

Request List of Routine Program Changes 2016, Hawaii CZM Program

Added (Attachment-I)	
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
Modified (Attachment-II)	
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
Deleted (Attachment-III)	
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

Deleted

31) HAR Chapter 13-60.3

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

HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 4

FISHERIES

PART II MARINE FISHERIES MANAGEMENT AREAS

CHAPTER 60.3

WEST HAWAII REGIONAL FISHERIES MANAGEMENT AREA, HAWAII

- §13-60.3-1 Definitions
- §13-60.3-2 Intent and purpose
- §13-60.3-3 General conditions
- §13-60.3-4 Aquarium fisheries
- §13-60.3-5 Lay nets
- §13-60.3-6 Penalty
- §13-60.3-7 Severability
- §§13-60.3-8 to 13-60.3-12 (Reserved)
- §13-60.3-13 North Kohala fisheries management area
- §13-60.3-14 Puako-'Anaeho'omalu fisheries management area
- §13-60.3-15 Ka'upulehu fisheries management area
- §13-60.3-16 Kaloko-Honokohau fisheries management area
- §13-60.3-17 Kailua-Keauhou fisheries management area
- §13-60.3-18 Red Hill fisheries management area
- §13-60.3-19 Napo'opo'o-Honaunau fisheries management area
- §13-60.3-20 Ho'okena fisheries management area
- §13-60.3-21 Miloli'i fisheries management area

§13-60.3-1 Definitions. As used in this chapter unless otherwise provided:

"Aquarium-collecting gear" means any equipment or gear used to collect aquarium fish or animals including but not limited to hand nets, fence or barrier nets, fiberglass or metal 'tickle sticks', catch buckets, keeps or baskets.

"Aquarium purpose" means to hold salt water fish, fresh water nongame fish, or other aquatic life alive in a state of captivity as pets, for scientific study or for public exhibition or display, or for sale for

these purposes. Salt water fish, fresh water nongame fish, or other aquatic life held alive in a state of captivity as food for human consumption shall not be considered as aquarium purpose.

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

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

"Fish feeding" means deliberately introducing any food material, substance or device used as an attractant, directly to or in the vicinity of any marine life, by any means, for any purpose except the purpose of catching and removing that marine life.

"Kealakekua Bay Marine Life Conservation District" means that area designated by Chapter 29, Hawaii Administrative Rules.

"Keauhou Fisheries Management Area" means that area designated by Chapter 57, Hawaii Administrative Rules.

"Kona Coast Fisheries Management Area" means those areas designated by Chapter 58, Hawaii Administrative Rules.

"Landward boundary" means an imaginary line drawn along the highwater mark on shore between the landward northern point and the landward southern point.

"Lay net" means a panel or panels of net mesh made of various materials that is suspended vertically in the water with the aid of a float line that supports the top edge of the net upwards towards the water surface and opposite to a lead line that keeps the bottom edge of the net downward towards the ocean floor.

"Lay net fishing" means a method of fishing where a person or persons engage in the act of or attempt to engage in the act of deploying a lay net in the water in a specific location, then retrieving the lay net from the same location, after a certain time period has passed to allow for the capture of aquatic life. The lay net primarily entangles aquatic life within the mesh of the net as the aquatic life swim or move into the stationary lay net. The lay net is most commonly deployed in a straight line or semi-circle configuration. The main characteristics of the lay net fishing method are the open net configuration and the stationary net. This fishing method is also known as set netting, cross netting, *pa'ipa'i*, and *moemoe* netting.

"Management area" means the West Hawaii regional fisheries management area.

"Natural fibers" means fibers derived wholly from plant materials such as, but not limited to, olona, linen, cotton, hemp, and sisal.

"Northern boundary" means an imaginary straight line drawn between the landward northern point and the seaward northern point.

"Puako Bay and Puako Reef fisheries management area" means that area designated by Chapter 54, Hawaii Administrative Rules.

"Seaward boundary" means an imaginary straight line drawn between the seaward northern point and the seaward southern point.

"Southern boundary" means an imaginary straight line drawn between the landward southern point and the seaward southern point.

"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 on or about the shore where aquatic life can be fished for, caught, or harvested, shall be construed as taking. [Eff 12/31/99; am and comp **AUG 0 1 2005**] (Auth: HRS §§187A-5, 188-53, 188F-6) (Imp: HRS §§187A-5, 188-53, 188F-6)

§13-60.3-2 Intent and purpose. (a) The intent and purpose of this chapter shall be as described in sections 188F-2 and 188F-3, Hawaii Revised Statutes.

(b) For the purposes of this chapter, the fish replenishment areas, as described in section 188F-4, Hawaii Revised Statutes, shall be known as fishery management areas, marine life conservation districts, or as may be otherwise designated, to be consistent with other area designations.

(c) Native Hawaiian (Kanaka Maoli) 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 such a procedure is established. [Eff 12/31/1999; am and comp **AUG 0 1 2005**] (Auth: HRS §§187A-5, 188-53, 188F-2, 188F-3, 188F-4, 188F-6) (Imp: HRS §§187A-5, 188-53, 188F-6)

§13-60.3-3 General conditions. (a) Unless otherwise authorized by law, it is unlawful for any

person to engage in or attempt to engage in fish feeding in any area designated in this chapter, including the Lapakahi Marine Life Conservation District, the Wailea Bay Marine Life Conservation District, the Old Kona Airport Marine Life Conservation District, the Kealakekua Bay Marine Life Conservation District, Puako Bay and Puako Reef fisheries management areas, Kiholo Bay fisheries management areas, Kailua Bay fisheries management areas, and Keauhou Bay fisheries management areas.

(b) Unless otherwise specified, the seaward boundary of any area designated in this chapter shall be to a depth of 100 fathoms (600 feet).

(c) Unless otherwise specified, the landward boundary of any area designated in this chapter shall be the highwater mark on shore. Should there be a stream or river flowing into the ocean, the landward boundary shall be an imaginary straight line drawn between the highwater marks on either side of the stream or river, as if the stream or river was not there.

(d) Unless otherwise provided, any area designated in this chapter shall be bounded by four points further identified by their latitude and longitude coordinates. A table of the areas with their corresponding latitude and longitude coordinates is provided at the end of this chapter, entitled "Fisheries Management Area Boundaries", dated September 24, 2003. The four points shall be the landward northern point, the landward southern point, the seaward northern point, and the seaward southern point. Imaginary lines drawn between these four points shall be known as the landward, seaward, northern, and southern boundaries. Any area designated in this chapter shall include the submerged lands and overlying waters within these four boundaries.

(e) The department may further identify the landward northern point and the landward southern point by signs posted on land to aid in the location of these points.

(f) Nothing in this chapter shall be construed as allowing within the management area any activity otherwise prohibited by law or rules adopted by another department of the state. [Eff 12/31/99; am and comp **AUG 01 2005**] (Auth: HRS §§187A-5, 188-53, 188F-6) (Imp: HRS §§187A-5, 188-53, 188F-6)

§13-60.3-4 Aquarium fisheries. (a) Unless otherwise authorized by law, it is unlawful for any

person taking aquatic life for aquarium purposes within the management area to:

- (1) For commercial purposes, possess aquarium-collecting gear or collected marine life or both on-board any aquarium-collecting vessel without holding a valid aquarium permit and commercial marine license;
 - (2) For commercial purposes, possess aquarium-collecting gear or take or possess marine life taken with such gear while on an unregistered aquarium-collecting vessel;
 - (3) Take aquatic life for aquarium purposes between sunset and sunrise.
- (b) Unless otherwise authorized by law, all aquarium-fishing vessels shall:
- (1) Register the vessel with the department to take marine life for aquarium purposes within the management area. The current vessel identification number issued by either the department or the United States Coast Guard shall serve as the registration number for such vessels;
 - (2) Clearly display the capital letters "AQ" on 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 (6) inches high and three (3) inches wide in either black or a contrasting color to 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 whenever aquarium-collecting gear or collected aquarium marine life or both are on-board;
 - (4) Display of a dive flag at all times when divers are in the water.
- (c) Unless otherwise authorized by law, it is unlawful for an aquarium-collecting vessel and persons on-board the aquarium-collecting vessel to:
- (1) Be adrift, anchored, or moored within any area prohibiting aquarium collecting while possessing aquarium-collecting gear or possessing any marine life taken with such gear. A vessel may transit through such areas with aquarium-collecting gear or marine

life taken with collecting gear or both; provided that no collecting gear is in the water during transit.

