaa.gov](http://www.nmfs.noaa.gov)) for anadromous or marine species or FWS ([www.fws.gov](http://www.fws.gov)) for terrestrial or freshwater species.

### (4) Notification and Reporting for Adverse Incidents Involving Multiple Operators

Where multiple Operators are authorized for a discharge that results in an adverse incident, notification and reporting by any one of the Operators constitutes compliance for all of the Operators, provided a copy of the written report required in section 6(d)(2) is also provided to all of the other authorized Operators within 30 calendar days of the reportable adverse incident.



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### (e) Reportable Spills and Leaks

#### (1) Spill, Leak, or Other Unpermitted Discharge Notification

Where a leak, spill, or other release into state waters containing a hazardous substance or oil in an amount equal to or in excess of a reportable quantity established under either 40 CFR Part 110, 40 CFR Part 117, or 40 CFR Part 302 occurs in any 24-hour period, an Operator must notify the Clean Water Branch at (808) 586-4309 during regular office hours, which are Monday through Friday (excluding holidays) from 7:45 a.m. until 4:15 p.m. or the Hawaii State hospital Operator at (808) 247-2191 outside of regular office hours and the National Response Center immediately at (800) 424-8802 in accordance with the requirements of 40 CFR Part 110, 40 CFR Part 117, and 40 CFR Part 302 as soon as the Operator has knowledge of the release. Contact information must be in locations that are readily accessible and available in the area where the spill, leak, or other unpermitted discharge may occur.

State or local requirements may necessitate also reporting spills or leaks to local emergency response, public health, or drinking water supply agencies.

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### (2) Thirty-Day Spill, Leak, or Other Unpermitted Discharge Documentation

If an Operator becomes aware of a spill, leak, or other unpermitted discharge which triggers the notification in section 6(e)(1) and results in an adverse incident, then the Operator must report the incident per the guidelines in section 6(d)(1) and 6(d)(2). If the spill, leak, or other unpermitted discharge triggers the notification in section 6(e)(1), but does not result in an adverse incident, then the Operator must document and retain the following information within 30 calendar days of becoming aware of the situation:

- (A) Information required to be provided in section 6(e)(1);
- (B) Summary of corrective action taken or to be taken including date initiated and date completed or expected to be completed; and
- (C) Any measures to prevent recurrence of such a spill or leak or other discharge, including notice of whether PDMP modifications are required as a result of the spill or leak.

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### (f) Other Corrective Action Documentation.

For situations identified in section 6(a), other than for adverse incidents (addressed in section 6(d)), or reportable spills or leaks (addressed in section 6(e)), Operators must document the situation triggering corrective action and planned corrective action within 30 calendar days of becoming aware of that situation, and retain a copy of this documentation. This documentation must include the following information:

- (1) Identification of the condition triggering the need for corrective action review, including any ambient water quality monitoring that assisted in determining that discharges did not meet water quality standards;
- (2) Brief description of the situation;
- (3) Date the problem was identified;
- (4) Brief description of how the problem was identified, how the Operator learned of the situation, and date the Operator learned of the situation;
- (5) Summary of corrective action taken or to be taken, including date initiated and date completed or expected to be completed; and
- (6) Any measures to prevent reoccurrence of such an incident, including notice of whether PDMP modifications are required as a result of the incident.

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### 7. Recordkeeping and Annual Reporting

The recordkeeping and annual reporting requirements vary depending on the type of Operator and whether a Decision-maker is a small or large entity. Table 4 references applicable requirements for the range of Operators covered under this permit.

Table 4: Applicable Recordkeeping and Annual Reporting Requirements for Different Types of Operators.

PGP Section	Applicable Type of Operator
7(a)	Recordkeeping: All Operators
7(b)	Recordkeeping: All Operators who are Applicators, as defined in section 11-55-01
7(c)	Recordkeeping: Any Decision-maker required to submit an NOI and who is a small entity{1}
7(d)	Recordkeeping: Any Decision-maker required to submit an NOI and who is a large entity{2}
7(e)	Retention of Records: All Operators
7(f)	Annual Reporting: Any Decision-maker required to submit an NOI and who is a large entity{2}

{1} Small Entity - As defined in section 11-55-01, is any (1) public entity that serves a population of 10,000 or less or (2) private enterprise that does not exceed the Small Business Administration size standard as identified at 13 CFR 121.201.

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{2} Large Entity - As defined in section 11-55-01, is any (1) public entity that serves a population greater than 10,000 or (2) private enterprise that exceeds the Small Business Administration size standard as identified at 13 CFR 121.201.

Operators must keep written records as required in this permit for all discharges covered under this general permit. These records must be accurate and complete to demonstrate the Operator's compliance with the conditions of this general permit. Operator's may rely on records and documents developed for other obligations, such as requirements under FIFRA, and state or local pesticide programs, provided that all requirements of this general permit are satisfied.

The Director recommends that all Decision-makers, who are or may be required to submit an NOI based on their annual treatment area, keep records of acres or linear miles treated for all applicable use patterns covered under this general permit. The records should be kept up-to-date to help Decision-makers determine if the annual treatment area threshold, is exceeded during any calendar year.

### (a) Recordkeeping For All Operators.

All Operators must keep the following records:

- (1) A copy of any Adverse Incident Reports (See section 6(d)(2));

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- (2) Rationale for any determination that reporting of an identified adverse incident is not required consistent with allowances identified in Section 6(d)(1)(B);
  - (3) A copy of any corrective action documentation (See section 6(f)); and
  - (4) A copy of any spill and leak or other unpermitted discharge documentation (See section 6(e)(2)).
- (b) Recordkeeping for All Operators who are Applicators.

After the adjustment period, any Operator who is an Applicator, as defined in section 11-55-01, must retain the following records:

- (1) Documentation of equipment calibration; and
- (2) Information on each treatment area to which pesticides are discharged, including:
  - (A) Description of each treatment area, including location and size (acres or linear feet) of treatment area and identification of any waters, either by name or by location, to which pesticide(s) are discharged;
  - (B) Pesticide use pattern(s) (i.e., mosquito and other flying insects,

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weed and algae, animal pest, or forest canopy);

- (C) Target pest(s);
  - (D) Documentation of any assessment of weather conditions in the treatment area prior to and during application to ensure application is consistent with all applicable federal requirements;
  - (E) Name of each pesticide product used including the EPA registration number;
  - (F) Quantity of each pesticide product applied to each treatment area;
  - (G) Pesticide application date(s); and
  - (H) Whether or not visual monitoring was conducted during pesticide application and/or post-application and if not, why not and whether monitoring identified any possible or observable adverse incidents caused by application of pesticides.
- (c) Recordkeeping for Any Decision-maker Required to Submit an NOI and Who is a Small Entity.

After the adjustment period, any Decision-maker required to submit an NOI that is defined as a small entity, must retain the

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following records at the address provided on the NOI.

- (1) Copy of the NOI submitted to the Director, any correspondence exchanged between the Decision-maker and the Director specific to coverage under this permit, and a copy of the NGPC;
- (2) Documentation of equipment calibration (only if Decision-maker is also the Applicator);
- (3) Information on each treatment area to which pesticides are discharged, including:
  - (A) Description of treatment area, including location and size (acres or linear feet) of treatment area and identification of any state waters, either by name or by location, to which pesticides are discharged;
  - (B) Pesticide use pattern(s) (i.e., mosquito and other flying insects, weed and algae, animal pest, or forest canopy);
  - (C) Target pest(s) and explanation of need for pest control;
  - (D) Description of pest management measure(s) implemented prior to the first pesticide application;



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- (E) Company name and contact information for pesticide applicator;
  - (F) Name of each pesticide product used including the EPA registration number;
  - (G) Quantity of each pesticide product applied to each treatment area;
  - (H) Pesticide Application Start Date;
  - (I) Pesticide Application End Date; and
  - (J) Whether or not visual monitoring was conducted during pesticide application and/or post-application and if not, why not and whether monitoring identified any possible or observable adverse incidents caused by application of pesticides.
- (d) Recordkeeping for Any Decision-maker Required to Submit an NOI and Who is a Large Entity.

After the adjustment period, any Decision-maker required to submit an NOI that is defined as a large entity must retain the following records at the Operator's business address provided on the NOI:

- (1) Copy of the NOI submitted to the Director, any correspondence exchanged between the Decision-maker and the

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Director specific to coverage under this permit, and a copy of the NGPC;

- (2) A copy of your PDMP, including any modifications made to the PDMP during the term of this general permit.
- (3) Copy of annual reports submitted to the Director;
- (4) Documentation of equipment calibration (only if Decision-maker is also the Applicator);
- (5) Information on each treatment area to which pesticides are discharged, including:
  - (A) Description of each treatment area, including location and size (acres or linear feet) of treatment area and identification of any state waters, either by name or by location, to which pesticide(s) are discharged;
  - (B) Pesticide use pattern(s) (i.e., mosquito and other flying insects, weed and algae, animal pest, or forest canopy);
  - (C) Target pest(s) and explanation of need for pest control;
  - (D) Action Thresholds;

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- (E) Method and/or data used to determine that action threshold(s) has been met;
- (F) Description of pest management measure(s) implemented prior to the first pesticide application;
- (G) Company name and contact information for pesticide applicator;
- (H) Name of each pesticide product used including the EPA registration number;
- (I) Quantity of each pesticide product applied to each treatment area;
- (J) Pesticide application date(s); and
- (K) Whether or not visual monitoring was conducted during pesticide application and/or post-application and if not, why not and whether monitoring identified any possible or observable adverse incidents caused by application of pesticides.

### (e) Retention of Records for All Operators.

All required records must be documented as soon as possible but no later than 14 calendar days following completion of each pesticide application. Operators must retain any records required under this permit for at least five (5) years after the

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Operator's coverage under this permit expires or is terminated. Operators must make available to the State, including EPA or an authorized representative of EPA, all records kept under this permit upon request and provide copies of such records, upon request.

- (f) Annual Reporting for Any Decision-maker Required to Submit an NOI and Who is a Large Entity.

Any Decision-makers required to submit an NOI and are defined as a large entity in section 11-55-01, must submit an annual report to the Director. Once a Decision-maker meets the obligation to submit an annual report, the Decision-maker must submit the annual report each calendar year thereafter for the duration of coverage under this general permit, whether or not the Decision-maker has discharges from the application of pesticides in any subsequent calendar year. The Decision-maker must submit the annual report to the Director no later than February 15, in pdf format (minimum of 300 dpi) on CD/DVD, of the following year for all pesticide activities covered under this permit occurring during the previous calendar year. Annual reporting requirements begin with those discharges occurring after the adjustment period.

Any Decision-maker required to submit an NOI based on an annual treatment area threshold must include information for the calendar year, with the first annual report required

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to include activities for the portion of the calendar year after the point at which the Decision-maker exceeded the annual treatment area threshold. If the Decision-maker first exceeds an annual treatment area threshold after December 1, an annual report is not required for that first partial year but an annual report is required thereafter, with the first annual report submitted also including information from the first partial year.

When Decision-makers terminate permit coverage, as specified in appendix A of chapter 11-55, an annual report must be submitted for the portion of the year up through the date of termination. The annual report is due no later than February 15 of the next year.

The annual report must contain the following information:

- (1) Decision-maker's name and contact information;
- (2) NPDES file number
- (3) Contact person name, title, e-mail address (if any), and phone number; and
- (4) For each treatment area, report the following information:
  - (A) Description of treatment area, including location and size (acres or linear feet) of treatment area and identification of any state

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waters, either by name or by location, to which pesticide(s) are discharged;

- (B) Pesticide use pattern(s) (i.e., mosquito and other flying insects, weed and algae, animal pest, or forest canopy) and target pest(s);
- (C) Company name(s) and contact information for pesticide applicator(s), if different from the Decision-maker;
- (D) Total amount of each pesticide product applied for the reporting year by the EPA registration number(s) and by application method (e.g., aerially by fixed-wing or rotary aircraft, broadcast spray, etc.);
- (E) Whether this pest control activity was addressed in the PDMP prior to pesticide application;
- (F) The approximate date(s) of any discharge;
- (G) If applicable, an annual report of any adverse incidents as a result of these treatment(s), for incidents, as described in Section 6(d)(1) of this general permit; and
- (H) If applicable, description of any corrective action(s), including

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spill responses, resulting from pesticide application activities and the rationale for such action(s).

### (g) Submittal Requirements

- (1) All submittals shall be addressed to the Director at the following address or as otherwise specified:

Director of Health  
Clean Water Branch  
Environmental Management Division  
State Department of Health  
P.O. Box 3378  
Honolulu, HI 96801-3378

- (2) The operator or its duly authorized representative shall include the following certification statement and an original signature on each submittal in accordance with section 11-55-34.08(e) or (f):

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete.

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I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

- (3) The operator or its duly authorized representative shall include the notice of general permit coverage file number on each submittal. Failure to provide the assigned notice of general permit coverage file number on future correspondence or submittals may be a basis for delay of the processing of the document(s).

### 8. Notice of Intent Requirements

- (a) The owner or duly authorized representative shall submit a complete NOI in accordance with the deadline in Section 1(f), Table 2 or thirty days before the expiration date of the applicable notice of general permit coverage.
- (b) The owner or duly authorized representative shall include the following information in the notice of intent:
  - (1) Information required in section 34 of appendix A of chapter 11-55;
  - (2) Pesticide use activities that trigger the PGP requirements;
  - (3) If the operator is a Large entity that triggers developing a PDMP and submittal of an annual report;



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- (4) Pest Management Area name and map of the location of the area or description of the Pest Management Area in detail; and
- (5) Name of the water quality impaired waters; class 1, inland or class AA, marine waters, or areas restricted in accordance with the State's "no discharge" policy; or to surface drinking waters and their tributaries up-stream for which permit coverage is being requested and demonstration of eligibility for such discharges.

## **Added**

### **8) HAR §§ 11-55-34.05(b) to (f)**

Relating to **Requiring an individual NPDES permit**

DEPARTMENT OF HEALTH

Amendment and Compilation of Chapter 11-55  
Hawaii Administrative Rules

(insert adoption date)

1. Chapter 55 of Title 11, Hawaii Administrative Rules, titled "Water Pollution Control," is amended and complied to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 55

WATER POLLUTION CONTROL

§11-55-01	Definitions
§11-55-02	General policy of water pollution control
§11-55-03	General prohibition
§11-55-04	Application for NPDES permit, notice of intent, or conditional "no exposure" exclusion
§11-55-05	Receipt of federal information
§11-55-06	Transmission of information to regional administrator
§11-55-07	Identity of signatories to NPDES forms
§11-55-08	Formulation of tentative determinations and draft permit
§11-55-09	Public notice of applications
§11-55-10	Fact sheet
§11-55-11	Notice to other government agencies
§11-55-12	Public access to information
§11-55-13	Public hearings
§11-55-14	Public notice of public hearings
§11-55-15	Issuance of NPDES permits
§11-55-16	Modification or revocation and reissuance of NPDES permits

§11-55-17	Termination of permits and denial of renewal
§11-55-18	Reporting discontinuance or dismantlement
§11-55-19	Application of effluent standards and limitations, water quality standards, and other requirements
§11-55-20	Effluent limitations in issued NPDES permits
§11-55-21	Schedule of compliance in issued NPDES permits
§11-55-22	Compliance schedule reports
§11-55-23	Other terms and conditions of issued NPDES permits
§11-55-24	National pretreatment standards and users of publicly owned treatment works
§11-55-25	Transmission to regional administrator of proposed NPDES permits
§11-55-26	Transmission to regional administrator of issued NPDES permits
§11-55-27	Renewal of NPDES permits
§11-55-28	Monitoring
§11-55-29	Recording of monitoring activities and results
§11-55-30	Reporting of monitoring results
§11-55-31	Sampling and testing methods
§11-55-32	Malfunction, maintenance, and repair of equipment
§11-55-33	Agency board membership
§11-55-34	General permit definitions
§11-55-34.01	General permit policy
§11-55-34.02	General permit authority and adoption
§11-55-34.03	General permit terms
§11-55-34.04	General permit conditions
§11-55-34.05	Requiring an individual permit
§11-55-34.06	[Relationship of general and individual permits] <u>Reserved</u>
§11-55-34.07	Degree of waste treatment
§11-55-34.08	Notice of intent
§11-55-34.09	Notice of intent review, notice of general permit coverage, additional conditions, terms, renewals, effective dates, and automatic coverage

§11-55-34.04

09/22/97; comp 01/06/01; am and comp 11/07/02; comp  
08/01/05; am and comp 10/22/07; comp 6/15/09; am and  
comp 10/21/12; am and comp ] (Auth: HRS  
§§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387;  
40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5,  
342D-50; 33 U.S.C. §§1311, 1318, 1319, 1321, 1323,  
1342, 1345, 1370, 1251-1387; 40 CFR Parts 122; 123;  
124; 125; §§122.26, 122.28, 122.41, 122.42,  
123.25(a)(11))

§11-55-34.05 Requiring an individual permit.

(a) Notwithstanding the provisions of a general permit, the director may require any person covered by a general permit to apply for and obtain an individual permit. Cases where an individual permit may be required include, but are not limited to, the following:

- (1) The discharger or "treatment works treating domestic sewage" is not in compliance with the conditions of the general permit;
- (2) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source or treatment works treating domestic sewage;
- (3) Effluent limitation guidelines are promulgated for point sources covered by the general permit;
- (4) A water quality management plan containing requirements applicable to the point sources is approved;
- (5) Circumstances have changed since the time of the request to be covered so that the permittee is no longer appropriately controlled under the general permit or either a temporary or permanent reduction or elimination of the authorized discharge is necessary;
- (6) Standards for sewage sludge use or disposal have been promulgated for the sludge use and

disposal practice covered by the general permit; or

- (7) The discharge(s) is a significant contributor of pollutants to state waters. In making this determination, the director may consider the following factors:
- (A) The location of the discharge with respect to state waters;
  - (B) The size of the discharge;
  - (C) The quantity and nature of the pollutants discharged to the state waters; and
  - (D) Other relevant factors.

(b) The director may require any owner or operator authorized by a general permit to apply for an individual NPDES permit as provided in section 11-55-34.05(a), only if the owner or operator has been notified in writing that a permit application is required. This notice shall include a brief statement of the reasons for this decision, application information, a statement setting a time for the owner or operator to file the application, and a statement that on the effective date of the individual NPDES the general permit as it applies to the individual permittee shall automatically terminate, unless coverage under a general permit had already been terminated by the director in accordance with 11-55-34.11. The director may grant additional time upon request of the applicant.

(c) Any owner or operator covered by a general permit may request to be excluded from the coverage of the general permit by applying for an individual permit. The owner or operator shall submit an application with reasons supporting the request to the director.

(d) When an individual permit is issued to an owner or operator otherwise covered by a general permit, the coverage of the general permit to the individual permittee is automatically terminated on the effective date of the individual permit.

§11-55-34.05

(e) A source excluded from a general permit solely because it already has an individual permit may request that the individual permit be revoked and that it be covered by the general permit. Upon revocation of the individual permit, the general permit shall apply to the source.

(f) The director may require any activity and/or discharge that has commenced prior to obtaining the required coverage under a general permit to apply for an individual NPDES permit. For construction activities which have commenced prior to obtaining general permit coverage, restoration of the site to preconstruction conditions may re-qualify it for coverage under the general permit. [Eff and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; am and comp ] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §122.28(b)(3)[(i)], 123.25(a)(11))

§11-55-34.06 [Relationship of general and individual permits. (a) Any owner or operator covered by a general permit may request to be excluded from the coverage of the general permit by applying for an individual permit. The owner or operator shall submit an application with reasons supporting the request to the director.

(b) When an individual permit is issued to an owner or operator otherwise covered by a general permit, the coverage of the general permit to the individual permittee is automatically terminated on the effective date of the individual permit.

(c) A source excluded from a general permit solely because it already has an individual permit may request that the individual permit be revoked and that it be covered by the general permit. Upon revocation of the individual permit, the general permit shall apply to the source. [Eff and comp 10/29/92; am and

DEPARTMENT OF HEALTH

Amendment and Compilation of Chapter 11-55

Hawaii Administrative Rules

**DEC 06 2013**

SUMMARY

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1. §11-55-01 is amended.
2. §11-55-04 is amended.
3. §11-55-15 is amended.
4. §11-55-34.02 is amended.
5. §11-55-34.04 is amended.
6. §11-55-34.05 is amended.
7. §11-55-34.06 is reserved.
8. §11-55-34.08 is amended.
9. §11-55-34.09 is amended.
10. §11-55-34.11 is amended.
11. §11-55-40 is amended.
12. Appendix A is amended.
13. Appendix B is amended.
14. Appendix C is amended.
15. Appendix D is amended.
16. Appendix E is amended.
17. Appendix F is amended.



§11-55-34.04 General permit conditions.

(a) Discharges covered by general permits shall comply with the applicable sections of state water quality standards in chapter 11-54, and the applicable provisions of this chapter, including, but not limited to, sections 11-55-18, 11-55-19, 11-55-20, 11-55-21, 11-55-22, 11-55-23, 11-55-28, 11-55-29, 11-55-30, 11-55-31, 11-55-32, and 11-55-34.07.

(b) Appendix A, titled "Department of Health Standard General Permit Conditions" and located at the end of this chapter is adopted, incorporated by reference, and applies to each general permit.

(c) Special conditions apply as specified in each general permit, e.g., appendices B through M, respectively. [Eff and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; am and comp 10/21/12; am and comp ] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1318, 1319, 1321, 1323, 1342, 1345, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §§122.26, 122.28, 122.41, 122.42, 123.25(a)(11))

§11-55-34.05 Requiring an individual permit.

(a) Notwithstanding the provisions of a general permit, the director may require any person covered by a general permit to apply for and obtain an individual permit. Cases where an individual permit may be required include, but are not limited to, the following:

- (1) The discharger or "treatment works treating domestic sewage" is not in compliance with the conditions of the general permit;
- (2) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source or treatment works treating domestic sewage;

§11-55-34.05

- (3) Effluent limitation guidelines are promulgated for point sources covered by the general permit;
- (4) A water quality management plan containing requirements applicable to the point sources is approved;
- (5) Circumstances have changed since the time of the request to be covered so that the permittee is no longer appropriately controlled under the general permit or either a temporary or permanent reduction or elimination of the authorized discharge is necessary;
- (6) Standards for sewage sludge use or disposal have been promulgated for the sludge use and disposal practice covered by the general permit; or
- (7) The discharge(s) is a significant contributor of pollutants to state waters. In making this determination, the director may consider the following factors:
  - (A) The location of the discharge with respect to state waters;
  - (B) The size of the discharge;
  - (C) The quantity and nature of the pollutants discharged to the state waters; and
  - (D) Other relevant factors.

(b) The director may require any owner or operator authorized by a general permit to apply for an individual NPDES permit as provided in section 11-55-34.05(a), only if the owner or operator has been notified in writing that a permit application is required. This notice shall include a brief statement of the reasons for this decision, application information, a statement setting a time for the owner or operator to file the application, and a statement that on the effective date of the individual NPDES the general permit as it applies to the individual permittee shall automatically terminate, unless coverage under a general permit had already been

terminated by the director in accordance with 11-55-34.11. The director may grant additional time upon request of the applicant.

(c) Any owner or operator covered by a general permit may request to be excluded from the coverage of the general permit by applying for an individual permit. The owner or operator shall submit an application with reasons supporting the request to the director.

(d) When an individual permit is issued to an owner or operator otherwise covered by a general permit, the coverage of the general permit to the individual permittee is automatically terminated on the effective date of the individual permit.

(e) A source excluded from a general permit solely because it already has an individual permit may request that the individual permit be revoked and that it be covered by the general permit. Upon revocation of the individual permit, the general permit shall apply to the source.

(f) The director may require any activity and/or discharge that has commenced prior to obtaining the required coverage under a general permit to apply for an individual NPDES permit. For construction activities which have commenced prior to obtaining general permit coverage, restoration of the site to preconstruction conditions may re-qualify it for coverage under the general permit. [Eff and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; am and comp **DEC 06 2013**] (Auth: HRS §§342D-4, 342D-5; 33 U.S.C. §§1342, 1370, 1251-1387; 40 CFR §122.28) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-50; 33 U.S.C. §§1311, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124; 125; §122.28(b)(3), 123.25(a)(11))

§11-55-34.06 (Reserved)

# **Added**

## **9) HAR §§ 11-55-19(a)(9) and 11-15-19(a)(10)**

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

Department of Health

Rules Amending Title 11  
Hawaii Administrative Rules

(insert adoption date)

1. Chapter 55 of Title 11, Hawaii Administrative Rules, entitled "Water Pollution Control", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 55

WATER POLLUTION CONTROL

§11-55-01	Definitions
§11-55-02	General policy of water pollution control
§11-55-03	General prohibition
§11-55-04	Application for NPDES permit, notice of intent, or conditional "no exposure" exclusion
§11-55-05	Receipt of federal information
§11-55-06	Transmission of information to regional administrator
§11-55-07	Identity of signatories to NPDES forms
§11-55-08	Formulation of tentative determinations and draft permit
§11-55-09	Public notice of applications
§11-55-10	Fact sheet
§11-55-11	Notice to other government agencies
§11-55-12	Public access to information
§11-55-13	Public hearings
§11-55-14	Public notice of public hearings
§11-55-15	Issuance of NPDES permits
§11-55-16	Modification or revocation and reissuance of NPDES permits

§11-55-17	Termination of permits and denial of renewal
§11-55-18	Reporting discontinuance or dismantlement
§11-55-19	Application of effluent standards and limitations, water quality standards, and other requirements
§11-55-20	Effluent limitations in issued NPDES permits
§11-55-21	Schedule of compliance in issued NPDES permits
§11-55-22	Compliance schedule reports
§11-55-23	Other terms and conditions of issued NPDES permits
§11-55-24	National pretreatment standards and users of publicly owned treatment works
§11-55-25	Transmission to regional administrator of proposed NPDES permits
§11-55-26	Transmission to regional administrator of issued NPDES permits
§11-55-27	Renewal of NPDES permits
§11-55-28	Monitoring
§11-55-29	Recording of monitoring activities and results
§11-55-30	Reporting of monitoring results
§11-55-31	Sampling and testing methods
§11-55-32	Malfunction, maintenance, and repair of equipment
§11-55-33	Agency board membership
§11-55-34	General permit definitions
§11-55-34.01	General permit policy
§11-55-34.02	General permit authority and adoption
§11-55-34.03	General permit terms
§11-55-34.04	General permit conditions
§11-55-34.05	Requiring an individual permit
§11-55-34.06	Reserved
§11-55-34.07	Degree of waste treatment
§11-55-34.08	Notice of intent
§11-55-34.09	Notice of intent review, notice of general permit coverage, additional conditions, terms, renewals, effective dates, and automatic coverage
§11-55-34.10	Review of coverage issues and notice of intent and notice of general permit coverage decisions

1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §§122.5, 122.64, 122.64(b), 123.25(a), 124.5, 124.5(d), 124.15(a))

§11-55-18 Reporting discontinuance or dismantlement.

An NPDES permittee shall report within thirty days after the permanent discontinuance or dismantlement of that treatment works or waste outlet for which the NPDES permit had been issued by submitting a notice of cessation. [Eff 11/27/81; comp 10/29/92; comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp ]  
(Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 33 U.S.C. §§1252, 1342, 1370, 1251-1387; 40 CFR 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §122.64, 124.5)

§11-55-19 Application of effluent standards and limitations, water quality standards, and other requirements. (a) NPDES permits shall apply and ensure compliance with the following whenever applicable:

- (1) Effluent limitations under Sections 301 and 302 of the Act, 33 U.S.C. §§1311 and 1312;
- (2) Standards of performance for new sources;
- (3) Effluent standards, effluent prohibitions, and pretreatment standards under Section 307 of the Act, 33 U.S.C. §1317;
- (4) More stringent limitation, including those:
  - (A) Necessary to meet water quality standards, treatment standards, or schedules of compliance, established under any state law or rules (under authority preserved by Section 510 of the Act, 33 U.S.C. §1370); or

- (B) Necessary to meet any other federal law or regulations including, but not limited to:
  - (i) Toxic pollutant effluent standards in 40 CFR Part 129;
  - (ii) Secondary treatment regulation in 40 CFR Part 133;
  - (iii) Effluent guidelines and standards in 40 CFR Chapter I, subchapter N, Parts 400 to 471;
  - (iv) Criteria and standards in 40 CFR Part 125, Subparts A, B, C, D, H, I, J, K, and M;
  - (v) Standards for sludge handling in 40 CFR §122.44(b)(2), 40 CFR Part 503 and state rules; and
  - (vi) Nutrient management requirements and technical standards for concentrated animal feeding operations in 40 CFR §123.36, 40 CFR §122.42, and 40 CFR Part 412; or
- (C) Required to implement any applicable water quality standards; the limitations to include any legally applicable requirements necessary to implement total maximum daily loads established under Section 303(d) of the Act, 33 U.S.C. §1313(d), or incorporated in the continuing planning process approved under Section 303(e) of the Act, 33 U.S.C. §1313(e), and any regulations and guidelines issued pursuant thereto;
- (5) More stringent legally applicable requirements necessary to comply with a plan approved under Section 208(b) of the Act, 33 U.S.C. §1288(b);
- (6) Prior to promulgation by the Administrator of applicable effluent standards and limitations under Sections 301, 302, 306, and 307 of the Act, 33 U.S.C. §§1311, 1312, 1316, and 1317,



the conditions, as the director determines are necessary to carry out the provisions of the Act; and

- (7) If the NPDES permit is for the discharge of pollutants into the [state]State waters from a vessel or other floating craft, any applicable regulations promulgated by the secretary of the department in which the Coast Guard is operating, establishing specifications for safe transportation, handling, carriage, storage, and stowage of pollutants.
- (8) Other requirements developed under the continuing planning process under Section 303(e) of the Act and any regulations and guidelines issued under it.
- (9) Intake credits in accordance with 40 CFR §122.45(g) and HAR section 11-54-12.
- (10) Recreational criteria for all State waters in HAR section 11-54-8. To comply with HAR sections 11-54-8(b) and (c) requirements, at least one sample shall be collected on every fifth day of the thirty day sampling period. Each sample shall be collected and analyzed pursuant to 40 CFR Part 136. The director may require samples to be collected more frequently within the thirty day period.

(b) In any case where an issued NPDES permit applies the effluent standards and limitations described in subsection (a)(1), (2), and (3), the director shall state that the discharge authorized by the permit shall not violate applicable water quality standards and shall have prepared some explicit verification of that statement. In any case where an issued NPDES permit applies any more stringent effluent limitation based upon applicable water quality standards, a waste load allocation shall be prepared to ensure that the discharge authorized by the permit is consistent with applicable water quality standards.  
[Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; am and

DEPARTMENT OF HEALTH  
Amendment and Compilation of Chapter 11-55  
Hawaii Administrative Rules

**NOV 1 5 2014**

SUMMARY

1. Title amended.
2. §11-55-01 is amended.
3. §11-55-02 is amended.
4. §11-55-04 is amended.
5. §11-55-06 is amended.
6. §11-55-10 is amended.
7. §11-55-11 is amended.
8. §11-55-15 is amended.
9. §11-55-19 is amended.
10. §11-55-24 is amended.
11. §11-55-28 is amended.
12. §11-55-32 is amended.
13. §11-55-34.05 is amended.
14. §11-55-40 is amended.

