

**Program Changes
to
State of Hawai‘i Coastal Zone Management Program**

**Request for Concurrence
January 2025**

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

Submitted by: State of Hawai‘i Office of Planning &
Sustainable Development
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Summary of Changes in the Hawai‘i Coastal Zone Management Program for Change Request

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

Since its approval in 1978 by National Oceanic and Atmospheric Administration (NOAA), the Hawai‘i 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 Hawai‘i CZM network agencies are necessary to address challenges, strengthen the management regime, clarify provisions, or otherwise modify management of activities affecting coastal resources. For these statutory and regulatory changes to be incorporated into the federally approved Hawai‘i 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 Hawai‘i Office of Planning and Sustainable Development (OPSD), the lead agency of the Hawai‘i CZM Program, is submitting this program change request for NOAA Office for Coastal Management (OCM) concurrence of these statutory and regulatory changes to the Hawai‘i CZM Program.

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

Act 35, Session Laws of Hawaii (SLH) 2020, Relating to Aquatic Resources

- HRS § 187A-12.5 General administrative penalties for violations of aquatic resources

HRS § 187A-12.5 amended by Act 35, SLH 2020, strengthens the penalties for violations of the State of Hawaii’s aquatic resources by establishing a tiered administrative fine system for each specimen of aquatic life taken, killed or injured.

HRS § 187A-12.5 (Act 243, SLH 1998) was previously approved by NOAA on September 18, 2001.

- HRS § 187A-13 General penalty; community services for violations of aquatic resources

HRS § 187A-13 amended by Act 35, SLH 2020, strengthens the penalties for violations of the State of Hawaii’s aquatic resources by 1) establishing a tiered administrative fine system; 2) authorizing the Department of Land and Natural Resources to recommend community service that benefits the resource damaged when a person is ordered to perform community service in lieu of a fine, and recommend to the court that the defendant be sentenced to probation with probationary terms and conditions, including but not limited to specific restrictions.

HRS § 187A-13 (Act 195, SLH 1999) was previously approved by NOAA on September 18, 2001.

- HRS § 188-70 Penalties for violations of fishing rights and regulations

HRS § 187A-70 amended by Act 35, SLH 2020, strengthens the penalties for violation of any provision of any rule adopted pursuant to HRS Chapter 188 by adding a fine for the first offense, second offense, and third offense, respectively, in addition to the fine under subsection (a).

HRS § 188-70 (Act 195, SLH 1999) was previously approved by NOAA on September 18, 2001.

- HRS § 189-4 Penalties for violations of commercial fishing

HRS § 189-4 amended by Act 35, SLH 2020, strengthens the penalties for violation of any provision of any rule adopted pursuant to HRS Chapter 189 by adding a fine for the first offense, second offense, and third offense, respectively, in addition to the fine under subsection (b).

HRS § 189-4 (Act 195, SLH 1999) was previously approved by NOAA on September 18, 2001.

- HRS § 190-5 Penalty for violations of marine life conservation program

HRS § 190-5 amended by Act 35, SLH 2020, strengthens the penalties for violation of any provision of any rule adopted pursuant to HRS Chapter 190 by adding a fine for the first offense, second offense, and third offense, respectively, in addition to the fine under subsection (b).

HRS § 190-5 (Act 195, SLH 1999) was previously approved by NOAA on September 18, 2001.

Act 59, SLH 2023, Relating to Transportation

- HRS § 266-31 Restriction of use of facilities

A new section was added to HRS Chapter 266 for the State of Hawaii Department of Transportation to restrict vessels that have been engaged in specific unpermitted or unlicensed activities from entering or departing ports in the State's commercial harbor system.

Act 73, SLH 2020, Relating to Waste Management

- HRS § 183C-4 Zoning; amendments

No waste or disposal facility shall be located in a conservation district except in emergency circumstances where it may be necessary to mitigate significant risks to public safety and health, and emergency circumstances shall not exceed three years.

HRS Chapter 183C was previously approved by NOAA on September 18, 2001.

- HRS 342H-52 Prohibitions; buffer zones

No person, including the State or any county, shall construct, modify, or expand a waste or disposal facility including a municipal solid waste landfill unit, any component of a municipal solid waste landfill unit, a construction and demolition landfill unit, or any component of a construction and demolition landfill unit without first establishing a buffer zone of no less than one-half mile around the waste or disposal facility.

HRS Chapter 342H-52 was previously approved by NOAA on June 7, 1993.

Act 112, SLH 2008, Relating to Federal Fisheries Regulations

- HRS § 187A-5.5 Consistency of state and federal fisheries regulations

HRS Chapter 187A was amended by adding a new section 187A-5.5 Consistency of state and federal fisheries regulations for fisheries located in both state and federal waters, that are equivalent to and consistent with federal fisheries regulations for the same waters, to create uniform, complementary, and comprehensive management measures to improve efficiencies in management and effectiveness of enforcement.