(d) In the event an aquarium-collecting vessel becomes inoperable in the management area, 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.

(e) Control date. There is established a control date to give prior notice of intent to possibly limit participation in the West Hawaii Regional Fisheries Management Area (WHRFMA) commercial aquarium fishery. Persons who begin fishing in the WHRFMA 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. The control date will be the original effective date of this section.

(f) Nothing in this chapter shall require the department to establish an aquarium limited entry program in the future nor does it prevent the department from establishing another control date. [Eff AUG 01 2005] (Auth: HRS §§187A-5, 188-53, 188F-6) (Imp: HRS §§187A-5, 188-53, 188F-3)

§13-60.3-5 Lay nets. (a) It is unlawful for any person on or about the water 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 125 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; and
 - C. with two or more joined lay nets with a combined total length of more than 250 feet.
- (4) Possess or use a multi-panel net;
- (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;

- to:
- (b) It is unlawful for any person lay net fishing
 - (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 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 1,2000 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 80 feet in depth;
 - (4) Use a lay net for more than four hours during any one set; provided further that after the one set, the same lay net may not be set again within twenty-four hours 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 either from its attachment to the bottom or into smaller pieces. Any coral brought to the surface in the net shall be considered as 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;
 - (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 subsections (a) (5) and (a) (1) respectively.
 - (d) Persons using a vessel or float may use a total maximum of 250 feet of lay net, provided that at least two persons are 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 on or about the water that is not registered or does not have proper identification tags, as required in subsections (a)(1) and (a)(5), shall be considered contraband and subject to immediate seizure by the department.

(g) It is unlawful for any person to lay net fish in the following areas as provided in the table at the end of this chapter, entitled "Fisheries Management Area Boundaries," dated September 24, 2003;

- (1) Puako-'Anaeho'omalu Fisheries Management Area;
- (2) Ka'upulehu Fisheries Management Area;
- (3) Makolea to Kalae o Kikaua (Kekaha Kai State Park);
- (4) Nenua Point (Red Hill Fisheries Management Area) - Kealakekua Bay Marine Life Conservation District;
- (5) Hanamalo Point to Kanewa'a Point, South Kona; and
- (6) Kanonohe to Kalipoa, Ka'u.

(h) Special netting rules apply in the following areas:

- (1) A person shall lay net fish or net akule (all methods) at Kaloko-Honokohau National Historical Park Fisheries Management Area using only a locally constructed, handmade net of natural fibers subject to the provisions of subsections (a) - (g).
- (2) No netting area at Keauhou Bay (excepting throw nets) is extended from present FMA boundaries to Kaukalahae Point and Haiku'ua Point. [Eff AUG 01 2005] (Auth: HRS §§187A-5, 188-53, 188F-6) (Imp: HRS §§187A-5, 188-53, 188F-6).

§13-60.3-6 Penalty. Any person violating the provisions of this chapter, or the terms and conditions of any permit issued as provided by this chapter, shall be punished as provided by sections 187A-12.5 and 188-70, Hawaii Revised Statutes, or a may be otherwise provided by law. [Eff 12/31/99; ren AUG 01 2005] (Auth: HRS §§187A-12.5, 188-70) (Imp: HRS §§187A-12.5, 188-70)

§13-60.3-7 Severability. If any provision of this chapter, or the application thereof, to any person or circumstance is held invalid, the invalidity does

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 12/31/99; ren **AUG 01 2005**] (Auth: HRS §§1-23, 187A-5, 188-53, HRS 188F-6) (Imp: HRS §§1-23, 187A-5, 188-53, 188F-6)

§13-60.3-13 North Kohala fisheries management area. The North Kohala fisheries management area shall be identified on shore to the north by Kamilo Gulch and to the south by the Kawaihae Lighthouse. [Eff 12/31/99; ren **AUG 01 2005**] (Auth: HRS §§187A-5, 188-53, 188F-6) (Imp: HRS §§187A-5, 188-53, 188F-6)

§13-60.3-14 Puako-'Anaeho'omalu fisheries management area. The Puako-'Anaeho'omalu fisheries management area shall be identified on shore to the north by the southern end of the Puako Bay and Puako Reef Fisheries Management Area and to the south by the southern side of 'Anaeho'omalu Bay (Kapalaoa). [Eff 12/31/99; ren **AUG 01 2005**] (Auth: HRS §§187A-5, 188-53, 188F-6) (Imp: HRS §§187A-5, 188-53, 188F-6)

§13-60.3-15 Ka'upulehu fisheries management area. The Ka'upulehu fisheries management area shall be identified on shore to the north by the northern boundary of the Ka'upulehu ahupua'a and to the south by the southern side of Kalae O Kikaua (Kuki'o Bay). [Eff 12/31/99; ren **AUG 01 2005**] (Auth: HRS §§187A-5, 188-53, 188F-6) (Imp: HRS §§187A-5, 188-53, 188F-6)

§13-60.3-16 Kaloko-Honokohau fisheries management area. The Kaloko-Honokohau fisheries management area shall be identified on shore to the north by the southern boundary of Wawaloli Zone (Kona Coast Fisheries Management Area) at Wawahiwa'a Point and to the south by Noio Point. [Eff 12/31/99; ren **AUG 01 2005**] (Auth: HRS §§187A-5, 188-53, 188F-6) (Imp: HRS §§187A-5, 188-53, 188F-6)

§13-60.3-17 Kailua-Keauhou fisheries management area. The Kailua-Keauhou fisheries management area shall be identified on shore to the north by the southern boundary of Kailua Bay Zone, Kona Coast Fisheries Management Area and to the south by the northern boundary of Keauhou Fisheries Management Area.

[Eff 12/31/99; ren **AUG 0 1 2005**] (Auth: HRS §§187A-5, 188-53, 188F-6) (Imp: HRS §§187A-5, 188-53, 188F-6)

§13-60.3-18 Red Hill fisheries management area.
The Red Hill fisheries management area shall be identified on shore to the north at Nenu Point and to the south by Keawekaheka Point. [Eff 12/31/99; ren **AUG 0 1 2005**] (Auth: HRS §§187A-5, 188-53, 188F-6) (Imp: HRS §§187A-5, 188-53, 188F-6)

§13-60.3-19 Napo'opo'o-Honaunau fisheries management area. (a) The Napo'opo'o-Honaunau fisheries management area shall be identified on shore to the north by the southern boundary of Kealakekua Bay marine life conservation district (Manini Point) and to the south by the southern boundary of Pu'uhonua O Honaunau (Ki'ilae). [Eff 12/31/99; ren **AUG 0 1 2005**] (Auth: HRS §§187A-5, 188-53, 188F-6) (Imp: HRS §§187A-5, 188-53, 188F-6)

§13-60.3-20 Ho'okena fisheries management area. The Ho'okena fisheries management area shall be identified on shore to the north by Loa Point and to the south by Ka'uoloa Point. [Eff 12/31/99; ren **AUG 0 1 2005**] (Auth: HRS §§187A-5, 188-53, 188F-6) (Imp: HRS §§187A-5, 188-53, 188F-6)

§13-60.3-21 Miloli'i fisheries management area.
The Miloli'i fisheries management area shall be identified on shore to the north by Makahiki Point and to the south by Kakio Point. [Eff 12/31/99; ren **AUG 0 1 2005**] (Auth: HRS §§187A-5, 188-53, 188F-6) (Imp: HRS §§187A-5, 188-53, 188F-6)