§11-55-18 Reporting discontinuance or dismantlement.  
 An NPDES permittee shall report within thirty days after the permanent discontinuance or dismantlement of that treatment works or waste outlet for which the NPDES permit had been issued by submitting a notice of cessation. [Eff 11/27/81; comp 10/29/92; comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; am and comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp NOV 15 2014 ]  
 (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 33 U.S.C. §§1252, 1342, 1370, 1251-1387; 40 CFR 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §122.64, 124.5)

§11-55-19 Application of effluent standards and limitations, water quality standards, and other requirements. (a) NPDES permits shall apply and ensure compliance with the following whenever applicable:

- (1) Effluent limitations under Sections 301 and 302 of the Act, 33 U.S.C. §§1311 and 1312;
- (2) Standards of performance for new sources;
- (3) Effluent standards, effluent prohibitions, and pretreatment standards under Section 307 of the Act, 33 U.S.C. §1317;
- (4) More stringent limitation, including those:
  - (A) Necessary to meet water quality standards, treatment standards, or schedules of compliance, established under any state law or rules (under authority preserved by Section 510 of the Act, 33 U.S.C. §1370); or
  - (B) Necessary to meet any other federal law or regulations including, but not limited to:
    - (i) Toxic pollutant effluent standards in 40 CFR Part 129;
    - (ii) Secondary treatment regulation in 40 CFR Part 133;

- (iii) Effluent guidelines and standards in 40 CFR Chapter I, subchapter N, Parts 400 to 471;
  - (iv) Criteria and standards in 40 CFR Part 125, Subparts A, B, C, D, H, I, J, K, and M;
  - (v) Standards for sludge handling in 40 CFR §122.44(b)(2), 40 CFR Part 503 and state rules; and
  - (vi) Nutrient management requirements and technical standards for concentrated animal feeding operations in 40 CFR §123.36, 40 CFR §122.42, and 40 CFR Part 412; or
- (C) Required to implement any applicable water quality standards; the limitations to include any legally applicable requirements necessary to implement total maximum daily loads established under Section 303(d) of the Act, 33 U.S.C. §1313(d), or incorporated in the continuing planning process approved under Section 303(e) of the Act, 33 U.S.C. §1313(e), and any regulations and guidelines issued pursuant thereto;
- (5) More stringent legally applicable requirements necessary to comply with a plan approved under Section 208(b) of the Act, 33 U.S.C. §1288(b);
  - (6) Prior to promulgation by the Administrator of applicable effluent standards and limitations under Sections 301, 302, 306, and 307 of the Act, 33 U.S.C. §§1311, 1312, 1316, and 1317, the conditions, as the director determines are necessary to carry out the provisions of the Act; and
  - (7) If the NPDES permit is for the discharge of pollutants into the State waters from a vessel or other floating craft, any applicable regulations promulgated by the

secretary of the department in which the Coast Guard is operating, establishing specifications for safe transportation, handling, carriage, storage, and stowage of pollutants.

- (8) Other requirements developed under the continuing planning process under Section 303(e) of the Act and any regulations and guidelines issued under it.
- (9) Intake credits in accordance with 40 CFR §122.45(g) and HAR section 11-54-12.
- (10) Recreational criteria for all State waters in HAR section 11-54-8. To comply with HAR sections 11-54-8(b) and (c) requirements, at least one sample shall be collected on every fifth day of the thirty day sampling period. Each sample shall be collected and analyzed pursuant to 40 CFR Part 136. The director may require samples to be collected more frequently within the thirty day period.

(b) In any case where an issued NPDES permit applies the effluent standards and limitations described in subsection (a)(1), (2), and (3), the director shall state that the discharge authorized by the permit shall not violate applicable water quality standards and shall have prepared some explicit verification of that statement. In any case where an issued NPDES permit applies any more stringent effluent limitation based upon applicable water quality standards, a waste load allocation shall be prepared to ensure that the discharge authorized by the permit is consistent with applicable water quality standards.

[Eff 11/27/81; am and comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; am and comp 08/01/05; am and comp 10/22/07; comp 6/15/09; am and comp 10/21/12; comp 12/6/13; am and comp **NOV 15 2014** ] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 33 U.S.C. §§1251, 1288(b), 1311, 1312, 1313, 1316, 1317, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A

§11-55-19

and D; 125, Subparts A, B, C, D, H, I, J, K, L, M; 129; 133; 136; 401; 403; 405-432; 434-436; 439-440; 443; 446-447; 454-455; 457-460; 503; 400-471, Subparts N; §§122.42, 122.43, 122.44, 122.45(g), 123.25(a))

§11-55-20 Effluent limitations in issued NPDES permits. In the application of effluent standards and limitations, water quality standards, and other legally applicable requirements under section 11-55-19, each issued NPDES permit shall specify average and maximum daily quantitative limitations for the level of pollutants in the authorized discharge in terms of weight (except pH, temperature, radiation, and any other pollutants not appropriately expressed by weight). The director, at the director's discretion, in addition to the specification of daily quantitative limitations by weight, may specify other limitations, such as average or maximum concentration limits. [Eff 11/27/81; comp 10/29/92; am and comp 09/22/97; comp 01/06/01; am and comp 11/07/02; comp 08/01/05; comp 10/22/07; comp 6/15/09; comp 10/21/12; comp 12/6/13; comp **NOV 15 2014** ] (Auth: HRS §§342D-4, 342D-5, 342D-6; 33 U.S.C. §§1251, 1342, 1370) (Imp: HRS §§342D-2, 342D-4, 342D-5, 342D-6, 342D-50; 33 U.S.C. §§1251, 1342, 1370, 1251-1387; 40 CFR Parts 122; 123; 124, Subparts A and D; 125; §122.45(f), 123.25(a))

§11-55-21 Schedule of compliance in issued NPDES permits. (a) With respect to any discharge which is not in compliance with applicable effluent standards and limitations, applicable water quality standards, or other legally applicable requirements listed in section 11-55-19, the permit shall require the permittee to take specific steps to achieve compliance with the following:

- (1) In accordance with any legally applicable schedule of compliance contained in:
  - (A) Applicable effluent standards and limitations;

# **Added**

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

Relating to **West Hawaii Regional Fishery Management Area,  
Hawaii**

UNCERTIFIED COPY

HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 4 FISHERIES

PART II MARINE FISHERIES MANAGEMENT AREAS

CHAPTER 60.4

WEST HAWAI'I REGIONAL FISHERY MANAGEMENT AREA, HAWAI'I

§13-60.4-1	Intent and purpose
§13-60.4-2	Geographical jurisdiction of chapter provisions
§13-60.4-3	Definitions
§13-60.4-4	Activities prohibited within the West Hawai'i regional fishery management area
§13-60.4-5	Activities prohibited within selected areas
§13-60.4-6	Lay net registration and use requirements
§13-60.4-7	Aquarium collecting permit and vessel registration requirements
§13-60.4-8	Penalty
§13-60.4-9	Severability

Historical note: Chapter 13-60.4 is based substantially upon chapter 13-60.3 and is simultaneously adopted upon repeal of that chapter. All rights, duties, penalties, and responsibilities incurred under chapter 13-60.3 are intended to be transferred to chapter 13-60.4 upon its adoption. [Eff 12/31/99; am, ren, and comp 8/1/05; R 12/26/13]

§13-60.4-1 Intent and purpose. (a) The intent and purpose of this chapter regarding the West Hawai'i regional fishery management area shall be to:



- (1) Establish the West Hawai'i regional fishery management area for improved management of consumptive and nonconsumptive uses of aquatic resources;
- (2) Ensure the sustainability of the State's nearshore ocean resources;
- (3) Identify areas with resource and use conflicts;
- (4) Minimize user conflicts and resource depletion in the West Hawai'i regional fishery management area, by designating fish replenishment areas and identifying other regulated areas where aquarium fish collecting is prohibited, areas where the use of gill nets as set nets is prohibited, and establishing a portion of the fish replenishment areas as fish reserves where no fishing of reef-dwelling fish is allowed;
- (5) Establish a system of day-use mooring buoys in high-use coral reef areas and prohibit anchoring in some of these areas to prevent anchor damage to corals;
- (6) Identify areas and resources of statewide significance for protection;
- (7) Facilitate scientific research and monitoring of the nearshore resources and environment; and
- (8) Facilitate the substantive involvement of the community in resource management decisions for the West Hawai'i regional fishery management area through dialogue with community residents and resource users.

(b) Native Hawaiian traditional and customary rights with regard to marine resources for subsistence, cultural, and religious purposes are recognized. Claims for traditional and customary rights will be decided by appropriate agencies when a claims procedure is established. [Eff 12/26/13]  
 (Auth: HRS §§187A-5, 188-53, 188F-6) (Imp: HRS §§187A-5, 188-53, 188F-2, 188F-3, 188F-4, 188F-6)

§13-60.4-2 Geographical jurisdiction of chapter provisions. (a) The provisions of this chapter shall

apply to the West Hawai'i regional fishery management area, bounded by the west coast of Hawai'i Island, from Ka Lae, Ka'ū (South Point) to 'Upolu Point, North Kohala, and extending from the upper reaches of the wash of the waves on shore, seaward to the limit of the State's police power and management authority.

(b) The following fish replenishment areas and netting restricted areas shall be established within the boundaries of the West Hawai'i regional fishery management area (as depicted in the exhibit entitled "Map of Fish Replenishment Area and Netting Restricted Area Boundaries", dated 9/21/11, located at the end of this chapter):

- (1) North Kohala fish replenishment area, identified on shore to the north by Kamilo Gulch and to the south by the Kawaihae Lighthouse;
- (2) Puakō-'Anaeho'omalu fish replenishment area, identified on shore to the north by the southern end of the Puakō Bay and Puakō Reef fisheries management area and to the south by the southern side of 'Anaeho'omalu Bay (Kapalaoa);
- (3) Ka'ūpūlehu fish replenishment area, identified on shore to the north by the northern boundary of the Ka'ūpūlehu ahupua'a and to the south by the southern side of Kikaua Point (south of Kūki'o Bay);
- (4) Kaloko-Honokōhau fish replenishment area, identified on shore to the north by the southern boundary of Wāwālolli Zone (a Kona Coast fisheries management area defined in section 13-58-2) at Wawahiwa'a Point and to the south by Noio Point;
- (5) Kailua-Keauhou fish replenishment area, identified on shore to the north by the southern boundary of Kailua Bay Zone, Kona Coast fisheries management area defined in section 13-58-2, and to the south by the northern boundary of the Keauhou Bay fisheries management area defined in section 13-57-1;
- (6) Red Hill fish replenishment area, identified on shore to the north at Nenuue Point and to

- the south by Keawakāheka Point;
- (7) Nāpo‘opo‘o-Hōnaunau fish replenishment area, identified on shore to the north by the southern boundary of Kealakekua Bay marine life conservation district (Manini Beach Point) and to the south by the southern boundary of Pu‘uhonua o Hōnaunau (Ki‘ilae);
  - (8) Ho‘okena fish replenishment area, identified on shore to the north by Loa Point and to the south by Ka‘ū Loa Point;
  - (9) Ka‘ohe Beach fish replenishment area (Pebble Beach), identified on shore to the north by signage south of Ka‘ū Loa Point, and to the south by signage north of ‘Au‘au Point;
  - (10) Miloli‘i fish replenishment area, identified on shore to the north by Makahiki Point and to the south by Kāki‘o Point;
  - (11) Kikaua Point-Mākole‘ā Point netting restricted area, identified on shore to the north by Kikaua Point (Kalae o Kikaua) and to the south by Mākole‘ā Point (near Kekaha Kai State Park);
  - (12) Nenua Point-Kealakekua Bay netting restricted area, identified on shore to the north by the northern boundary of the Red Hill fish replenishment area and to the south by the northern boundary of the Kealakekua Bay marine life conservation district;
  - (13) Hanamalo Point-Kanewa‘a Point netting restricted area, identified on shore to the north by Hanamalo Point, inclusive of Okoe Bay and Kapu‘a Bay, and to the south by Kanewa‘a Point, South Kona; and
  - (14) Kanonone-Kalīpoa netting restricted area, identified on shore to the north by Kanonone, inclusive of Pōhue Bay, Kahakahakea, and identified to the south by Kalīpoa, Ka‘ū.

Unless otherwise described, any area described in this chapter shall be described by four reference points identified by their latitude and longitude coordinates, as provided in the tables located at the

end of this chapter entitled "Table of Reference Coordinates to Fish Replenishment Area Boundaries", dated 9/21/11, and "Table of Reference Coordinates to Netting Restricted Area Boundaries", dated 9/21/11, and as may be further indicated by signage on or about the shoreline. The four points shall be identified as the landward northern point, the landward southern point, the seaward northern point, and the seaward southern point. The landward boundary for each of these areas shall be an imaginary line drawn along the highest wash of the waves between the landward northern point and the landward southern point. Should there be a stream or river flowing into the ocean, the landward boundary shall be an imaginary straight line drawn between the shoreline on either side of the stream or river, as if the stream or river was not there. Imaginary straight lines drawn through the landward and seaward northern points, and through the landward and seaward southern points, shall constitute the northern and southern boundary lines of each area. The seaward boundary of each area shall be determined by an imaginary line drawn along the one hundred fathom (six hundred feet) depth contour, between the intersection of the one hundred fathom depth contour and the northern and southern boundary lines. Seaward GPS reference points are for guidelines and the one hundred fathom depth contour otherwise controls the seaward boundary. Any area designated in this chapter shall include the submerged lands and overlying waters within these four boundaries.

(c) The following areas, designated and subject to additional regulations in other chapters, shall also be considered and regulated as part of the West Hawai'i regional fishery management area:

- (1) Lapakahi marine life conservation district, as described in chapter 13-33;
- (2) Kawaihae Harbor fisheries management area, as described in chapter 13-55;
- (3) Wailea Bay marine life conservation district, as described in chapter 13-35;
- (4) Old Kona Airport marine life conservation district, as described in chapter 13-37;
- (5) Kealahou Bay marine life conservation

- district, as described in chapter 13-29;
- (6) Puakō Bay and Puakō Reef fisheries management area, as described in chapter 13-54;
  - (7) Kīholo Bay fisheries management area, as described in chapter 13-60;
  - (8) Kailua Bay fisheries management area, as described in chapter 13-52;
  - (9) Keauhou Bay fisheries management area, as described in chapter 13-57;
  - (10) Kona Coast fisheries management area, as described in chapter 13-58;

Except for the area encompassed by the Kawaihae Harbor fisheries management area, Kawaihae commercial harbor shall not be regulated as part of the West Hawai'i regional fishery management area.

(d) Nothing in this chapter shall be construed as allowing within the West Hawai'i regional fishery management area any activity otherwise prohibited by law or rules adopted by the department of land and natural resources or any other department of the State. [Eff 12/26/13] (Auth: HRS §§187A-5, 188-53, 188F-6) (Imp: HRS §§187A-5, 188-53, 188F-2, 188F-3, 188F-4, 188F-6)

§13-60.4-3 Definitions. As used in this chapter unless otherwise provided:

"Aquarium collecting gear" means any equipment or gear adapted, designed, or commonly used to collect, capture or maintain aquatic life alive in a state of captivity, including but not limited to hand nets, fence or barrier nets, fiberglass, plastic, wood or metal 'tickle sticks' (including spears or similar implements used to manipulate the movement of aquarium fish or animals), catch buckets, keeps, baskets or venting needles.

"Aquarium collecting vessel" means any motorized or non-motorized vessel used by any person to collect, ferry, or scout for aquarium fish or animals.

"Aquarium purposes" means to hold aquatic life alive in a state of captivity, whether as pets, for scientific study, for public exhibition, for public display, or for sale for these purposes. Aquatic life

collected under a valid aquarium permit may not be used for human consumption, for bait, or for other consumptive purposes.

"Aquatic life" means any type or species of mammal, fish, amphibian, reptile, mollusk, crustacean, arthropod, invertebrate, coral, or other animal that inhabits the freshwater or marine environment and includes any part, product, egg, or offspring thereof; or freshwater or marine plants, including seeds, roots, products, and other parts thereof.

"Commercial purpose" means the taking of aquatic life for profit, gain, sale, purchase, barter, exchange, to offer for sale, or upon any offer to purchase.

"Department" means the department of land and natural resources.

"Fish feeding" means deliberately introducing into the water any food material, substance, or device used as an attractant, for any purpose except catching and removing marine life.

"Lay net" means a panel of net mesh that is suspended vertically in the water with the aid of a float line that supports the top edge of the net upward towards the water surface and a lead line that keeps the bottom edge of the net downward towards the ocean bottom.

"Lay net fishing" or to "lay net fish" means deploying or attempting to deploy a lay net in a set location and in an open configuration, and retrieving the lay net from the same location after a certain time period has passed. This fishing method is also known as set netting, cross netting, pa'ipa'i, and moemoe netting. This term does not apply to the use of a lay net to completely encircle a pre-identified school of fish, where the net is constantly attended at all times while in the water, such as in the practice of surround netting.

"Natural fibers" means fibers derived wholly from plant materials including, olonā, linen, cotton, hemp, and sisal.

"SCUBA gear" means any equipment adapted, designed, or commonly used to enable a diver to breathe while underwater, including but not limited to SCUBA regulators, high pressure cylinders,

rebreathers, SNUBA, and hookah rigs.

"SCUBA spearfishing" means to take or to attempt to take aquatic life through the combined use of a spear and SCUBA gear.

"Set" when used as a noun with respect to the use of lay nets, means a sequential act beginning from when the lay net is fully deployed in the water and ending on the next complete removal of the lay net from the water.

"Spear" means any device or implement which is designed or used for impaling marine life. Spears may include but are not limited to spear gun shafts, arbaletes, arrows, bolts, Hawaiian slings, tridents, or three-prong spears. A dive knife is not considered to be a spear.

"Speared" means pierced, impaled, penetrated, stuck, or run through by a sharp, pointed implement.

"Take" means to fish for, catch, or harvest, or to attempt to fish for, catch, or harvest, aquatic life. The use of any gear, equipment, tool, or any means to fish for, catch, capture, or harvest, or to attempt to fish for, catch, capture, or harvest, aquatic life by any person who is in the water, or in a vessel on the water, or in the shoreline area where aquatic life can be fished for, caught, or harvested, shall be construed as taking.

"Total length" means the length of a fish measured from the tip of the snout to the tip of the longer lobe of the caudal (tail) fin. The length measurement shall be a straight-line measure, not measured over the curvature of the body of the fish.

"White list" means a list of species of marine life that may be taken for aquarium purposes. [Eff 12/26/13] (Auth: HRS §§187A-5, 188-53, 188F-6) (Imp: HRS §§187A-5, 188-53, 188F-6)

§13-60.4-4 Activities prohibited within the West Hawai'i regional fishery management area. While within the West Hawai'i regional fishery management area, no person shall:

- (1) Take, kill, possess, sell, or offer for sale, any specimen of the following species:  
*Aetobatus narinari* (spotted eagle ray),

*Carcharhinus amblyrhynchos* (gray reef shark), *Carcharhinus melanopterus* (blacktip reef shark), *Cassis cornuta* (horned helmet), *Charonia tritonis* (Triton's trumpet), *Dasyatis hawaiiensis* (Hawaiian stingray), *Dasyatis lata* (broad stingray), *Pteroplatytrygon violacea* (pelagic stingray), *Galeocerdo cuvier* (tiger shark), *Rhincodon typus* (whale shark), or *Triaenodon obesus* (whitetip reef shark);

- (2) Possess more than five *Zebrasoma flavescens* (yellow tang) larger than 4.5 inches in total length, or possess more than five *Zebrasoma flavescens* smaller than two inches in total length;
- (3) Possess aquarium collecting gear, or take or possess any specimen of aquatic life for aquarium purposes:
  - (A) Between sunset and sunrise, provided that collecting gear or collected aquatic life may be possessed after sunset or before sunrise if notification by phone is made to the Division of Aquatic Resources West Hawai'i (DAR-Kona) office prior to sunset. The notification shall include the names of individuals who plan to possess the gear or aquatic life and the location where the possession will take place;
  - (B) Without holding a valid West Hawai'i aquarium permit issued pursuant to section 13-60.4-7(a);
  - (C) In violation of the terms and conditions of a West Hawai'i aquarium permit issued to that person; or
  - (D) While occupying any vessel that does not conform to the registration and marking requirements of section 13-60.4-7(d);
- (4) Possess or use any net or container employed underwater to capture or hold aquatic life alive for aquarium purposes, that is not labeled with the commercial marine license



- number or numbers of the person or persons owning, possessing or using the equipment;
- (5) Possess a lay net or engage in lay net fishing in violation of the requirements of section 13-60.4-6; or
  - (6) Engage in or attempt to engage in SCUBA spearfishing, possess both SCUBA gear and a spear at the same time, or possess SCUBA gear and any specimen of speared aquatic life at the same time. [Eff 12/26/13]  
(Auth: HRS §§187A-5, 188-53, 188F-6) (Imp: HRS §§187A-5, 188-53, 188F-3)

§13-60.4-5 Activities prohibited within selected areas. (a) No person may engage in fish feeding while within any of the fish replenishment areas or netting restricted areas described in section 13-60.4-2(b) or any of the other areas listed in section 13-60.4-2(c).

(b) While within the fish replenishment areas described in section 13-60.4-2(b)(1) to (10), or while within any of the areas listed in section 13-60.4-2(c) other than the Kīholo Bay fisheries management area, no person may:

- (1) Collect aquatic life for aquarium purposes; or
- (2) Possess any aquarium collecting gear, or take or possess any specimen of aquatic life for aquarium purposes, except that aquarium collecting gear or aquatic life collected for aquarium purposes may be possessed while onboard a vessel in active transit through the areas, provided that no collecting gear is in the water during the transit. Boats that are adrift, anchored, or moored are not considered to be in active transit.

(c) No person may lay net fish while within the following areas, as described in section 13-60.4-2(b) and in the tables located at the end of this chapter entitled "Table of Reference Coordinates to Fish Replenishment Area Boundaries", dated 9/21/11, and "Table of Reference Coordinates to Netting Restricted Area Boundaries", dated 9/21/11:

- (1) Puakō-‘Anaeho‘omalu fish replenishment area;
- (2) Ka‘ūpūlehu fish replenishment area;
- (3) Kikaua Point-Mākole‘ā netting restricted area (Kekaha Kai State Park);
- (4) Nenua Point (Red Hill fish replenishment area)-Kealahou Bay netting restricted area;
- (5) Hanamalo Point-Kanewa‘a Point netting restricted area;
- (6) Kanonohe-Kalīpoa netting restricted area; and
- (7) Kaloko-Honokōhau fish replenishment area, except that a person may lay net fish in the Kaloko-Honokōhau fish replenishment area using only a locally-constructed, handmade lay net of natural fibers, that is registered and used in compliance with section 13-60.4-6. [Eff 12/26/13] (Auth: HRS §§187A-5, 188-53, 188F-6) (Imp: HRS §§187A-5, 188-53, 188F-6)

§13-60.4-6 Lay net registration and use requirements. (a) It is unlawful for any person within the West Hawai‘i regional fishery management area to:

- (1) Possess or use a lay net that has not been registered with the department;
- (2) Possess or use more than one lay net;
- (3) Possess or use a lay net:
  - (A) Longer than one hundred twenty-five feet in length or more than seven feet in stretched height;
  - (B) With less than two and three-fourths inches stretched mesh; and in Kailua Bay fisheries management area, with less than three inches stretched mesh; or
  - (C) With two or more joined lay nets with a combined total length of more than two hundred fifty feet;
- (4) Possess or use a multi-panel lay net; or
- (5) Possess or use a lay net that does not have at least four identification tags as specified or provided by the department. One identification tag must be attached at each

end of both the net float line and the net lead line for a total of four attachment points on each lay net.

(b) It is unlawful for any person lay net fishing to:

- (1) Use a lay net that is not marked by buoys as specified or provided by the department. The buoys shall display the lay net registration number, be marked with reflective tape, and be visible above the surface of the water. The buoys shall be attached to each end of the float line for a total of two buoys for each lay net;
- (2) Use a lay net within one thousand two hundred feet of any other lay net; provided that two or more individuals working together and using the lay net fishing method may use a joined net;
- (3) Use a lay net in water that is more than eighty feet in depth;
- (4) Use a lay net for more than four hours during any one set; provided that after one set, the same lay net may not be set again within twenty-four hours after the ending of the set; and provided further that the same person shall not set any other lay net within that twenty-four hour period after the ending of the set;
- (5) Leave a lay net unattended for more than one-half hour;
- (6) Retrieve a lay net in such a manner as to cause coral to break from its attachment to the bottom or to break into smaller pieces. Any coral brought to the surface in the net shall be considered prima facie evidence of a violation of this section;
- (7) Fail to complete inspection of an entire lay net within two hours after the beginning of the set. The person lay net fishing shall inspect the lay net and release any threatened, endangered, prohibited, or unwanted species; or
- (8) Discard, abandon, or leave any lay net, or portion thereof, in the water for longer than four hours.

(c) It is unlawful for any person to falsely identify, with identification tags, any lay net that is not registered with the department as required in subsection (a)(1) and (a)(5).

(d) Persons using a vessel or float may use a total maximum of two hundred fifty feet of lay net, provided that at least two persons are present and associated with the same vessel or float.

(e) Should any registered lay net be lost, destroyed, sold, traded, stolen, given away, or otherwise no longer the property of, or no longer in the possession of the registered owner, then the registered owner shall be responsible for the lay net until a report is filed and confirmed by the department.

(f) Any lay net within the West Hawai'i regional fishery management area that is not registered or does not have proper identification tags, as required in subsection (a)(1) and (a)(5), shall be subject to immediate seizure according to section 199-7, HRS, and subject to forfeiture by the department under procedures similar to chapter 712A, Hawaii Revised Statutes.

(g) This section shall not apply to panel mesh nets with a stretched mesh size of less than two and three-fourths inches that are marked with commercial marine license numbers as required under section 13-60.4-4(4), and permitted for use and possession under an aquarium permit and a West Hawai'i aquarium permit issued under section 13-60.4-7(a). [Eff 12/26/13]  
(Auth: HRS §§187A-5, 188-53, 188F-6) (Imp: HRS §§187A-5, 188-53, 188F-6, 199-7, 712A-6)

§13-60.4-7 Aquarium collecting permit and vessel registration requirements. (a) West Hawai'i aquarium permit. The department may issue West Hawai'i aquarium permits authorizing persons to engage in aquarium collecting activities for species listed in subsection (b) and to use fine meshed traps and nets (other than throw nets) to collect those species in the West Hawai'i regional fishery management area, notwithstanding section 13-75-14, subject to terms and conditions the department deems necessary for the

management of the area and its resources. No person, unless exempted from provisions of this chapter by the issuance and possession of a valid special activity permit under section 187A-6, Hawaii Revised Statutes, shall engage in aquarium collecting activities within the West Hawai'i regional fishery management area without first having been issued and possessing a West Hawai'i aquarium permit in addition to a valid State of Hawai'i aquarium fish permit. Permits shall be valid for one year from the date of issuance unless revoked sooner, and are non-transferable. In addition to applying any other penalties provided by law, the department may revoke any West Hawai'i aquarium permit for any infraction of these rules or the terms and conditions of the permit, and any person whose permit has been revoked shall not be eligible to apply for another West Hawai'i aquarium permit until the expiration of one year from the date of revocation.

(b) Aquarium species white list. In addition to other regulations deemed necessary for the management of the West Hawai'i regional fishery management area, an aquarium permit holder may only take or possess specimens of the following species of fish for aquarium purposes while within the West Hawai'i regional fishery management area: *Acanthurus achilles* (Achilles tang), *Acanthurus dussumieri* (eyestripe surgeonfish), *Acanthurus nigricans* (goldrim surgeonfish), *Acanthurus nigrofuscus* (brown surgeonfish), *Acanthurus olivaceus* (orangeband surgeonfish), *Acanthurus thompsoni* (Thompson's surgeonfish), *Anampses chrysocephalus* (psychedelic wrasse), *Canthigaster jactator* (whitespotted Toby), *Centropyge fisheri* (Fisher's angelfish), *Centropyge potteri* (Potter's angelfish), *Cephalopholis argus* (peacock grouper), *Chaetodon kleinii* (blacklip butterflyfish), *Chaetodon miliaris* (milletseed butterflyfish), *Chaetodon multicinctus* (multiband butterflyfish), *Chaetodon quadrimaculatus* (fourspot butterflyfish), *Chaetodon tinkeri* (Tinker's butterflyfish), *Cirrhitilabrus jordani* (flame wrasse), *Cirrhitops fasciatus* (redbarred hawkfish), *Coris gaimard* (yellowtail Coris), *Ctenochaetus hawaiiensis* (chevron tang), *Ctenochaetus strigosus* (goldring surgeonfish, kole), *Dascyllus albisella* (Hawaiian

*Dascyllus*), *Forcipiger flavissimus* (forcepsfish), *Gomphosus varius* (bird wrasse), *Halichoeres ornatissimus* (ornate wrasse), *Hemitaurichthys polylepis* (pyramid butterflyfish), *Lutjanus kasmira* (bluestripe snapper), *Macropharyngodon geoffroy* (shortnose wrasse), *Melichthys niger* (black Durgon), *Naso lituratus* (orangespine unicornfish), *Ostracion meleagris* (spotted boxfish), *Paracirrhites forsteri* (blackside hawkfish), *Pseudanthias hawaiiensis* (Hawaiian longfin Anthias), *Pseudocheilinus octotaenia* (eightline wrasse), *Pseudocheilinus tetrataenia* (fourline wrasse), *Pseudojuloides cerasinus* (smalltail wrasse), *Sufflamen bursa* (lei triggerfish), *Thalassoma duperrey* (saddle wrasse), *Xanthichthys auromarginatus* (gilded triggerfish), and *Zebrasoma flavescens* (yellow tang); provided further that:

- (1) No *Zebrasoma flavescens* (yellow tang) may be taken or possessed in violation of section 13-60.4-4(2);
  - (2) No more than five *Ctenochaetus strigosus* (goldring surgeonfish or kole) larger than four inches in total length may be taken per day or possessed at any time; and
  - (3) No more than ten *Acanthurus achilles* (Achilles tang) may be taken per day, or possessed at any time.
- (c) Aquarium collecting vessel registration and marking requirements. All aquarium collecting vessels shall:
- (1) Be registered every year with the Division of Aquatic Resources West Hawai'i (DAR-Kona) office to take aquatic life for aquarium purposes within the West Hawai'i regional fishery management area. Each registration shall be valid for one year from the date of registration. The current vessel identification number issued by either the department or the United States Coast Guard shall serve as the registration number for each vessel;
  - (2) Clearly display the capital letters "AQ" permanently affixed to both sides of the vessel, either near the top of the gunwales or on the superstructure. Unless otherwise

specified, the "AQ" letters shall be no less than six inches high and three inches wide in either black or a color that contrasts with the background;

- (3) Fly a "stiffened" flag or pennant from the vessel with the letter "A" as specified by the department. The flag or pennant shall be provided at cost to aquarium permittees as specified by the department. The flag or pennant shall be displayed and clearly visible from both sides of the vessel at all times while aquarium collecting gear or collected aquarium marine life or both are onboard;
- (4) Display a dive flag at all times when divers are in the water; and
- (5) In the event an aquarium collecting vessel becomes inoperable, the operator of the vessel shall immediately notify the department's division of conservation and resources enforcement or United States Coast Guard or both by VHF radio or by cellular phone or both.

