



**U.S. DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
**Office for Coastal Management**  
Silver Spring Metro Center, Building 4  
1305 East-West Highway  
Silver Spring, Maryland 20910

January 31, 2023

Justine W. Nihipali  
Planning Program Manager  
Coastal Zone Management Program  
Office of Planning and Sustainable  
Development  
235 South Beretania St. 6th floor,  
Honolulu, HI 96813

Dear Ms. Nihipali,

Thank you for the October 12, 2022, request for approval of changes to the Hawai'i Coastal Management Program pursuant to the National Oceanic and Atmospheric Administration (NOAA) Coastal Zone Management Act (CZMA) regulations at 15 CFR part 923, subpart H.<sup>1</sup>

NOAA's Office for Coastal Management approves the request subject to the exceptions and standard qualification noted below.

NOAA's regulations require that the state post this decision for public notice.<sup>2</sup> The public notice should state that as of the date of this decision letter the enforceable policies identified in the attached Table of Approved Changes shall be applicable in reviewing federal actions pursuant to the federal consistency requirements of the CZMA and its implementing regulations found at 15 CFR part 930.<sup>3</sup> Please send a copy of the public notice to the Office for Coastal Management for our records to close out this file.

### **PUBLIC AND FEDERAL AGENCY COMMENTS**

The Office for Coastal Management did not receive any comments on this program change submission.

### **CHANGES APPROVED**

The Table of Changes included in the state's submission designated all of the changes as enforceable policies. The review of the submission found that many of the changes pertained to statutory and regulatory sections that had no standard by which to determine the consistency of a

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<sup>1</sup> This program change request was submitted under NOAA's revised CZMA program change regulations at 15 CFR part 923, subpart H. The Office for Coastal Management's decision due date was November 11, 2022 subject to extension. The Office for Coastal Management extended its review of this program change request to February 9, 2023.

<sup>2</sup> 15 CFR § 923.81(e)(5).

<sup>3</sup> 15 CFR § 923.81(f).

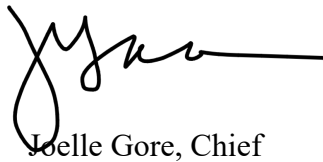
proposed federal action, and that many of the sections had no relevancy to proposed federal actions. Those sections have been approved for incorporation into the Hawai'i Coastal Management Program but not designated as enforceable policies. See the attached Table of Approved Changes to the Hawai'i Coastal Management Program. My staff is available to discuss with you the reasons why these particular sections do not meet the criteria for enforceable policies, and to review drafts of future submissions to provide advice on the approvability of program changes as enforceable policies.

### **QUALIFICATION**

As a standard qualification applying to all program changes, states may not incorporate enforceable policies by reference. If an approved enforceable policy refers to another statute, regulation, policy, standard, guidance, or other such requirement or document, the referenced policy must be submitted to and approved by the Office for Coastal Management as an enforceable policy in order to be applied under the federal consistency review provisions of the CZMA. No referenced policy may be applied for CZMA federal consistency review purposes unless that policy has been separately reviewed and approved as an enforceable policy by the Office for Coastal Management.

Thank you for your cooperation in this review. Please contact Sarah van der Schalie at (510) 213-8945, if you have any questions. For future correspondence regarding these program changes, please refer to the file number assigned to this action, HI-2022-1.

Sincerely,

A handwritten signature in black ink, appearing to read 'Joelle Gore', with a long horizontal line extending to the right.

Joelle Gore, Chief  
Stewardship Division

Attachment: Table of Approved Changes HI-2022-1

**Table of Approved Changes to the Hawai'i Coastal Management Program (HI-2022-1)**

See the January 31, 2023 decision letter from the NOAA Office for Coastal Management for clarifications, qualifications and exceptions to these approved changes.

