

**Program Changes  
to  
State of Hawaii Coastal Zone Management Program**

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**Request for Concurrence**

**October 2022**

**Submitted to:** Office for Coastal Management  
National Oceanic and Atmospheric Administration

**Submitted by:** State of Hawaii Office of Planning &  
Sustainable Development  
Hawaii Coastal Zone Management Program  
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## **Summary of Changes in the Hawaii Coastal Zone Management Program for Change Request**

In 1977, the Hawaii State Legislature enacted Hawaii Revised Statutes (HRS) Chapter 205A as the legal foundation for the Hawaii Coastal Zone Management (CZM) Program. The Legislature designed the Hawaii CZM Program to build upon the regulatory functions of the existing agencies that comprise the network of the Hawaii CZM Program. The Hawaii CZM Program is implemented through the licensing, permitting and other enforceable mechanisms created by the Hawaii CZM Law and the network agencies.

Since its approval in 1978 by National Oceanic and Atmospheric Administration (NOAA), the Hawaii CZM Program has incorporated a wide array of state and local authorities and enforceable policies into its management. It has been recognized that statutory and regulatory changes from the Hawaii CZM network agencies are necessary to address challenges, strengthen the management regime, clarify provisions, or otherwise modify management of activities affecting coastal resources. In order for these statutory and regulatory changes to be incorporated into the federally approved Hawaii CZM Program, they must be submitted for federal review and concurrence in accordance with 15 Code of Federal Regulations (CFR) Part 923.

The State of Hawaii Office of Planning and Sustainable Development (OPSD), the lead agency of the Hawaii CZM Program, is submitting this program change request for NOAA Office for Coastal Management (OCM) concurrence of these statutory and regulatory changes to the Hawaii CZM Program.

The following pages provide a brief description of statutory and regulatory changes that are being submitted for NOAA OCM's concurrence.

### **Deleted Regulatory Policies**

#### **1. Hawaii Administrative Rules (HAR) § 13-51-3 Fisher Check Station Requirements under HAR Chapter 13-51 Marine Fisheries Management Areas,**

HAR § 13-51-3 was repealed on November 27, 2021 to remove the check-in, check-out, and fisher report requirements.

HAR § 13-51-3 was approved by NOAA as program changes on March 12, 2009.

### **Added Statutory and Regulatory Policies**

#### **2. HAR Chapter 11-56 Nonpoint Source Pollution Control**

Nonpoint source (NPS) pollution is not currently regulated in Hawaii. Unlike regulation of point source pollution, regulation of NPS is not federally mandated. The 1972 federal Clean

Water Act omitted regulation of NPS pollution from federal purview and left protection of surface waters from NPS pollution to states.

HAR Chapter 11-56 provides the regulatory requirements for the prevention, abatement, and control of new and existing NPS pollution. Chapter 11-56 identifies major nonpoint sources and requires the development and implementation of a Water Pollution Prevention Plan that identifies the specific management measures to be used for effectively controlling those sources of NPS pollution. These management measures are largely based on Hawaii's Coastal Nonpoint Pollution Control Program (CNPCP) management measures. In addition to regulating NPS pollution, Chapter 11-56 provides support to further the State's capacity to carry out the requirements of any federal law, rules, or regulation pertinent to the management or mitigation of NPS pollution by serving as a mechanism to implement, track, and demonstrate the effectiveness of Hawaii's CNPCP management measures, which are activities required by Coastal Zone Act Reauthorization Amendments.

**3. HAR Chapter 13-60.10 Miloli'i Community-Based Subsistence Fishing Area, Hawai'i**

Adopt a new chapter to designate the Miloli'i Community-Based Subsistence Fishing Area, (CBSFA), Hawai'i and establish rules governing marine resource uses and activities within the area, including 1) purpose of the CBSFA; 2) boundaries to delineate the boundaries of the Miloli'i CBSFA and its subzones; 3) permitted and prohibited activities to prescribe the permitted and prohibited activities within the Miloli'i CBSFA; and 4) penalty to establish the administrative and criminal penalties that may be imposed for violations of this chapter.