(d) Control date. A control date was established in August 1, 2005 to possibly limit participation in the West Hawai'i regional fishery management area commercial aquarium fishery. Persons who begin fishing in the West Hawai'i regional fishery management area commercial aquarium fishery on or after the control date will not be assured continued participation if the department establishes an aquarium limited entry program in the future.

(e) Nothing in this chapter shall prevent the department from establishing another control date.  
[Eff 12/26/13] (Auth: HRS §§187A-5, 188-53, 188F-6)  
(Imp: HRS §§187A-5, 188-53, 188F-3)

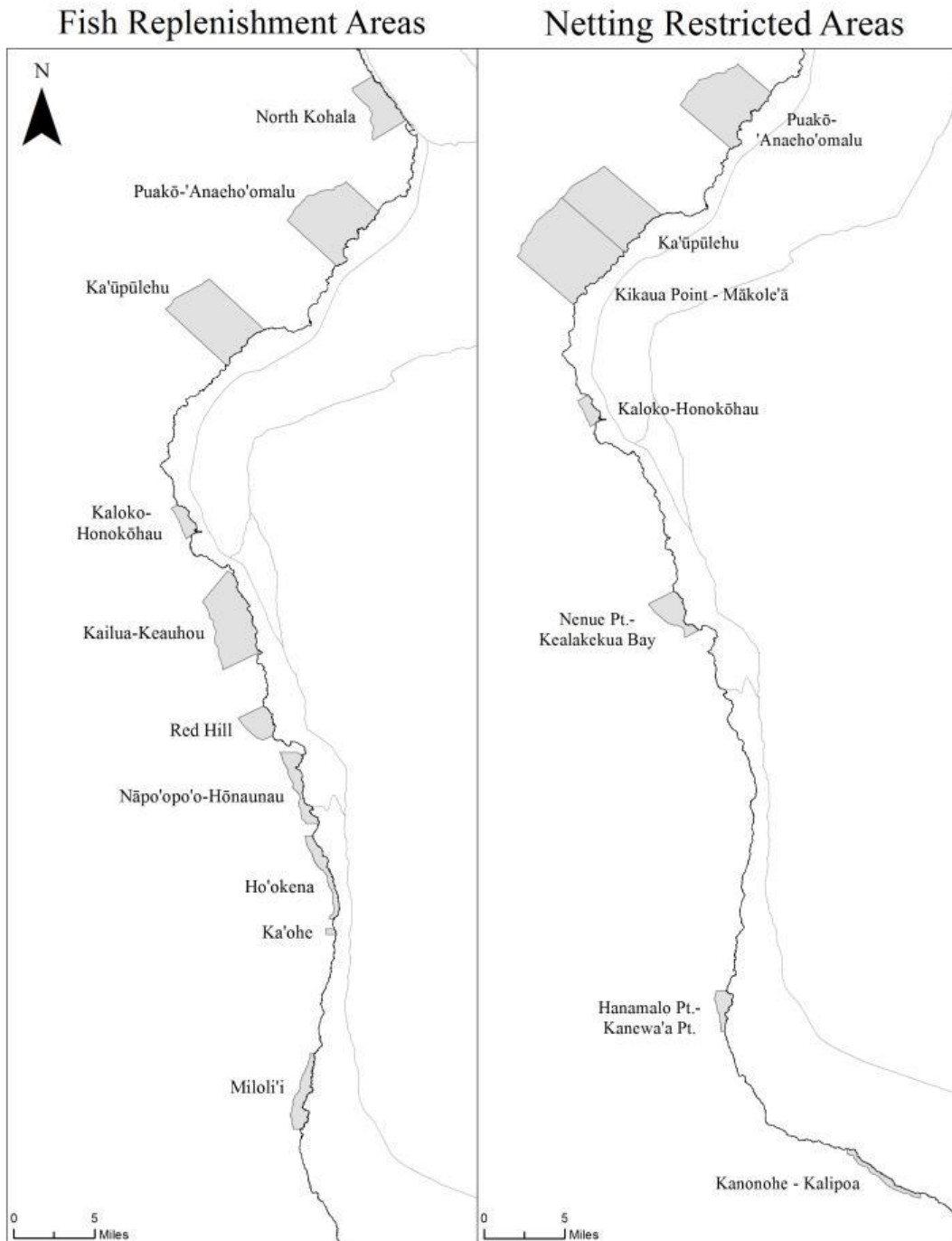
§13-60.4-8 Penalty. Any person violating any provision of this chapter, or any term or condition of any permit issued pursuant to this chapter, shall be subject to the provisions of sections 187A-12.5 and 188-70, Hawaii Revised Statutes, or as may be otherwise provided by law. [Eff 12/26/13] (Auth: HRS

§§187A-5, 188-53, 188F-6) (Imp: HRS §§187A-12.5, 188-53, 188-70)

§13-60.4-9 Severability. If any provision of this chapter, or the application thereof, to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable. [Eff 12/26/13] (Auth: HRS §§187A-5, 188-53, 188F-6) (Imp: HRS §§1-23, 187A-5, 188-53, 188F-6)



**Map of Fish Replenishment Area and Netting Restricted Area Boundaries\* (9/21/11)**



\*Maps and tables do not reflect regulated areas and their specific prohibitions (including gear restrictions) that are defined in other chapters, as described in section 13-60.4-5(c)

**Table of Reference Coordinates to Fish Replenishment Area Boundaries  
(9/21/11)**

Fish Replenishment Area	Landward dGPS Coordinates		Seaward dGPS Coordinates (600 ft.)				
	Northern Point	Southern Point	Northern Point	D (nm)	Southern Point	D (nm)	@
North Kohala	20° 04.826' N	20° 02.471' N	20° 04.378' N	1.40	20° 01.654' N	1.94	225°
	155° 51.934' W	155° 49.988' W	155° 53.344' W		155° 51.875' W		225°
Puakō – ‘Anaeho‘omalu	19° 57.529' N	19° 54.641' N	19° 59.206' N	2.40	19° 57.034' N	3.54	300°
	155° 51.553' W	155° 53.893' W	155° 53.383' W		155° 56.658' W		300°
Ka‘ūpūlehu	19° 51.011' N	19° 49.209' N	19° 53.817' N	3.91	19° 51.724' N	4.39	300°
	155° 58.111' W	156° 00.132' W	156° 00.994' W		156° 03.947' W		300°
Kaloko - Honokōhau	19° 41.442' N	19° 40.059' N	19° 41.368' N	0.35	19° 39.844' N	0.46	240°
	156° 02.350' W	156° 01.741' W	156° 03.031' W		156° 02.169' W		240°
Kailua – Keauhou	19° 37.903' N	19° 33.716' N	19° 37.089' N	2.02	19° 32.801' N	2.21	245°
	155° 59.472' W	155° 57.829' W	156° 01.449' W		156° 00.004' W		245°
Red Hill	19° 30.823' N	19° 29.252' N	19° 30.166' N	1.41	19° 28.991' N	0.51	235°
	155° 57.630' W	155° 57.068' W	155° 58.953' W		155° 57.536' W		235°
Nāpo‘opo‘o - Hōnaunau	19° 28.230' N <sup>1</sup>	19° 24.559' N	19° 28.350' N <sup>2</sup>	1.13	19° 24.725' N	0.79	270°
	155° 55.370' W	155° 54.343' W	155° 56.898' W		155° 55.162' W		270°
Ho‘okena	19° 23.796' N	19° 19.458' N	19° 23.690' N	0.40	19° 19.403' N	0.25	240°
	155° 54.685' W	155° 53.426' W	155° 55.095' W		155° 53.688' W		240°
Ka‘ohe	19° 18.954' N	19° 18.714' N	19° 18.947' N	0.44	19° 18.706' N	0.48	270°
	155° 53.362' W	155° 53.296' W	155° 53.824' W		155° 53.806' W		270°
Miloli‘i	19° 12.179' N	19° 08.098' N	19° 12.179' N	0.15	19° 08.160' N	0.36	270°
	155° 54.369' W	155° 55.132' W	155° 54.599' W		155° 55.510' W		270°

<sup>1,2</sup> Northern Boundary runs 0.25 nm along existing Kealakekua Bay MLCD southern boundary to 19° 28.443' N/155° 55.708' W and then 270° to seaward northern point.

D (nm) = distance in nautical miles from the landward points to the seaward points

@ = compass heading from landward coordinates to seaward coordinates

**Table of Reference Coordinates to Netting Restricted Area Boundaries  
(9/21/11)**

Netting Restricted Area**	Landward dGPS Coordinates		Seaward dGPS Coordinates (600 ft.)				
	Northern Point	Southern Point	Northern Point	D (nm)	Southern Point	D (nm)	@
Puakō – ‘Anaeho‘omalu	19° 57.529’ N	19° 54.641’ N	19° 59.206’ N	2.40	19° 57.034’ N	3.54	300°
	155° 51.553’ W	155° 53.893’ W	155° 53.383’ W		155° 56.658’ W		300°
Ka‘ūpūlehu	19° 51.011’ N	19° 49.209’ N	19° 53.817’ N	3.91	19° 51.724’ N	4.39	300°
	155° 58.111’ W	156° 00.132’ W	156° 00.994’ W		156° 03.947’ W		300°
Kikaua Point - Mākole‘ā	19° 49.130’ N	19° 46.356’ N	19° 52.100’ N	4.41	19° 49.000’ N	3.98	300°
	156° 00.063’ W	156° 03.024’ W	156° 03.566’ W		156° 06.164’ W		300°
Kaloko - Honokōhau	19° 41.442’ N	19° 40.059’ N	19° 41.368’ N	0.35	19° 39.844’ N	0.46	240°
	156° 02.350’ W	156° 01.741’ W	156° 03.031’ W		156° 02.169’ W		240°
Nenue Pt. - Kealakekua Bay	19° 30.823’ N	19° 28.699’ N	19° 30.166’ N	1.41	19° 28.316’ N	0.90	235°
	155° 57.630’ W	155° 56.114’ W	155° 58.953’ W		155° 56.983’ W		235°
Hanamalo Pt. - Kanewa‘a Pt.	19° 09.273’ N	19° 07.091’ N	19° 09.275’ N	0.55	19° 07.093’ N	0.18	260°
	155° 54.973’ W	155° 55.115’ W	155° 55.564’ W		155° 55.313’ W		260°
Kanonone - Kalīpoa	19° 00.662’ N	18° 58.180’ N	19° 00.409’ N	0.25	18° 57.941’ N	0.24	200°
	155° 48.302’ W	155° 44.182’ W	155° 48.302’ W		155° 44.183’ W		200°

**\*\*Netting restrictions may also apply in fisheries replenishment areas (see map entitled “Map of Fish Replenishment Area and Netting Restricted Area Boundaries”, dated 9/21/11) and in areas designated under separate chapters, as described in section 13-60.4-2(c)**

D (nm) = distance in nautical miles from the landward points to the seaward points

@ = compass heading from landward coordinates to seaward coordinates

# **Added**

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

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

HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 4 FISHERIES

PART II MARINE FISHERIES MANAGEMENT AREAS

CHAPTER 60.8

HĀ'ENA COMMUNITY-BASED SUBSISTENCE FISHING AREA, KAUA'I

§13-60.8-1	Purpose
§13-60.8-2	Definitions
§13-60.8-3	Boundaries
§13-60.8-4	Management plan and review
§13-60.8-5	Permitted and prohibited activities
§13-60.8-6	Prohibited activities, Makua Pu'uhonua
§13-60.8-7	Penalty
§13-60.8-8	Severability

§13-60.8-1 Purpose. The purpose of this chapter regarding the Hā'ena Community-Based Subsistence Fishing Area is to:

- (1) Sustainably support the consumptive needs of the Hā'ena ahupua'a through culturally-rooted community-based management;
- (2) Ensure the sustainability of nearshore ocean resources in the area through effective management practices, including the establishment of limits on the harvest of aquatic life;
- (3) Establish the Makua Pu'uhonua (Marine Refuge) for the preservation and protection of this nursery habitat for juvenile reef fishes;
- (4) Recognize and protect customary and traditional native Hawaiian fishing

- practices that are exercised for subsistence, cultural, and religious purposes in the area; and
- (5) Facilitate the substantive involvement of the community in resource management decisions for the area through dialogue with community residents and resource users.  
[Eff 8/14/15] (Auth: HRS §§188-22.9, 188-53, 190-3) (Imp: HRS §§188-22.9, 188-53, 190-3)

§13-60.8-2 Definitions. As used in this chapter:

"Aquatic life" means any type or species of mammal, fish, amphibian, reptile, mollusk, crustacean, arthropod, invertebrate, coral, or other animal that inhabits the freshwater or marine environment and includes any part, product, egg, or offspring thereof; or freshwater or marine plants, including seeds, roots products, and other parts thereof.

"Area" means the Hā'ena Community-Based Subsistence Fishing Area (Hā'ena CBSFA), as encompassed within the boundaries described in section 13-60.8-3(a).

"Day" means a twenty-four hour period.

"Department" means the department of land and natural resources.

"Deploy" means to place the specified gear in the water, whether in whole or in part.

"Fish" means any species of aquatic life with a backbone, gills, and with limbs that are fins, if any.

"Gill net" means a panel or curtain of net made of various materials, that is suspended vertically in the water with the aid of a net float line that supports the top edge of the net up towards the ocean surface and parallel to a net lead line that keeps the lower edge of the net down towards the ocean bottom. The gill net is usually made of transparent or semi-transparent materials to make the net seem invisible underwater, with mesh openings generally large enough to permit the heads of fish to pass through, ensnaring

them around the gills, fins, spines, or mid-section when they attempt to escape.

"Hand-harvest" means to gather directly with the hands only, and without the use of any net, spear, trap, rake, or any other tool or implement.

"He'e" means any cephalopod mollusk known as *Octopus cyanea*, *Octopus ornatus*, or any recognized synonym.

"Hook-and-line" means a fishing line to which one or more hooks or other tackle are attached. A hook-and-line may include a fishing rod or reel or both to cast and retrieve the line.

"Kūpe'e" means any marine snail known as *Nerita polita* or any recognized synonym.

"Limu" means any marine alga including algae in the intertidal zone.

"Lobster" means any crustacean in the family Palinuridae or in the family Scyllaridae. Lobsters are also known as ula (spiny lobster) or ula pāpapa (slipper lobster).

"Marine life" means any type or species of saltwater fish, shellfish, mollusks, crustaceans, coral, algae, or other marine animals, including any part, product, egg, or offspring thereof; or any type or species of seaweeds or other marine plants or algae, including any part, product, seed, holdfast, or root thereof.

"Noncommercial purposes" means for personal, cultural, recreational, or subsistence use, and not for compensation of any kind, regardless of whether the compensation is received inside or outside of the boundaries of the area.

"Ōpihi" means any mollusk of the genus *Cellana* or any recognized synonym. Ōpihi are also known as kō'ele, 'ālinalina, makaiauli, or limpets.

"Pa'ipa'i net fishing" means a technique of fishing where a person or persons engage or attempt to engage in the act of deploying a gill net in the water in a specific location in a straight line or semi-circular configuration, and a person or persons chase aquatic life into the net.

"Pipipi" means any marine snail known as *Theodoxus neglectus*, *Nerita picea*, *Neripteron neglectum*, or any recognized synonym.

"Pole spear" means a spear consisting of a straight shaft terminating in up to three pointed prongs, and to which up to two elastic bands may be attached. A pole spear is released solely by hand and without the aid of any trigger mechanism as characteristic of a speargun or hinge gun.

"Pūpū" means any marine or terrestrial species belonging to the order Gastropoda or Bivalvia. Unless otherwise specified, as used in this chapter, pūpū refers to the live mollusk as a whole, not just the hard outer shell.

"Scoop net" means a hand net consisting of a bag of mesh material attached to a frame to hold the bag open, which may be attached to a single handle no more than three feet in length.

"Snorkel" means an underwater breathing apparatus consisting of a tube no more than two feet in length, which extends from a person's mouth to the surface of the water, through which a person is able to breathe air using only the lungs and without the aid of a compressor.

"Subsistence" means the customary and traditional native Hawaiian uses of renewable ocean resources for direct personal or family consumption or sharing.

"Surround gill net fishing" means a fishing technique where any person deploys or attempts to deploy a gill net in the water to encircle aquatic life. Aquatic life may entangle within the net mesh as the aquatic life swim or move into the net. Surround gill net fishing involves a closed net configuration, a moving net, a person or persons chasing aquatic life into the net, and only entangled aquatic life are captured.

"Take" means to fish for, catch, injure, kill, remove, capture, confine, or harvest, or to attempt to fish for, catch, injure, kill, remove, capture, confine, or harvest.

"Throw net" means a circular net with a weighted outer perimeter designed to be deployed by manually



casting or throwing the net over fish or other aquatic life.

"Underwater breathing apparatus" means any apparatus that allows a person to breathe while below the surface of the water.

"Urchin" means any invertebrate in the class Echinoidea. Urchins are also known as wana, hālula, hā'uke'uke, hāwa'e, 'ina, or sea urchin.

"Vessel" means any craft used or capable of being used as a means of transportation on or in the water. [Eff 8/14/15] (Auth: HRS §§187A-5, 188-22.9, 188-53, 190-3) (Imp: HRS §§187A-5, 188-22.9, 190-3)

§13-60.8-3 Boundaries. (a) The Hā'ena Community-Based Subsistence Fishing Area includes that portion of the northwestern coast of Kaua'i consisting of all State waters and submerged lands bounded by a line drawn along the shoreline; a straight line that extends seaward from the shoreline at the boundary between Hā'ena State Park and Na Pali State Park, as drawn through the points 22°12'42.50"N, 159°35'44.50"W and 22°13'21.62"N, 159°36'22.27"W; a line that follows the contours of the shoreline at a distance of one mile seaward from the shoreline; and a straight line that extends seaward from the shoreline at the boundary between Hā'ena and Wainiha, as drawn through the points 22°13'28.00"N, 159°33'13.50"W and 22°14'19.91"N, 159°33'6.21"W; as shown on Exhibit A entitled "Map of the Hā'ena Community-Based Subsistence Fishing Area, Kaua'i", dated 4/16/14, located at the end of this chapter.

(b) The following subzones are established within the Hā'ena Community-Based Subsistence Fishing Area:

- (1) The "'Ōpihi Management Area," which includes all State waters and submerged lands within 300 feet from the shoreline between a line that extends seaward from the shoreline at the boundary between Hā'ena State Park and Nā Pali State Park, as drawn through the points

22°12'42.50"N, 159°35'44.50"W and 22°13'21.62"N, 159°36'22.27"W; and a line that extends seaward from the shoreline at the western edge of Kē'ē Beach, as drawn through the points 22°13'13.61"N, 159°35'5.11"W and 22°13'15.75"N, 159°35'7.34"W; as shown on Exhibit B entitled "Map of the 'Ōpihi Management Area", dated 4/16/14, located at the end of this chapter;

- (2) The "Makua Pu'uhonua," which includes all State waters and submerged lands located within the fringing reef of Makua lagoon, bounded by a line drawn starting from a point located at 22°13'33.88"N, 159°33'42.41"W, to a point located at 22°13'41.15"N, 159°33'44.67"W; then to a point located at 22°13'44.57"N, 159°33'34.71"W; then to a point located at 22°13'38.26"N, 159°33'31.56"W; then back to the starting point; as shown on Exhibit C entitled "Map of the Makua Pu'uhonua", dated 4/16/14, located at the end of this chapter;
- (3) The "Vessel Transit Boundary," which includes all State waters and submerged lands bounded by a line drawn starting from the shoreline at the boundary between Hā'ena State Park and Na Pali State Park, located at 22°12'42.50"N, 159°35'44.50"W, to a point approximately 1,000 feet seaward, located at 22°12'49.98"N, 159°35'51.79"W; then eastward to a point approximately 1,300 feet from shore, located at 22°13'35.57"N, 159°34'59.73"W; then to a point approximately 2,300 feet from shore, located at 22°13'55.42"N, 159°33'42.00"W; then to a point located approximately 2,100 feet from shore, located at 22°13'48.84"N, 159°33'10.76"W; then to a point on the shoreline at the boundary between Hā'ena and Wainiha, located at 22°13'28.00"N,

159°33'13.50"W; as identified in the map shown on Exhibit A entitled "Map of the Hā'ena Community-Based Subsistence Fishing Area, Kaua'i", dated 4/16/14, located at the end of this chapter;

(c) For the purposes of this chapter, the shoreline shall be determined by the upper reaches of the wash of the waves on shore. Should there be a stream or river flowing into the ocean, the shoreline shall be determined by an imaginary straight line drawn between the upper reaches of the wash of the waves on either side of the stream or river. [Eff 8/14/15] (Auth: HRS §§188-22.9, 188-53, 190-3) (Imp: HRS §§187A-1.5, 188-22.9, 190-3)

§13-60.8-4 Management plan and review. (a) The department shall consult with inhabitants of the Hā'ena ahupua'a and other interested parties to provide for a management plan, which describes:

- (1) Existing marine activities permitted by the department within the area;
- (2) Specific activities to be conducted in the area;
- (3) Processes for community-based monitoring and evaluation of the area; and
- (4) Methods of funding and enforcement.

The management plan shall serve as a framework to assist the department and the community in monitoring, evaluating, and managing the area.

(b) Five, ten, and twenty years beginning from the effective date of this chapter, the department shall hold at least one meeting within the Hā'ena ahupua'a to:

- (1) Review the effectiveness of the Hā'ena Community-Based Subsistence Fishing Area;
- (2) Revise the management plan as needed; and
- (3) Consider whether the area should be expanded to include other ahupua'a.

The meeting shall be publicly noticed at least two weeks prior to the meeting date, by posting the

date, time, location, and subject matter of the meeting in a newspaper of general circulation within the Hā'ena ahupua'a. [Eff 8/14/15] (Auth: HRS §§188-22.9, 188-53) (Imp: HRS §§187A-2, 188-22.9)

§13-60.8-5 Permitted and prohibited activities.

(a) Nothing in this chapter shall be construed as allowing within the Hā'ena Community-Based Subsistence Fishing Area any activity or fishing gear otherwise prohibited by law or rules adopted by the department of land and natural resources or any other department of the State.

(b) It is unlawful for any person to sell or offer for sale any marine life taken from within the area, or to otherwise take marine life from within the area for commercial purposes.

(c) Unless otherwise allowed in subsection (d) of this section, it is unlawful for any person to engage in or attempt to engage in the following activities within the Hā'ena Community-Based Subsistence Fishing Area:

- (1) Take or possess any marine life;
- (2) Take, alter, deface, destroy, possess, or remove any sand, coral, rock, or other geological feature or specimen;
- (3) Possess, deploy, or use any fishing gear or device that is designed or may be used for the taking, injuring, or killing of marine life, or the altering of any geological feature or specimen; or
- (4) Deliberately introduce into the water any food material, substance, or device used as an attractant for marine life, for any purpose other than the taking of marine life as may be allowed under subsection (d) of this section.

(d) Except while within the Makua Pu'u honua, an individual within the Hā'ena CBSFA may:

- (1) Take and possess any empty pūpū shell, provided that empty pūpū shells may not be

- taken or possessed while using any underwater breathing apparatus other than a snorkel;
- (2) At any time after November 30, 2017, take up to twenty total living 'ōpihi, pipipi, kūpe'e, or pūpū per person per day from the 'Ōpihi Management Area only, and possess up to twenty total living 'ōpihi, pipipi, kūpe'e, or pūpū at any one time;
  - (3) Take and possess any limu by hand-harvest only; provided further that the following species of invasive or introduced algae may be taken and possessed for any purpose, including a commercial purpose: *Gracilaria salicornia*, *Acanthophora spicifera*, *Avrainvillea amadelpha*, *Kappaphycus* (any species), *Eucheuma* (any species), or *Hypnea musciformis*;
  - (4) Take up to two lobsters per day by hand-harvest only, and possess up to two lobsters at any one time;
  - (5) Take up to five urchins per species per day, and possess up to five urchins per species at any one time;
  - (6) Take up to two he'e per day, and possess up to two he'e at any one time, provided that he'e may only be taken by hand-harvest or with the use of a stick no longer than two feet in length;
  - (7) Take and possess any fish in compliance with this chapter and all other state law;
  - (8) Subject to paragraphs (1)-(7), above:
    - (A) Possess and use up to two hook-and-lines with up to two hooks per hook-and-line;
    - (B) Possess and use a pole spear to take fish between 6:00 a.m. and 6:00 p.m., provided that the pole spear shall be no greater than eight feet in total length;
    - (C) Possess and use a throw net;

- (D) Use pa'ipa'i net or surround gill net fishing methods, provided that nets may only be deployed from the shore, or from a vessel less than fourteen feet long, and provided further that at least two people must be within five feet of the net at all times while it is deployed; and
- (E) Possess and use a scoop net between 6:00 a.m. and 6:00 p.m., provided that a scoop net may not be used to take greater than three specimens of marine life per day; and
- (9) Possess any fishing gear while on a vessel in active transit seaward of the Vessel Transit Boundary, as described in section 13-60.8-3(b)(3) of this chapter.
- (e) Native Hawaiian traditional and customary rights recognized under article XII, section 7, of the Hawaii State Constitution shall not be abridged. [Eff 8/14/15] (Auth: HRS §§187A-5, 188-22.9, 188-53, 190-3) (Imp: HRS §§187A-5, 188-22.9, 188-53, 190-3)

§13-60.8-6 Prohibited activities, Makua Pu'u honua. In addition to the prohibitions described in section 13-60.8-5(c), it is unlawful for any person to enter the Makua Pu'u honua except with a special activity permit issued by the board under section 187A-6, HRS, under such terms and conditions allowing such entry and as deemed necessary for educational, scientific, or other purposes not inconsistent with sections 187A-6 and 188-53, HRS, provided that:

- (1) The board may revoke any permit for any infraction of the terms and conditions of the permit; and
- (2) A person whose permit was revoked shall not be eligible to apply for another permit until one year after the date of revocation. [Eff 8/14/15] (Auth: HRS §§187A-6, 188-22.9, 188-53, 190-3) (Imp: HRS §§187A-6, 188-22.9, 188-53, 190-3)

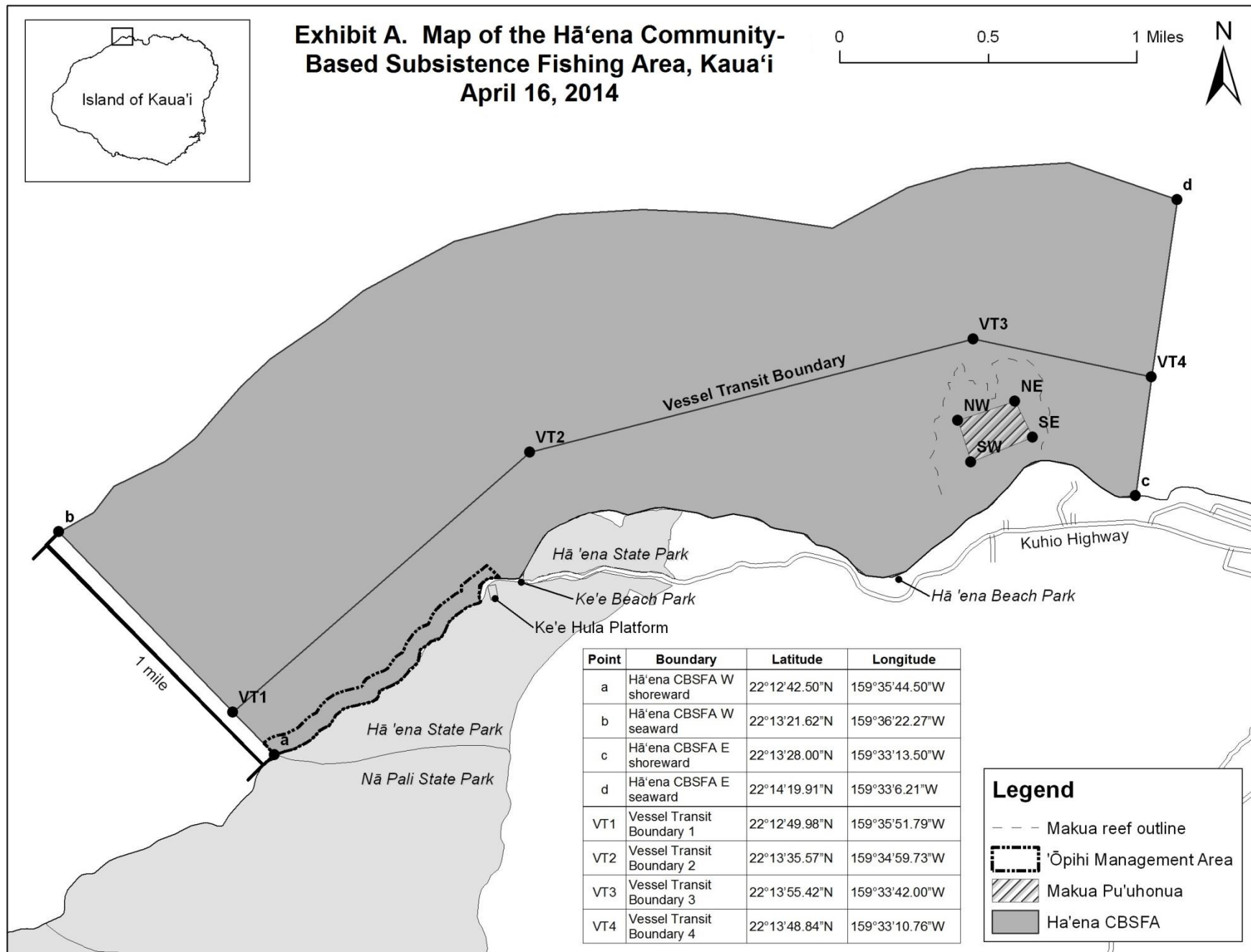
§13-60.8-7 Penalty. (a) Any person who violates any provision of this chapter, or the terms and conditions of any permit issued applicable to this chapter, shall be subject to administrative fines of:

- (1) Not less than \$100 and not more than \$1,000 for a first violation;
- (2) Not less than \$200 and not more than \$2,000 for a second violation within five years of any prior violation; and
- (3) Not less than \$500 and not more than \$3,000 for a third or subsequent violation within a five year period of any prior violation.

(b) In addition to subsection (a), a fine of up to \$1,000 may be levied for each specimen of aquatic life taken, killed, or damaged in violation of this chapter.