Act 157, SLH 2022, Relating to Underground Storage Tanks

- HRS § 342L-4.2 Large capacity underground tank systems; prohibited

HRS Chapter 342L Underground Storage Tanks was amended by adding a new section 342L-4.2 Large capacity underground storage tank systems; prohibited, so that beginning July 1, 2022, the State of Hawaii Department of Health shall not issue a permit for a new large capacity underground storage tank system mauka of the underground injection control line; no person shall operate a large capacity underground storage tank system mauka of the underground injection control line and no permit for a large capacity underground storage tank system mauka of the underground injection control line shall be renewed except the situation under section 342L-9.

Act 179, SLH 2016, Relating to Underground Storage Tanks

- HRS § 342L-4.5 Permits new shoreline prohibited; exception

HRS Chapter 342L Underground Storage Tanks was amended by adding a new section 342L-4.5 Permits new shoreline prohibited; exception, so that the State of Hawaii Department of Health shall not issue a permit for a new underground fuel storage tank within 100 yards of the shoreline; and beginning January 1, 2045, no person shall operate an

underground fuel storage tank within 100 yards of the shoreline, and no permit for an underground fuel storage tank within 100 yards of the shoreline shall be renewed.

Act 212, SLH 2022, Relating to Historic Preservation

- HRS § 6E-11 Civil and administrative violations

HRS § 6E-11 amended by Act 212, SLH 2022 increases the civil fine up to from \$10,000 to \$20,000 for each separate violation of this section. Any landowner or developer responsible for any project where violations are found to have occurred shall execute any mitigation and preservation measures ordered by the State of Hawaii Department of Lands and Natural Resources, and liable for any costs of mitigation and preservation.

HRS § 6E-11 was previously approved by NOAA on June 7, 1993.

- HRS § 6E-11.5 Civil penalties

HRS § 6E-11.5 amended by Act 212, SLH 2022 increases the civil penalty up to from \$10,000 to \$20,000 for each separate violation of this section.

HRS § 6E-11.5 was previously approved by NOAA on June 7, 1993.

- HRS § 6E-12 Reproductions, forgeries and illegal sales

HRS § 6E-12 amended by Act 212, SLH 2022 increases the fine up to from \$10,000 to \$25,000 for violation of this section.

Act 213, SLH 2022, Relating to Abandoned Wells

- HRS § 174C-81 Definition of “Abandoned wells”

HRS § 174C-81 amended by Act 213, SLH 2022 amends the definition of “Abandoned well”, which means 1) the purpose of the well has been permanently discontinued; 2) that has served its purpose; 3) that is not properly maintained; 4) the physical condition of the well is causing a waste of ground water or is impairing or threatens to impair the quality of the ground water resources; or 5) that is in such a state of disrepair that its continued use is impractical or poses a hazard to public health or safety.

HRS § 174C-81 was previously approved by NOAA on October 15, 1987.

- HRS § 174C-87 Sealing of abandoned wells

HRS § 174C-87 amended by Act 213, SLH 2022 replace the term “Abandonment of wells” with “Sealing of abandoned wells” to require the owner of an abandoned well to seal the abandoned well in a manner approved by the commission on water resource management. Before sealing, the owner shall file with the commission an application for a well sealing

permit signed by a driller licensed to do the work and other information required by the commission.

HRS § 174C-87 was previously approved by NOAA on October 15, 1987.

Marine Fisheries Management Areas, Kīpahulu, Maui

HAR Chapter 13-60.11 Kīpahulu Community-Based Subsistence Fishing Area, Maui

New Hawaii Administrative Rules Chapter 13-60.11 Kīpahulu Community-Based Subsistence Fishing Area (CBSFA), Maui, for Division of Aquatic Resources, Department of Lands and Natural Resources, was adopted and took effect on March 25, 2024. HAR Chapter 13-60.1 was adopted to: 1) outline the purpose of the Kīpahulu CBFSA and its subzones; 2) provide the definitions of key terms; 3) establish and delineate the boundaries for the Kīpahulu CBFSA and its two subzones; 4) describe permitted and prohibited activities within the Kīpahulu CBFSA; 5) protect Native Hawaiian traditional and customary rights; 6) carve out an exception for vessels with restricted species or gear in active transit through the Kīpahulu CBFSA; 7) establish the administrative and criminal penalties for violations; and 8) recognize the State’s asset forfeiture authority as an enforcement tool for violations.

HAR Chapter 13-74 License and Permit Provisions and Fees for Fishing, Fish, and Fish Products

HAR chapter 13-74 was amended to

- 1) Establish and add provisions for a new Nonresident Recreational Marine Fishing License pursuant to HRS § 188-72;
- 2) Establish and add provisions for a new Commercial Marine Vessel License (CMVL) pursuant to HRS §189-2, including an exemption from Commercial Marine License requirements for CMVL holders;
- 3) Establish and add provisions for a new Commercial Marine Dealer License (CMDL) pursuant to HRS §189-10;
- 4) Increase the fee for the Bait License, the Mullet Pond Operator and Closed Season Sales License, the Kona Crab and Lobster Closed Season Sales License, the Special Marine Animal or Product Possession and Sale License, and the Aquaculture License from \$50 to \$100;
- 5) Remove the Northwestern Hawaiian Islands Fishing Permit;
- 6) Add a catch reporting requirement for all Bait License holders;
- 7) Establish a fee for duplicate Aquaculture Licenses and licenses to sell reared species;
- 8) Give the Department discretion to require additional reports from Aquaculture License holders; and
- 9) Establish a fee of \$200 for a license to sell reared species.