**4. Ordinance No. 1085, An Ordinance to amend Chapter 8, Kauai County Code 1987, Article 11 Special Treatment Districts**

Located in areas between public access roadways and the ocean, the coastal edges of communities are the frontline of vulnerability to coastal hazards, including but not limited sea level rise, coastal erosion, high wave run-up, passive flooding, and an increased frequency and intensity of storms. This Ordinance establishes a new "Special Treatment Coastal Edge (ST-CE) District" that specifies additional performance required for development in particularly vulnerable areas along the coastline of the County of Kauai.

**5. HAR § 13-104-5.5 Abandoned and unattended property**

**HAR § 13-104-7.5 Closing of areas**

**HAR § 13-104-25 General statement**

**HAR § 13-104-26 Payment**

**HAR § 13-104-27 Camping and cabin rental fees**

**HAR § 13-104-28 Commercial use permit fees**

**HAR § 13-104-29 Kiln fees**

**HAR § 13-104-30 Permit processing fees**

**HAR § 13-104-31 Parking and entrance fees**

HAR Chapter 13-104 was amended to streamline, clarify, improve enforceability, and update allowed uses and activities in the public forest reserves.

HAR § 13-104-5.5 was added to address the increasing problem of abandoned personal property in the forest reserves, which are detrimental to natural resource management; dangerous to public health, safety, or welfare; and negatively impact aesthetic enjoyment of these public resources. The provision creates a process to address removal of found items, waste, abandoned vehicles, and dumped bulky items left in the forest reserves.

HAR § 13-104-7.5 was added to allow the Board of Land and Natural Resources or its authorized representative to close or restrict all or part of a forest reserve for reasons of public health, safety, or welfare and for management activities; as well as to protect any biological, geological, or cultural resources.

HAR §§ 13-104-26, 27, 28, 29, 30 and 31 were added for payment and all fees relating to camping and cabin rental, commercial use permit, kiln and permit processing.

HAR Chapter 13-104 Rules Regulating Activities within Forest Reserves, was approved as program changes by NOAA on March 12, 2009.

## **Revised Statutory and Regulatory Policies**

- 6. HAR § 13-104-2 Definitions**
- HAR § 13-104-3 Penalty**
- HAR § 13-104-11 Vehicles and transportation**
- HAR § 13-104-16 Camping**
- HAR § 13-104-18 General provisions for permits**
- HAR § 13-104-19 Camping permits**
- HAR § 13-104-20 Special use permits**
- HAR § 13-104-21 Collecting permits**
- HAR § 13-104-22 Commercial permits**
- HAR § 13-104-23 Access permits**

HAR Chapter 13-104 needed comprehensive revision to streamline, clarify, improve enforceability, and update allowed uses and activities in the public forest reserves. The amendments to HAR Chapter 13-104 provide the Department of Land and Natural Resource (DLNR) with the legal tools to more effectually and properly manage the forest reserves. The amendments include:

- Improving clarity and transparency of procedures
- Accounting for relevant conditions and new technology
- Improve enforcement capacity
- Improved framework and procedures for management of the forest reserves
- Increase opportunity for sustainable ecotourism industry
- Create alternate revenue streams for forest management decreasing reliance on tax-based funding.

HAR Chapter 13-104 was last comprehensively amended and compiled in 1993, with a portion on commercial harvest permits amended in 2005. HAR Chapter 13-104 Rules

Regulating Activities within Forest Reserves, was approved as program changes by NOAA on March 12, 2009.

**7. Ordinance No. 1088, An Ordinance to amend Chapter 8, Kauai County Code 1987, Article 27 Shoreline Setback and Coastal Protection**

Kauai's coastline is subject to a wide variety of natural hazards, such as tsunamis, high surf, sea level rise, hurricanes, coastal flooding, and coastal erosion that pose dangers to people and property located near the shoreline. This bill aims to: (1) Protect life and property and to ensure the longevity and integrity of Kauai's coastal and beach resources along Kauai's shoreline; (2) Strengthen shoreline setback requirements in Chapter 8, Article 27, of the Kauai County Code, 1987, as amended, by incorporating science-based erosion rates established in the Kauai Coastal Erosion Study and current coastal hazard mitigation best practices and strategies; and (3) Update the Kauai Coastal Erosion Study to include the updated erosion rates and updated data completed by the University of Hawaii Coastal Geology Group in 2018.