(c) Any administrative fine imposed under this section for any violation of a provision of this chapter shall not preclude the imposition of criminal penalties pursuant to section 188-70, HRS, or as may be otherwise provided by law. [Eff 8/14/15] (Auth: HRS §§187A-5, 188-22.9, 188-53, 190-3) (Imp: HRS §§187A-5, 187A-12.5, 188-22.9, 188-53, 188-70, 190-5)

§13-60.8-8 Severability. If any provision of this chapter, or the application thereof, to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable. [Eff 8/14/15] (Auth: HRS §§187A-5, 188-22.9, 188-53, 190-3) (Imp: HRS §§1-23, 187A-5, 188-22.9, 188-53, 190-3)

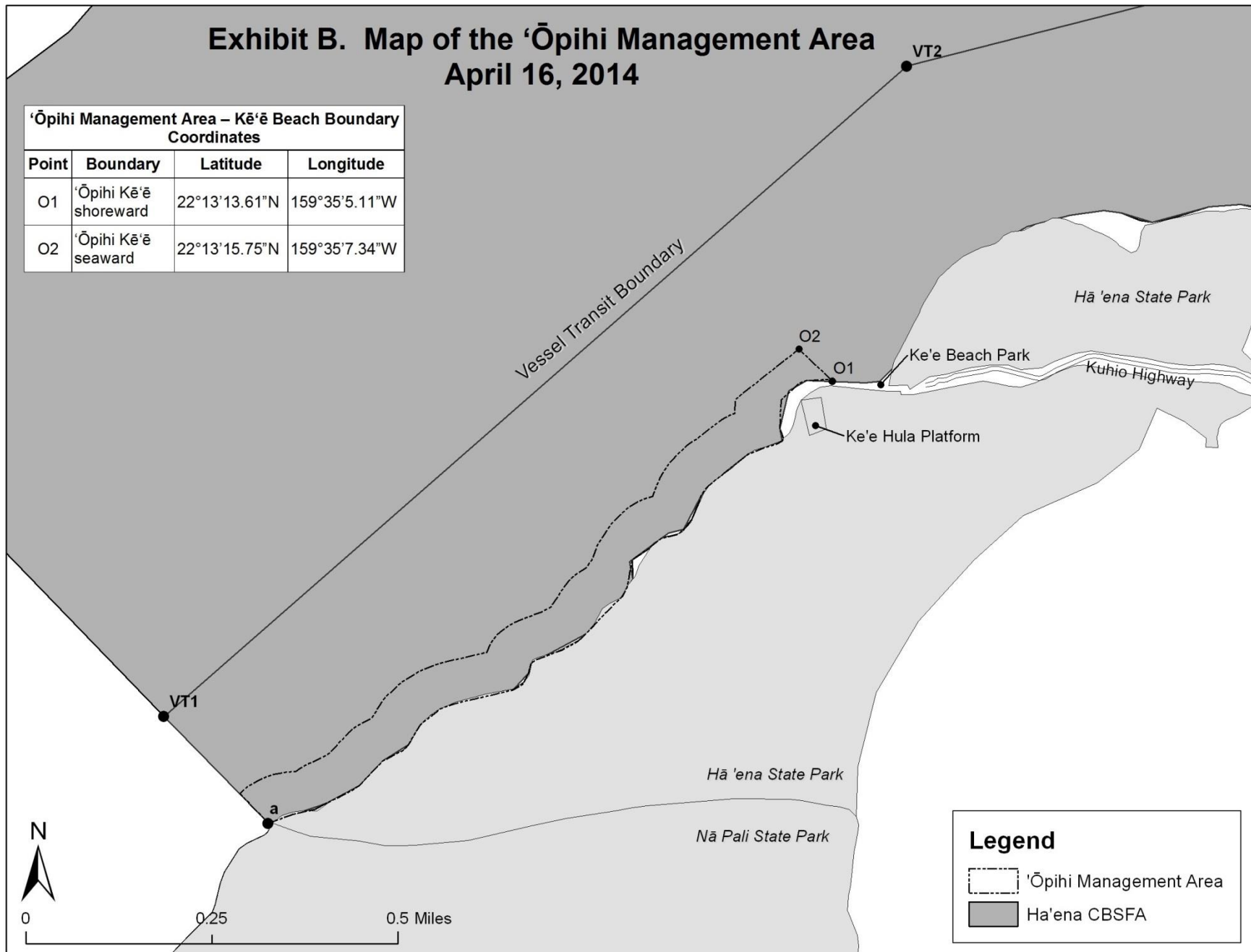




## Exhibit B. Map of the 'Ōpihi Management Area April 16, 2014

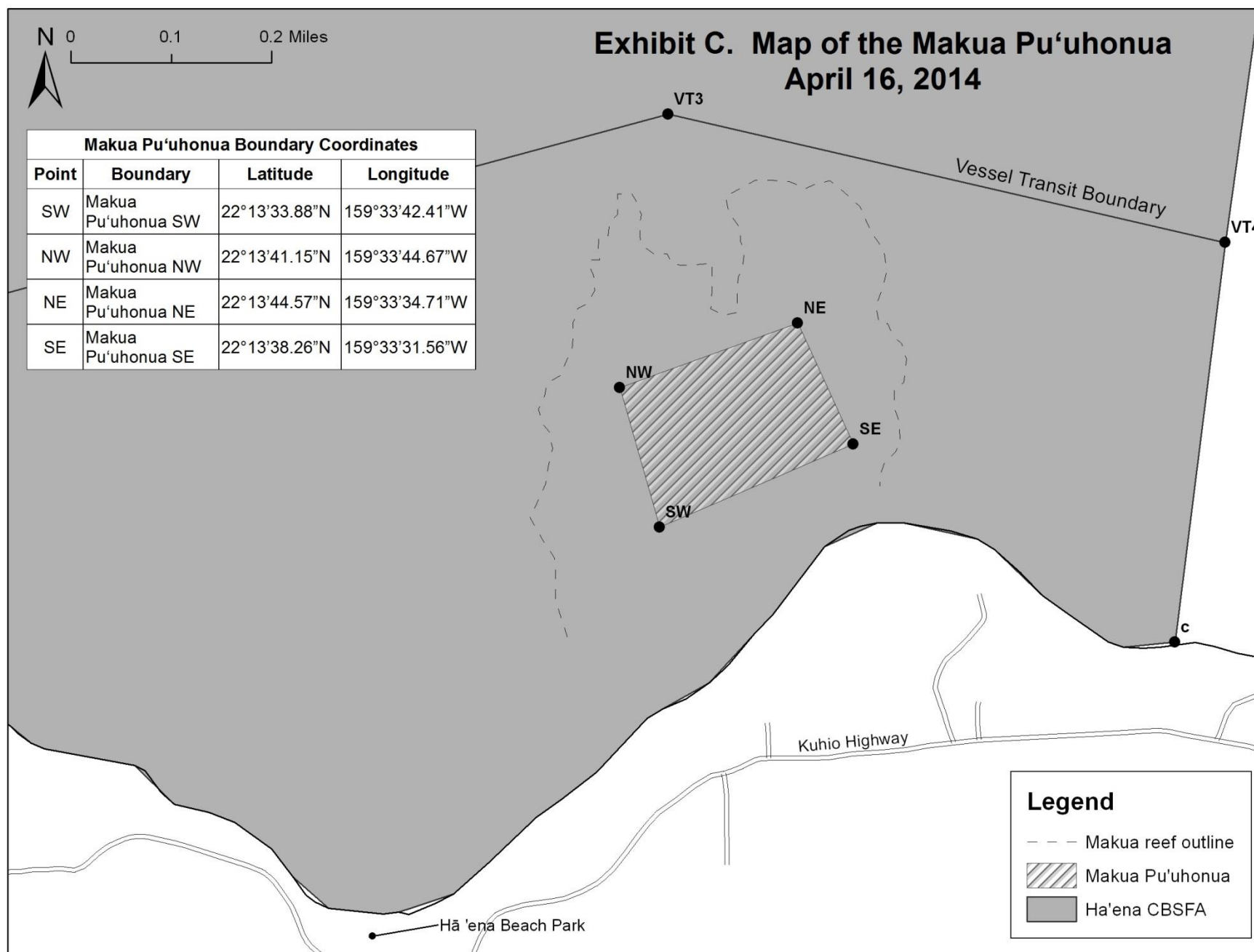
**'Ōpihi Management Area – Kē'e Beach Boundary  
Coordinates**

Point	Boundary	Latitude	Longitude
O1	'Ōpihi Kē'e shoreward	22°13'13.61"N	159°35'5.11"W
O2	'Ōpihi Kē'e seaward	22°13'15.75"N	159°35'7.34"W



### Legend

- 'Ōpihi Management Area
- Ha'ena CBSFA



# **Added**

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

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

HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 4 FISHERIES

PART V PROTECTED MARINE FISHERIES RESOURCES

CHAPTER 95.1

ISLAND-BASED FISHERIES RULES

Subchapter 1 General Provisions

§13-95.1-1	Definitions
§13-95.1-2	Penalty
§13-95.1-3	Scope
§13-95.1-4	Exceptions
§13-95.1-5	Severability

Subchapter 2 Maui Island Fisheries

§13-95.1-20	Goatfish
§13-95.1-21	Uhu

SUBCHAPTER 1

GENERAL PROVISIONS

§13-95.1-1 Definitions. As used in this chapter, unless otherwise provided:

“Commercial marine dealer” means any person who sells or exchanges, or who is an agent in the transfer of marine life obtained directly from a commercial marine licensee, or any commercial marine licensee who sells or exchanges marine life at retail.

"Department" means the department of land and natural resources.

"Goatfish" means any fish in the family Mullidae, or any recognized synonym.

"Kūmū" means any fish known as *Parupeneus porphyreus* or any recognized synonym. Kūmū are also known as whitesaddle goatfish.

"Length" means the straight-line measurement from the tip of the snout to the middle of the trailing edge of the tail.

"Moano kea" means any fish known as *Parupeneus cyclostomus* or any recognized synonym. Moano kea are also known as moano kali, moano ukali ulua, blue goatfish, or goldsaddle goatfish.

"Munu" means any fish known as *Parupeneus insularis* or any recognized synonym. Munu are also known as doublebar goatfish.

"Oama" means any juvenile weke'ā or *Mulloidichthys flavolineatus*, which is less than five inches in length.

"Possess" means to procure, receive, hold, or control for a sufficient period to have had the opportunity to release or relinquish control.

"Take" means to fish for, capture, confine, or harvest aquatic life. This term shall not apply to the temporary capture or confinement of any specimen which is returned to the water as soon as possible after landing.

"Uhu" means any fish belonging to the family Scaridae or any recognized synonyms. Uhu is a general term for parrotfish.

"Uhu 'ahu'ula" means any fish known as *Chlorurus perspicillatus* or any recognized synonym. Uhu 'ahu'ula are also known as spectacled parrotfish. The terminal phase of these fish is also known as "uhu uliuli".

"Uhu 'ele'ele" is any *Scarus rubroviolaceus* which has reached its terminal phase, indicated by a change in coloration from brownish-red and yellowish-gray, to green and blue. A predominantly green or blue-green body color and a green beak on a specimen of *Scarus rubroviolaceus* is prima facie evidence that the

specimen is an uhu 'ele'ele. Both uhu 'ele'ele and uhu pālukaluka are known as redlip or ember parrotfish.

"Uhu pālukaluka" means any fish known as *Scarus rubroviolaceus* or any recognized synonym. Uhu pālukaluka are also known as redlip or ember parrotfish. The terminal phase of these fish is also known as "uhu 'ele'ele".

"Uhu uliuli" is any *Chlorurus perspicillatus* which has reached its terminal phase, indicated by a change in coloration from a grayish brown body with a broad white band at the base of the tail, to a blue-green body with a dark band across the top of the snout. A predominantly blue-green body color and the lack of a white tail band on a specimen of *Chlorurus perspicillatus* is prima facie evidence that the specimen is an uhu uliuli. Both uhu uliuli and uhu 'ahu'ula are known as spectacled parrotfish.

"Weke'ā" means any fish known as *Mulloidichthys flavolineatus* or any recognized synonym. Weke'ā are also known as white goatfish. The young of these fish are also known as 'oama.

"Weke nono" means any fish known as *Mulloidichthys pfluegeri* or any recognized synonym. Weke nono are also known as Pflueger's goatfish or moelua. [Eff 11/1/14] (Auth: HRS §§187A-5, 189-2, 189-6) (Imp: HRS §§187A-1, 187A-5, 189-2, 189-6)

§13-95.1-2 Penalty. (a) Any person who violates any provision of this chapter shall be subject to administrative fines as provided by chapter 187A, HRS.

(b) Any administrative fine imposed under this section for any violation of a provision of this chapter shall not preclude the imposition of criminal penalties pursuant to section 188-70, HRS, or as may be otherwise provided by law. [Eff 11/1/14] (Auth: HRS §§187A-5, 188-53) (Imp: HRS §§187A-5, 187A-12.5, 188-53, 188-70)

§13-95.1-3 Scope. (a) Unless expressly provided otherwise, the scope of jurisdiction for subchapter 2 shall be as follows:

Subchapter 2 shall apply to the take or possession of aquatic life from, in, or on the lands or waters of Maui island subject to state jurisdiction or control. For purposes of this section, "waters of Maui island" means all ocean waters within three nautical miles seaward from the highest wash of the waves on the shores of Maui, excluding all waters within two nautical miles from the shores of Kaho'olawe island, as shown on Exhibit 1 entitled "Map of Maui Island Fisheries", dated May 19, 2014, and located at the end of this chapter.

(b) Nothing in this chapter shall restrict the State's claims to jurisdiction and authority over its marine waters.

(c) The take and possession provisions of this chapter supersede any conflicting take or possession provisions in chapter 13-95. [Eff 11/1/14] (Auth: HRS §§187A-5, 188-53) (Imp: HRS §§187A-1.5, 188-22.5, 187A-5, 188-53)

§13-95.1-4 Exceptions. (a) The prohibitions of this chapter shall not apply to authorized employees of the department when acting in the course of their official duties, departmental agents and contractors engaged in authorized departmental activities, or to any persons conducting activities permitted under a valid license or permit listed under section 13-95-1.1 that expressly refers to this chapter.

(b) Native Hawaiian traditional and customary rights recognized under article XII, section 7, of the Hawaii State Constitution shall not be abridged.

(c) For the purposes of this chapter, any commercial marine dealer may possess more than the allowed number of aquatic specimens, only if the specimens were purchased from other individual(s) with:

- (1) A valid commercial marine license; or
- (2) A valid special marine product license;

and has receipts issued for each purchase pursuant to section 189-11, HRS. Receipts shall include the first and last name and license number of the person to whom the receipt is issued. [Eff 11/1/14] (Auth: HRS §§187A-3.5, 187A-5, 187A-6, 189-2, 189-6) (Imp: HRS §§187A-3.5, 187A-5, 187A-6, 188-53, 189-2, 189-6, 189-11)

§13-95.1-5 Severability. If any provision of this chapter, or the application thereof to any person or circumstances, is held invalid, the remaining provisions, or application of the provisions which can be given effect without the invalid provision or application, shall not be affected. [Eff 11/1/14] (Auth: HRS §§187A-5, 188-53) (Imp: HRS §§187A-5, 188-53)

## SUBCHAPTER 2

### MAUI ISLAND FISHERIES

§13-95.1-20 Goatfish. (a) No person may take or possess any kūmū, moano kea, or weke nono less than twelve inches in length.

(b) Except as provided in subsection (f), no person may take or possess any other goatfish less than eight inches in length.

(c) No person may take more than one kūmū per day, or possess more than one kūmū at any one time.

(d) No person may take more than two moano kea per day, or possess more than two moano kea at any one time.

(e) No person may take more than two munu per day, or possess more than two munu at any one time.

(f) Notwithstanding subsection (b), any person may take up to fifty 'oama per day, or possess up to fifty 'oama at any one time, provided that no 'oama may be taken by any means other than hook-and-line fishing.



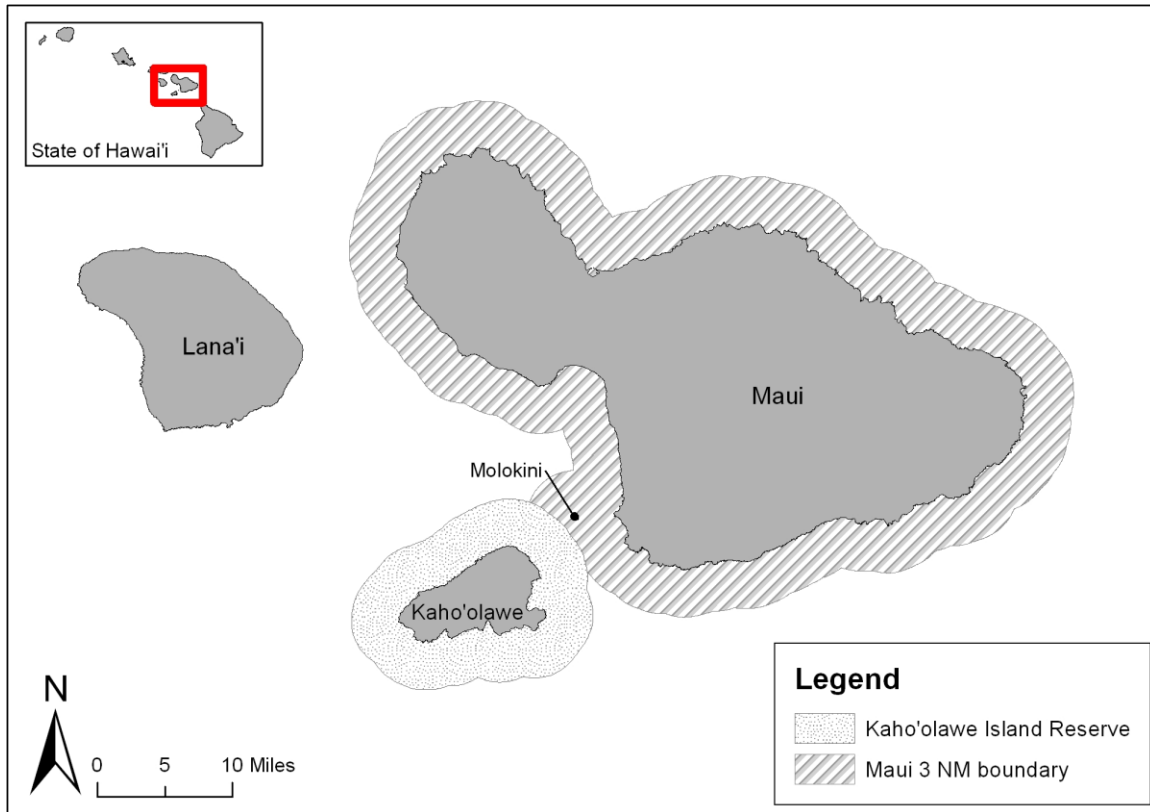
(g) No person may sell any 'oama at any time.  
[Eff 11/1/14] (Auth: HRS §§187A-5, 188-53) (Imp: HRS  
§§187A-5, 188-53)

§13-95.1-21 Uhu. (a) No person may take or  
possess any uhu 'ele'ele or uhu uliuli at any time.

(b) No person may take or possess any uhu  
pālukaluka or any uhu 'ahu'ula less than fourteen  
inches in length.

(c) Any other department size restriction  
notwithstanding, subject to subsections (a) and (b),  
any person may take any other uhu greater than ten  
inches in length.

(d) No person may take more than two uhu of any  
variety per day, or possess more than two uhu of any  
variety at any one time. [Eff 11/1/14] (Auth: HRS  
§§187A-5, 188-53) (Imp: HRS §§187A-5, 188-53)

**Exhibit 1. Map of Maui Island Fisheries (May 19, 2014)**

NOTE: The Maui Island Fisheries rules do NOT apply to waters within two nautical miles of Kaho'olawe island (which are governed by the Kaho'olawe Island Reserve Commission's separate authority, Hawaii Administrative Rules chapter 13-261).

## **Added**

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

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

Rules Amending Title 13  
Hawaii Administrative Rules

December 12, 2014

1. Chapter 124 of Title 13, Hawaii Administrative Rules, entitled "Indigenous Wildlife, Endangered and Threatened Wildlife, and Introduced Wild Birds" is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 5

FORESTRY AND WILDLIFE

PART 2

WILDLIFE

CHAPTER 124

INDIGENOUS WILDLIFE, ENDANGERED AND THREATENED  
WILDLIFE, INJURIOUS WILDLIFE, [AND] INTRODUCED WILD  
BIRDS, AND INTRODUCED WILDLIFE

Subchapter 1 General Provisions

\$13-124-1	Purpose
\$13-124-2	Definitions
\$13-124-2.1	Revocation of permits
\$13-124-2.2	Compliance with laws
\$13-124-2.3	Exemption
\$13-124-2.4	Severability

Subchapter 2 Indigenous, Injurious, Introduced  
Wild Birds, and Introduced Wildlife

- §13-124-3 Prohibited activities
- §13-124-4 Scientific, propagation, and  
educational permits
- §13-124-5 Repealed
- §13-124-6 Permits for keeping indigenous wildlife,  
introduced wild birds, game birds, and  
game mammals
- §13-124-7 Crop damage, nuisance, and threat to  
human health and safety permits
- §13-124-8 Penalty

Subchapter 3 Endangered and Threatened  
Wildlife

- §13-124-11 Prohibited activities
- §13-124-12 Scientific, propagation, and  
educational permits
- §13-124-13 Penalty

Historical Note: Chapter 13-124, Hawaii  
Administrative Rules, is based substantially upon  
Regulation 18 of the Division of Fish and Game,  
Department of Land and Natural Resources. [Eff 8/10/53;  
am 10/10/55; am 3/28/58 and ren Regulation 6; am  
9/8/73; R 3/22/82]

SUBCHAPTER 1

GENERAL PROVISIONS

§13-124-1 Purpose. The purpose of this  
chapter is to conserve, manage, protect, and enhance  
indigenous wildlife; and manage introduced wild  
birds. [Eff 3/22/82; am and comp 8/28/86; am and comp  
3/2/98; comp ] (Auth: HRS\$\$ 183D-2,  
183D-3, 183D-61, 195D-3, 195D-4, 195D-6) (Imp: HRS\$\$

~~§13-124-10 Severability. These rules are declared to be severable and if any portion or the application thereof to any person or property is held invalid for any reason, the validity of the remainder of these rules or the application of the remainder to other persons or property shall not be affected.~~ [Eff 3/2/98; R ] (Auth: HRS §§183D-2, 183D-3)  
(Imp: HRS §§183D-2, 183D-3)

### SUBCHAPTER 3

#### ENDANGERED AND THREATENED WILDLIFE

§13-124-11 Prohibited activities. (a)  
With respect to endangered and threatened species of wildlife except as provided in subsection (c) or as permitted by the department, no person shall or attempt to:

- (1) Take, possess, process, sell, offer for sale, or transport any such species, any young or egg, or the dead body or skin thereof within the State; or
- (2) Export any such species, or any young or egg, or the dead body or parts thereof, from the State.

(b) No person shall remove, damage, or disturb the nest of any endangered or threatened species except as provided in subsection (c) or as permitted by the department.

(c) The prohibited activities in this section shall not apply to:

- (1) Authorized employees of the department;
- (2) Enforcement agents, researchers, and inspectors of the department of agriculture and United States Fish and Wildlife Service when acting in the course of their official duties; or
- (3) Persons authorized by the board or its authorized representative and as provided elsewhere in this chapter. [Eff and comp

] (Auth: HRS



§§183D-8, 183D-61, 183D-64, 195D-3, 195D-4, 195D-5, 195D-6) (Imp: HRS §§183D-8, 183D-61, 183D-64, 195D-3, 195D-4, 195D-5, 195D-6)

§13-124-12 Scientific, propagation, and educational permits. (a) Permits for collecting, possessing, killing, selling or offering for sale, and transporting threatened wildlife may be issued by the board or its authorized representative for scientific or educational purposes including cultural activities, or for activities which will enhance the survival of the wildlife species.

(b) Permits to take, possess, process, sell or offer for sale, transport, or export any endangered species of wildlife may be issued only for scientific purposes or to enhance the propagation or survival of the wildlife species, except permits to possess legally obtained endangered species may be issued for educational purposes which enhance the survival of that species. [Eff and comp ] (Auth: HRS §§183D-6, 183D-61, 195D-3, 195D-4, 195D-5, 195D-6) (Imp: HRS §§183D-6, 183D-6, 183D-61, 195D-3, 195D-4, 195D-5, 195D-6)

§13-124-13 Penalty. (a) Any person who violates any of the provisions of this subchapter shall be guilty of a misdemeanor and shall be punished as follows:

- (1) For a first offense by a fine of not less than \$250 or by imprisonment of not more than one year, or both; and
- (2) For a second or subsequent offense within five years of a previous conviction by a fine of not less than \$500 or by imprisonment of not more than one year, or both.

(b) In addition to the above penalties, except for violations under approved habitat conservation plans under section HRS 195D-21 or approved safe harbor agreements under section HRS 195D-22 as

determined by the board, a fine of \$5,000 for each specimen of a threatened species and \$10,000 for each specimen of an endangered species intentionally, knowingly, or recklessly killed or removed from its original growing location, shall be levied against the convicted person.

(c) The disposition of fines collected for violations of the provisions concerning wildlife conservation shall be subject to HRS 183D-10.5.

(d) Except as otherwise provided by law, the board or its authorized representative by proper delegation is authorized to set, charge, and collect administrative fines or bring legal action to recover administrative fees and costs as documented by receipts or affidavit, including attorneys' fees and costs, or bring legal action to recover administrative fines, fees, and costs, including attorneys' fees and costs, or payment for damages or for the cost to correct damages resulting from a violation of this chapter. The administrative fines shall be as follows:

- (1) For a first violation, a fine of not more than \$2,500;
- (2) For a second violation within five years of a previous violation, a fine of not more than \$5,000; and
- (3) For a third or subsequent violation within five years of the last violation, a fine of not more than \$10,000.

(e) In addition, an administrative fine of up to \$5,000 may be levied for each specimen of wildlife or plant taken, killed, injured, or damaged in violation of this chapter.

(f) Any criminal action against a person for any violation of this chapter shall not be deemed to preclude the State from pursuing civil legal action to recover administrative fines and costs against that person. Any civil legal action against a person to recover administrative fines and costs for any violation of this chapter shall not be deemed to preclude the State from pursuing any criminal action against that person.



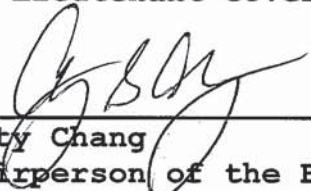
(g) Any equipment, article, instrument, aircraft, vehicle, vessel, business record or natural resource used or taken in violation of the provisions of this chapter may be seized and subject to forfeiture as provided by HRS section 199-7 and chapter 712A." [Eff and comp ] (Auth: HRS §§195D-3, 195D-4, 195D-6, 195D-7, 195D-8, 195D-9, 199-7, 712A-4, 712A-6) (Imp: HRS §§195D-3, 195D-4, 195D-6, 195D-7, 195D-8, 195D-9, 199-7, 712A-4, 712A-6)

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

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

4. These amendments to and compilation of chapter 124, Hawaii Administrative Rules shall take effects ten days after filing with the Office of the Lieutenant Governor.

**I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on December 12, 2014 and filed with the Office of the Lieutenant Governor.**

  
\_\_\_\_\_  
**Carty Chang**  
**Chairperson of the Board of**  
**Land and Natural Resources**

APPROVED AS TO FORM

  
\_\_\_\_\_  
Deputy Attorney General

**UNOFFICIAL COPY**

An official copy can be  
obtained from the DLNR  
808-587-0166

HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 5

FORESTRY AND WILDLIFE

PART 2

WILDLIFE

CHAPTER 124

INDIGENOUS WILDLIFE, ENDANGERED AND THREATENED  
WILDLIFE, INJURIOUS WILDLIFE, INTRODUCED WILD BIRDS,  
AND INTRODUCED WILDLIFE

Subchapter 1 General Provisions

§13-124-1	Purpose
§13-124-2	Definitions
§13-124-2.1	Revocation of permits
§13-124-2.2	Compliance with laws
§13-124-2.3	Exemption
§13-124-2.4	Severability

Subchapter 2 Indigenous, Injurious, Introduced  
Wild Birds, and Introduced Wildlife

§13-124-3	Prohibited activities
§13-124-4	Scientific, propagation, and educational permits
§13-124-5	Repealed
§13-124-6	Permits for keeping indigenous wildlife, introduced wild birds, game birds, and game mammals

§13-124-7           Crop damage, nuisance, and threat to  
                      human health and safety permits  
§13-124-8           Penalty

Subchapter 3   Endangered and Threatened  
                      Wildlife

§13-124-11          Prohibited activities  
§13-124-12          Scientific, propagation, and  
                      educational permits  
§13-124-13          Penalty

Historical Note: Chapter 13-124, Hawaii  
Administrative Rules, is based substantially upon  
Regulation 18 of the Division of Fish and Game,  
Department of Land and Natural Resources. [Eff 8/10/53;  
am 10/10/55; am 3/28/58 and ren Regulation 6; am  
9/8/73; R 3/22/82]

SUBCHAPTER 1

GENERAL PROVISIONS

§13-124-1   Purpose.   The purpose of this  
chapter is to conserve, manage, protect, and enhance  
indigenous wildlife; and manage introduced wild  
birds. [Eff 3/22/82; am and comp 8/28/86; am and comp  
3/2/98; comp   FEB272015 ] (Auth: HRS §§ 183D-2, 183D-  
3, 183D-61, 195D-3, 195D-4, 195D-6) (Imp: HRS §§ 183D-  
2, 183D-3, 195D-3, 195D-4, 195D-6)

§13-124-2   Definitions.   As used in this chapter  
unless the context requires otherwise:

"Agriculture" means the production of crops which  
are planted, cultivated, and harvested for food,  
ornamental, grazing, cultural, medicinal or forest  
purposes.

"Aquaculture" means the farming or ranching of

### SUBCHAPTER 3

#### ENDANGERED AND THREATENED WILDLIFE

##### §13-124-11 Prohibited activities. (a)

With respect to endangered and threatened species of wildlife except as provided in subsection (c) or as permitted by the department, no person shall or attempt to:

- (1) Take, possess, process, sell, offer for sale, or transport any such species, any young or egg, or the dead body or skin thereof within the State; or
- (2) Export any such species, or any young or egg, or the dead body or parts thereof, from the State.

(b) No person shall remove, damage, or disturb the nest of any endangered or threatened species except as provided in subsection (c) or as permitted by the department.

(c) The prohibited activities in this section shall not apply to:

- (1) Authorized employees of the department;
- (2) Enforcement agents, researchers, and inspectors of the department of agriculture and United States Fish and Wildlife Service when acting in the course of their official duties; or
- (3) Persons authorized by the board or its authorized representative and as provided elsewhere in this chapter.[Eff and comp FEB 27 2015] (Auth: HRS §§183D-8, 183D-61, 183D-64, 195D-3, 195D-4, 195D-5, 195D-6) (Imp: HRS §§183D-8, 183D-61, 183D-64, 195D-3, 195D-4, 195D-5, 195D-6)

§13-124-12 Scientific, propagation, and educational permits. (a) Permits for collecting, possessing, killing, selling or offering for sale, and transporting threatened wildlife may be issued by the

board or its authorized representative for scientific or educational purposes including cultural activities, or for activities which will enhance the survival of the wildlife species.

(b) Permits to take, possess, process, sell or offer for sale, transport, or export any endangered species of wildlife may be issued only for scientific purposes or to enhance the propagation or survival of the wildlife species, except permits to possess legally obtained endangered species may be issued for educational purposes which enhance the survival of that species. [Eff and comp FEB272015] (Auth: HRS §§183D-6, 183D-61, 195D-3, 195D-4, 195D-5, 195D-6) (Imp: HRS §§183D-6, 183D-6, 183D-61, 195D-3, 195D-4, 195D-5, 195D-6)

§13-124-13 Penalty. (a) Any person who violates any of the provisions of this subchapter shall be guilty of a misdemeanor and shall be punished as follows:

- (1) For a first offense by a fine of not less than \$250 or by imprisonment of not more than one year, or both; and
- (2) For a second or subsequent offense within five years of a previous conviction by a fine of not less than \$500 or by imprisonment of not more than one year, or both.

(b) In addition to the above penalties, except for violations under approved habitat conservation plans under section HRS 195D-21 or approved safe harbor agreements under section HRS 195D-22 as determined by the board, a fine of \$5,000 for each specimen of a threatened species and \$10,000 for each specimen of an endangered species intentionally, knowingly, or recklessly killed or removed from its original growing location, shall be levied against the convicted person.