Fisheries Management Area Boundaries

September 24, 2003

Location	Landward dGPS Coordinates		Seaward dGPS Coordinates (600 ft.)			
	Northern Point	Southern Point	Northern Point	Southern Point	D (nm)	@
North Kohala	20° 04.826' N	20° 02.471' N	20° 04.378' N	20° 01.654' N	1.40	225°
	155° 51.934' W	155° 49.988' N	155° 53.344' W	155° 51.875' W		225°
Puako - Anaeho'omalu	19° 57.529' N	19° 54.641' N	19° 59.206' N	19° 57.034' N	2.40	300°
	155° 51.553' W	155° 53.893' W	155° 53.383' W	155° 56.658' W		300°
Ka'upulehu	19° 51.011' N	19° 49.209' N	19° 53.817' N	19° 51.724' N	3.91	300°
	155° 58.111' W	156° 00.132' W	156° 00.994' W	156° 03.947' W		300°
Kalae o Kikaua - Makolea	19° 49.130' N	19° 46.356' N	19° 52.100' N	19° 49.000' N	4.41	300°
	156° 00.063' W	156° 03.024' W	156° 03.566' W	156° 06.164' W		300°
Kaloko - Honokohau	19° 41.558' N	19° 40.059' N	19° 41.368' N	19° 39.844' N	0.35	240°
	156° 02.725' W	156° 01.741' W	156° 03.031' W	156° 02.169' W		240°
Kailua - Keauhou	19° 37.904' N	19° 33.716' N	19° 37.089' N	19° 32.801' N	2.02	245°
	155° 55.497' 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	19° 28.991' N	1.41	235°
	155° 57.630' W	155° 57.068' W	155° 58.953' W	155° 57.536' W		235°
Nenu Pt. - Kealahou Bay	19° 30.823' N	19° 28.699' N	19° 30.166' N	19° 28.316' N	1.41	235°
	155° 57.630' W	155° 56.114' W	155° 58.953' W	155° 56.983' W		235°
Napo'opo'o - Honaunau	19° 28.230' N ¹	19° 24.559' N	19° 28.688' N ²	19° 24.725' N	1.13	270°
	155° 53.354' 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	19° 19.403' N	0.40	240°
	155° 54.685' W	155° 53.426' W	155° 55.095' W	155° 53.688' W		240°
Miloli'i	19° 14.071' N	19° 08.098' N	19° 14.111' N	19° 08.160' N	0.15	270°
	155° 54.082' W	155° 55.132' W	155° 54.235' W	155° 55.510' W		270°
Hanamalo Pt. - Kanewa'a Pt.	19° 09.273' N	19° 07.091' N	19° 09.275' N	19° 07.093' N	0.55	260°
	155° 54.973' W	155° 55.115' W	155° 55.564' W	155° 55.313' W		260°
Kanonone - Kalipoa	19° 00.662' N	18° 58.180' N	19° 00.409' N	18° 57.941' N	0.25	200°
	155° 48.302' W	155° 44.182' W	155° 48.302' W	155° 44.183' W		200°
Haiku'ua Pt. - Kaukalaelae Pt.	19° 33.757' N	19° 33.587' N	NA ³	NA	NA	NA
	155° 57.916' W	155° 57.964' W	NA	NA	NA	NA

^{1,2} Northern Boundary runs 0.25nm along existing Kealahou Bay MLCB southern boundary to 19° 28.443' N/155° 55.708' W and then 270° to seaward northern point.

³ Seaward boundary points not present. Seaward boundary runs between N and S landward points.

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

@ = compass heading from landward coordinates to seaward coordinates

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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:

Deleted

32) HAR §13-126-22 Aircraft

§13-126-21 Agricultural use of premises. No person shall run at large, herd, drive across, or graze animals or use the premises for any agricultural purpose except under a valid lease, contract, or permit issued by the board. [Eff 1/22/2010] (Auth: HRS §§ 183D-2, 183D-3, 183D-4, 195D-3, 195D-6) (Imp: HRS §§ 183D-2, 183D-3, 183D-4, 195D-3, 195D-6)

§13-126-22 Aircraft. No person shall land, launch, or cause any aircraft to approach within 500 feet of any sanctuary, including airplanes, airships, balloons, gliders, hang gliders, para-gliders, helicopters, parachutes, dirigibles, and other similar means of conveyance, except with the written permission of the board or its authorized representative or in the case of an emergency. [Eff 1/22/2010] (Auth: HRS §§ 183D-2, 183D-3, 183D-4, 195D-3, 195D-6) (Imp: HRS §§ 183D-2, 183D-3, 183D-4, 195D-3, 195D-6)

§13-126-23 Animals and plants. (a) No person shall introduce, feed, remove, injure, take, or kill any plant or animal, either in whole or in part, except as authorized by the Board or authorized representative or as provided by rules of the Board.

(b) The introduction by any person of any animal or plant and the placement, abandonment or leaving of any animal or plant in a state wildlife sanctuary is strictly prohibited except as authorized by permit by the board or its authorized representative. This section shall not apply to dogs when authorized by the hunting rules of the department or service animals accompanying their handlers.

(c) Animal pets are not permitted in wildlife sanctuaries, except as authorized by the board or its authorized representative, or by the rules of the department. Any animal, such as a dog or cat, found

DEPARTMENT OF LAND AND NATURAL RESOURCES

The repeal of chapter 13-125, and adoption of chapter 13-126, Hawaii Administrative Rules, on the Summary Page dated December 11, 2009, was adopted on December 11, 2009, following a series of statewide public hearings held between November 3 through 9, 2009 after public notice was given in the Star Bulletin, Garden Island, Maui News, Hawaii Tribune-Herald, and West Hawaii Today on October 4, 2009.

The repeal and adoption shall take effect ten days after filing with the Office of the Lieutenant Governor.

LIEUTENANT GOVERNOR'S
OFFICE

'10 JAN 12 A9:55



LAURA H. THIELEN
Chairperson
Board of Land and Natural
Resources

APPROVED:



LINDA LINGLE
Governor
State of Hawaii

Dated: 1/8/10

APPROVED AS TO FORM:



Deputy Attorney General

JAN 12 2010

Filed

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33) HAR Chapter 13-190

Relating to **Dams and Reservoirs**

HAWAII ADMINISTRATIVE RULES
TITLE 13
DEPARTMENT OF LAND AND NATURAL RESOURCES
SUBTITLE 7
WATER AND LAND DEVELOPMENT
CHAPTER 190
DAMS AND RESERVOIRS

Subchapter 1 General Provisions

- §13-190-1 Purpose and applicability
- §13-190-2 Definitions
- §13-190-3 Exempt structures
- §13-190-4 Violations; penalties
- §13-190-5 Administrative and judicial review

Subchapter 2 Construction, Enlargement, Repair,
Alteration, or Removal of Dams and
Reservoirs

- §13-190-20 Construction or enlargement of dam or
reservoir
- §13-190-21 Repair or alteration of dam, reservoir,
or appurtenant works; removal of
dam or reservoir
- §13-190-22 Supervision of plans preparation and
construction inspection
- §13-190-23 Approval of plans and specifications
- §13-190-24 Revocation of approval

Subchapter 3 Construction, Inspection, and
Completion

- §13-190-30 Inspection during progress of work
- §13-190-31 Completion of new or enlarged dam or
reservoir
- §13-190-32 Completion of repair or alteration of
dam or reservoir
- §13-190-33 Completion of removal of dam or
reservoir
- §13-190-34 Complaints as to unsafe conditions

Subchapter 4 Maintenance, Operation, and
Emergency Work

§13-190-40 Maintenance and operation
§13-190-41 Emergency work
§13-190-42 Emergency preparedness plan

SUBCHAPTER 1

GENERAL PROVISIONS

§13-190-1 Purpose and applicability. (a) The purpose of this chapter is to establish rules governing the design, construction, operation, maintenance, enlargement, alteration, repair, and removal of dams, reservoirs, and appurtenant works in the State.

(b) This chapter shall not apply to the design and construction of dams, reservoirs, and appurtenant works which already existed on June 6, 1987, but shall apply to their operation, maintenance, enlargement, alteration, repair, and removal.

(c) This chapter does 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.

Eff. APR 19 1990 (Auth: HRS §179D-6) (Imp: HRS §179D-2, 179D-5)

§13-190-2 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.

Appurtenant works means the ancillary features of a dam, such as the spillway, reservoir and its rim, powerhouse outlet, tunnel, pipeline, and penstock.

Board means the board of land and natural resources.