Ordinance No. 863 and Ordinance No. 887 that adopted and amended Chapter 8, Kauai County Code 1987, Article 27 Shoreline Setback and Coastal Protection Erosion, were approved as program changes by NOAA on January 18, 2013.

**8. Revised Ordinances of Honolulu § 25-5.1 Required materials**

Ordinance No.21-27 amended Revised Ordinances of Honolulu (ROH) § 25-5.1 to require an applicant for a special management area use permit to present the proposed project to the applicable neighborhood board or appropriate community association prior to submitting an application to the Department of Planning and Permitting, City and County of Honolulu.

ROH Chapter 25 under Ordinance 87-73 and amendments were approved by NOAA as program changes on October 15, 1987, July 18, 1990, and January 18, 2013, respectively.

**9. Hawaii Revised Statutes (HRS) § 46-161 Findings and purpose  
HRS § 46-163 Conditions for the transfer of development rights**

Amendments to HRS §§ 46-161 and 46-163 by Act 223 Session Laws of Hawaii (SLH) 2022 expand the county authority to regulate the transfer of development rights to protect areas vulnerable to sea level rise, coastal erosion, storm surge, and flooding, thereby facilitating the potential movement of development away from at-risk areas to locations more appropriate for development.

HRS §§ 46-161 and 46-163 was approved as program changes by NOAA on September 18, 2001.

**10. HRS § 171-55 Permits**

Act 209, SLH 2022 amended HRS § 171-55 to ensure that sandbags are installed in compliance with the permit conditions by requiring that certain identifying information be attached to the sandbag, thereby confirming that a permit was acquired to install the sandbag and holding each permittee accountable for the type of device or structure installed.

HRS Chapter 171 and its amendments were previously approved by NOAA as program changes on October 15, 1987, October 18, 1989, July 18, 1990, September 18, 2001, May 19, 2004, and January 18, 2013, respectively.

## **11. HRS § 342D-6 Permits; procedures for**

Act 162, SLH 2021 amended HRS § 342D-6 to waive the requirement to obtain a section 401 water quality certification for beach restoration and management projects that have received notice of authorization to proceed from the department of land and natural resources' small-scale beach restoration program.

HRS Chapter 342D and its amendments were approved by NOAA as program changes on July 18, 1990, June 7, 1993, October 17, 1997, January 22, 1999, September 18, 2001, and March 12, 2009, respectively.

## **12. HAR Chapter 11-280.1 Underground Storage Tanks**

Amend HAR Chapter 11-280.1 to further protect Hawaii's environment and natural resources, especially Hawaii's groundwater, by requiring all airport hydrant fuel distribution systems and underground storage tank (UST) systems with field-constructed tanks to be provided with secondary containment or permanently closed. Additional changes make non-substantive corrections to improve the clarity of existing requirements, make edits to ensure that the state regulations are fully consistent with the federal UST regulations, and clarify notification and reporting requirements.

The amendments include, but limited to:

- 1) HAR § 11-280.1-21 has been revised to require that airport hydrant fuel distribution systems and UST systems with field-constructed tanks installed before July 15, 2018 be provided with secondary containment by July 15, 2038 or permanently closed.
- 2) HAR § 11-280.1-25(c) has been revised to require under-dispenser containment (UDC) to allow for visual inspection and access to the components in the containment system or monitoring for leaks from the dispenser system with a sensing device that signals the operator of the presence of regulated substances, rather than requiring both visual access and a sensor. This change makes the state regulations the same as the federal requirements for UDCs in 40 CFR § 280.20(f)(2), which require either visual access or monitoring with a sensor.
- 3) HAR § 11-280.1-34 has been revised to require notifications of planned permanent closure or change-in-service and scheduled excavation work for permanent closure or change-in-service to be made using the "Notice of Intent to Close Underground Storage Tanks" form

rather than the “Notification for Underground Storage Tanks” form. A requirement to submit a UST closure report to the department is added to § 11-280.1-71(e).