(c) The disposition of fines collected for violations of the provisions concerning wildlife conservation shall be subject to HRS 183D-10.5.

(d) Except as otherwise provided by law, the board or its authorized representative by proper delegation is authorized to set, charge, and collect administrative fines or bring legal action to recover administrative fees and costs as documented by receipts or affidavit, including attorneys' fees and costs, or bring legal action to recover administrative fines, fees, and costs, including attorneys' fees and costs, or payment for damages or for the cost to correct damages resulting from a violation of this chapter. The administrative fines shall be as follows:

- (1) For a first violation, a fine of not more than \$2,500;
- (2) For a second violation within five years of a previous violation, a fine of not more than \$5,000; and
- (3) For a third or subsequent violation within five years of the last violation, a fine of not more than \$10,000.

(e) In addition, an administrative fine of up to \$5,000 may be levied for each specimen of wildlife or plant taken, killed, injured, or damaged in violation of this chapter.

(f) Any criminal action against a person for any violation of this chapter shall not be deemed to preclude the State from pursuing civil legal action to recover administrative fines and costs against that person. Any civil legal action against a person to recover administrative fines and costs for any violation of this chapter shall not be deemed to preclude the State from pursuing any criminal action against that person.

(g) Any equipment, article, instrument, aircraft, vehicle, vessel, business record or natural resource used or taken in violation of the provisions of this chapter may be seized and subject to forfeiture as provided by HRS section 199-7 and chapter 712A. [Eff and comp FEB272015](Auth: HRS §§195D-3, 195D-4, 195D-6, 195D-7, 195D-8, 195D-9, 199-7, 712A-4, 712A-6) (Imp: HRS §§195D-3, 195D-4, 195D-6, 195D-7, 195D-8, 195D-9, 199-7, 712A-4, 712A-6)

DEPARTMENT OF LAND AND NATURAL RESOURCES

Amendments to and compilation of chapter 124, title 13, Hawaii Administrative Rules Regulating Indigenous Wildlife, Endangered and Threatened Wildlife, Injurious Wildlife, Introduced Wild Birds, and Introduced Wildlife on the Summary Page dated December 12, 2014 were adopted on December 12, 2014 following public hearings held on March 27, 28, and April 1, 2, 3, 4 and 5 after public notice was given on February 17, 2013, in the Sunday editions of The Honolulu Star-Advertiser, The Garden Island, The Maui News, West Hawaii Today, and Hawaii Tribune-Herald.

They shall take effect ten days after filing with the Office of the Lieutenant Governor.

/S/ Carty S. Chang  
CARTY S. CHANG  
Chairperson of the Board  
Land and Natural Resources

/S/ David Ige  
David Ige  
Governor  
State of Hawaii

Date: Filed with the Office  
of Lieutenant Governor,  
February 17 2015

Approved as to form

/S/ Linda Chow  
Deputy Attorney General

# **Added**

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

Relating to **Dams and Reservoirs**



DEPARTMENT OF LAND AND NATURAL RESOURCES

Repeal of Chapter 13-190 and Adoption of Chapter 13-190.1  
HAWAII ADMINISTRATIVE RULES

November 22, 2010  
(adoption date)

SUMMARY

1. Chapter 13-190, Hawaii Administrative Rules, consisting of §§13-190-1 to 13-190-42 is repealed.
2. Chapter 13-190.1, Hawaii Administrative Rules, entitled "Dams and Reservoirs", is adopted.

This is to certify that this is a true  
and correct copy of the document  
on file in the office of the State  
Department of Land and Natural  
Resources, Honolulu, Hawaii

MAR 14 2012

  
\_\_\_\_\_



TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 7

WATER AND LAND DEVELOPMENT

CHAPTER 190

DAMS AND RESERVOIRS

Repealed

§§13-190-1 to 13-190-42 Repealed. [R FEB 20 2012 ]



HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 7

WATER AND LAND DEVELOPMENT

CHAPTER 190.1

DAMS AND RESERVOIRS

Subchapter 1 General Provisions

- \$13-190.1-1 Purpose and applicability
- \$13-190.1-2 Definitions
- \$13-190.1-3 Exempt structures
- \$13-190.1-4 Minimum design requirements
- \$13-190.1-5 Violations; penalties
- \$13-190.1-5.1 Criminal violations; penalties
- \$13-190.1-6 Administrative and judicial review
- \$13-190.1-7 Inspections
- \$13-190.1-8 Change in ownership
- \$13-190.1-9 Variances
- \$13-190.1-10 Severability

Subchapter 2 Certificate of Approval to Impound

- \$13-190.1-11 Certificates of approval to impound
- \$13-190.1-12 Applications for certificate of approval to impound
- \$13-190.1-13 Notice
- \$13-190.1-14 Application review process
- \$13-190.1-15 Noncompliance
- \$13-190.1-16 Transferability

Subchapter 3 Construction, Enlargement, Repair, Alteration, or Removal of Dams and Reservoirs

- \$13-190.1-20 General requirements for construction, enlargement, repair, alteration, or removal of a dam, reservoir, or appurtenant works
- \$13-190.1-21 Additional requirements for removal of dam or reservoir
- \$13-190.1-22 Supervision of plans preparation and observation of construction
- \$13-190.1-23 Permit application approval
- \$13-190.1-24 Revocation of approval

#### Subchapter 4 Construction, Inspection, and Completion

- \$13-190.1-30 General construction requirements for construction, enlargement, repair, alteration, or removal of a dam, reservoir, or appurtenant works
- \$13-190.1-31 Construction completion and acceptance for the construction, enlargement, repair, alteration, or removal of a dam, reservoir, or appurtenant works
- \$13-190.1-32 Complaints as to unsafe conditions during construction

#### Subchapter 5 Maintenance, Operation, and Emergency Work

- \$13-190.1-40 Maintenance and operation
- \$13-190.1-40.1 Operation and maintenance plan
- \$13-190.1-41 Emergency work
- \$13-190.1-41.1 Emergency action by department
- \$13-190.1-42 Emergency action plan

#### Subchapter 6 Remedies

- \$13-190.1-43 Liens
- \$13-190.1-44 Injunctive relief
- \$13-190.1-45 Department action when multiple owners cannot mutually agree

Subchapter 7 Entry Upon Property

§13-190.1-46 Entry upon property

Subchapter 8 Fees

§13-190.1-50 Dam permit application fees for  
construction, repair, alteration, or  
removal

§13-190.1-51 Certificate of approval to impound fee

§13-190.1-52 Annual fees

SUBCHAPTER 1

GENERAL PROVISIONS

§13-190.1-1 Purpose and applicability. (a) The purpose of this chapter is to establish rules for the inspection and regulation of the design, construction, operation, maintenance, enlargement, alteration, repair, and removal of dams, reservoirs, and appurtenant works in the State to protect the health, safety, and welfare of the citizens of the State by reducing the risk of failure of the dams or reservoirs.

(b) This chapter shall not apply to any artificial barrier which is less than six feet in height regardless of storage capacity or which has a storage capacity at maximum water storage elevation less than fifteen acre-feet regardless of height, unless such a barrier, due to its location or other physical characteristics, is a high hazard.

(c) The board shall have jurisdiction of all dams and reservoirs until the department has completed its statewide inspections and has established and implemented rules and criteria for a five-year dams and reservoirs inspection and classification process and the board declares which dams or reservoirs are to be removed from its jurisdiction. [Eff. FEB 20 2012 ]  
(Auth: HRS §179D-6) (Imp: HRS §179D-2)

§13-190.1-2 Definitions. As used in this chapter unless otherwise provided:

"Alteration" means a change to an existing dam or reservoir from the originally approved construction plans and specifications or current condition.

"Application approval" means authorization in writing issued by the board to an owner who has applied to the board for permission to construct, enlarge, repair, alter, remove, maintain, or operate a dam or reservoir and which specifies the conditions or limitations under which work is to be performed by the owner or under which approval is granted.

"Appurtenant works" or "appurtenance" means any structure, such as spillways in the dam or separate therefrom, the reservoir and its rim, including artificial or natural barriers that function as the rim, low level outlet works, and water conduits, such as tunnels, pipelines, or penstocks, through the dam or its abutment that is anticipated to affect the structural integrity of the dam or reservoir.

"Board" means the board of land and natural resources.

"Certificate of approval to impound" means authorization in writing issued by the board to an owner of an existing dam or reservoir, or an owner who has completed construction, enlargement, repair, or alteration of a dam or reservoir, that specifies the conditions or limitations under which the dam or reservoir is to be maintained and operated.

"Dam" means any artificial barrier, including appurtenant works, which impounds or diverts water and:

- (1) Is twenty-five feet or more in height from the natural bed of the stream or watercourse measured at the downstream toe of the barrier, or from the lowest elevation of the outside limit of the barrier if it is not across a stream channel or watercourse, to a maximum water storage elevation;



- (2) Has an impounding capacity at maximum water storage elevation of fifty acre-feet or more. This chapter shall not apply to any artificial barrier which is less than six feet in height regardless of storage capacity or which has a storage capacity at maximum water storage elevation less than fifteen acre-feet regardless of height;
- (3) Was included in circular C 122 (Revised) entitled "Dams within the jurisdiction of the State of Hawaii" dated September 1998;
- (4) Any facility that has two or more reservoirs that operate or function as a single facility or are connected together with an uncontrolled conduit, which shall be construed to be one dam or reservoir. The highest height of any of the embankments and the combined maximum storage volume shall be used as the criteria for determining if the structure is a dam under this chapter; or
- (5) Is a natural structure that retains water and has been altered by the addition of an outlet works and has a maximum storage volume greater than fifty acre-feet.

"Department" means the department of land and natural resources.

"Design water level" means the water elevation that a dam is designed to store, including the flood surcharge, that a dam is designed to impound without overtopping the dam crest. The design water level shall not include freeboard.

"Emergency" means, but is not limited to, breaches and all conditions leading to or causing a breach, overtopping, or any other condition in a dam and its appurtenant structures that may be construed as unsafe or threatening to life or property.

"Engineer" means a registered professional engineer, licensed by the State of Hawaii, and who has experience with dam design and construction.

"Enlargement" means any change in or addition to an existing dam or reservoir which raises or may raise the maximum water storage elevation of the reservoir.

"Freeboard" means the vertical distance above the maximum water surface during the peak discharge in the emergency spillway during the inflow design flood (IDF) to the lowest point on the crest of the dam at which water would flow over the dam at a section not designed for overflow.

"Hazard potential" means the possible adverse incremental consequences that result from the release of water or stored contents due to the failure of the dam or reservoir or operational failures of the dam, reservoir, or appurtenances. The hazard potential classification of a dam or reservoir shall not reflect in any way on the current condition of the dam or reservoir and its appurtenant works, including the dam's or reservoir's safety, structural integrity, or flood routing capacity.

"High hazard" means a dam's or reservoir's failure will result in probable loss of human life.

"Inflow design flood" is the flood hydrograph used in the design or evaluation of a dam, its appurtenant works particularly for sizing the spillway and outlet works, with which the upper limit of the inflow design flood is the probable maximum flood.

"Low hazard" means a dam's or reservoir's failure would result in no probable loss of human life and low economic loss or environmental loss, or both. Economic losses are principally limited to the owner's property.

"Maximum water storage elevation" means the maximum water surface elevation that can be hydrologically attained in the reservoir, or at the dam crest elevation if hydrologic loading is unknown.

"Operator" means any person who controls, manages, maintains, or supervises the condition and functions of a dam or reservoir.

"Outlet works" means a tunnel or pipe/conduit (low level outlet) that is used to drain the reservoir and often used to regulate flow to downstream users.

"Owner" means any person who has a right, title, or interest in or to the dam or reservoir or to the property upon which the dam or appurtenant works is located or proposed to be located.

"Person" means any natural person, partnership, firm, association, organization, corporation, county, county authority, trust, receiver or trustee, limited liability company, limited liability partnership, or company, or any state department, agency, or political subdivision, or any other commercial or legal entity. Whenever used in a section prescribing and imposing a penalty or sanction, the term "person" shall include the members of an association or organization, and the officers of a corporation, company, municipality, or municipal authority.

"Physical clear access" means a roadway or path that allows timely access for inspection to a dam, reservoir, and its appurtenant works. If by a roadway, the roadway shall be maintained in an accessible condition by a four-wheel-drive vehicle even during inclement weather conditions.

"Probable" means more likely than not to occur, reasonably expected, realistic.

"Removal" means complete removal or partial removal of the dam or reservoir embankment or structure to restore the approximate original topographic contours of the valley.

"Repair" means construction to an existing dam or appurtenant works that does not significantly change the reservoir's storage capacity or alter significantly the existing structure as it exists. Repair shall not apply to routine maintenance not affecting the safety of the dam or appurtenant works.

"Reservoir" means any basin which contains or will contain water impounded by a dam, including appurtenant works.

"Significant hazard" means a dam's or reservoir's failure will result in no probable loss of human life but can cause major economic loss, environmental damage, disruption of lifeline facilities, or impact other concerns. Significant hazard potential classification dams or reservoirs are often located in predominantly rural or agricultural areas but could be located in areas with population and significant infrastructure.

"Spillway" means a device which conveys flood waters from the reservoir past the dam without endangering its safety or integrity.

"Spillway crest" means the lowest point in the spillway above which water can flow over or through the spillway.

"Storage capacity" means the maximum volume of water and material which could be impounded by a dam when the water level is at the top of the dam or at the highest elevation which could be hydrologically attained, if this elevation is below the top of dam. [Eff. FEB 20 2012 ] (Auth: HRS §179D-6) (Imp: HRS §179D-3)

#### §13-190.1-3 Exempt structures.

Structures exempt from these rules include:

- (1) A transportation structure such as a highway or road fill that exists solely for transportation purposes;
- (2) Refuse embankments (e.g., solid waste disposal facilities); and
- (3) Structures that store water only below the lowest point of the natural ground, unless the structure retains more than fifteen acre-feet and an outlet works is constructed to release water. [Eff. FEB 20 2012 ]  
(Auth: HRS §179D-6) (Imp: HRS §179D-6)

#### §13-190.1-4 Minimum design requirements. (a)

Regulated dams and reservoirs shall incorporate the following minimum design requirements:

- (1) Embankment slopes that are not steeper than 2.5 horizontal to 1 vertical unless a specific design for a steeper slope shows that the embankment is stable and capable of being safely maintained;
- (2) An embankment crest that has a minimum width of ten feet;

- (3) Earthen spillways that are constructed in natural ground; and
- (4) A low level outlet shall be designed to drain the reservoir by gravity flow.
- (b) Significant and high hazard dams shall also have a stability analysis of the structure demonstrating the stability of the embankment slopes for various loading conditions and minimum factors of safety generated by a methodology accepted by the department.
- (c) Regulated dam spillways shall safely pass the appropriate inflow design flood, as shown in the following table:

Hazard Classification	Size Classification	Inflow design flood
Low	Small	100 year
	Intermediate	100 year
	Large	$\frac{1}{2}$ PMF
Significant	Small	$\frac{1}{2}$ PMF
	Intermediate	$\frac{1}{2}$ PMF
	Large	PMF
High	All Sizes	PMF

Category	Impoundment	
	Storage (Acre-feet)	Height (feet)
Small	<1000 and $\geq 50$	<40 and $\geq 25$
Intermediate	$\geq 1,000$ and <50,000	$\geq 40$ and <100
Large	$\geq 50,000$	$\geq 100$

**Note:** "PMF" or "Probable Maximum Flood", is defined as the flood that may be expected from the most severe combination of critical meteorologic and hydrologic conditions that are reasonably possible in the region. The PMF is derived from the 24-hour probable maximum precipitation (PMP), which information is available from the National Weather Service, NOAA, Publication HMR-39, "Hydrometeorological Report No. 39 - Probable Maximum

Precipitation in the Hawaiian Islands", or current standard.  $\frac{1}{2}$  PMF = PMF divided by two. "100 year" is defined as the flood associated with the 1 per cent probability storm event that is derived from the 24-hour 100-year precipitation rate, which is identified in the US Weather Bureau Technical Paper No. 43 Rainfall-Frequency Atlas of the Hawaiian Islands and as updated by NOAA Atlas 14, Volume 4 Precipitation-Frequency Atlas of the United States, Hawaiian Islands, or current standard.

(d) Freeboard shall be the greater of the following:

- (1) Two feet above the water level during the peak spillway flow associated with the inflow design flood;
- (2) Sum of the wave run-up and reservoir setup resulting from a 100 miles per hour wind speed during the peak spillway flow associated with the inflow design flood.  
[Eff. FEB 20 2012 ] (Auth: HRS §179D-6)  
(Imp: HRS §179D-6)

§13-190.1-5 Violations; penalties. (a) Except as otherwise provided by law, the board may set, charge, and collect administrative penalties and recover administrative fees and costs, including attorney's fees and costs, or bring legal action to recover administrative penalties, fees, and costs, including attorney's fees and costs, or payment for damages or for the cost to correct damages resulting from a violation of chapter 179D, HRS, this chapter, or any order or condition adopted, issued, or required under this chapter. The administrative penalty shall not exceed \$25,000 per day of a violation, and each day during which the violation continues shall constitute an additional, separate, and distinct violation. Proceedings under this section shall be conducted pursuant to the administrative rules for the department.

(b) With the assistance of the attorney general, the board may seek an injunction and damages in the enforcement of this chapter.

(c) All penalties, fees, and costs collected pursuant to this section or other rules adopted by the board pursuant to chapter 179D, HRS, shall be deposited in the dam and reservoir safety special fund. [Eff. FEB 20 2012 ] (Auth: HRS §§179D-6, 179D-8) (Imp: HRS §179D-8)

§13-190.1-5.1 Criminal violations; penalties.  
Criminal sanctions regarding violations of this chapter and chapter 179D, HRS, are as provided in section 179D-8, HRS. [Eff. FEB 20 2012 ] (Auth: HRS §179D-8) (Imp: HRS §179D-8)

§13-190.1-6 Administrative and judicial review.  
(a) The findings and orders of the board, and the board's approval or disapproval of an application issued by the State are final, conclusive, and binding upon all owners, state agencies, and other government agencies, regulatory or otherwise, as to the safety of design, construction, enlargement, repair, alteration, removal, maintenance, or operation of any dam or reservoir, and the certificate of approval to impound. The board's approval of an application or a certificate of approval to impound will not be considered final if it can be demonstrated to the board that the board's approval of the relevant application or certificate of approval was based on one or more misrepresentations or other relevant data.

(b) Any person aggrieved or adversely affected by an order or action of the board is entitled to administrative and judicial review in accordance with chapter 91, HRS, and the department's applicable administrative rules on administrative and judicial review in effect at the time, provided, however, that the order or action shall remain in force until

modified or set aside on appeal. [Eff. FEB 20 2012 ]  
(Auth: HRS §179D-8) (Imp: HRS §179D-7)

§13-190.1-7 Inspections. Any inspections done pursuant to this chapter shall use the current guidelines developed by the department. [Eff.

FEB 20 2012 ] (Auth: HRS §179D-6) (Imp: HRS §179D-6)

§13-190.1-8 Change in ownership. Changes in ownership of a dam shall be filed with the department by the transferring owner within seven days of recordation with the bureau of conveyances of the State of Hawaii. [Eff. FEB 20 2012 ] (Auth: HRS §179D-6) (Imp: HRS §179D-6)

§13-190.1-9 Variances. The board or department may, upon a showing of good cause, grant a variance from any provision of this chapter, including, without limitation, an extension of time to comply with any such provision. [Eff. FEB 20 2012 ] (Auth: HRS §179D-6) (Imp: HRS §179D-6)

§13-190.1-10 Severability. If any portion of these rules is found to be invalid, the remaining portion of the rules shall remain in force. [Eff. FEB 20 2012 ] (Auth: HRS §179D-6) (Imp: HRS §179D-6)



## SUBCHAPTER 2

### CERTIFICATE OF APPROVAL TO IMPOUND

§13-190.1-11 Certificates of approval to impound. No owner of a dam or reservoir shall impound water without a valid certificate of approval to impound water at the dam or reservoir. A certificate of approval to impound shall be valid for five years from the date of issuance, unless otherwise stated by the department, and provided all conditions of the certificate are fulfilled and maintained to the satisfaction of the department. [Eff. FEB 20 2012 ]  
(Auth: HRS §179D-6) (Imp: HRS §179D-21)

§13-190.1-12 Applications for certificate of approval to impound. (a) Every owner of a dam or reservoir that is a regulated structure as defined in section 13-190.1-2 shall file an application for a certificate of approval to impound.

(b) All applications shall be submitted with supporting information as required by the department.

(c) Each application shall also be accompanied by application fees as required by subchapter 8.

(d) During the application process for the initial certificate of approval to impound, the owner or operator of a dam or reservoir that was completed prior to July 6, 2007, shall be allowed to impound water, unless the board determines that the dam or reservoir may pose a danger to the health and safety of persons or property. [Eff. FEB 20 2012 ] (Auth: HRS §179D-6) (Imp: HRS §179D-21)

§13-190.1-13 Notice. (a) The board shall give notice to file an application for certificate of approval to impound to owners of dams or reservoirs known to the department, who have failed to file such applications as required by this chapter.

(b) The notice provided for in this section shall be delivered by certified mail to the owner at the owner's last address of record in the office of the county tax assessor for the county in which the dam or reservoir is located.

(c) Service of the notice shall be complete upon the mailing of the notice.

(d) All owners shall submit an application for certificate of approval to impound water within ninety days from the date of the notice, unless the owner has filed a request for exemption. An owner who fails to submit an application for certificate of approval to impound within ninety days from the date of notice shall be deemed in violation of these rules and subject to penalties consistent with sections 13-190.1-5 and 13-190.1-5.1. [Eff. FEB 20 2012 ] (Auth: HRS §179D-6) (Imp: HRS §179D-27)

§13-190.1-14 Application review process. (a) The department shall inspect the dams and reservoirs, unless the data, records, and inspection reports on file with the department are found adequate to enable a determination of whether or not the certificate of approval to impound should be issued.

(b) The department shall require owners of the dams and reservoirs to perform at their expense any work, tests, or investigation as may reasonably be required to disclose information sufficient to enable the board to determine whether to issue certificates of approval to impound, or to issue orders directing further work at the owner's expense necessary to safeguard life and property.

(c) The board shall issue a certificate of approval to impound for dams and reservoirs that do not have severe deficiencies that affect the structural safety or operational integrity of a facility or that may threaten the safety of the dam.

(d) In order to protect public safety, the department shall require an owner or operator to lower the water level of, or to drain the dam or reservoir,

or impose conditions on a certificate to impound application approval.

(e) Upon inspection, review of investigation findings, or satisfactory correction of severe deficiencies, if the department finds that the dam and reservoir are safe to impound water, a certificate of approval to impound shall be issued.

(f) The department shall not issue a certificate of approval to impound when a dam or reservoir is determined by the department to be unsafe to impound water. Upon finding that the dam or reservoir is unsafe to impound water, the department shall issue a written notice to the owner. After receipt of the notice, the owner shall no longer cause or allow the dam or reservoir to impound water unless consent is obtained from the department. [Eff. FEB 20 2012 ]  
(Auth: HRS §179D-6) (Imp: HRS §179D-21)

§13-190.1-15 Noncompliance. The board may order the suspension, revocation, or restriction of any certificate of approval to impound, for any act or failure to comply with chapter 179D, HRS, these rules, or orders issued pursuant to chapter 179D, HRS, or with any of the conditions contained in or attached to the application approval or certificate of approval to impound. [Eff. FEB 20 2012 ] (Auth: HRS §179D-6)  
(Imp: HRS §179D-21)

§13-190.1-16 Transferability. Certificates of approval to impound water are not transferable from one person to another without written approval from the board; and:

- (1) The existing holder of the certificate to impound requests a transfer in writing to the department; and
- (2) The new or prospective dam owner submits in writing to the department:

- (A) Proof that the person is or will become the owner of the dam;
  - (B) The date of change in ownership; and
  - (C) An acknowledgment of receipt of a copy of the certificate of approval to impound that is in effect, and of the person's awareness of the terms, including and without limitation, any conditions or restrictions on the operation imposed by the department.
- [Eff. FEB 20 2012 ] (Auth: HRS §179D-6) (Imp: HRS §§179D-6, 179D-21)

### SUBCHAPTER 3

#### CONSTRUCTION, ENLARGEMENT, REPAIR, ALTERATION, OR REMOVAL OF DAMS AND RESERVOIRS

§13-190.1-20 General requirements for construction, enlargement, repair, alteration, or removal of a dam, reservoir, or appurtenant works.

(a) No person shall construct, enlarge, repair, alter, or remove any dam or reservoir until a dam permit application form has been filed, approval of the construction plans and specifications is obtained from the board, and a written application approval is issued. Owners proposing routine maintenance not affecting the safety of the structure are exempted from the requirements of this subchapter. All submittals shall be in accordance with this chapter. The department guidelines shall assist but not limit evaluation of the application.

(b) Nothing in this chapter grants an exemption from any applicable federal, state, or county governmental requirements.

(c) The applicant shall notify in writing, the county engineer or appropriate person within the county, for which the dam or reservoir is located, of the submittal of a permit application for the construction, enlargement, repair, alteration, or

removal of a dam or reservoir. A copy of this notification letter shall be submitted to the department by the applicant.

(d) A separate application shall be filed with the department for each regulated dam or reservoir and for each separate project. The applicant shall submit to the department, three hard copies and an electronic copy on disk of the application package. The application package shall consist of the following:

- (1) The department's dam permit application form. Each application shall be made on forms furnished by the department and shall be signed by the dam owner or an authorized representative of the dam owner. If there are multiple owners of the property where the dam is located, a property map shall be provided showing the dam with the property lines identified for each owner. A notarized letter of concurrence and agreement from the owners of all property on which the proposed project is being conducted is required. Each application shall include at a minimum the following:
  - (A) Name and address of the applicant;
  - (B) Name and address of the owner or owners and their associated tax map key numbers of the properties upon which the works are to be constructed, enlarged, repaired, altered, or removed;
  - (C) Description of the location, type, size, purpose, and height of the proposed, enlarged, repaired, altered, or removed dam, and the reservoir and appurtenant works;
  - (D) Storage capacity and reservoir surface areas for maximum water storage elevation and design water level;
  - (E) Plans for installation of any permanent instrumentation at the dam or appurtenant structures;

- (F) Area of the drainage basin, rainfall and stream flow records, and flood-flow records and estimates (as applicable);
  - (G) Relevant construction drawings, plans, and specifications signed and sealed by the design engineer, licensed in the State of Hawaii; and the name and address of the design engineer who prepared the plans and specifications;
  - (H) Proposed times of commencement and completion of the proposed activity; and
  - (I) A listing of all sources of inflow to the reservoir (as applicable);
- (2) Design reports. A design report shall be submitted with the application package (as applicable to the proposed activity). The report shall include information sufficient to evaluate the design of the new or to be enlarged, repaired, altered, or removed dam and the appurtenances, including references and page numbers, to support any assumptions or criteria used in the design. The report shall include calculations and be sufficiently detailed to accurately define the final design of the proposed dam project as represented in the construction plans. The report shall include but not be limited to the following items, as applicable for the proposed activity:
- (A) Hydraulic and hydrologic report;
  - (B) Geotechnical report;
  - (C) Seepage analysis;
  - (D) Spillway analysis;
  - (E) Foundation evaluation;
  - (F) Analysis of the downstream effects;
  - (G) Anticipated construction sequence needed to complete the project;
  - (H) Anticipated permit and approvals required; and
  - (I) Other reports as necessary;

- (3) Construction plans and specifications.  
Construction plans and specifications shall meet the following requirements:
- (A) The plans shall show the design of the dam, dam enlargement, repair, alteration, or removal, and each appurtenant structure, in sufficient detail so that the contractor or builder is able to construct the proposed structure from the plans and specifications;
  - (B) The front cover sheet of the plan shall include a site map of the dam, reservoir area, and appurtenances, the name of the dam facility and the state dam inventory identification (if available), the county and island in which the dam is located, tax map key numbers of all parcels the dam or reservoir is situated on, project location and vicinity maps, and an index of sheets;
  - (C) Drawings shall be prepared in an appropriate scale so details are legible with an overall size of 24-inches high and 36-inches wide or 22-inches high and 34-inches wide;
  - (D) Spillway and outlet discharge rating curves and tables, and reservoir area-capacity curves and tables, shall be placed on the drawings, as applicable;
  - (E) The front cover of the specifications shall show the title name and state inventory identification number of the dam and the county in which the dam is located;
  - (F) The general conditions shall include statements that the plans and specifications cannot be significantly changed without prior written approval of the department and the design engineer of record;

- (G) The specifications shall provide that the owner's construction engineer will monitor the construction of the project. The construction engineer monitoring the construction for the owner is responsible for the quality of construction, compliance with the approved design and specifications, review and approval of all construction change orders, and preparation of the project completion documents;
- (H) The following items, at a minimum, shall be included in the construction plans, as applicable:
  - (i) Elevation view along longitudinal axis of dam and foundation;
  - (ii) Cross-sectional view of dam at location of maximum height;
  - (iii) Cross-sectional views and profiles of spillway(s), outlet facilities, and other appurtenances;
  - (iv) Steel reinforcement placement and bar sizing for concrete construction must be shown in at least one section or profile; and
  - (v) The plan for diversion and control of water during construction; and
- (I) The following items shall be included in the specifications, as applicable:
  - (i) The type, class, or description of all materials to be used;
  - (ii) The requirements for fill placement, moisture conditioning, and minimum level of compaction of all earth zones; and
  - (iii) The requirements, procedures, and minimum standards for



concrete construction or  
structural details;

- (4) Construction quality assurance plan. An approved quality assurance plan describing all aspects of construction supervision and protocol for change requests, approvals, and field inspection;
- (5) Detailed cost estimate. A detailed cost estimate for the construction of the dam project including the engineering fees;
- (6) Filing fee. The filing fee shall be pursuant to section 13-190.1-50; and
- (7) The following items shall be submitted either with the application package or during construction:
  - (A) An emergency action plan;
  - (B) An operation and maintenance plan to accomplish the annual maintenance, including record keeping documents;
  - (C) An instrumentation plan regarding instruments that evaluate the performance of the dam;
  - (D) Proposed construction schedule. A proposed construction schedule shall be provided with the construction package. The schedule should identify key benchmarks and milestones and any long lead items; and
  - (E) Construction emergency action plan. Prior to the start of construction, the applicant shall submit a copy of an approved emergency action plan for use during the construction, modification, or alteration of the dam and reservoir. This plan shall address possible deficiencies and concerns that may arise at specific phases of the work. The plan shall also include applicable operations, maintenance, and inspection work that should be followed during the construction phase. [Eff. FEB 20 2012 ]  
(Auth: HRS §179D-6) (Imp: HRS §179D-6)

§13-190.1-21 Additional requirements for removal of dam or reservoir. (a) No person shall remove any dam, reservoir, or appurtenant works until written approval is obtained from the board. The application for removal shall include, but not be limited to, the following information:

- (1) The current height and storage of the dam;
- (2) The current hazard classification;
- (3) The proposed flow through channel width and side slopes;
- (4) A description of and quantitative analyses of the flow through conditions during the 100-year, 24-hour storm event including provision for erosion protection;
- (5) Evaluation of all potential effects on life, property, and environment downstream; and
- (6) For a partial removal of a dam that will still store water, the relevant deficiencies identified in the initial investigation or inspection reports shall be addressed.