Dam means any artificial barrier, including appurtenant works, which impounds or diverts water, and which:

- (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; or

- (2) Has an impounding capacity at maximum water storage elevation of fifty acre-feet or more. This chapter does 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.

Day means calendar days including Saturdays, Sundays and holidays.

Department means the department of land and natural resources.

Design water level means the maximum water elevation, including the flood surcharge, that a dam is designed to withstand.

Engineer means a registered professional engineer, licensed by the State of Hawaii.

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.

High hazard means a dam's failure would most probably result in the loss of lives and extensive property damage.

Low hazard means a dam's failure would result in only minimal property damage.

Maximum water storage elevation means the maximum water surface elevation of the reservoir at the crest of the spillway or, if no spillway exists, at the crest of the dam.

Moderate hazard means a dam's failure would possibly result in the loss of life and appreciable property damage.

Owner means any person who owns, controls, operates, maintains, manages, or proposes to construct a dam or reservoir.

Person means any individual, firm, association, organization, partnership, estate, trust, corporation, company, or any governmental unit.

Repair means construction to an existing dam that does not significantly change the reservoir's storage capacity. Repair shall not be deemed to apply to routine maintenance not affecting the safety of the structure.

Reservoir means any basin which contains or will contain water impounded by a dam.

Spillway crest means the lowest level at which water can flow over or through the spillway.

Storage capacity means the total reservoir storage in acre-feet at the maximum water storage elevation. Eff. APR 19 1990 (Auth: HRS 179D-6) (Imp: HRS §179D-3)

§13-190-3 Exempt structures. Structures exempt from these rules include:

- (1) Highways and roadfills (except those designed or modified with the purpose of impounding water for uses other than flood detention);
- (2) Dams smaller than those defined in section 13-190-2.
- (3) Dams for which no loss of human life is expected and damage will occur only to the owner's property in the event of failure of the dam;
- (4) Refuse embankments (e.g., solid waste disposal facilities); and
- (5) Structures that store water only below the lowest point of the natural ground, unless an outlet works is constructed to develop water.

Eff. APR 19 1990 (Auth: HRS §179D-6) (Imp: HRS §179D-6)

§13-190-4 Violations; penalties. Any person violating any provision of this chapter shall be liable for a civil penalty not to exceed \$500 for each day during which said violation continues. Eff. APR 19 1990 (Auth: HRS §179D-6) (Imp: HRS §179D-8)

§13-190-5 Administrative and judicial review. 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. Eff. APR 19 1990 (Auth: HRS §179D-6) (Imp: HRS §179D-7)

SUBCHAPTER 2

CONSTRUCTION, ENLARGEMENT, REPAIR, ALTERATION,

OR REMOVAL OF DAMS AND RESERVOIRS

§13-190-20 Construction or enlargement of dam or reservoir. (a) No person shall construct any dam or reservoir or enlarge any dam or reservoir until an application to undertake the work has been filed and written approval of the construction plans and specifications is obtained from the board.

(b) A separate application shall be filed with the board for each reservoir and dam.

(c) Each application shall be made on forms furnished by the department and shall include the following:

- (1) Name and address of the applicant;
- (2) Name and address of the owner or owners of the land upon which the works are to be constructed or enlarged, and a legal description of the land;
- (3) Description of the location, type, size, and height of the proposed dam and reservoir and appurtenant works;
- (4) Storage capacity and reservoir surface areas for maximum water storage elevation and design water level;
- (5) Plans for any permanent instrument installations in the dam;
- (6) Area of the drainage basin, rainfall and streamflow records, and flood-flow records and estimates (as accurately as may be readily obtained);
- (7) Relevant construction drawings, plans, and specifications;
- (8) Proposed times of commencement and completion of the proposed activity;
- (9) Name and address of the person who prepared the plans and specifications;
- (10) Name and address of the person who will construct or enlarge the proposed dam or reservoir and appurtenant works; and
- (11) Other information as may be necessary for the board to determine the merits of the proposed construction or enlargement of the dam or reservoir and appurtenant works, including any hazards to the public health, safety, or welfare, and the desirability of issuing a permit.

(d) A non-refundable filing fee of \$25 shall accompany each application; provided that no fee shall be required of any federal, state, or county agency. Eff. APR 19 1990 (Auth: HRS §179D-6) (Imp: HRS §179D-6)

§13-190-21 Repair or alteration of dam, reservoir, or appurtenant works; removal of dam or reservoir. (a) Before commencing the repair or alteration of an existing dam, reservoir, or appurtenant works, or the alteration or removal of a dam or reservoir so that it no longer constitutes a dam or reservoir as defined in this chapter, the owner shall file an application for the work and secure the written approval of the board; provided that owners proposing routine maintenance not affecting the safety of the structure are exempted from this requirement.

(b) Each application shall include such pertinent information and data concerning the dam, reservoir, or appurtenant works as may be required by the board, as follows:

- (1) Proposed times of commencement and completion of remedial construction;
- (2) Names and addresses of applicant and contractor;
- (3) Changes which the work covered in the application is proposed to effect, with appropriate references to the existing dam or reservoir;
- (4) Relevant construction plans and specifications; and
- (5) Other information appropriate for a thorough consideration of the safety of such work, as may be required by the board.

(c) A non-refundable application fee of \$25 shall accompany each application; provided that no fee shall be required of any federal, state, or county agency.

(d) The requirements of this section may be waived where appropriate. Eff. APR 19 1990 (Auth: HRS §179D-6) (Imp: HRS §179D-6)

§13-190-22 Supervision of plans preparation and construction inspection. An engineer shall be in charge of the preparation of all plans and specifications for the initial construction, enlargement, alteration, repair, or removal of dams and

reservoirs and of the inspection of the construction. The engineer may be assisted by other specialists as required. Eff. APR 19 1990 (Auth: HRS §179D-6) (Imp: HRS §179D-6)

§13-190-23 Approval of plans and specifications.

(a) The board shall act upon an application and shall take into consideration the:

- (1) Cost and magnitude of the project;
- (2) Engineering and physical features involved;
- (3) Existing conditions; and
- (4) Public interest affected.

(b) If an application is incomplete, it shall be returned to the applicant. The application shall be corrected and returned to the board within 60 days or such further time as may be given by the board in order to retain its validity. If the application is not returned within the required time limit, it shall be deemed automatically rejected.

(c) If the construction, alteration, or repair of a dam or reservoir is not commenced within five years of the date of approval of the application, the board's approval shall be deemed automatically void.

Eff. APR 19 1990 (Auth: HRS §179D-6) (Imp: HRS §179D-6)

§13-190-24 Revocation of approval.

(a) An approval of the plans and specifications for any construction, enlargement, alteration, repair, or removal of any dam or reservoir or its appurtenant works may be revoked in whole or in part for any:

- (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; or
- (3) Violation of the approved plans and specifications.

(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 owner an opportunity for a hearing.

Eff. APR 19 1990 (Auth: HRS §179D-6) (Imp: HRS §179D-6)

SUBCHAPTER 3

CONSTRUCTION, INSPECTION, AND COMPLETION

§13-190-30 Inspection during progress of work.

(a) During the construction, enlargement, repair, alteration, or removal of any dam or reservoir, the owner shall:

- (1) Perform, at its own expense, work or tests necessary to insure proper compliance with the approved plans and specifications;
- (2) Provide adequate supervision by an engineer during construction; and
- (3) Provide any information requested by the board to determine that conformity with the approved plans and specifications is being achieved.

The department may make, through its own engineers or by consulting engineers of its selection, periodic inspections at State expense for the purpose of ascertaining compliance with the approved plans and specifications.

(b) After any tests, inspections, or investigations, or at any time as the work progresses, or at any time prior to completion of the project, the department may order the owner to revise, modify, or change its plans and specifications for safety reasons; provided that the owner may request a hearing before the board to review the order.

(c) If conditions are revealed which will not permit the construction of a safe dam or reservoir, the board's approval for construction shall be revoked.

(d) If at any time during the construction, enlargement, repair, or alteration of any dam or reservoir the department finds that the work is not being done in accordance with approved plans and specifications, it shall give a written notice thereof to the owner. The written notice shall state the specific violations and shall order the immediate compliance with the approved plans and specifications. The department may order that no further work be done until such compliance has been effected and confirmed by the department or its designated representative.