- 4) HAR § 11-280.1-41(a)(1), (2) and (3) have been rephrased to clarify which tanks each paragraph applies to.
- 5) HAR § 11-280.1-52(b)(1), “or” is replaced with “and” to clarify that when secondary containment testing is appropriate, this testing must be done in addition to rather than in place of other required system tests.
- 6) HAR § 11-280.1-61(b) has been revised to require that notice of confirmation of a release be submitted on the “Confirmed Release Notification” form. When this form is accurately completed, it will include all the information about the release listed in this section, so the list is no longer necessary.

HRS Chapter 11-280.1 Underground Storage Tanks was approved as program changes by NOAA on May 16, 2019.

### **13. HAR § 13-34-1 Boundaries**

**HAR § 13-34-2 Prohibited activities**

**HAR § 13-34-5 Penalty**

**HAR § 13-34-6 Asset forfeiture**

**Under HAR Chapter 13-34 Pupukea Marine Life Conservation District, Oahu**

Amend the boundaries of the Pūpūkea Marine Life Conservation District (MLCD) to include the Kapo‘o tide pools, also known as the Old Quarry tide pools. Boundary amendments provide accurate GPS coordinates and description, including coordinates delineating the boundary of the Waimea Bay zone of the MLCD.

The definition of “limu lipe‘epe‘e” was amended to provide clarity and ensure the rule’s enforceability. The definition of “Waimea Bay” was removed because it is described in the amended Boundary section. The definition of “legal nets” was removed because it is no longer necessary due to amendments regarding permitted activities.

The amended rule will ensure that the natural ecological habitat within the MLCD is not impacted by fish feeding activities, given the growing number of snorkelers and other visitors there.

HAR Chapter 13-34 Pupukea Marine Life Conservation District, Oahu and its amendments were approved as program changes by NOAA on July 18, 1990 and May 19, 2004, respectively.

### **14. HAR § 13-51-1 Definitions**

**HAR § 13-51-2 Regulated activities**

**Under HAR Chapter 13-51 Marine Fisheries Management Areas, Kahului Harbor, Maui**

The proposed changes update fishing regulations within the Kahului Harbor Fisheries Management Area to address fishing issues and activities. Many of the original rules and special exceptions are no longer necessary because fishing activities have changed over time. The changes also provide greater clarity and consistency to facilitate compliance and enforcement of the rules.

HAR Chapter 13-51 Marine Fisheries Management Areas, Kahului Harbor, Maui, was approved as program changes by NOAA on March 12, 2009.

#### **15. HAR § 13-95.1-1 Definitions**

**HAR § 13-95.1-3 Scope**

**HAR § 13-95.1-4 Exceptions**

**Under HAR Chapter 13-95.1 Island-Based Fisheries**

Amendments to HAR Chapter 13-95.1 include:

- 1) Amend the definition of “oama” to include two species of goatfish (weke ‘ā, *Mulloidichthys flavolineatus*, and weke ‘ula, *Mulloidichthys vanicolensis*) and to increase the allowed size from five inches to eight inches in length;
- 2) Amend the definition of “take” to clarify that the attempt to fish for, catch, capture, confine, or harvest marine life is considered “take;” and
- 3) Add definitions for “marine life” and “weke ‘ula.”

HAR Chapter 13-95.1 was approved by NOAA as program changes on September 30, 2016.