(b) Plans for removal of a dam or reservoir, shall meet the following requirements:

- (1) The dam shall be excavated down to the level of the natural ground or to sufficient cut depth to prevent silt previously deposited in the reservoir or material excavated for the channel from washing downstream. The plan shall address sediment that has been previously deposited in the reservoir;
- (2) The channel shall be of sufficient width to pass the 100-year, 24-hour flood with maximum depth of five feet of water anywhere in the channel at any time during the flood. Results of analyses demonstrating the 100-year, 24-hour flood can be safely passed within the breached section while maintaining five feet or less of water in the remaining reservoir shall be submitted for review;

- (3) Regardless of the hydraulic requirements, the bottom width of the channel shall be a minimum of fifteen feet;
- (4) The side slopes of the channel shall be excavated to a slope that is stable, but not steeper than 2:1 (horizontal:vertical). Slope stability analysis that provides an adequate factor of safety for steeper slopes may be accepted by the department but in no case steeper than 1:1;
- (5) A detailed flood study for the 100-year storm frequency events shall be performed for the existing conditions and proposed removed or partially removed dam;
- (6) If the partially removed dam will store more than 2 million gallons (6 acre-feet) of water, the plan shall provide a dam break inundation map of the downstream community at risk from the altered dam structure, assuming full water level at the time of failure;
- (7) Transitions to downstream channels shall be investigated and appropriate provisions made to mitigate against possible damage or flooding;
- (8) The exposed slopes within the 100-year, 24-hour storm depth shall be protected with riprap, vegetation, or other suitable means to prevent headcutting, downcutting, and lateral slope erosion; and
- (9) The reservoir shall be emptied before removal of the dam. [Eff. FEB 20 2012 ]  
(Auth: HRS §179D-6) (Imp: HRS §179D-6)

§13-190.1-22 Supervision of plans preparation and observation of construction. (a) The design engineer shall supervise the preparation of all plans and specifications for the initial construction, enlargement, alteration, repair, or removal of dams and reservoirs.

(b) The observation of the construction shall be conducted by the construction engineer, as referenced in subchapter 4. Requirements for documentation of construction are provided in subchapter 4.

(c) The design engineer and construction engineer may be assisted by other specialists, under the design or construction engineer's direction, as required. [Eff. FEB 20 2012 ] (Auth: HRS §179D-6) (Imp: HRS §179D-6)

§13-190.1-23 Permit application approval. (a) The permit application will be reviewed for compliance with the requirements provided in this chapter and in general accordance with standard practice for dam safety. If an application is incomplete or defective, it shall be returned to the applicant. The application shall be corrected and returned to the board within ninety days or such further time as may be given by the department in order to retain its validity. If the application is not returned within the required time limit, it shall be deemed automatically rejected.

(b) After the department has determined that the application is complete and the plans and specifications conform to this chapter and generally accepted engineering practice, the board shall approve the plans and specifications and issue an application approval with any conditions determined to be appropriate by the board.

(c) Actual construction, enlargement, repair, alteration, or removal shall be commenced within the time frame set by the board in the application approval; otherwise, the application approval becomes void. The department may, upon written application and for good cause shown, extend an owner's time for commencing construction, enlargement, repair, alteration, or removal of a dam or reservoir.

(d) Actual construction, enlargement, repair, alteration, or removal of a dam or reservoir shall be completed with five years of issuance of the

application approval unless an extension authorized in writing by the board is issued.

(e) The board decision under subsection (b) shall be made within 180 days of the receipt by the department of a complete application package. [Eff.

FEB 20 2012 ] (Auth: HRS §179D-6) (Imp: HRS §179D-6)

§13-190.1-24 Revocation of approval. (a) The board shall consider the revocation of the application approval in whole or in part for any of the following:

- (1) Material false statement in the application or in any report or statement of fact required pursuant to this chapter;
- (2) Violation of this chapter;
- (3) Violation of the approved plans and specifications;
- (4) Non-compliance of any conditions as set by the board; or
- (5) Discovery of unforeseen unsafe conditions.

(b) In any proceeding for revocation, the board shall give prior written notice to the affected owner of the facts or conditions which warrant the action and provide the applicant or owner an opportunity for a hearing. [Eff. FEB 20 2012 ] (Auth: HRS §179D-6) (Imp: HRS §179D-6)

#### SUBCHAPTER 4

#### CONSTRUCTION, INSPECTION, AND COMPLETION

§13-190.1-30 General construction requirements for construction, enlargement, repair, alteration, or removal of a dam, reservoir, or appurtenant works.

For the actual construction work for the construction, enlargement, repair, alteration, or removal of a dam, reservoir, or appurtenant works, the owner or

applicant, or both, shall be responsible for providing and complying with the following:

- (1) Construction engineer's observation of construction.
  - (A) Prior to the start of any work on the dam or reservoir, the owner or applicant shall provide a construction engineer, to ensure compliance with the approved plans and specifications, including any approved change orders and the construction quality assurance plan;
  - (B) The construction engineer shall have ultimate responsibility for the supervision of all inspection tasks and compliance with approved plans and specifications; and
  - (C) The construction engineer may assign some inspection tasks to a duly authorized agent, under the construction engineer's supervision;
- (2) A construction quality assurance plan. A construction quality assurance plan shall be prepared and submitted to the department at least thirty days prior to the start of construction, which details the minimum requirements of the construction engineer's observation of construction. The minimum components of this plan shall include the following as applicable:
  - (A) Listing of parties and their roles and responsibility;
  - (B) Names and qualifications of the engineer(s) and staff to be used on the project;
  - (C) Anticipated construction observation schedule for the construction engineer and staff;
  - (D) Schedule of observations and inspections (with reference to specification sections), such as the observation of the foundation or other

- inspections, as deemed appropriate by the department or design engineer;
- (E) Schedule of required submittals, including shop drawings (with reference to specification section);
  - (F) Schedule of construction material tests (with reference to specification section); and
  - (G) Schedule of construction performance tests (with reference to specification section);
- (3) Construction records. The construction engineer shall maintain a record of construction that, at a minimum, shall include: daily activity and progress reports; all test results pertaining to construction; photographs sufficient to provide a record of foundation conditions and various stages of the construction through completion; all geologic information obtained; and construction problems and remedies;
  - (4) Construction schedule;
  - (5) Construction emergency action plan;
  - (6) Labor and material bonds. Where the project construction estimate exceeds \$500,000 (including design), the owner shall furnish evidence of a bond for labor and materials for the approved construction or alteration work, unless otherwise allowed by the board;
  - (7) General liability insurance. Insurance coverage must be maintained for the minimum amounts stipulated by the department, with a provision identifying the department as an additional insured, and evidence of insurance provided to the department prior to the start of construction;
  - (8) Change order requirements. When unforeseen site conditions or material availability require that the construction work differ significantly from the approved plans and specifications, a change order, including

details, must be provided by the construction engineer to the department:

- (A) No change shall be executed until approved by the department;
  - (B) Major changes must be submitted in writing with supporting documentation, and approved in writing by the department;
  - (C) If the department determines that the proposed construction change order represents a significant modification of the application approval that could have an effect on structural integrity or safe operations of the project, then approval of the change order by the board or department shall be required;
  - (D) If board approval of the proposed construction change order is required, no action can be taken by the owner to make the construction change until approval is given by the board; and
  - (E) Minor changes may be transmitted verbally by the construction engineer and approved by the department verbally, provided documentation of the change is provided to the department within ten days of the approval;
- (9) A pre-construction meeting shall be held subsequent to submitting the construction observation and quality assurance plan, but not later than fourteen days prior to start of construction. All parties actively involved in the construction should be requested to attend, such as the dam owner, the design engineer, the construction engineer, the contractor, and the department. At a minimum, the following should be discussed:
- (A) Project personnel and roles:
    - (i) Project communication protocol between the owner, construction engineer, and the department shall



- be established at the pre-construction meeting; and
- (ii) The names of the contractors and any principals in charge shall be furnished to the department at the meeting;
- (B) Project schedule;
- (C) Special issues:
  - (i) The means used to divert and carry inflows into the reservoir;
  - (ii) Reservoir filling requirements; and
  - (iii) Special permitting requirements;
- (D) The contractor's quality control plan, developed by the contractor shall be thoroughly explained, including but not limited to the following:
  - (i) Identification of the firm that will conduct the construction material tests in the field and in the laboratory;
  - (ii) Schedule of required submittals, including shop drawings (including reference to specification section);
  - (iii) Schedule of construction material tests (including reference to specification section);
  - (iv) Schedule of construction performance tests (including reference to specification section);
  - (v) Schedule of notifications to the engineer and the department; and
  - (vi) Plan for addressing construction difficulties.
- (E) Change order procedures;
- (F) Maintenance of records;
- (G) Notifications and submittals; and
- (H) Construction progress reports;
- (10) Reservoir filling plan.

- (A) A schedule for the filling of the reservoir specifying the fill rates, water level elevations to be held for observation, and a schedule for inspecting and monitoring the dam;
  - (B) Upon written request by the owner and for good cause shown, the department may temporarily approve storage of water prior to full compliance with the acceptance of construction. Only a partial reservoir filling will be granted and final acceptance of the construction for full use will not be granted until all the construction completion documents have been satisfactorily completed. The written request shall include:
    - (i) A schedule for the filling of the reservoir specifying the fill rates, water level elevations to be held for observation, and a schedule for inspecting and monitoring the dam;
    - (ii) A draft emergency action plan; and
    - (iii) A draft operation and maintenance plan;
- (11) Completed project documentation.
- (A) Submission of required documentation as detailed in section 13-190.1-31;
  - (B) Topographic survey of completed work including all monuments, inverts, crest alignment, spillways, and significant appurtenant features, when required by the department;
- (12) Notifications to the department. The construction engineer shall notify the department of the following:
- (A) The date of the start of construction;
  - (B) Notice for inspection(s). The construction engineer shall give the department at least ten days advance notice of initial materials placement

- on the dam's foundation, in the cutoff trench, outlet backfill, outlet foundation, and any appurtenance requested by the department in the approval of the plan for construction observation, to allow for observation by the department;
- (C) Notice of substantial completion shall be issued by the construction engineer to the department stating that the permitted improvements are functionally complete such that filling of the reservoir can be accomplished;
  - (D) Notice of final inspection. The construction engineer shall give the department fifteen days advance written notice prior to the project's final construction inspection;
  - (E) Notice of start of reservoir filling. The construction engineer shall provide notice at least ten days prior to initiating filling of the reservoir, unless otherwise agreed upon at final inspection. Filling of the reservoir shall not commence until concurrence is received from the department;
- (13) Suspension of construction or revocation of permit.
- (A) Unsafe conditions. If conditions are revealed which will not permit the construction, enlargement, repair, alteration, or removal of a safe dam or reservoir, the application approval for construction, enlargement, repair, alteration, or removal shall be revoked;
  - (B) Violation of application approval. If at any time during construction, enlargement, repair, alteration, or removal of a dam or reservoir the department finds that the work is not being done in accordance with approved

plans and specifications, the department shall give a written notice thereof to the owner.

- (i) The written notice shall state the specific violations or deficiencies and shall order the immediate compliance with the approved plans and specifications;
- (ii) The department may order that no further work be done until compliance has been effected and confirmed by the department or its designated representative;
- (iii) If the owner fails to comply with the department's written notice or the approved plans and specifications, the board shall revoke the application approval and compel the owner to remove the incomplete structure sufficiently to eliminate any safety hazard to life or property. [Eff.

FEB 20 2012 ] (Auth: HRS  
\$179D-6) (Imp: HRS \$179D-6)

§13-190.1-31 Construction completion and acceptance for the construction, enlargement, repair, alteration, or removal of a dam, reservoir, or appurtenant works. Upon completion of the construction for a new, enlarged, repaired, altered, or dam removal project, the following items, as a minimum, shall be addressed and submitted to the department, as applicable to the project:

- (1) The construction engineer's certification that to the best of the engineer's knowledge, information, and belief, the project is complete and was constructed in conformance with the approved plans, specifications, and approved change orders, and all punch list items identified at the

final construction inspection have been resolved, including a description of the actions taken to address the deficiencies;

- (2) Construction completion documents. The following construction documents shall be provided to the department within sixty days of the final construction inspection in order for the project to be deemed complete:
- (A) Written notification to the department that the project is complete and conforms with the approved plans, specifications, and approved change orders;
  - (B) As constructed, record, or as built drawings that describe the dam or reservoir as actually constructed;
  - (C) A final construction report containing the following information, if applicable: a summary of construction, including problems encountered and solutions implemented to resolve the problems; a summary of construction material tests and geologic observations; photographs of construction from the exposed foundation to completion of construction;
  - (D) Topographic survey of completed work including all monuments, inverts, crest alignment, spillways, and significant appurtenant features as required by the department;
  - (E) A record of the location of permanent monuments and instrumentation as well as installation details and initial surveys and readings, as applicable;
  - (F) A log of the recorded water levels and other readings in the schedule for the first filling of the reservoir and refilling specifying the fill rates, water level elevations to be held for observation, and a schedule for inspecting and monitoring the dam;

- (G) A long-term instrumentation monitoring plan that shall include the frequency of monitoring; the data recording format; graphical presentation of data; and the parties who will perform the work;
  - (H) An emergency action plan in a format accepted by the department in accordance with subchapter 5;
  - (I) An operation and maintenance manual for the dam and its appurtenant structures developed in accordance with subchapter 5;
  - (J) Compliance with subchapter 2;
  - (K) An affidavit showing the actual cost of the construction, including all engineering costs;
  - (L) An additional fee or refund request based on the actual cost of construction, computed in accordance with subchapter 8;
- (3) Acceptance of construction. Construction for which application approval has been provided shall not be deemed complete nor shall storage of water be permitted until the department furnishes to the owner a written statement of acceptance, unless temporary approval of storage is granted by the department. The acceptance shall specify any limitation upon, or requirements for use of the facility. The department shall furnish the acceptance or denial within sixty days of receipt of satisfactorily completed construction completion documents; and
- (4) A report documenting the filling of the reservoir and identifying the fill rates, water level elevations held, and inspection and monitoring findings. [Eff.

FEB 20 2012 ] (Auth: HRS §179D-6) (Imp:  
HRS §179D-6)

§13-190.1-32 Complaints as to unsafe conditions during construction. (a) Upon receipt of a written complaint alleging that the person or property of the complainant is endangered by the construction, enlargement, repairs, alterations, removal, maintenance, or operation of any dam or reservoir, the department shall contact the owner and the department or department representative shall conduct an inspection unless the data, records, and inspection reports on file with the department are sufficiently adequate to determine whether the complaint is valid or invalid.

(b) If an unsafe condition exists, the department shall notify the owner to take action necessary to render the condition safe, including breaching or removal of any dam found beyond repair. If the owner is unavailable or unresponsive, the board may commence action under section 13-190.1-41. [Eff.

FEB 20 2012 ] (Auth: HRS §179D-6) (Imp: HRS §179D-6)

## SUBCHAPTER 5

### MAINTENANCE, OPERATION, AND EMERGENCY WORK

§13-190.1-40 Maintenance and operation. (a) Owners shall provide for the adequate and timely maintenance, operation, and inspection of their dams and reservoirs and shall be responsible for any engineering and geologic investigations which may be required to ensure public safety. Owners shall keep available and in good order records of original construction and any modifications, and shall report to the department their maintenance, operation, and engineering activities, including at a minimum, but not limited to, horizontal and vertical controls, seepage measurements, piezometric data collection, and geologic investigations.

(b) The owner of a dam or reservoir shall fully and promptly advise the department of any flood,

incidents, or circumstance which may adversely affect the dam or reservoir.

(c) The department shall make inspections of dams and reservoirs either with its own engineers or by consulting engineers of its selection, not less than once every five years. The department shall require owners to perform at their expense any necessary remedial work and work reasonably required to disclose information sufficient to enable the department to determine conditions of dams and reservoirs in regard to their safety, including the installation, maintenance, and monitoring of instrumentation.

(d) All costs incurred by the department to conduct the inspection may be charged to the owner. The department shall present a bill for the expenses to the owner, and if the owner neglects for ninety days thereafter to pay it, the bill and costs become a lien upon the lands and property of the owner so liable for the payment of the bill, and must be collected as delinquent taxes against the lands and property are collected. All funds collected shall be deposited into the dam and reservoir safety special fund. [Eff. FEB 20 2012 ] (Auth: HRS §179D-6) (Imp: HRS §179D-30)

§13-190.1-40.1 Operation and maintenance plan.

(a) Owners and operators shall maintain an up-to-date operation and maintenance plan including an inspection and monitoring program with written reports submitted to the department on a yearly basis. The inspection and monitoring program shall contain the actions required to maintain and keep the structure, its appurtenant works, and access in a state of repair and operating condition that would be required by the exercise of due care with regard for the safety of persons or property, using sound and accepted engineering principles, guidelines, and these rules.

(b) An operation and maintenance plan shall include the following:



- (1) Facility information and site map:
  - (A) Dam name;
  - (B) State dam inventory identification number;
  - (C) Owner's name;
  - (D) Stream;
  - (E) Location;
  - (F) Dam type; and
  - (G) Dam height, crest length, and crest width;
- (2) List of responsible parties, name, title, and telephone numbers, for the following:
  - (A) Operation;
  - (B) Maintenance;
  - (C) Inspection; and
  - (D) Monitoring of instrumentation;
- (3) List of hydraulic elements controlling inflow to or outflow reservoir, including gates, valves spillways, stoplogs, structures, etc. and the location and dimensions of structures;
- (4) Rules and procedures for reservoir operation, including how the reservoir level is controlled, proposed reservoir levels for given times of year, periods of drawdown, and filling and operation during floods;
- (5) List of items requiring periodic maintenance, and procedures for performing maintenance, including type of maintenance performed, frequency, method, and record keeping;
- (6) List of instrumentation, frequency of monitoring, and method of record keeping;
- (7) List of equipment to be periodically test operated, including gates, valves, hoists, and frequency of test operations;
- (8) Frequency of routine inspections and monitoring, for example, weekly, monthly, quarterly; and a list of key elements inspected;
- (9) Checklists, logbook, inspection forms for applicable items;

- (10) Copy of the latest inspection report; and
- (11) Appendices for any additional information.  
[Eff. FEB 20 2012 ] (Auth: HRS §179D-6)  
(Imp: HRS §179D-6)

§13-190.1-41 Emergency work. (a) Owners and operators of dams and reservoirs have the primary responsibility for determining when an emergency involving a dam or reservoir exists. When the owner or operator of a dam or reservoir suspects an emergency exists, the owner or operator shall immediately implement the emergency action plan required by section 13-190.1-42, and take additional actions necessary to safeguard life, health, and property.

(b) If, in the opinion of the department, conditions of any dam or reservoir are so dangerous to the health and safety of life or property as to not permit time for issuance and enforcement of an order relative to construction, modification, maintenance, or repair of the dam or reservoir, or the dam or reservoir is threatened by any large flood or other natural disaster, the department may immediately employ remedial measures necessary to protect life and property.

(c) The department shall provide coordination and assistance to the proper state or county agency or agencies to maintain control of any dam or reservoir that, pursuant to subsection (b), has been determined to be dangerous to life or property until the dam or reservoir is deemed safe, or until any emergency conditions that precipitated taking control of the dam or reservoir, pursuant to subsection (b), have been abated. The department may determine the proper time at which to relinquish control of the dam or reservoir.

(d) Any necessary and reasonable costs and expenses incurred by the department in fulfilling the duties mandated by subsections (b) and (c) in connection with a remedial or emergency action shall

be recoverable by the department from the owner of any dangerous or threatened dam or reservoir.

(e) Any owner failing or refusing, after written notice has been given, to pay the reasonable costs and expenses incurred by the department, in accordance with subsection (d), shall be, upon complaint by the department to the attorney general, subject to reasonable attorney's fees incurred in the recovery of the costs and expenses.

(f) All moneys collected by the department pursuant to subsection (d) shall be credited to the dam and reservoir safety special fund.

(g) If a condition arises that in the opinion of the department may pose a danger to the health and safety of persons or property and sufficient time permits, the board may issue orders reciting the existence of the condition and require any actions the board deems necessary. Any person to whom an order is directed may challenge the order, but shall immediately comply with the order, pending disposition of the person's challenge. The board shall give precedence to a hearing on the challenge over all other pending matters.

(h) In the case of an emergency where the board or department declares that repairs, breaching of the dam, or other actions, are immediately necessary to safeguard life and property, the department shall initiate remedial action at the owner's expense if the owner fails to act. The department shall be notified at once of any emergency repairs or other work instituted by the owner. [Eff. FEB 20 2012 ] (Auth: HRS §179D-6); (Imp: HRS §179D-24; HRS §179D-30)

§13-190.1-41.1 Emergency action by department.

(a) In applying the remedial means provided for in this chapter, the department may in an emergency with its own forces, or by other means at its disposal, do any or all of the following:

- (1) Take full charge and control of any dam or reservoir;

- (2) Lower the water level by releasing water from the reservoir;
- (3) Completely or partially drain the reservoir;
- (4) Perform any necessary remedial or protective work at the site; or
- (5) Take such other steps as may be essential to safeguard life and property.

(b) The department shall continue in full charge and control of such dam or reservoir and its appurtenances until they are rendered safe or the emergency occasioning the action has ceased and the owner or operator is able to take back such operations. The department's take over of the dam, the reservoir, or their appurtenances shall not relieve the owner of a dam or reservoir of legal liability to the department or third parties for those circumstances which caused an emergency situation. The department's assumption of control over the dam shall not constitute a taking and the department shall not be liable to the dam owner or others for diminution in value that may be caused by the department's work.  
[Eff. FEB 20 2012 ] (Auth: HRS §179D-6) (Imp: HRS §179D-24)

§13-190.1-42 Emergency action plan. (a) Owners of high and significant hazard dams shall prepare, maintain, and implement an emergency action plan for each dam or reservoir for immediate defensive action to alert and evacuate the affected population and to mitigate damages to property.

(b) The emergency action plan shall be submitted to the department.

(c) The emergency action plan shall contain at a minimum the following:

- (1) Guidance for determining emergency event levels;
- (2) A notification procedure for informing the department and local emergency response agencies;
- (3) An anticipated evacuation area;

- (4) Listing of official emergency action governmental plan holders;
- (5) Directions to the facility;
- (6) A location map and site map; and
- (7) Testing, training, and updated information for the plan.

(d) The owner shall submit a copy of the emergency action plan to the emergency response agencies in the appropriate county and other parties involved in the plan for review.

(e) The owner of a dam or reservoir shall be responsible for the production, distribution, maintenance, and testing of the emergency action plan with all governmental plan holders. [Eff.

FEB 20 2012 ] (Auth: HRS §179D-6) (Imp: HRS §179D-30)

## SUBCHAPTER 6

### REMEDIES

§13-190.1-43 Liens. (a) Costs of construction, enlargement, repair, alteration, or removal work done by the department or its agents to render a dam, reservoir, or appurtenances safe shall constitute a statutory lien against all property of the owner. Notwithstanding any other law to the contrary, the lien shall be considered prior and superior to all other mortgages, liens, or encumbrances of record even if those other mortgages, liens, or encumbrances were filed before the lien pursuant to this subsection becomes due.

(b) Liens pursuant to subsection (a) may be perfected and foreclosed in advance of or after completion of construction, enlargement, repair, alteration, or removal. If perfected in advance, the lien shall be perfected by the filing of an affidavit of the board setting forth the estimate of the costs of construction, enlargement, repair, alteration, or removal within the county in which the dam or reservoir is located in the same manner as prescribed

for mechanic's liens. When the affidavit is filed, the amount set forth in the affidavit shall be a lien in that amount against all property of the owner. If the actual cost of construction, enlargement, repair, alteration, or removal exceeds the estimated cost, the board may amend the affidavit setting forth the additional estimated cost. If the estimated cost exceeds the actual costs of construction, enlargement, repair, alteration, or removal at completion, the board shall file an amended affidavit at completion. If a lien is perfected in advance and the construction, enlargement, repair, alteration, or removal is not commenced within two years from the date of perfection, the lien shall be void. The board shall file a satisfaction of lien upon payment of the costs of construction, enlargement, repair, alteration, or removal by the owner. [Eff.

FEB 20 2012 ] (Auth: HRS §179D-6) (Imp: HRS §179D-26)

§13-190.1-44 Injunctive relief. Whenever in the judgment of the department any person has engaged in or is about to engage in any act or practice that constitutes or will constitute an unlawful action under chapter 179D, HRS, the department may apply to the circuit court of the county in which the unlawful act or practice has been or is about to be engaged in, or in which jurisdiction is appropriate, for an order enjoining the act or practice, or for an order requiring compliance with this chapter. Upon a showing by the department that a person has engaged in or is about to engage in any unlawful act or practice, a permanent or temporary injunction, restraining order, or other order shall be granted without the necessity of showing lack of an adequate remedy at law. [Eff. FEB 20 2012 ] (Auth: HRS §179D-6) (Imp: HRS §179D-23)

§13-190.1-45 Department action when multiple owners cannot mutually agree. If multiple owners of a dam or reservoir facility cannot mutually agree on a unified course of action for repair or remediation of a dam facility, the department shall issue and enforce actions to ensure public safety. Costs incurred may be recoverable by the department from the owners. [Eff. FEB 20 2012 ] (Auth: HRS §179D-6) (Imp: HRS §179D-23)

## SUBCHAPTER 7

### ENTRY UPON PROPERTY

§13-190.1-46 Entry upon property. (a) The department shall have the right to direct and conduct investigations as it may reasonably deem necessary, to carry out its duties as prescribed by statute. For this purpose, the agents or employees of the department or any authorized representatives may enter at reasonable times, without prior notice, any property, public or private, for the purpose of investigating the condition, construction, or operation of any dam, reservoir, or other artificial barrier dealt with in chapter 179D, HRS. If an emergency situation arises as determined by the department, the agents or employees of the department, or any authorized representatives, shall have the right to enter without prior notice, any property, public or private, for the purpose of investigating the condition, construction, or operation of the dam and to take any emergency remedial actions, without a search warrant or liability for trespass.

(b) It shall be unlawful for any person to refuse entry or access to any authorized representative of the department who requests entry for purposes of inspection and who presents appropriate credentials. It shall also be unlawful to obstruct, hamper, or interfere with any representative while in the process of carrying out the representative's official duties.

(c) Notwithstanding any other provision of law to the contrary, the board and its agents, engineers, other employees, or authorized representatives, for the purposes of enforcing chapter 179D, HRS, may enter upon any land or water in the State that is the subject of an inspection, investigation, or remedial actions without a search warrant or liability for trespass. [Eff. FEB 20 2012 ] (Auth: HRS §179D-6) (Imp: HRS §179D-22)

## SUBCHAPTER 8

### FEES

§13-190.1-50 Dam permit application fees for construction, repair, alteration, or removal. (a) The applicant or owner shall submit with the application for construction, enlargement, alteration, repair, or removal of a dam or reservoir, an application fee in the amount equal to two per cent of the estimated cost of construction, including engineering costs.

(b) For the purposes of this subchapter, the estimated cost of the construction, enlargement, alteration, repair, or removal shall include the following:

- (1) The cost of all labor and materials entering into the construction of the dam and appurtenant works or reservoir;
- (2) The cost of preliminary investigations and surveys;
- (3) The cost of the construction plans properly chargeable to the cost of the dam or reservoir; and
- (4) Any and all other items entering directly into the cost of the construction, enlargement, alteration, repair, or removal.

(c) The costs of right-of-way, detached powerhouses, electrical generating machinery, and roads and railroads affording access to the dam or



reservoir shall not be included among the items used in the determination of cost.

(d) An application shall not be considered by the department until the application fee is received.

(e) In the event the actual cost exceeds the estimated cost by more than fifteen per cent, a further fee shall be required by the board before final approval and shall be two per cent of the amount the actual cost exceeded the estimated cost of the construction, enlargement, alteration, repair, or removal. No further fee shall be required, if such fee is to be computed at less than twenty dollars. [Eff.

FEB 20 2012 ] (Auth: HRS §179D-6) (Imp: HRS §179D-6)

§13-190.1-51 Certificate of approval to impound fee. The owner shall submit with the application for a certificate of approval to impound payment of a fee in the amount of four hundred dollars. [Eff.

FEB 20 2012 ] (Auth: HRS §179D-6) (Imp: HRS §179D-6)

§13-190.1-52 Annual fees. (a) An annual fee shall be paid by the owner of the dam, on or before December 31 of each year, for the following calendar year, based upon a fixed rate and height of the dam. The annual fee shall be five hundred dollars per dam, plus one hundred ten dollars per foot of height.

(b) Any owner who fails to pay any annual fee or any part of any annual fee required to be paid within the time required shall pay a penalty of ten per cent of the annual fee or part of the annual fee, plus interest at the rate of one-half of one per cent per month, or for each fraction of a month, from the date on which the annual fee or the part of the annual fee became due and payable to the department until the date of payment.

(c) For the purposes of this section, "height of the dam" means the vertical distance, to the nearest foot, from the natural bed of the stream or

watercourse at the downstream toe of the barrier, as determined by the department, or from the lowest elevation of the outside limit of the barrier, as determined by the department, if it is not across a stream channel or watercourse, to the maximum water storage elevation. [Eff. FEB 20 2012 ] (Auth: HRS §179D-6) (Imp: HRS §179D-6)


DEPARTMENT OF LAND AND NATURAL RESOURCES

The repeal of Chapter 13-190 and the adoption of Chapter 13-190.1, Hawaii Administrative Rules, on the Summary Page dated November 22, 2010, were adopted on November 22, 2010, following public hearings held on Kauai on October 12, 2010; on Oahu on October 13, 2010; on Maui on October 14, 2010; and on Hawaii on October 15, 2010; and after public notice was given in the Honolulu Star Advertiser on September 10, 17, & 24, 2010 and on October 1, 2010, Hawaii Tribune Herald on October 1 & 8, 2010, and Maui News and Kauai News on September 27, 2010 and on October 6, 2010.