(e) If the owner fails to comply with the approved plans and specifications the board shall take action to revoke its approval and compel the owner to

remove the incomplete structure sufficiently to eliminate any safety hazard to life or property.
Eff. APR 19 1990 (Auth: HRS §179D-6) (Imp: HRS §179D-6)

§13-190-31 Completion of new or enlarged dam or reservoir. (a) Upon completion of a new or enlarged dam or reservoir, the owner shall provide written notification of completion to the department signed by the responsible engineer supervising construction for the owner, certifying that the project was constructed in conformance with the approved plans and specifications, accompanied by supplementary drawings or descriptive matter showing or describing the dam or reservoir as actually constructed, which shall include a record of the following:

- (1) All geological boreholes and grout holes and grouting;
- (2) Permanent location points, benchmarks, and instruments embedded in the structure;
- (3) Tests of concrete or other material used in the construction of the dam and reservoir;
- (4) Seepage flows and embedded instrument readings after a year of operation; and
- (5) Construction problems encountered and solutions implemented.

(b) Supplementary drawings and descriptive matter for the enlargement of a dam or reservoir shall only apply to any new construction not already shown in the original plans on file with the department.

Eff. APR 19 1990 (Auth: HRS §179D-6) (Imp: HRS §179D-6)

§13-190-32 Completion of repair or alteration of dam or reservoir. (a) Upon completion of the repair or alteration of any dam or reservoir, the owner shall provide a notice of completion to the department and thereafter shall file with the department a completion report, signed by the responsible engineer supervising the work for the owner, attesting that the repairs or alterations were completed in accordance with the approved plans and specifications, accompanied by supplementary drawings or descriptive matter showing or describing the dam or reservoir as actually repaired or altered, together with all applicable maps, data,

records, and information required by the department.
Eff. APR 19 1990 (Auth: HRS §179D-6) (Imp: HRS §179D-6)

§13-190-33 Completion of removal of dam or reservoir. (a) Upon completion of the removal of a dam or reservoir, the owner shall file with the department a report regarding the manner in which the work was performed and the conditions existing after the removal of the dam. No filing shall be required for the routine drawdown of reservoirs for normal operations and maintenance not affecting the safety of the structure.

(b) The report shall show that a sufficient portion of the dam has been removed to permit the safe flow of water down the watercourse across which the dam was situated and that adequate provisions have been made by the owner to prevent any damage downstream that may result from the remaining portion of the dam due to subsequent flooding. Eff. APR 19 1990 (Auth: HRS §179D-6) (Imp: HRS §179-D-6)

§13-190-34 Complaints as to unsafe conditions.

(a) Upon receipt of a written complaint alleging that the person or property of the complainant is endangered by the construction, enlargement, repairs, alterations, maintenance, or operation of any dam or reservoir, the department shall contact the owner and 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.

(b) In determining whether an existing dam or reservoir or proposed dam or reservoir constitutes or would constitute a danger to life or property, the department shall evaluate the possibility that the dam or reservoir might be endangered by overtopping, seepage, settlement, erosion, cracking, earth movement, earthquakes, and failure of bulkheads, flashboard, gates, and conduits which exist or which might occur in any area in the vicinity of the dam or reservoir.

(c) 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.

Eff. APR 19 1990 (Auth: HRS §179D-6) (Imp: HRS §179D-

6)

SUBCHAPTER 4

MAINTENANCE, OPERATION, AND EMERGENCY WORK

§13-190-40 Maintanance 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 insure public safety. Owners or their agents 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 piezometric data collection and geologic investigations.

(b) The owner of a dam or reservoir or his agent shall fully and promptly advise the department of any sudden or unprecedented flood or unusual or alarming circumstance or occurrence existing or anticipated which may adversely affect the dam or reservoir.

(c) Upon reasonable notice to the owners of dams and reservoirs, the department, from time to time, but not less than once every five years, either with its own engineers or by consulting engineers of its selection, shall make inspections of dams and reservoirs at State expense for the purpose of determining their safety, but shall require owners to perform at their expense 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 necessary instrumentation. Eff. APR 19 1990 (Auth: HRS §179D-6) (Imp: HRS §179D-6)

§13-190-41 Emergency work. (a) In case of an emergency where the department declares that repairs, breaching of the dam, or other actions are immediately necessary to safeguard life and property, the work shall be initiated by the owner, or by the department through its authorized agent at the owner's expense if the owner fails to do so. The department shall be notified at once of any emergency repairs or other work instituted by the owner.

(b) Where appropriate, the repairs, breaching, or other emergency work shall conform to an order issued by the department.

(c) The following emergency actions not impairing the safety of the dam may be taken by the owner without prior notification or approval of the department:

- (1) Stockpiling materials such as riprap, earthfill, sand, sandbags, and plastic sheeting;
- (2) Lowering the reservoir level by making releases through the outlet or a gated spillway, by pumping or by siphoning; however, when large releases are to be made, the department shall be notified. Lowering the water level by excavating the spillway or embankment is prohibited unless failure is imminent. In this situation, the department shall be notified as soon as reasonably possible of any emergency condition that exists and any emergency action taken;
- (3) Armoring eroded areas by placing sandbags, riprap, plastic sheeting, or other available material;
- (4) Plugging leakage entrances on the upstream slope;
- (5) Increasing freeboard by placing sandbags or temporary earthfill on the dam;
- (6) Diverting floodwaters to prevent them from entering the reservoir basin;
- (7) Constructing training berms to control floodwaters;
- (8) Placing sandbag ring dikes around boils at the downstream toe to provide back pressure; and
- (9) Removing obstructions from outlet or spillway flow areas. Eff. APR 19 1990 (Auth: HRS §179D-6) (IMP: HRS §179D-6)

§13-190-42 Emergency preparedness plan. (a) Owners of high hazard dams shall prepare, maintain, and implement an emergency preparedness plan for each dam or reservoir for immediate defensive action to alert and evacuate the affected population and to mitigate damages to property. The emergency preparedness plan shall contain as a minimum the following:

- (1) The identification of equipment, labor, and material available for implementation of the plan;
- (2) A notification procedure for informing the department and the civil defense office of the affected county;
- (3) A dam failure inundation map.
- (4) A procedure for warning the affected population if failure of the dam is imminent.

(b) The owner shall submit a copy of the emergency preparedness plan to the affected county civil defense office and other emergency coordinators involved in the plan for review.

(c) The owner shall annually review and update the emergency preparedness plan as necessary.

Eff. APR 19 1990 (Auth: HRS §179D-6) (IMP: HRS §179D-6)

DEPARTMENT OF LAND AND NATURAL RESOURCES

Chapter 13-190, Hawaii Administrative Rules, on the Summary Page dated October 27, 1989 was adopted on October 27, 1989, following public hearings held on Oahu on April 24, 1989; on Hawaii on April 25, 1989; on Maui on April 26, 1989; and on Kauai on April 27, 1989; after public notice was given in the Honolulu Star Bulletin, Hawaii Tribune Herald, Maui News and the Garden Island on March 28, 1989.

The adoption of chapter 13-190 shall take effect

ten days after filing with the Office of the Lieutenant Governor.