#### **16. HRS § 189-2 Commercial Marine and Commercial Marine Vessel License**

The legislature finds that although existing statutory language requires vessel-based fishing charters to obtain a commercial marine license, it is unclear whether shore-based charters are also required to obtain a commercial marine license. Act 43, SLH 2021 amended HRS § 189-2 as follows:

- 1) Specify that a single commercial marine vessel license satisfies the commercial marine license requirement for all persons aboard a licensed vessel;
- 2) Require each commercial marine vessel licensee for a Hawaii longline vessel that satisfies the commercial marine license requirement by obtaining the vessel license to file an annual report with the department of land and natural resources that contains certain information on the crew members;
- 3) Require any person providing fishing charter services to obtain a commercial marine license;
- 4) Allow any vessel used for or engaged in the taking of marine life for commercial purposes to be eligible to obtain a commercial marine vessel license;
- 5) Authorize the department of land and natural resources to establish rules and fees for obtaining a commercial marine vessel license; and
- 6) Require the department of land and natural resources to submit a report to the legislature regarding the status of its administrative rules establishing a new commercial marine vessel license category.

HRS Chapter 189 and its amendments were approved by NOAA as program changes on July 18, 1990, June 7, 1993 and September 18, 2001, respectively,

## **17. HAR § 13-256-73 Kaneohe Bay Ocean Waters**

Make clarifications for commercial activity restrictions, specifically repeal HAR § 13-256-73(q) regarding activities conducted by a bona-fide educational institution or an organization which is registered with the State and classified by the Internal Revenue Service as a not-for-profit (section 501(c)(3)) organization; make amendments for organization and clarity; update map exhibits to higher resolution color maps.

HAR Chapter 13-256 Ocean Recreation Management Rules and Areas, including HAR § 13-256-73, was approved as program changes by NOAA on October 17, 1997.

## **Conclusion**

Pursuant to 15 CFR § 923.82, the Hawaii CZM Program finds that the statutory and regulatory changes submitted to NOAA's OCM for approval are changes to enforceable policies previously approved by NOAA, including modifications, additions, and deletions. These changes proposed to the Hawaii CZM Program for approval include the following:

- Provide the regulatory requirements for the prevention, abatement, and control of new and existing nonpoint source pollution;
- Establish a new "Special Treatment Coastal Edge (ST-CE) District" that specifies additional performance required for development in particularly vulnerable areas along Kauai's coastline;
- Ensure the longevity and integrity of Kauai's coastal and beach resources along Kauai's shoreline, and strengthen shoreline setback requirements in Chapter 8, Article 27, of the Kauai County Code, 1987, as amended;
- Require an applicant for a special management area use permit to present the proposed project to the applicable neighborhood board or appropriate community association prior to submitting an application to the Department of Planning and Permitting, City and County of Honolulu;
- Expand the county authority to regulate the transfer of development rights to protect areas vulnerable to sea level rise, coastal erosion, storm surge, and flooding, thereby facilitating the potential movement of development away from at-risk areas to locations more appropriate for development;
- Require the attachment of identifying information to a sandbag from an emergency permit granted by the Board of Land and Natural Resources;
- Waive a section 401 water quality certification for any applicant of the small-scale beach restoration program that has received notice of authorization to proceed from the Department of Land and Natural Resources;
- Protect Hawaii's groundwater by requiring all airport hydrant fuel distribution systems and underground storage tank systems with field-constructed tanks to be provided with secondary containment or permanently closed;

- Amend rules regulating activities within forest reserves to provide the Department of Land and Natural Resource with the legal tools to more effectually and properly manage the forest reserves;
- Establish Miloli'i Community-Based Subsistence Fishing Area, Hawai'i, to establish rules governing marine resource uses and activities within the area.
- Amend the boundaries of the Pūpūkea Marine Life Conservation District to include the Kapo'o tide pools, also known as the Old Quarry tide pools;
- Update fishing regulations within the Kahului Harbor Fisheries Management Area, Maui, to address current fishing issues and activities; and
- Make clarifications for commercial activity restrictions in Kaneohe Bay Ocean Waters, Oahu.

All the changes submitted at this time for approval will not result in substantive changes to the five program approval areas, including 1) Uses Subject to Management; 2) Special Management Areas; 3) Boundaries; 4) Authorities and Organization; and 5) Coordination, Public Involvement and National Interest. No changes or additions are submitted this time to the Hawaii Federal consistency list of geographic location descriptions.