The repeal of chapter 13-190 and the adoption of chapter 13-190.1, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

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

APPROVED AS TO FORM:

  
Deputy Attorney General  
Date: 12/5/11  
LIEUTENANT GOVERNOR'S OFFICE  
FEB 9 2012

APPROVED:  
  
NEIL ABERCROMBIE, Governor  
State of Hawaii

2-8-12  
Date

Date Filed



## **Added**

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

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

DEPARTMENT OF LAND AND NATURAL RESOURCES

Rules Amending Title 13  
Hawaii Administrative Rules

April 25, 2014

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

"HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 11

OCEAN RECREATION AND COASTAL AREAS

PART III

OCEAN WATERS, NAVIGABLE STREAMS AND BEACHES

CHAPTER 251

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

Subchapter 1     Catamaran Captain, Canoe Captain,  
Canoe Second Captain, Surfboard  
Instructor, Sailboard Instructor  
and Commercial Motorboat Operator  
Permits

§13-251-1        Permits  
§13-251-2        What persons shall not receive permits  
§13-251-3        Special restrictions

§13-251-4	Learner steersperson permits
§13-251-5	Application for operator permit
§13-251-6	Examination of applicants
§13-251-7	Operator permits issued to catamaran captains, canoe captains, canoe second captains, surfboard instructors, sailboard instructors and commercial motorboat operators
§13-251-8	Operator permit to be carried on board and exhibited upon demand
§13-251-9	Duplicate certificate
§13-251-10	Expiration of operator permit
§13-251-11	Records to be kept by the department
§§13-251-12 to 13-251-15	(Reserved)

#### Subchapter 2    Suspension or Revocation of Operator Permits

§13-251-16	Authority of department to revoke operator permit
§13-251-17	Authority of department to suspend operator permit
§13-251-18	Department may require re-examination
§13-251-19	Period of suspension or revocation
§13-251-20	Surrender and return of operator permit
§§13-251-21 to 13-251-25	(Reserved)

#### Subchapter 3    Violation of Operator Permit Provisions

§13-251-26	Unlawful use of operator permit
§13-251-27	Operating while operator permit suspended or revoked
§13-251-28	Permitting unauthorized person to operate catamaran or canoe
§§13-251-29 to 13-251-30	(Reserved)

#### Subchapter 4    Repealed

§13-251-31        Repealed  
§13-251-32        Repealed

#### Subchapter 4.1 Use Permits

§13-251-33        Use permit  
§13-251-34        Insurance requirements  
§13-251-35        Reissuance of a registration  
                     certificate and/or commercial use  
                     permit

#### Subchapter 5     Waikiki and Kaanapali Catamarans

§13-251-36        Application for a catamaran  
                     registration certificate and/or  
                     commercial use permit  
§13-251-37        Grounds for refusing an application for  
                     a registration certificate and/or  
                     commercial use permit  
§13-251-38        Registration certificate and/or  
                     commercial use permit indices  
§13-251-39        Department to issue registration  
                     certificate and/or commercial use  
                     permit  
§13-251-40        Registration certificates and/or  
                     commercial use permits to be exhibited  
                     upon demand  
§13-251-41        Identification of catamarans with a  
                     registration certificate and/or  
                     commercial use permit  
§13-251-42        Expiration of registration certificate  
                     and/or commercial use permit  
§13-251-43        Application for renewal of registration  
                     certificate and/or commercial use  
                     permit  
§13-251-44        Notice of change of address  
§13-251-45        Transfer of registration certificate  
                     and/or commercial use permit



§13-251-46	New owner must secure new registration certificate and/or commercial use permit
§13-251-47	Repealed
§13-251-48	Operation of a catamaran when registration certificate and/or commercial use permit suspended or revoked
§13-251-49	Authority of department to suspend or revoke registration certificate and/or commercial use permit
§13-251-50	Duplicate registration certificate and/or commercial use permit
§13-251-51	Catamaran registration limitations
§13-251-52	Allocation of catamaran registration certificates and/or commercial use permits
§13-251-53	Waikiki catamarans; mooring of
§§13-251-54 to 13-251-55 (Reserved)	

#### Subchapter 6    Waikiki and Kaanapali Beach and Ocean Waters

§13-251-56	Repealed
§13-251-57	Waikiki ocean waters
§13-251-58	Kaanapali beach and ocean waters
§13-251-59	Repealed
§13-251-60	Repealed
§§13-251-61 to 13-251-65 (Reserved)	

#### Subchapter 7    Special Operating Restrictions

§13-251-66	Canoe operation; required crew
§13-251-67	Catamaran crews
§13-251-68	Repealed
§13-251-69	Learner steersperson
§§12-251-70 to 13-251-75 (Reserved)	

~~accident of \$100,000 for bodily injury or death; or~~

~~(2) If the owner applies for the registration of any vessel carrying passengers for hire, in the following sums for bodily injury or death per occurrence:~~

~~(A) \$100,000 for vessels authorized to carry not more than six passengers;~~

~~(B) Not less than \$300,000 for vessels authorized to carry more than six passengers but less than twenty-six;~~

~~(C) Not less than \$500,000 for vessels authorized to carry more than twenty-five passengers;~~

~~(3) In the case of motorboat operations, the amount of \$100,000 for bodily injury or death per person, subject to the total coverage in any one accident of \$500,000; or~~

~~(4) In the case of water sports equipment operations, the amount of \$100,000 for bodily injury or death per person, subject to the total coverage in any one accident of \$300,000.~~

~~(b) The department shall cancel the registration of any vessel, surfboard, sailboard, motorboat or water sports equipment whenever the department determines that the owner has failed or is unable to comply with the requirements of this section.] [Eff 2/24/94; R ]~~

#### SUBCHAPTER 4.1

#### USE PERMITS

§13-251-33 Use Permit. No regular or extensive use of any state property or facilities or ocean waters or navigable streams for private gain or purposes shall be allowed without corresponding and reasonable benefits and returns to the public.

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

- (1) Prior written approval from the board or its authorized representatives; or
- (2) The proper execution of an agreement with the department. [Eff and comp ]  
(Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

§13-251-34 Insurance requirements. A registration certificate and/or commercial use permit are subject to the insurance requirements of section 13-231-65. [Eff and comp ] (Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

§13-251-35 Reissuance of a registration certificate and/or commercial use permit. (a) The department may reissue a registration certificate and/or commercial use permit provided that:

- (1) The gross receipts during the 12 month period under the registration certificate and/or commercial use permit for which the application for reissuance has been submitted, equals or exceeds the following minimums as applicable:
  - (A) Catamarans used for bare boat (demise) charters and charter sail boats \$ 7,000
  - (B) Catamarans with a registration certificate and/or commercial use permit by the State or documented by the U. S. Coast Guard to carry six passengers or less, including charter fishing boats \$15,000
  - (C) Catamarans certified by

- |     |   |                  |
|-----|---|------------------|
|     | <u>the U. S. Coast Guard</u>                        |                  |
|     | <u>to carry seven to</u>                            |                  |
|     | <u>twenty-six passengers</u>                        | <u>\$45,000</u>  |
| (D) | <u>Catamarans certified by</u>                      |                  |
|     | <u>the U. S. Coast Guard to</u>                     |                  |
|     | <u>carry twenty-seven to forty-nine</u>             |                  |
|     | <u>passengers</u>                                   | <u>\$85,000</u>  |
| (E) | <u>Catamarans certified by</u>                      |                  |
|     | <u>the U. S. Coast Guard</u>                        |                  |
|     | <u>to carry fifty to ninety-nine</u>                |                  |
|     | <u>passengers</u>                                   | <u>\$125,000</u> |
| (F) | <u>Catamaran certified by</u>                       |                  |
|     | <u>the U. S. Coast Guard</u>                        |                  |
|     | <u>to carry more than</u>                           |                  |
|     | <u>ninety-nine passengers</u>                       | <u>\$250,000</u> |
| (G) | <u>Vessels engaged in</u>                           |                  |
|     | <u>another trade or business</u>                    |                  |
|     | <u>not delineated and</u>                           |                  |
|     | <u>governed by an appropriate</u>                   |                  |
|     | <u>paragraph above</u>                              | <u>\$ 7,000;</u> |
|     | <u>or</u>   |                  |
| (2) | <u>The registered certificate holder and/or</u>     |                  |
|     | <u>commercial use permittee applies to the</u>      |                  |
|     | <u>department in writing for reissuance of the</u>  |                  |
|     | <u>registration certificate and/or commercial</u>   |                  |
|     | <u>use permit and concurrently presents</u>         |                  |
|     | <u>evidence that any failure to generate gross</u>  |                  |
|     | <u>receipts from the operation of the catamaran</u> |                  |
|     | <u>as prescribed in this subsection was due to:</u> |                  |
| (A) | <u>The sinking, loss, or destruction of</u>         |                  |
|     | <u>the catamaran;</u>                               |                  |
| (B) | <u>The catamaran being inoperative in</u>           |                  |
|     | <u>excess of 60 days due to disability of</u>       |                  |
|     | <u>the registered certificate holder</u>            |                  |
|     | <u>and/or commercial use permittee;</u>             |                  |
| (C) | <u>The catamaran was rendered inoperative</u>       |                  |
|     | <u>in excess of 60 days due to damage to</u>        |                  |
|     | <u>the catamaran, or due to the necessity</u>       |                  |
|     | <u>of replacing essential parts and gear,</u>       |                  |
|     | <u>provided that reasonable and diligent</u>        |                  |
|     | <u>efforts to secure such items necessary</u>       |                  |
|     | <u>to repair the catamaran or replace</u>           |                  |

parts, is demonstrated to the satisfaction of the department; or

(D) Where conditions and circumstances are demonstrated wherein a reissuance of the registration certificate and/or commercial use permit would be fair and warranted, and the application for reissuance is approved by the department;

and

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

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

(c) A corporation or other business entity must have been in continuous commercial operation as evidenced by the submission of monthly reports of gross receipts for a minimum of 12 months in order to retain their registration certificate and/or commercial use permit upon the transfer of any interest in that corporation or other business entity and fee amounts in accordance with section 13-253-1 are paid.

(d) No reissuance of a registration certificate or commercial use permit may be denied for a catamaran operating in Waikiki ocean waters without a prior hearing held in accordance with Chapter 91, Hawaii Revised Statutes. [Eff and comp

]  
(Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-

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

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

# SUBCHAPTER 5

## [REGISTRATION] WAIKIKI AND KAA NAPALI CATAMARANS

§13-251-36 Application for a catamaran registration~~[.]~~ certificate and/or commercial use permit. (a) No person shall~~[÷~~

~~(1) Offer]~~ offer for hire, navigate, operate, or sail a catamaran ~~[or canoe carrying passengers boarded or to be disembarked in or]~~ on Waikiki or Kaanapali ocean waters and ~~[shores;]~~ beach without either a registration certificate or a commercial use permit;

~~[(2) Permit the use of a surfboard, sailboard or motorboat for compensation in and on the Waikiki or Kaanapali ocean waters and shores;~~

~~(3) Permit the use of water sports equipment for compensation in and on the Waikiki or Kaanapali ocean waters and shores; or~~

~~(4) As the owner of a vessel, surfboard, sailboard, motorboat or water sports equipment, permit or authorize those operations described in paragraphs (1), (2), or (3); unless the vessel, surfboard, sailboard or water sports equipment has been properly registered with the department.]~~

(b) The registration certificate and/or commercial use permit shall be initiated by the owner upon appropriate forms furnished by the department in accordance with those procedures that the department may reasonably prescribe. [Eff 2/24/94; am and comp

compliance shall not exceed a period of 120 days from the date the department received from the applicant a written notice of intention to accept the offer of a catamaran registration[-] certificate and/or commercial use permit;

- (7) Because time is of the essence, the offer delivered or mailed to an applicant pursuant to subsection (g) shall contain a statement that the offer will lapse unless accepted in accordance with the procedures of this section. [Eff 2/24/94; am and comp  
] (Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

§13-251-53 Waikiki catamarans; mooring of. Each catamaran operator holding a commercial use permit or registration certificate authorizing operation in Waikiki nearshore waters or on Waikiki beach shall maintain their beach moorings in the position and condition that they have established and maintained since January 1, 2013, provided:

(a) Approval is obtained from the board of land and natural resources regarding the type and location of the mooring to be installed on Waikiki beach or ocean waters for the purpose of securing the catamaran while conducting business. No additional fee shall be charged for said moorings beyond the amounts set forth in section 13-253-1.1;

(b) Operators shall assume all responsibility and liability for their moorings and operations, indemnify and defend the State, and carry general liability insurance in accordance with section 13-231-65;

(c) Operators shall obtain all applicable permits required to install moorings on Waikiki beach or ocean waters;

(d) Operators shall lower the catamarans' sails to prevent obstructing the view from lifeguard

stations upon the request of a Honolulu city and county lifeguard;

(e) Operators may apply to the department for temporary variance to its assigned mooring, as described in the attendant revocable permit, to accommodate governmental, natural or environmental conditions that make the regularly assigned moorings inaccessible or a danger to any of the catamarans operating in Waikiki. Such variance shall terminate upon the resolution of said dangerous condition. Such variance shall not encroach upon or adversely affect the operations of the other catamarans without the express written consent of the affected catamarans;

(f) Catamaran ingress and egress through the transit channel referred to as "Canoes" channel shall be limited to the four Waikiki catamaran registration holders presently moored and operating closest to the "Canoes" channel as more specifically described in the Waikiki beach mooring revocable permit;

(g) Catamaran ingress and egress through the transit channel referred to as "Sheraton" channel shall be limited to the three Waikiki catamaran registration holders presently moored and operating closest to the "Sheraton" channel as more specifically described in the Waikiki beach mooring revocable permit; and

(h) Any violation of this section shall be cause for fines, suspensions, or where repeated violations of this section are found, revocation of the registration certificate or commercial use permit of the catamaran owner. [Eff and comp ]

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

§§13-251-54 to 13-251-55 (Reserved)

## SUBCHAPTER 6

[RULES OF THE ROAD] WAIKIKI AND KAA NAPALI BEACH AND OCEAN WATERS



DEPARTMENT OF LAND AND NATURAL RESOURCES  
Amendment and Compilation of Chapter 13-251  
Hawaii Administrative Rules  
April 25, 2014

SUMMARY

1. Title amended.
2. §§13-251-2 to 13-251-11 are amended.
3. §§13-251-16 to 13-251-20 are amended.
4. §§13-251-26 to 13-251-28 are amended.
5. §§13-251-31 and 13-251-32 are repealed.
6. §§13-251-33 to 13-251-35 are adopted.
7. §§13-251-36 to 13-251-46 are amended.
8. §13-251-47 is repealed.
9. §§13-251-48 to 13-251-52 are amended.
10. §13-251-53 is adopted.
11. §13-251-56 is repealed.
12. §§13-251-57 and 13-251-58 are amended.
13. §§13-251-59 and 13-251-60 are repealed.
14. §§13-251-66 and 13-251-67 are amended.
15. §13-251-68 is repealed.
16. §13-251-69 is amended.
17. §13-251-76 is amended.

18. Chapter 251 is compiled.

hire to be navigated in or upon Waikiki ocean waters by any person who is not authorized by this chapter to do so. [Eff 2/24/94; am and comp **SEP 25 2014** ]  
(Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§§13-251-29 to 13-251-30 (Reserved)

§§13-251-31 and 13-251-32 REPEALED. [R  
**SEP 25 2014** ]

#### SUBCHAPTER 4.1

##### USE PERMITS

§13-251-33 Use Permit. No regular or extensive use of any state property or facilities or ocean waters or navigable streams for private gain or purposes shall be allowed without corresponding and reasonable benefits and returns to the public.

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

- (1) Prior written approval from the board or its authorized representatives; or
- (2) The proper execution of an agreement with the department. [Eff and comp **SEP 25 2014** ]  
(Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

§13-251-34 Insurance requirements. A registration certificate and/or commercial use permit are subject to the insurance requirements of section 13-231-65. [Eff and comp **SEP 25 2014** ] (Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

§13-251-35 Reissuance of a registration certificate and/or commercial use permit. (a) The department may reissue a registration certificate and/or commercial use permit provided that:

- (1) The gross receipts during the 12 month period under the registration certificate and/or commercial use permit for which the application for reissuance has been submitted, equals or exceeds the following minimums as applicable:
  - (A) Catamarans used for bare boat (demise) charters and charter sail boats \$ 7,000
  - (B) Catamarans with a registration certificate and/or commercial use permit by the State or documented by the U. S. Coast Guard to carry six passengers or less, including charter fishing boats \$15,000
  - (C) Catamarans certified by the U. S. Coast Guard to carry seven to twenty-six passengers \$45,000
  - (D) Catamarans certified by the U. S. Coast Guard to carry twenty-seven to forty-nine passengers \$85,000
  - (E) Catamarans certified by the U. S. Coast Guard to carry fifty to ninety-nine passengers \$125,000
  - (F) Catamaran 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;  
or

- (2) The registered certificate holder and/or commercial use permittee applies to the department in writing for reissuance of the registration certificate and/or commercial use permit and concurrently presents evidence that any failure to generate gross receipts from the operation of the catamaran as prescribed in this subsection was due to:

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

and

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

(b) No registration certificate and/or commercial use permit whose registration certificate and/or commercial use permit has been terminated for cause shall be reissued; provided that the registered certificate holder and/or commercial use permittee may

apply for, but not be automatically entitled to, a new registration certificate and/or commercial use permit after one year has expired from the date of termination of the registration certificate and/or commercial use permit, all fees and charges owing the State have been paid, and the registered certificate holder and/or commercial use permittee is in compliance with federal and state laws.

(c) A corporation or other business entity must have been in continuous commercial operation as evidenced by the submission of monthly reports of gross receipts for a minimum of 12 months in order to retain their registration certificate and/or commercial use permit upon the transfer of any interest in that corporation or other business entity and fee amounts in accordance with section 13-253-1 are paid.

(d) No reissuance of a registration certificate or commercial use permit may be denied for a catamaran operating in Waikiki ocean waters without a prior hearing held in accordance with Chapter 91, Hawaii Revised Statutes. [Eff and comp **SEP 25 2014** ]  
(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)

## SUBCHAPTER 5

### WAIKIKI AND KAA NAPALI CATAMARANS

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

(a) No person shall offer for hire, navigate, operate, or sail a catamaran on Waikiki or Kaanapali ocean waters and beach without either a registration certificate or a commercial use permit;

(b) The registration certificate and/or commercial use permit shall be initiated by the owner upon appropriate forms furnished by the department in

that the offer will lapse unless accepted in accordance with the procedures of this section. [Eff 2/24/94; am and comp

SEP 25 2014 ] (Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

§13-251-53 Waikiki catamarans; mooring of. Each catamaran operator holding a commercial use permit or registration certificate authorizing operation in Waikiki nearshore waters or on Waikiki beach shall maintain their beach moorings in the position and condition that they have established and maintained since January 1, 2013, provided:

(a) Approval is obtained from the board of land and natural resources regarding the type and location of the mooring to be installed on Waikiki beach or ocean waters for the purpose of securing the catamaran while conducting business. No additional fee shall be charged for said moorings beyond the amounts set forth in section 13-253-1.1;

(b) Operators shall assume all responsibility and liability for their moorings and operations, indemnify and defend the State, and carry general liability insurance in accordance with section 13-231-65;

(c) Operators shall obtain all applicable permits required to install moorings on Waikiki beach or ocean waters;

(d) Operators shall lower the catamarans' sails to prevent obstructing the view from lifeguard stations upon the request of a Honolulu city and county lifeguard;

(e) Operators may apply to the department for temporary variance to its assigned mooring, as described in the attendant revocable permit, to accommodate governmental, natural or environmental conditions that make the regularly assigned moorings inaccessible or a danger to any of the catamarans operating in Waikiki. Such variance shall terminate

upon the resolution of said dangerous condition. Such variance shall not encroach upon or adversely affect the operations of the other catamarans without the express written consent of the affected catamarans;

(f) Catamaran ingress and egress through the transit channel referred to as "Canoes" channel shall be limited to the four Waikiki catamaran registration holders presently moored and operating closest to the "Canoes" channel as more specifically described in the Waikiki beach mooring revocable permit;

(g) Catamaran ingress and egress through the transit channel referred to as "Sheraton" channel shall be limited to the three Waikiki catamaran registration holders presently moored and operating closest to the "Sheraton" channel as more specifically described in the Waikiki beach mooring revocable permit; and

(h) Any violation of this section shall be cause for fines, suspensions, or where repeated violations of this section are found, revocation of the registration certificate or commercial use permit of the catamaran owner. [Eff and comp **SEP 25 2014** ]  
(Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

§§13-251-54 to 13-251-55 (Reserved)

## SUBCHAPTER 6

### WAIKIKI AND KAA NAPALI BEACH AND OCEAN WATERS

§13-251-56 REPEALED. [R **SEP 25 2014** ]

§13-251-57 Waikiki ocean waters. Waikiki ocean waters means the area shown on Exhibit 1, dated May 1, 2012, located at the end of this subchapter and incorporated herein. The boundaries are as follows:



# **Added**

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

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

DEPARTMENT OF PUBLIC WORKS

Adoption of Chapter 15-111  
Rules for the Design of Storm Water Treatment  
Best Management Practices

1. Chapter 15-111, entitled "Rules for the Design of Storm Water Treatment Best Management Practices", is adopted to read as follows:

"TITLE MC-15

DEPARTMENT OF PUBLIC WORKS

SUBTITLE 01

DIRECTOR OF THE DEPARTMENT OF PUBLIC WORKS

CHAPTER 111

RULES FOR THE DESIGN OF STORM WATER TREATMENT  
BEST MANAGEMENT PRACTICES

Subchapter 1 General Provisions

§15-111-1 Title

§15-111-2 Purpose

Subchapter 2 Criteria and Standards

§15-111-3 Water quality criteria

§15-111-4 Criteria for sizing of storm water quality  
facilities

§15-111-5 Management practices to meet criteria

§15-111-6 Water quality design standards

## SUBCHAPTER 1

### GENERAL PROVISIONS

§15-111-1 Title. The rules in this title shall be known as the "Rules for the Design of Storm Water Treatment Best Management Practices." [Eff 11/25/12] (Auth: MCC §§16.26B.3900, 18.20.135) (Imp: MCC §§16.26B.3900, 18.20.135)

§15-111-2 Purpose. These standards shall establish controls on the timing and rate of discharge of storm water runoff to reduce storm water runoff pollution to the maximum extent practicable through the implementation of best management practices and engineering control facilities designed to reduce the generation of pollutants.

Long-term water quality is generally impacted by the volume and frequency of discharged pollutants. Therefore, the water quality of the ocean and other receiving waters would be impacted more by the runoff from smaller frequent storms or rainfall events, which are the sources of the large majority of the volume and frequency of storm water runoff, rather than large infrequent flood events. Consequently, water quality measures for a development should be designed to mitigate water quality impacts from small frequent storms. [Eff 11/25/12] (Auth: MCC §§16.26B.3900, 18.20.135) (Imp: MCC §§16.26B.3900, 18.20.135)

## SUBCHAPTER 2

### CRITERIA AND STANDARDS

§15-111-3 Water quality criteria. (a) The purpose of the water quality criteria is to reduce the pollution associated with storm water runoff from new development and significant redevelopment.

(b) The department shall be responsible for the review and enforcement of these rules.

(c) These rules have been adopted to implement the provisions of sections 16.26B.3900 and 18.20.135, Maui County Code, as amended.

(d) The requirements of these rules shall apply as follows:

- (1) Projects with a disturbed area of greater than one acre, must meet the specific criteria for sizing of storm water quality facilities. The disturbed area shall be determined by the director. The director may take into consideration all factors, including future construction, such as home construction, even if not immediately constructed with the development of the site improvements.
- (2) Projects with a disturbed area of less than one acre, will be subject to approval of a site-specific best management practices ("BMP") plan to be proposed by the developer and approved by the director. These plans should consider and utilize appropriate BMP, including those described in these criteria as well as other non-structural control measures.
- (3) All plans for storm water quality facilities on projects with a disturbed area over one acre shall be prepared by a civil engineer, licensed in the State of Hawaii.

(e) Low Impact Development (LID) techniques can be incorporated into site design to satisfy water quality criteria. LID is an approach to land development or redevelopment that is modeled after nature to manage storm water as close to its source as possible by using distributed small scale controls. This approach replicates a site's predevelopment hydrology by using techniques that infiltrate, filter, store, evaporate, and detain runoff close to its source. Techniques are based on the premise that storm water management should not be seen as storm water disposal. Typical practices and controls include conservation of natural areas, bioretention cells, rain barrels, green roofs, permeable pavement, grassed swales, and commercially manufactured filtration or infiltration devices. By implementing LID principles and practices, water can be managed in a way that reduces the impact of built areas and promotes the natural movement of water within an ecosystem or watershed.

(f) The director may exempt projects from the application of these rules if projects are determined to have submitted substantially completed construction drawings before these rules are approved.

(g) These criteria are required to be applied to runoff arising from a site and not from off-site runoff, unless the off-site runoff is entering the site as overland flow, and/or will not be separated from on-site runoff. If off-site runoff is to be conveyed through a water quality facility, then the facility must be designed to meet the requirements as described below for the combined on-site and off-site runoff volumes and/or rates.

(h) These are minimum requirements. If the department determines that additional controls and/or lower thresholds for developments are required to meet the specific water quality needs in watersheds that drain to sensitive receiving waters (as defined by the Hawaii State Department of Health Water Quality Limited Segments ["WQLS"], of Class 1 Inland Waters,

of Class AA Marine Waters), additional requirements may be imposed. These may include design requirements that result in larger facilities as well as additional types of structural or non-structural controls. The design solution will be contingent upon the pollutants that are found to be impacting such water bodies and the regulatory status of the water body.

(i) Water quality facilities shall remain privately owned and maintained unless dedication is approved by the Maui County Council.

(j) Parks may be utilized to satisfy water quality facility requirements, with concurrence of the appropriate County agencies.

(k) All water quality facilities will require regular maintenance to ensure their adequate performance. Applicants are required to submit a proposed maintenance plan. The plan should specify the frequency of inspection and maintenance that will occur and who will be responsible. [Eff 11/25/12]  
(Auth: MCC §§16.26B.3900, 18.20.135) (Imp: MCC §§16.26B.3900, 18.20.135)

§15-111-4 Criteria for sizing of storm water quality facilities. (a) The criteria can be met by:

- (1) Either detaining storm water for a length of time that allows storm water pollutants to settle (detention treatment from such methods as extended detention wet and dry ponds, created wetlands, vaults/tanks, etc.);
- (2) By use of filtration or infiltration methods (flow-through based treatment from such methods as sand filters, grass swales, other media filters, and infiltration);
- (3) Short-term detention can be utilized with a flow-through based treatment system (e.g., a detention pond designed to meter flows

through a swale or filter) to meet the criteria; or

- (4) Upstream flow-through treatment and detention treatment can be utilized.

(b) Other proposals to satisfy the water quality criteria may be approved by the director if the proposal is accompanied by a certification and appropriate supporting material from a civil engineer, licensed in the State of Hawaii, that verifies compliance with one of the following (by performance or design):

- (1) After construction has been completed and the site is permanently stabilized, reduce the average annual total suspended solid ("TSS") loadings by eighty percent. For the purposes of this measure, an eighty percent TSS reduction is to be determined on an average annual basis for the two-year/twenty-four hour storm.
- (2) Reduce the post development loadings of TSS so that the average annual TSS loadings are no greater than predevelopment loadings.  
[Eff 11/25/12] (Auth: MCC §§16.26B.3900,  
18.20.135) (Imp: MCC §§16.26B.3900,  
18.20.135)

§15-111-5 Management practices to meet criteria.

(a) Detention based water quality control measures allow for the settling of fine particles and pollutants that are associated with these particles. Detention times for water quality control are typically much longer than for flood control. Although a detention system for water quality could be combined with a flood control system, the volume assigned for water quality control must meet minimum detention times. Therefore, this volume will typically not be available for peak rate volume control.



- (1) The required design volume for detention based control is equal to the entire runoff volume that would occur from the area contributing to the detention facility with a one-inch rain storm.

- (A) The runoff coefficient shall be determined from the following equation as developed by EPA for smaller storms in urban areas:

$$C = 0.05 + (0.009) \times (\text{IMP})$$

C = Runoff coefficient

IMP = Impervious Area (surface areas which allow little or no infiltration, including pavements, roofs, etc.) for the tributary watershed, expressed as a percentage.

It shall be based upon the ultimate use of the drainage area, unless the water quality feature will be re-built/sized during subsequent phases of construction.

- (B) The design storm for detention based water quality systems is a one-inch storm.

- (C) The volume calculation will be computed as follows:

$$\text{WQDV} = C \times 1" \times A \times 3630$$

WQDV = Water quality design volume  
in cubic feet

C = Runoff coefficient

A = Area of the site in acres

3630 = Conversion factor

- (2) For water quality treatment to be effective, longer detention times are required.

- (A) The draw-down (or draining) time for the detention volume, which is intended to drain down completely (vs. permanent wet volume), shall be greater than or equal to forty-eight hours. For the bottom half of the detention volume,

the draw-down time shall be greater than or equal to thirty-six hours.

- (B) For detention based water quality controls with less than or equal to twenty acres of drainage area, the total draw-down time can be reduced to thirty-six hours, with the lower half of the detention volume draw-down time of twenty-four hours, if it can be demonstrated that the outlet sizing (e.g., outlet pipe diameter less than four inches) would not be practical.
- (C) The detention system shall be designed to maximize the distance between the inlet and outlet, and to minimize "dead spaces" (areas where little or no exchange occurs during a storm event), thereby limiting short-circuiting. A minimum flow-path length to width ratio of three should be utilized.
- (D) The outlet shall be sized to achieve the above required detention times. In addition, it shall be large enough that clogging is unlikely to occur. It should be four inches or larger in diameter. If this is not possible, the use of flow-through based measures as provided in subsection (c) should be considered, unless it can be demonstrated that clogging can be avoided.

(b) Flow-through based water quality control measures are measures where either the flow is passed with little or no storage through a filtration media or is infiltrated. In addition, there are measures or devices which utilize hydraulic particle separation techniques, however, these alone do not typically address the smaller sized fractions of solids which typically have a high proportion of other pollutants

such as copper and zinc attached to them that are desired to be removed.

- (1) For flow-through treatment, flow-rate shall be calculated as follows:

(A) The runoff coefficient shall be determined from Tables 1, 2 and 3 of these rules.

(B) The required flow rate for treatment is the runoff that would be produced from a rainfall intensity of 0.4 inches per hour. This rate must be maintainable for a minimum of three hours (e.g., detention may be used to meter runoff through the flow-through water quality control measure at lower rates, but still meeting the criteria).

(C) Flow rate calculation shall be based upon the following:

$$WQFR = C \times 0.4" \times A$$

WQFR = Water quality flow rate in cubic feet per second

C = Runoff coefficient

A = Area of the site in acres

- (2) For flow-through treatment, the level of treatment shall be addressed as follows:

(A) Infiltrated storm water shall be infiltrated through soils capable of filtering pollutants or other suitable media as described below in Other Filter prior to entering groundwater. Infiltration shall only be used where soil conditions and slope stability are suitable.

(B) Vegetated swales such as wetland/native plants and/or grass swales shall be designed so that at the water quality flow rate ("WQFR"), the swale width is such that the flow depth is no greater than four inches and the hydraulic grade line is no greater than two

percent, unless drop structures are employed, between structures. The inflow should be directed towards the upstream end of the swale as much as possible, but should at a minimum occur evenly over the length of the swale. The length of flow in the swale is a minimum of one hundred feet.

- (C) Bioretention filters are vegetated, landscaped areas where runoff is directed through vegetation and soils for filtration. In most cases, unless there is shown to be adequate infiltration capacity, underdrains and overflow drains should be included to collect filtered runoff to discharge to the storm drainage system. The ponding depth should be six inches or less with a mulch layer of two to three inches. A sandy planting soil of two to three inches should be used. Each facility should have no more than one acre of tributary area, and should be designed to convey larger flows in a manner that does not cause re-entrainment of trapped materials.
- (D) Other filters shall be accompanied by certification from a civil engineer, licensed in the State of Hawaii, that the filter device will remove a minimum of eighty percent TSS from the design flow rate.

(c) Short-term detention facilities may be combined with flow-through facilities to reduce the size of the flow-through facility. For example a detention basin may be employed to meter flows through a filtration system. The applicant must show that the combined system could sufficiently treat, as provided in subsection (b), storm water runoff for the runoff

produced by the flow-through treatment rate occurring each hour for a three-hour period.