William W. Paty
Chairperson and Member
Board of Land and Natural Resources

Member
Board of Land and Natural Resources

APPROVED:

John Waihee
Governor
State of Hawaii

Dated: _____

APPROVED AS TO FORM:

Deputy Attorney General

Filed

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



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34) HAR §§ 13-231-72, 13-231-76, and 13-231-90

Relating to Small inter-island passenger vessel permit; Kewalo basin; Offer of category I berth Ala Wai harbor

Rules Amending Title 13
Hawaii Administrative Rules

DATE

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

"HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 11

OCEAN RECREATION AND COASTAL AREAS

PART 1

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

CHAPTER 231

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

Historical note

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

- \$13-231-1 General statement and restrictions on mooring dormant vessels
- \$13-231-2 Agreement for the use of small boat harbor property, facilities, and offshore mooring areas
- \$13-231-3 Use permits; issuance

- §13-231-4 Use permits; part-time or intermittent occupancy
- §13-231-5 Period of validity and renewal of various types of use [~~permit~~] permits
- §13-231-6 Revocation of use permit
- §13-231-7 Assignment and reassignment of moorings and vessel storage space
- §13-231-8 Inspections
- §13-231-9 Cancellation of use permit
- §13-231-10 Removal and custody of a vessel or contrivance
- §13-231-11 Absence of vessel for more than fourteen days; effect on permits
- §13-231-12 Discontinuance of [~~service~~] services
- §13-231-13 Joint and several liability; non-transferability of use permits
- §13-231-14 Sale of abandoned vessels or to collect delinquent fees
- §13-231-15 Boat owner required to report change of ownership, address, and other changes
- §13-231-16 Numbers or other vessel identification
- §13-231-17 Mooring prohibited except at assigned locations
- §13-231-18 Vessel reconstruction
- §13-231-19 Salvage
- §13-231-20 Houseboats prohibited
- §13-231-21 Restrictions on mooring vessels utilized for living aboard at small boat harbors other than Ala Wai and [~~Kechi~~] Ke'ehi small boat harbors
- §13-231-22 Staying aboard transient or visiting vessels
- §13-231-23 Interim use of berth during temporary absence of regular permittee's vessel
- §13-231-24 Interim use of berth pending occupancy by regular permittee
- §13-231-25 Exchange of berths
- §13-231-26 Use of vessel as a place of habitation
- §13-231-27 Allocation of principal habitation permits
- §13-231-28 Staying aboard vessels moored at Ala Wai or [~~Kechi~~] Ke'ehi small boat [~~harbors~~] harbor

- §13-231-29 Vessel used as a vacation site
- §13-231-30 Restrictions on multiple permits
- §13-231-31 Administrative hearing
- §13-231-32 Rules of evidence; official notice
- §§13-231-33 to 13-231-39 (Reserved)

Subchapter 2 Boat Operation

- §13-231-40 General statement
- §13-231-41 Navigation or mooring vessels in small boat harbor
- §13-231-42 Interference with navigation
- §13-231-43 Pilotage
- §13-231-44 Vessel loading zone
- §13-231-45 [~~Marine~~] Vessel inspections
- §13-231-46 Vessel limitations
- §§13-231-47 to 13-231-49 (Reserved)

Subchapter 3 Commercial Activities

- §13-231-50 General statement
- §13-231-51 Business activities
- §13-231-52 Solicitations and advertisements
- §13-231-53 Signs
- §13-231-54 Commercial vessel; definition
- §13-231-55 Berthing commercial vessels at Ala Wai and [~~Kechi~~] Ke'ehi small boat harbors
- §13-231-56 Definitions, gross receipts
- §13-231-57 Berthing or using commercial vessels in state small boat harbors [~~; signs and other structures~~]
- §13-231-58 Limitations on the number of commercial use permits and catamaran registration certificates for vessels assigned permanent moorings
- §13-231-59 Limitations on commercial use permits for vessels moored elsewhere
- §13-231-60 Allocation of commercial use permits for vessels and catamaran registration certificates

- §13-231-61 [~~Renewal~~] Reissuance of commercial use permits and catamaran registration certificates
- §13-231-62 Transferability of commercial use permits and catamaran registration certificates
- §13-231-63 Retention of berth upon termination of commercial use permit or catamaran registration certificate
- §13-231-64 Fees and charges
- §13-231-65 Insurance requirements
- §13-231-66 Limitation on number of berths held by a commercial permittee
- §13-231-67 Limitations on commercial use permits issued for the use of state boat launching ramps
- §13-231-68 Signs and other structures at a state small boat harbor
- §13-231-69 Multiple use of mooring facilities by commercial vessels
- §13-231-70 Water taxi operations
- ~~§13-231-71 (Reserved)~~
- ~~§13-231-72 Small inter island passenger vessel permit]~~
- ~~§§13-231-73]~~ §§13-231-71 to 13-231-75 (Reserved)

Subchapter 4 Special Area Rules

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

Subchapter 5 Allocation of Berths and Offshore Mooring

- §13-231-80 General
- §13-231-81 Application for a berth; seniority of application; period of validity; renewal of application
- §13-231-82 Review, ~~and~~ acceptance, or rejection of applications

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

EXHIBIT "A"

EXHIBIT "B"

Historical note. [~~This chapter is based on use of small boat harbors, boat operation, commercial activities, special area rules, allocation of berths of the small boat harbors rules, effective November 5, 1981, and as amended thereafter, under the jurisdiction of the Department of Transportation, Harbors Division.~~] The administrative jurisdiction for recreational boating and related vessel activities was transferred from the Department of Transportation, Harbors Division, to the Department of Land and Natural Resources, Division of Boating and Ocean Recreation, effective July 1, 1992, in accordance with Act 272, SLH 1991. [Eff 2/24/94; comp]

SUBCHAPTER 1

recreational vessels, vessels owned by the United States, or commercial vessels which are exempt from commercial use permit requirements under the provisions of section 13-231-57.

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

~~[§13-231-71 Reserved]~~

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

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

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

[R]

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

SUBCHAPTER 4

SPECIAL AREA RULES

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

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

§§13-231-78 to 13-231-79 (Reserved)

SUBCHAPTER 5

ALLOCATION OF BERTHS AND OFFSHORE MOORING

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

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

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

~~[\$13-231-90 Offer of category I (breakwater) berth—Ala Wai harbor. An applicant for a regular mooring permit may be offered a mooring buoy on the breakwater. The breakwater moorings have no water, electricity, roadway, or walkway. Access to the moorings is across the water from the 700 mole by boat. There is no way that emergency vehicles can reach the area, and the only toilet and shower facilities are located on the 700 mole. Principal habitation, stay aboard, and vacation permits are not available. The offer of a mooring buoy on the breakwater will follow the requirements of section 13-231-88 with the exception that acceptance or rejection of the mooring buoy on the breakwater will not alter the applicant's seniority for a regular mooring permit for any other category that the applicant enjoys.]"~~
 [R]

DEPARTMENT OF LAND AND NATURAL RESOURCES

Amendment and Compilation of Chapter 13-231
Hawaii Administrative Rules
April 25, 2014

SUMMARY

1. Title amended.
2. §§13-231-2 to 13-231-32 are amended.
3. §§13-231-41 to 13-231-46 are amended.
4. §§13-231-55 to 13-231-68 are amended.
5. §13-231-70 is amended.
6. §13-231-72 is repealed.
7. §13-231-76 is repealed.
8. §§13-231-85.5 to 13-231-89 are amended.
9. §13-231-90 is repealed.

harbors provided that the owner of the water taxi operation has been issued a commercial use permit. For the purpose of this section, "water taxi operations" means the shuttling of persons or cargo to or from the small boat harbor facility or a shoreside location authorized for such use under chapter 13-256, Hawaii Administrative Rules, to a destination or vessel located outside the small boat harbor boundary.

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

(c) The department may furnish a current list of commercial vessels authorized to receive water taxi service as provided in subsection (b) upon request by the owner of the vessel performing water taxi operations at no charge. [Eff 2/24/94; am and comp **SEP 25 2014**] (Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §§200-2, 200-3, 200-4, 200-10)

§13-231-71 (Reserved)

§13-231-72 REPEALED. [R **SEP 25 2014**]

§§13-231-73 to 13-231-75 (Reserved)

SUBCHAPTER 4

SPECIAL AREA RULES

§13-231-76 REPEALED [R SEP 25 2014]

§13-231-77 Ala Wai canal. Operation of vessels in Ala Wai canal shall be accomplished in a manner that will not create a nuisance to area residents. All applicable provisions of these rules shall apply to Ala Wai canal. [Eff 2/24/94; comp SEP 25 2014] (Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

§§13-231-78 to 13-231-79 (Reserved)

SUBCHAPTER 5

ALLOCATION OF BERTHS AND OFFSHORE MOORING

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

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

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

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

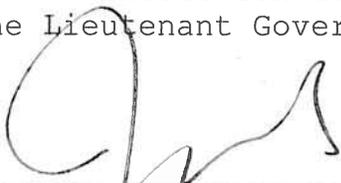
The applicant's application for a use permit and the applicant's notice of intention to accept the offer shall be void if the applicant fails to secure a use permit and to move the applicant's vessel into the applicant's assigned berth or mooring area within seven days as prescribed herein and the use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

§13-231-90 REPEALED. [R **SEP 25 2014**]

DEPARTMENT OF LAND AND NATURAL RESOURCES

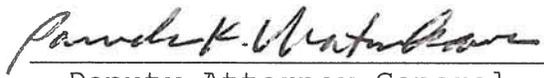
Amendments to and compilation of chapter 231, title 13, Hawaii Administrative Rules, on the Summary Page dated April 25, 2014 were adopted on April 25, 2014, following public hearings held on April 2 and 3, 2014, after public notice was given in the Honolulu Star-Advertiser, The Garden Island News, The Maui News, The Hawaii Tribune-Herald, and West Hawaii Today on March 2, 2014.