<b>Legal citation</b>	<b>Title of policy, section, or other descriptor</b>	<b>Is the change new, revised, or deleted</b>	<b>Date effective in state</b>	<b>Enforceable policy</b> <i>Yes or No</i>	<b>Enforceable mechanism citation</b>
<b>Act 43, SLH 2021, Relating to the Taking of Marine Life</b>					
HRS § 189-2	Requirement for commercial marine and commercial marine vessel license	Revised	6/8/2021	Yes	§ 189-4 Penalties
<b>Act 162, SLH 2021, Relating to Water Quality</b>					
HRS § 342D-6	Waiver of CWA 401 certification for small beach restoration projects	Revised	07/01/2022	Yes	§ 342D-9 Enforcement § 342D-30 Civil penalties
<b>Act 209, SLH 2022, Relating to Permits</b>					
HRS § 171-55	Permit condition for identifying information on sandbags	Revised	07/01/2022	Yes	§ 171-6.4 General administrative penalties § 171-31.6 Criminal penalties
<b>Act 223, Session Laws of Hawaii (SLH) 2022 Relating to Development Rights</b>					
Hawaii Revised Statutes (HRS) § 46- 161	Findings and purpose	Revised	06/27/2022	No	NA

HRS § 46-163	Conditions for the transfer of development rights	Revised	06/27/2022	No	NA
<b>Nonpoint Source Pollution Control</b>					
HAR Chapter 11-56	Nonpoint Source Pollution Control	New	6/25/2021	Yes (only as to the substantive standards within Ch. 11-56; the procedural requirements of Ch. 11-56 may not be applied for CZMA review purposes)	HAR § 11-56-12 Enforcement and penalties HAR § 11-56-16 Field citations; noncompliance with nonpoint source pollution control requirements
<b>Underground Storage Tanks (UST)</b>					
HAR 11-280.1	§ 11-280.1-10 Applicability; § 11-280.1-21 Upgrading of UST systems; § 11-280.1-25 Under-dispenser containment; § 11-280.1-34 Notification, reporting and recordkeeping; § 11-280.1-37 Periodic inspection and maintenance of under-dispenser	Revised	07/08/2021	Yes	§ 11-280.1-323 Permit required § 11-280.1-330 Revocation or suspension of permit

	<p>containment;  § 11-280.1-41  Requirements for petroleum UST systems;  § 11-280.1-52  Release investigation and confirmation steps;  § 11-280.1-53  Reporting and cleanup of spills and overfills;  § 11-280.1-61  Immediate response actions;  § 11-280.1-71  Permanent closure and changes-in-service;  § 11-280.1-110  Reporting by owner or operator;  § 11-280.1-244  Retraining  § 11-280.1-324  Application for a permit;  § 11-280.1-331  Change in owner or operator for a</p>				
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	permit				
<b>Pupukea Marine Life Conservation District, Oahu</b>					
HAR § 13-34	Boundaries, Prohibited activities, Penalty, Asset forfeiture	Revised	08/27/2021	Yes	§ 13-34-4 Exceptions; permits § 13-34-5 Penalty
<b>Marine Fisheries Management Areas, Kiholo Bay, Hawaii</b>					
HAR Chapter 13-60.10	Miloli'i Community-Based Subsistence Fishing Area, Hawai'i	New	08/13/2022	Yes	HAR § 13-60.10-4 Permitted and prohibited activities HAR § 13-60.10-7 Penalty
<b>Rules Regulating Activities within Forest Reserves</b>					
HAR Chapter 13-104, Subchapter 1, General Provisions					
§ 13-104-2	Definitions	Revised	01/16/2021	Yes	§ 13-104-3 Penalty
§ 13-104-3	Penalty	Revised	01/16/2021	No (enforceable mechanism)	NA
HAR Chapter 13-104, Subchapter 2, Public Use					
§ 13-104-5.5	Abandoned and unattended property	New	01/16/2021	Yes	§ 13-104-3 Penalty § 13-104-17 Compliance with laws § 13-104-18 General provisions for permits
§ 13-104-7.5	Closing of areas	New	01/16/2021	No	NA
§ 13-104-11	Vehicles and transportation	Revised	01/16/2021	Yes	§ 13-104-3 Penalty § 13-104-17 Compliance with laws § 13-104-18 General provisions for permits