(d) Flow-through based treatment may be located upstream from and combined with detention based treatment. The two treatment methods can be combined, to reduce the sizing of each. In this case, the flow-through treatment must be designed to treat the runoff produced from a minimum rainfall intensity of 0.2 inches per hour. The treated runoff shall then flow to a downstream detention system that is designed to capture and treat the entire runoff volume that would occur from the area contributing to the detention facility from a 0.6-inch rain storm. The upstream system must be designed so that larger flows will not re-entrain and mobilize materials previously deposited. [Eff 11/25/12] (Auth: MCC §§16.26B.3900, 18.20.135) (Imp: MCC §§16.26B.3900, 18.20.135)

§15-111-06 Water quality design standards. (a) Detention based storm water quality control facilities may be designed as follows:

- (1) Wet ponds. The wet pond volume is equal to the water quality design volume and is entirely a permanent wet pond, where storm water exchanges with the pond water to achieve treatment. Detention time requirements do not apply.
- (2) Dry extended detention ponds. The pond is normally dry, or has a small wet volume (less than ten percent of the total water quality design volume). Treatment is achieved by releasing flows over an extended period.
- (3) Combination wet and extended detention ponds. The permanent wet volume of the pond is greater than ten percent of the total water quality design volume. In this case,

- the detention time requirement applies to the extended detention volume.
- (4) Storm water marsh. This pond is considered either a shallow combination wet and extended detention pond or a shallow wet pond, depending on the design. Detention time requirements apply to the extended detention volume.
  - (5) Figure 1 specifies the total extended storage and/or wet volume required for detention based water quality systems per tributary acre based upon the methodology as provided in section 15-111-3. The volume is affected by the percent imperviousness of a site. Minimizing the percentage of imperviousness will reduce the required sizes of water quality facilities.
  - (6) Figure 2 specifies the average outlet discharge rate from extended detention volumes to achieve the necessary detention times. This average outlet rate will then be used to design the outlet system. Figure 2 applies to all pond and marsh systems, except wet ponds or storm water marshes where the total volume is designed to be permanently wet. In addition, if combination ponds such as wet and extended detention include forty percent or more wet volume, the full to half full discharge rate may be applied to the entire extended detention volume. Otherwise, the volume difference between the permanent wet volume and the half full volume must be released at the half-full to empty discharge rate.
  - (7) For wet ponds and storm water marshes, the applicant must show a water balance that demonstrates that there will be sufficient dry weather flows to maintain the planned pool volume, without creating stagnate conditions.

- (8) For dry extended detention ponds, the applicant must demonstrate that the pond will be able to handle dry-weather flows, such as irrigation return flows, without causing a nuisance such as visual eye sore or stagnate water.
- (9) Detention based water quality facilities are recommended to be off-line from flood conveyance. If they are to be on-line or combined with a flood detention facility, then the facility must be designed to pass the appropriate flood without damage to the facility, as well as to minimize re-entrainment of pollutants. The water quality design must be based upon the entire tributary area to the facility.

(b) Flow-through based storm water quality facilities include filtering facilities such as vegetated swales, sand and peat filter, commercial filters, and infiltration facilities. The facility must be able to completely treat the flow rate as determined from Figure 3. Flows above this rate can either be by-passed, or routed through the facility if it can be demonstrated that velocities will not re-entrain captured pollutants.

(c) Short-term detention may be combined with flow-through based water quality control. In this case, detention may be utilized to "meter" flows through a flow-through water quality facility, and thereby reducing sizing of the flow-through facility. Figure 4 presents the flow-through treatment rate required, selected with appropriated detention, for four levels of upstream detention and outlet control. The detention volume in cubic feet per acre would be determined using Figure 1 or the equation in section 15-111-5(a), and modified by the ratio of the chosen detention volume, expressed as rainfall depth in inches, divided by the one inch design storm. The outlet from the detention facility to the treatment facility must be designed to discharge at the selected

water quality rate, which is the runoff produced by 0.4 inches of rain per hour minus one-third of the appropriate detention volume expressed in inches of rain per hour at a maximum. The chart is based upon the requirement to be able to treat flows from 0.4 inches of rainfall per hour for up to three hours, if detention is planned upstream.

(d) Flow-through based treatment may be located upstream from and combined with detention based treatment. The two treatment methods can be combined, to reduce the sizing of each. In this case, the flow-through treatment must be designed to treat the runoff produced from a minimum rainfall intensity of 0.2 inches per hour and therefore results from Figures 1, 2, and 3, or as provided in sections 15-111-5(a) and (b), must be scaled accordingly." [Eff 11/25/12]  
(Auth: MCC §§16.26B.3900, 18.20.135) (Imp: MCC §§16.26B.3900, 18.20.135)



Design Charts.

Figure 1  
Required Water Quality Design Volume for  
Detention Based Systems

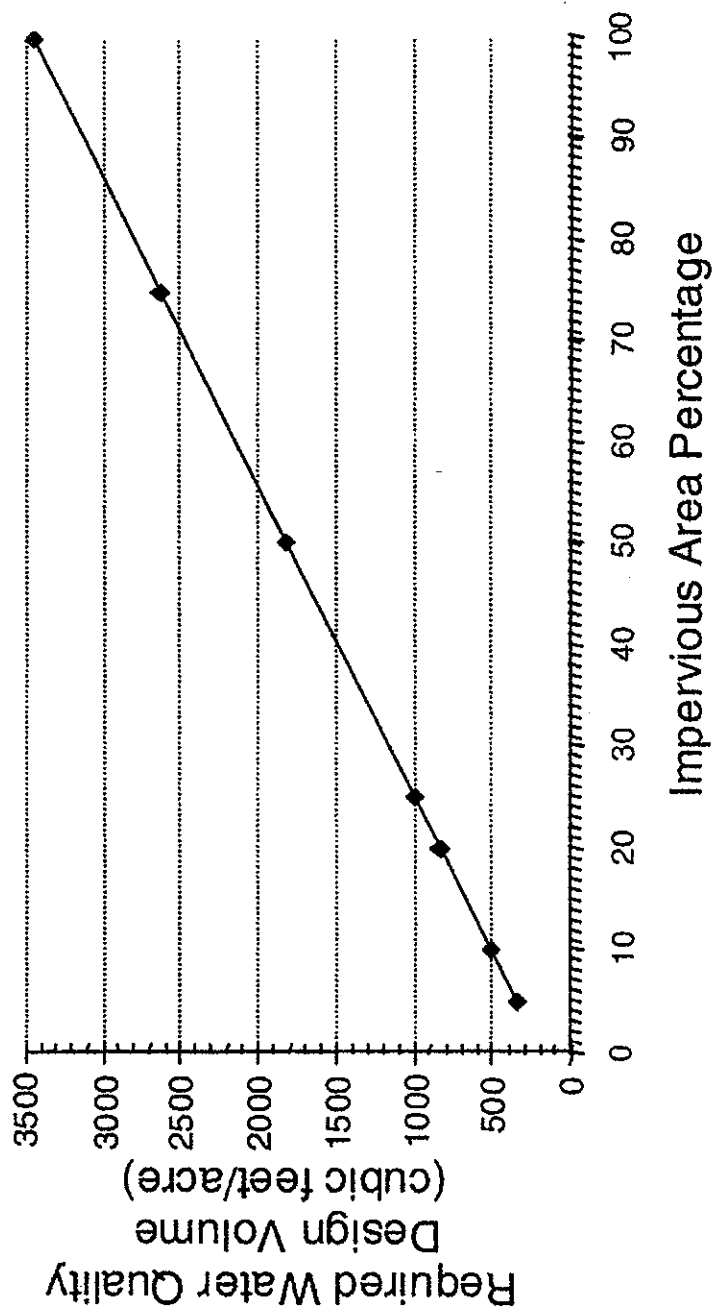


Figure 2: Required Average Outlet Discharge Rates  
for Extended Detention Volume

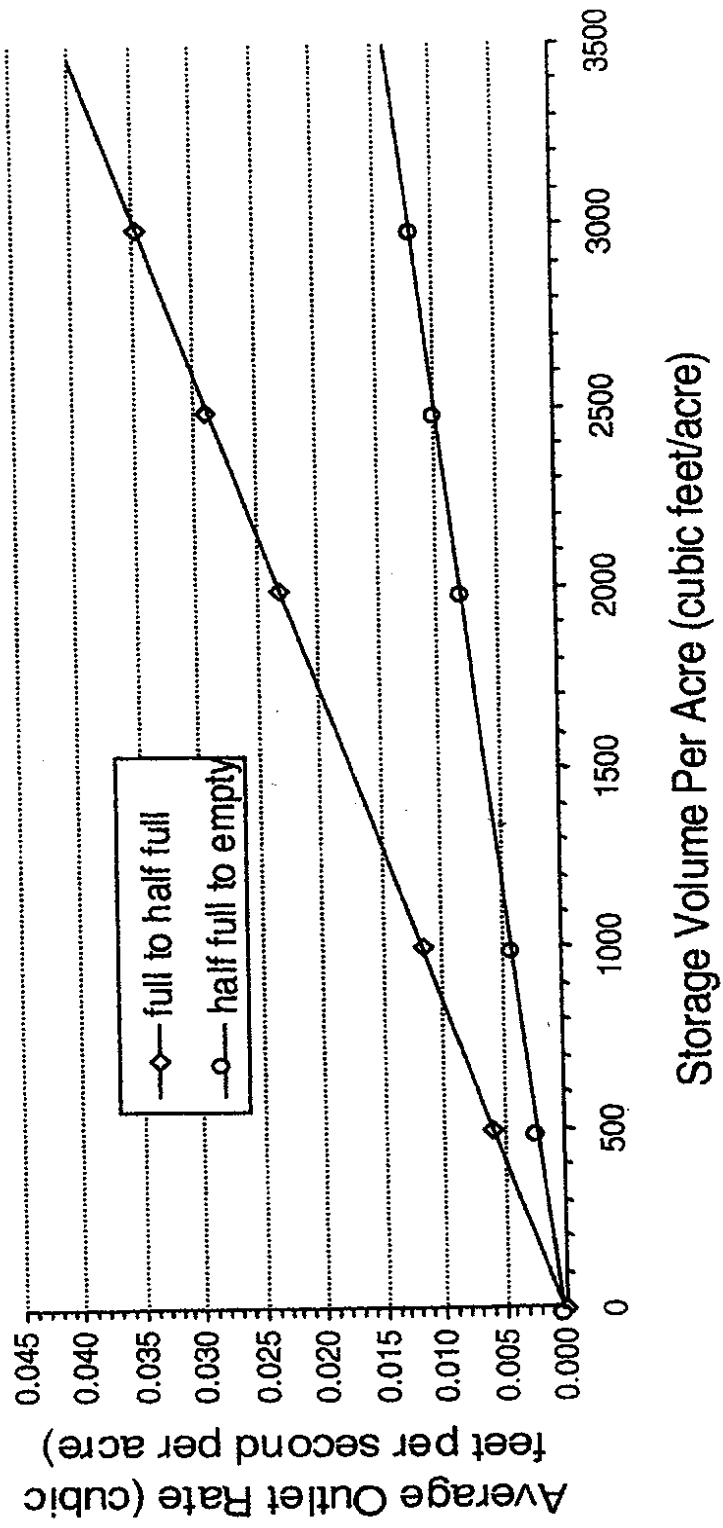


Figure 3  
Required Flow-through Based  
Storm Water Quality Control Flow Rate

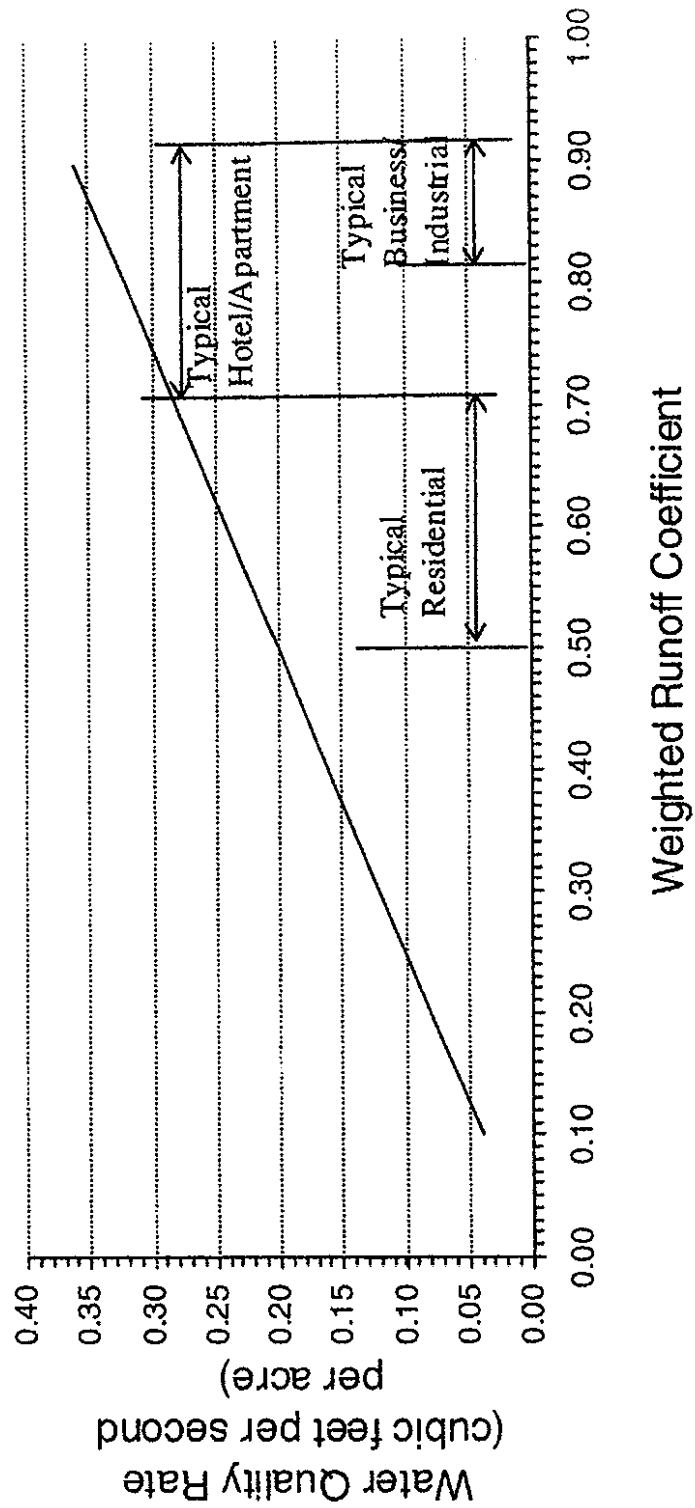


Figure 4: Flow-through Based Water Quality Flow Rate  
with Upstream Detention Volume

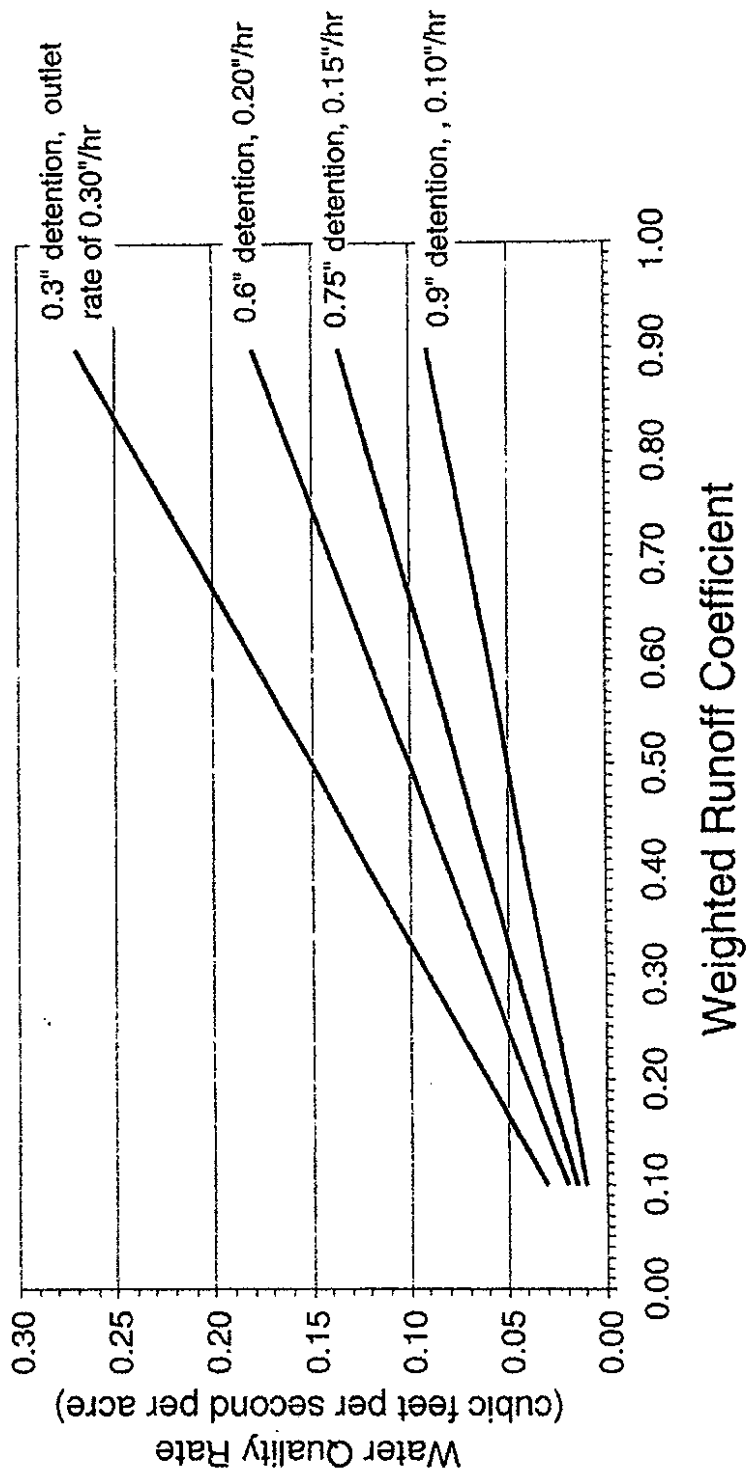


TABLE 1

## GUIDE FOR DETERMINATION OF RUNOFF COEFFICIENTS FOR BUILT-UP AREAS

WATERSHED CHARACTERISTICS	EXTREME	HIGH	MODERATE	LOW
INFILTRATION	NEGLIGIBLE 0.20	SLOW 0.14	MEDIUM 0.07	HIGH 0.0
RELIEF	STEEP (>25%) 0.08	HILLY (15-25%) 0.06	ROLLING (5-15%) 0.03	FLAT (0-5%) 0.0
VEGETAL COVER	NONE 0.07	POOR (<10%) 0.05	GOOD (10-50%) 0.03	HIGH (50-90%) 0.0
DEVELOPMENT TYPE	INDUSTRIAL & BUSINESS 0.55	HOTEL- APARTMENT 0.45	RESIDENTIAL 0.40	AGRICULTURAL 0.15

Note: The design coefficient "C" must result from a total of the values for all four watershed characteristics of the site.

**TABLE 2****TYPICAL RUNOFF COEFFICIENTS**

TYPE OF DRAINAGE AREA	RUNOFF COEFFICIENT C
PARKS, CEMETERIES	0.25
PLAYGROUNDS	0.35
RAILROAD YARD AREAS	0.40
UNIMPROVED AREAS	0.30
STREETS	
ASPHALTIC	0.95
CONCRETE	0.95
BRICK	0.85
DRIVEWAY AND WALKS	0.85
ROOFS	0.95
LAWNS:	
SANDY SOIL, FLAT (2%)	0.10
SANDY SOIL, AVERAGE (2-7%)	0.15
SANDY SOIL, STEEP (7%)	0.20
HEAVY SOIL, FLAT (2%)	0.17
HEAVY SOIL, AVERAGE (2-7%)	0.22
HEAVY SOIL, STEEP (7%)	0.35

**TABLE 3****MINIMUM RUNOFF COEFFICIENTS FOR BUILT-UP AREAS**

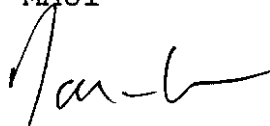
TYPE OF DEVELOPMENT	RUNOFF COEFFICIENT C
RESIDENTIAL AREAS	0.55
HOTEL, APARTMENT AREAS	0.70
BUSINESS AREAS	0.80
INDUSTRIAL AREAS	0.80

Note: Soil type, open space, ground cover, and slope shall be considered in arriving at reasonable and acceptable runoff coefficients.

2. Chapter 15-111, Rules for the Design of Storm Water Treatment Best Management Practices, shall take effect ten days after filing with the Office of the County Clerk, except that these standards shall not apply to structures or work referenced in Section 16.26B.3900, Maui County Code, until that section takes effect as provided by Ordinance Number 3928 (2012).

20 12 . ADOPTED THIS 9th day of November ,

COUNTY OF MAUI



DAVID C. GOODE  
Director of Public Works



ALAN M. ARAKAWA  
Mayor  
County of Maui

Approved this 9th day of  
November , 2012 .

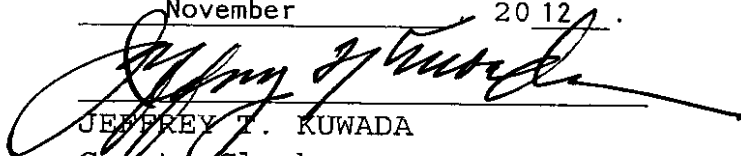
APPROVED AS TO FORM  
AND LEGALITY:



MICHAEL J. HOPPER  
Deputy Corporation  
County of Maui

S:\ALL\MJH\Public Works\Rules\Storm Water Treatment Ch15-111 2012\_Final 6-6-12.doc

Received this 15th day of  
November 2012 .



JEFFREY T. KUWADA  
County Clerk  
County of Maui

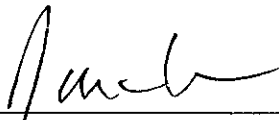


CERTIFICATION

I, DAVID C. GOODE, Director of Public Works,  
County of Maui, do hereby certify:

1. That the foregoing is a full, true and correct copy of the Rules for the Design of Storm Water Treatment Best Management Practices, drafted in Ramseyer format, pursuant to the requirements of Section 91-4.1, Hawaii Revised Statutes, which were adopted on the day of November 9, 2012, following a public hearing that closed on September 10, 2012, and which were filed with the Office of the County Clerk.

2. That the notice of public hearing on the foregoing Rules, which notice included the substance of such Rules, was published in The Maui News on August 10, 2012.

  
\_\_\_\_\_  
DAVID C. GOODE  
Director of Public Works

# **Added**

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

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

ORDINANCE NO. 3902

BILL NO. 77 (2011)

A BILL FOR AN ORDINANCE AMENDING CHAPTER 18.20,  
MAUI COUNTY CODE, RELATING TO SUBDIVISION IMPROVEMENTS

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Chapter 18.20, Maui County Code, is amended by  
adding a new section to be designated and to read as follows:

"18.20.135 Post-construction stormwater quality  
best management practices. Post-construction  
stormwater quality best management practices, as may  
be required by the director, shall be implemented for  
all subdivisions. The director shall adopt rules to  
implement this section."

SECTION 2. The requirements of this ordinance shall not  
apply to any subdivision that receives preliminary subdivision  
approval prior to the effective date of this ordinance.

SECTION 3. New material is underscored. In printing this  
bill, the County Clerk need not include the underscoring.

SECTION 4. This ordinance shall take effect 180 days after  
approval.

APPROVED AS TO FORM  
AND LEGALITY:



DAVID A. GALAZIN  
Deputy Corporation Counsel  
County of Maui

S:\ALLIDAG\ORDS\Ch 18.20.135.doc

WE HEREBY CERTIFY that the foregoing BILL NO. 77 (2011)

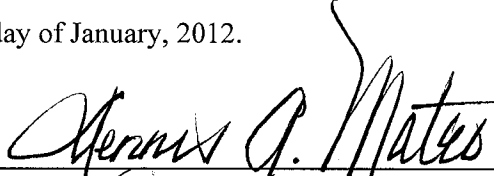
1. Passed FINAL READING at the meeting of the Council of the County of Maui, State of Hawaii, held on the 6th day of January, 2012, by the following vote:

Dennis A. MATEO Chair	Joseph PONTANILLA Vice-Chair	Gladys C. BAISA	Robert CARROLL	Eleanora COCHRAN	Donald G. COUCH, JR.	G. Riki HOKAMA	Michael P. VICTORINO	Michael B. WHITE
Aye	Aye	Aye	Aye	Aye	Aye	Aye	Excused	Aye

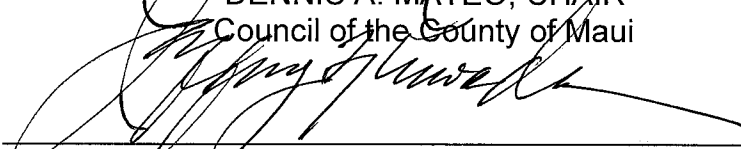
2. Was transmitted to the Mayor of the County of Maui, State of Hawaii, on the 6th day of January, 2012.

DATED AT WAILUKU, MAUI, HAWAII, this 6th day of January, 2012.

RECEIVED  
2012 JAN -6 AM 11:00  
OFFICE OF THE MAYOR



DENNIS A. MATEO, CHAIR  
Council of the County of Maui



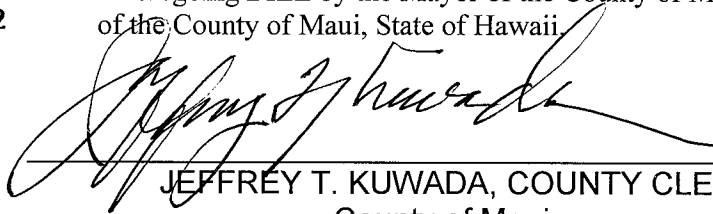
JEFFREY T. KUWADA, COUNTY CLERK  
County of Maui

THE FOREGOING BILL IS HEREBY APPROVED THIS 9 DAY OF January, 2012.



ALAN M. ARAKAWA, MAYOR  
County of Maui

I HEREBY CERTIFY that upon approval of the foregoing BILL by the Mayor of the County of Maui, the said BILL was designated as ORDINANCE NO. 3902 of the County of Maui, State of Hawaii.



JEFFREY T. KUWADA, COUNTY CLERK  
County of Maui

Passed First Reading on December 16, 2011.

Effective date of Ordinance July 7, 2012

RECEIVED  
2012 JAN -9 PM 2:11  
OFFICE OF THE  
COUNTY CLERK

I HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 3902, the original of which is on file in the Office of the County Clerk, County of Maui, State of Hawaii.

Dated at Wailuku, Hawaii, on

\_\_\_\_\_  
County Clerk, County of Maui

# **Added**

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

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

ORDINANCE NO. 3903

BILL NO. 78 (2011)

A BILL FOR AN ORDINANCE AMENDING CHAPTER 16.26,  
MAUI COUNTY CODE, RELATING TO THE BUILDING CODE

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Chapter 16.26, Maui County Code, is amended by  
adding a new section to be designated and to read as follows:

**"16.26.3306 Section 3306 added.**

Chapter 33 of the Uniform Building Code is  
amended by adding a new section 3306 to be designated  
and to read as follows:

**Sec. 3306 Post-construction stormwater quality  
best management practices.**

3306.1 Post-construction stormwater quality best  
management practices, as may be required by the  
director of public works, shall be implemented for  
property on which any new structure(s) will be  
situated, or for any work such as remodeling,  
reconstruction, repairs, additions, and similar work,  
where the cost of the work over a period of twelve  
consecutive months exceeds fifty percent of the  
replacement value of the existing structure(s) before  
work is started.

EXCEPTION: The requirements of this  
section shall not apply to a single-  
family dwelling and its accessory  
structures, as the same shall be  
defined in title 19 of this code,  
provided that the dwelling is not part  
of a multiple-dwelling development plan  
or subdivision plan, as determined by  
the director of public works, and  
provided further that the total  
impervious surface area of the project  
does not exceed five thousand square  
feet.

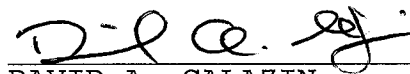
3306.2 The director of public works shall adopt rules to implement this section."

SECTION 2. The requirements of this ordinance shall not apply to any complete application for a building permit submitted prior to the effective date of this ordinance.

SECTION 3. New material is underscored. In printing this bill, the County Clerk need not include the underscoring.

SECTION 4. This ordinance shall take effect 180 days after approval.

APPROVED AS TO FORM  
AND LEGALITY:



DAVID A. GALAZIN  
Deputy Corporation Counsel  
County of Maui

S:\ALL\DAG\ORDS\building code amendment.doc

WE HEREBY CERTIFY that the foregoing BILL NO. 78 (2011)

1. Passed FINAL READING at the meeting of the Council of the County of Maui, State of Hawaii, held on the 6th day of January, 2012, by the following vote:

Dennis A. MATEO Chair	Joseph PONTANILLA Vice-Chair	Gladys C. BAISA	Robert CARROLL	Eleanora COCHRAN	Donald G. COUCH, JR.	G. Riki HOKAMA	Michael P. VICTORINO	Michael B. WHITE
Aye	Aye	Aye	Aye	Aye	Aye	Aye	Excused	Aye

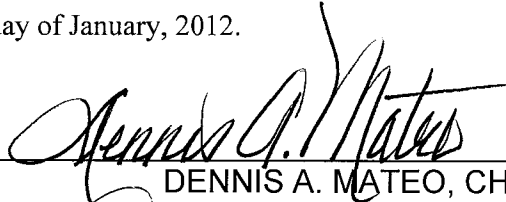
2. Was transmitted to the Mayor of the County of Maui, State of Hawaii, on the 6th day of January, 2012.

DATED AT WAILUKU, MAUI, HAWAII, this 6th day of January, 2012.

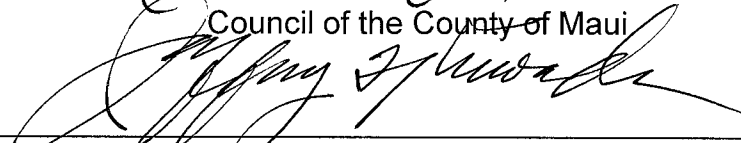
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OFFICE OF THE MAYOR



DENNIS A. MATEO, CHAIR  
Council of the County of Maui



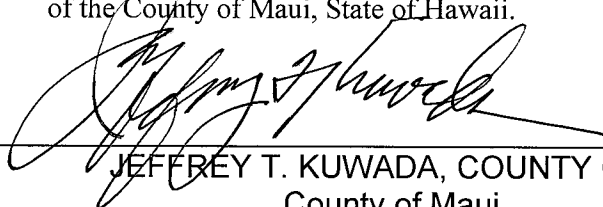
JEFFREY T. KUWADA, COUNTY CLERK  
County of Maui

THE FOREGOING BILL IS HEREBY APPROVED THIS 9 DAY OF January, 2012.



ALAN M. ARAKAWA, MAYOR  
County of Maui

I HEREBY CERTIFY that upon approval of the foregoing BILL by the Mayor of the County of Maui, the said BILL was designated as ORDINANCE NO. 3903 of the County of Maui, State of Hawaii.



JEFFREY T. KUWADA, COUNTY CLERK  
County of Maui

Passed First Reading on December 16, 2011.

Effective date of Ordinance July 7, 2012

RECEIVED

2012 JAN -9 PM 2:12

OFFICE OF THE  
COUNTY CLERK

I HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 3903, the original of which is on file in the Office of the County Clerk, County of Maui, State of Hawaii.

Dated at Wailuku, Hawaii, on

\_\_\_\_\_  
County Clerk, County of Maui