These amendments 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



NEIL ABERCROMBIE
Governor
State of Hawaii

Date: 9.9.14

Filed SEP15 1:26PM
LT GOVERNOR
STATE OF HAWAII

Deleted

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

Relating to Owner of passenger-carrying vessels; Operations of vessels without proper identification; Rules of the road; Intoxication; Catamarans, mooring of

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, sail-
 board 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)

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

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

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

~~proof of financial responsibility as provided by this subchapter. The department shall cancel the registration of any water sports equipment whenever the department ascertains that the owner has failed to or is unable to give and maintain proof of financial responsibility;~~

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

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

- ~~(1) In the case of vessels carrying passengers for hire, the following amounts for bodily injury and damage to property per occurrence:~~
- ~~(A) \$100,000 for vessels authorized to carry not more than six passengers;~~
 - ~~(B) Not less than \$300,000 for vessels authorized to carry more than six passengers, but less than twenty-six;~~
 - ~~(C) Not less than \$500,000 for vessels authorized to carry more than twenty-five passengers;~~

- ~~(2) In the case of surfboard or sailboard operations, the amount of \$50,000 for bodily injury or death per person, subject to the total coverage in any one accident of \$100,000 for bodily injury or death;~~
- ~~(3) In the case of motorboat operations, the amount of \$100,000 for bodily injury or death per person, subject to the total coverage in any one accident of \$500,000 for bodily injury or death;~~
- ~~(4) In the case of water sports equipment operations, the amount of \$100,000 for bodily injury or death per person, subject to the total coverage in any one accident of \$300,000 for bodily injury or death.~~
- ~~(c) The owner shall maintain the policy or policies in full force and effect during all times that the owner is engaged in the businesses described in subsection (a), unless the owner has given proof of financial responsibility as provided in section 13-251-32.] [Eff 2/24/94; am 6/16/03; R]~~

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

- ~~(1) If the owner applies for registration of surfboards or sailboards, in the sum of at least \$50,000 per person injured or killed in a surfboard or sailboard operation, subject to the total coverage in any one~~

~~accident of \$100,000 for bodily injury or death; or~~

~~(2) If the owner applies for the registration of any vessel carrying passengers for hire, in the following sums for bodily injury or death per occurrence:~~

~~(A) \$100,000 for vessels authorized to carry not more than six passengers;~~

~~(B) Not less than \$300,000 for vessels authorized to carry more than six passengers but less than twenty-six;~~

~~(C) Not less than \$500,000 for vessels authorized to carry more than twenty-five passengers;~~

~~(3) In the case of motorboat operations, the amount of \$100,000 for bodily injury or death per person, subject to the total coverage in any one accident of \$500,000; or~~

~~(4) In the case of water sports equipment operations, the amount of \$100,000 for bodily injury or death per person, subject to the total coverage in any one accident of \$300,000.~~

~~(b) The department shall cancel the registration of any vessel, surfboard, sailboard, motorboat or water sports equipment whenever the department determines that the owner has failed or is unable to comply with the requirements of this section.] [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.

~~§13-251-47~~ Operation of vessels without proper identification. No person shall operate, nor shall an owner permit to be operated upon the Waikiki or Kaanapali ocean waters, any vessel or rented surfboard, sailboard or water sports equipment required to be registered under this subchapter, unless there shall be attached, painted on, or otherwise displayed a valid distinguishing name, number, or mark as required by this subchapter. [Eff 2/24/94; R]

§13-251-48 Operation of a [vessel or renting of surfboard, sailboards, or water sports equipment] catamaran when registration certificate and/or commercial use permit suspended or revoked[-]. No person shall operate [~~nor shall an owner knowingly permit to be operated~~] upon the Waikiki or Kaanapali ocean waters any [~~vessel or rented surfboard, sailboard, or water sports equipment,~~] catamaran for which the registration [of which] and/or commercial use permit has been suspended or revoked. [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

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

- (1) The department is satisfied that the registration certificate and/or commercial use permit was fraudulently or erroneously issued;
- (2) The department determines that a registered [~~vessel~~] and/or commercial use permitted

~~§13-251-56 Rules of the road. All vessels shall be operated in accordance with the "Navigation Rules, International - Inland" as set forth in U.S. Department of Transportation, United States Coast Guard, COMDTINST M16672.2A of 23 December 1983, and subsequent revisions thereto, which is incorporated herein by reference.] [Eff 2/24/94; R]~~

§13-251-57 Waikiki ~~[restricted areas.]~~ ocean waters. ~~[(a)]~~ 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:

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

The [areas in] Waikiki ocean waters are reserved primarily for use by bathers, [and] swimmers, surfers, snorkelers, and other recreational uses and subject to restrictions set forth in this section. No person shall operate a vessel or watercraft within the Waikiki ocean waters within 500 feet of the shoreline at a speed in excess of slow-no-wake. Vessel

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

~~(b) No owner of any vessel, surfboard, sailboard, or water sports equipment or any person in charge or in control of any vessel, surfboard, sailboard, or water sports equipment shall authorize or knowingly permit the same to be operated by any person who is under the influence of intoxicating liquor, or narcotic, or other habit-forming drug.]~~
[Eff 2/24/94; R]

~~§13-251-60 Careless operation. No person shall operate a vessel, surfboard, sailboard or water sports equipment in a careless or heedless manner so as to endanger other persons or the property of other persons.]~~ [Eff 2/24/94; R]

§§13-251-61 to 13-251-65 (Reserved)

SUBCHAPTER 7

SPECIAL OPERATING RESTRICTIONS

§13-251-66 Canoe operation; required crew[-].

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

(b) No person shall operate nor shall any owner authorize or permit a canoe to transport passengers for hire unless the canoe meets all requirements of

these rules and a canoe captain or second captain, each having a valid permit issued by the department, is on board. In these instances the senior crew member aboard shall not permit the vessel to be utilized for canoe surfing unless a minimum crew as provided in subsection (a) is on board. [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

§13-251-67 Catamaran crews[~~-~~]. No person shall operate nor shall any owner authorize or permit a catamaran to transport passengers for hire, except cruising catamarans as described in section 13-251-1, unless the catamaran meets all requirements of these rules and a catamaran captain, having a permit issued by the department, and at least one other crew member are aboard. [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

~~[§13-251-68 Catamarans; mooring of. (a) Catamarans moored in a restricted area (13-251-57) shall be moored below the mean high water mark at catamaran moorings so designated by the department and in a manner approved by the department. (b) Operators of catamarans moored in a restricted area (13-251-57[(1)]) shall lower the catamarans' sails to prevent obstructing the view from lifeguard stations upon request of a Honolulu city and county lifeguard.] [Eff 2/24/94; R]~~

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

(b) A learner steersperson shall not steer an outrigger canoe carrying passengers for hire. [Eff 2/24/94; am and comp] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

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.