§ 13-104-16	Camping	Revised	01/16/2021	Yes	§ 13-104-3 Penalty § 13-104-17 Compliance with laws § 13-104-18 General provisions for permits
<b>HAR Chapter 13-104, Subchapter 3, Permits</b>					
§ 13-104-18	General provisions for permits	Revised	01/16/2021	No	NA
§ 13-104-19	Camping permits	Revised	01/16/2021	No	NA
§ 13-104-20	Special use permits	Revised	01/16/2021	No	NA
§ 13-104-21	Collecting permits	Revised	01/16/2021	Yes	
§ 13-104-22	Commercial permits	Revised	01/16/2021	Yes	
§ 13-104-23	Access permits	Revised	01/16/2021	Yes	
<b>HAR Chapter 13-104, Subchapter 4, Fees and Charges</b>					
§ 13-104-25	General statement	New	01/16/2021	No	NA
§ 13-104-26	Payment	New	01/16/2021	No	NA
§ 13-104-27	Camping and cabin rental fees	New	01/16/2021	No	NA
§ 13-104-28	Commercial use permit fees	New	01/16/2021	No	NA
§ 13-104-29	Kiln fees	New	01/16/2021	No	NA
§ 13-104-30	Permit processing fees	New	01/16/2021	No	NA
§ 13-104-31	Parking and entrance fees	New	01/16/2021	No	NA
<b>Marine Fisheries Management Areas, Kahului Harbor, Maui</b>					
HAR Chapter 13-	Definitions	Revised	11/27/2021	Yes	§ 13-51-4 Penalty HRS § 187A-12.5

51-1					General administrative penalties HRS § 188-70 Penalties HRS § Chapter 199D Civil Natural Resource Violations Act
HAR § 13-51-1	Definitions	Revised	11/27/2021	Yes	§ 13-51-4 Penalty HRS § 187A-12.5 General administrative penalties HRS § 188-70 Penalties HRS § Chapter 199D Civil Natural Resource Violations Act
HAR § 13-51-2	Regulated activities	Revised	11/27/2021	Yes	§ 13-51-4 Penalty HRS § 187A-12.5 General administrative penalties HRS § 188-70 Penalties HRS § Chapter 199D Civil Natural Resource Violations Act
HAR § 13-51-3 Repealed.	Fisher check station requirements	Deleted	11/27/2021	No	Not Applicable (NA)
<b>Marine Fisheries Management Areas, Kiholo Bay, Hawaii</b>					
HAR Chapter 13-60.10	Miloli'i Community-	New	08/13/2022	Yes	HAR § 13-60.10-4 Permitted and



	Based Subsistence Fishing Area, Hawai'i				prohibited activities HAR § 13-60.10-7 Penalty
<b>Island-Based Fisheries</b>					
HAR § 13-95.1	Definitions, Scope, Exceptions	Revised	11/27/2021	Yes	§ 13-95.1-2 Penalty
<b>Ocean Recreation Management Rules and Areas, Kaneohe Bay Ocean Waters</b>					
HAR Chapter 13- 256-73	Kaneohe Bay Ocean Waters	Revised	07/08/2021	Yes	§ 13-256-73.1, Kaneohe Bay ocean waters commercial use permits § 13-256-73.2, Large full service permit restrictions § 13-256-73.3, Small full service permit restrictions § 13-256-73.4, Small full service permit restrictions without thrill craft, water sledding, and high speed towing activities § 13-256-73.12, Kaneohe Bay ocean waters commercial use permit revocation
<b>Ordinance No. 1085, An Ordinance to amend Chapter 8, Kauai County Code 1987, Article 11 Special Treatment Districts</b>					
Ch. § 8-11	Special Treatment	Revised	01/04/1988;	Yes	§ 8-11.3 General

	Districts		Amended 12/03/2020		permitted uses, structures and development § 8-11.4 Uses, structures and development requiring a Use Permit § 8-11.5 Applications for use permits
<b>Ordinance No. 1088, An Ordinance to Amend Chapter 8, Kauai County Code 1987, Article 27 Shoreline Setback and Coastal Protection</b>					
Ch. § 8-27	Shoreline Setback and Coastal Protection	Revised	02/04/2021	Yes	§ 8-27.11 Enforcement § 8-27.12 Civil fines
<b>Ordinance No. 21-27 Relating to Special Management Area Use Permits</b>					
Revised Ordinances of Honolulu (ROH) § 25-5.1	Notice to adjoining owners	Revised	08/25/2021	No	§ 25-8.1 Civil fine § 25-9.4 Judicial enforcement of chapter