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

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, sail-
board 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)

Subchapter 8 Soliciting Prohibited In or On Waikiki and Kaanapali Ocean Waters

- §13-251-76 Commercial Activities

Historical note. The administrative jurisdiction for recreational boating and related vessel activities was transferred from the Department of Transportation, Harbors Division, to the Department of Land and Natural Resources, Division of Boating and Ocean Recreation, effective July 1, 1992, in accordance with Act 272, SLH 1991. [Eff 2/24/94; am and comp

SEP 25 2014]

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)

- (B) If the catamaran operated under the registration certificate and/or commercial use permit is sold or otherwise transferred and not replaced in accordance with the provisions of section 13-231-13(b); or
- (C) If the registration certificate holder and/or commercial use permittee fails to operate the catamaran for which the registration certificate and/or commercial use permit is issued for a period in excess of sixty days, except as provided in section 13-231-61(a)(2), and except when the registration holder and/or commercial use permittee provides advance notification to the department in writing that operations will be temporarily suspended for a specific period not to exceed four months. [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)

§13-251-46 New owner must secure new registration certificate and/or commercial use permit. A transferee shall obtain an original registration certificate and/or commercial use permit for a catamaran before operating or renting the same upon Waikiki or Kaanapali ocean waters. [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)

§13-251-47 REPEALED. [R **SEP 25 2014**]

§13-251-48 Operation of a catamaran when registration certificate and/or commercial use permit

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:

- (4) Zone 4 begins at a point on the vegetation line located 575 feet south from the southernmost tip of Black Rock shoreline and south of the Kaanapali Beach Public Access Trail; then southward along the vegetation line for a distance of 500 feet; and
- (5) Zone 5 begins at a point on the vegetation line located north of the Black Rock shoreline, then northward along the vegetation line for a distance of 500 feet.

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

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

(h) No person shall:

- (1) Navigate a commercial vessel or noncommercial motorized vessel to or from the beach area unless using a designated ingress/egress zone;
- (2) Beach a catamaran, registered for carrying passengers for hire in an ingress/egress zone in excess of 30 minutes; and
- (3) Navigate a vessel within an ingress/egress zone at a speed exceeding slow-no-wake. [Eff 2/24/94; am 6/16/03; am and comp **SEP 25 2014**]
(Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24, 200-37) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24, 200-37)

§§13-251-59 to 13-251-60 REPEALED. [R
SEP 25 2014]

§§13-251-61 to 13-251-65 (Reserved)

SUBCHAPTER 7

SPECIAL OPERATING RESTRICTIONS

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

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

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

§13-251-68 REPEALED. [R **SEP 25 2014**]

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

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

§§13-251-70 to 13-251-75 (Reserved)

SUBCHAPTER 8

SOLICITING PROHIBITED IN OR ON WAIKIKI AND KAA NAPALI OCEAN WATERS

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

(b) "Kaanapali beach" means the area within Kaanapali ocean waters that is situated between the shoreline and the mean high tide mark along the shores.

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

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

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

(f) The following activities shall be prohibited on Kaanapali beach:

- (1) Kite flying; and
- (2) Kite surfing equipment.

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

(h) Law enforcement and rescue vessels are exempt from the provisions of this section. [Eff 2/24/94; am 6/16/03; am and comp **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)

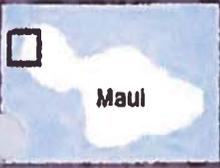


EXHIBIT 1: WAIKIKI OCEAN WATERS
Ocean Recreation Management Area

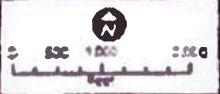
Zones A - E: Swimming, Wading, and other recreational and commercial uses. For a complete list, see §13-251-57 HAR.

Zone locations are approximate
 Map Date: May 1, 2012

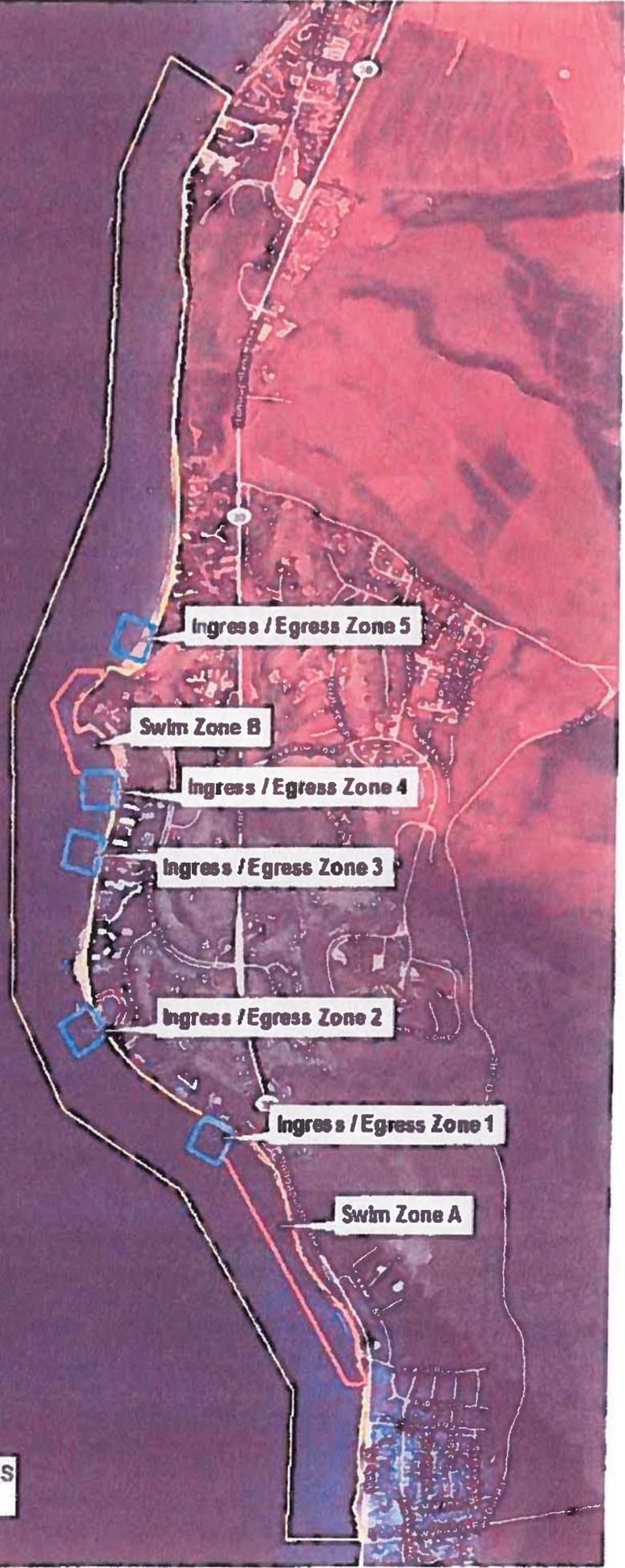
D. J. MOORE
 JULY 12



Maui



KA'ANAPALI BEACH AND OCEAN WATERS
 INGRESS / EGRESS CHANNEL
 SWIMMING AREA
 Zone location is approximate
 Map Date May 1, 2012
 913-251-58 HAR



Ingress / Egress Zone 5

Swim Zone B

Ingress / Egress Zone 4

Ingress / Egress Zone 3

Ingress / Egress Zone 2

Ingress / Egress Zone 1

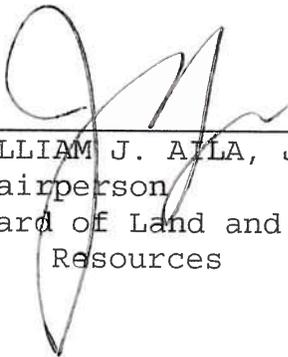
Swim Zone A

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

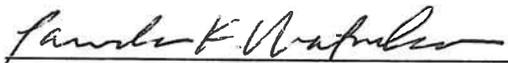
DEPARTMENT OF LAND AND NATURAL RESOURCES

Amendments to and compilation of chapter 251, title 13, Hawaii Administrative Rules, on the Summary Page dated April 25, 2014 were adopted on April 25, 2014, following public hearings held on April 2 and 3, 2014, after public notice was given in the Honolulu Star-Advertiser, The Garden Island News, The Maui News, The Hawaii Tribune-Herald, and West Hawaii Today on March 2, 2014.

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


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

APPROVED AS TO FORM:


Deputy Attorney General


NEIL ABERCROMBIE
Governor
State of Hawaii

Date: 9.9.14

SEP15 1:25PM
Filed LT GOVERNOR
STATE OF HAWAII