Additionally, the amendments add new definitions and amending current definitions for clarity; clarify that licenses and permits are non-refundable; clarify the administrative penalty schedule for violations of the chapter; and add asset forfeiture as an administrative enforcement tool within the chapter.

This submittal specifically requests for NOAA OCM concurrence on the enforceable policies relating to commercial fishing.

HAR Chapter 13-74 was previously approved by NOAA on October 17, 1997.

Ordinance No. 1134 (2022), An Ordinance to Amend Chapter 8, Article 12, Kauai County Code 1987, Relating to Constraint Districts

o Sec. 8-12.5 Sea Level Rise District (S-SLR)

Sec. 8-12.5 was amended from “Shore District (S-SH)” to “Sea Level Rise District (S-SLR)” to minimize the threat to public health and safety due to sea level rise that increases the impacts of annual high wave run up and passive flooding; to promote resilient planning and design; and to ensure that those who occupy areas that are projected to be impacted by sea level rise acknowledge and assume responsibility for their actions.

Chapter 8 was previously approved by NOAA on July 18, 1990.

**Ordinance No. 23-3 Relating to Shoreline Setbacks
Revised Ordinances of Honolulu (ROH) Chapter 26**

Ordinance No.23-3 relating to shoreline setbacks upgrades ROH Chapter 26 to incorporate amendments made by Act 16, SLH 2020 to HRS Chapter 205A, the Hawai‘i CZM Law, and to implement erosion-rate-based shoreline setbacks, with following main amendments:

- 1) The current shoreline setback is 40 or 60 feet, depending on the lot. The City and County of Honolulu (CCH) now implements a shoreline setback ranging from 60 feet to 130 feet by formula of 60 feet plus 70 times the annual coastal erosion rate, depending on historic erosion rates.
- 2) Due to the intensity of existing build out, the presence of critical public infrastructure, and the extensively modified shoreline within urban Honolulu, those lots within the Primary Urban Center Development Plan area, which extends from Pearl Harbor all the way around Diamond Head and into Kahala, or lots in areas without historic erosion, or where erosion data is unavailable, will be subject to a 60-foot shoreline setback.
- 3) Shoreline setback line may not be reduced to less than 40 feet from the certified shoreline for a minimum buildable area of 1,500 square feet.
- 4) If a proposed structure is within a special flood hazard area, structural design and construction must be resilient to existing and increasing flood hazards with a finished lowest floor elevation a minimum of 3 feet above the flood insurance rate map base flood elevation.

- 5) If a proposed structure is outside of the special flood hazard area but within the sea level rise exposure area, the lower floor of the structure must be a minimum of 3 feet above the highest adjacent grade.
- 6) A nonconforming structure may be repaired or altered; provide that the repairs or alterations do not increase or intensify the nonconformity, and the cumulative valuation of the repairs or alterations does not exceed 50% of the replacement cost of the structure over a 10-year period.
- 7) New residential zoning lots may not be approved unless each new lot has a buildable area at least 5,000 square feet, outside of the shoreline setback area with a minimum depth and width of at least 50 feet, and able to create deep lots to place structures far from the shoreline.
- 8) No building permit or grading permit will be granted on a shoreline lot unless and until an illegal structure is removed or corrected.
- 9) Structures approved by a shoreline setback variance within the shoreline setback area are not eligible for subsequent protection by shoreline hardening, and hardship may not be determined from a former shoreline setback variance approval.
- 10) The CCH is not responsible for any losses, liabilities, claims, or demands arising out of or resulting from damage to structures or property within the shoreline setback area approved by a shoreline setback variance.

Act 16, SLH 2020 was approved by NOAA OCM on March 25, 2021. ROH Chapter 23 (recodified as Chapter 26) was previously approved by NOAA on July 18, 1990.

**Ordinance No. 23-4 Relating to Special Management Areas
ROH Chapter 25**

Housekeeping for conformity with the Hawai‘i CZM Law, HRS Chapter 205A, as amended by Act 16, SLH 2020. As a result of these changes, all residential dwellings on shoreline lots and lots impacted by waves, storm surges, high tide, or shoreline erosion, will require Special Management Area (SMA) permits. In addition, there are amendments as the following:

- 1) Add language relating to objectives and policies from HRS Chapter 205A, instead of incorporating it by reference only.
- 2) Require climate resilient design measures for dwellings proposed within the flood hazard zone or sea level rise exposure area.
- 3) Add the definition of significant effect and cumulative impact.
- 4) Specify that structures associated with agricultural activity dedicated to manufacturing, processing, or packaging facilities are considered “development.”

- 5) Combine the exemptions relating to subdivision actions into a single “subdivision exemption” where no associated development is proposed.
- 6) Clarify when structural and nonstructural improvements to existing single-family residences are exempt. Remove the allowance for additional dwelling units. Allow minor accessory structures and additions up to 300 square feet on lots where residential development would otherwise require SMA permits.
- 7) Disallow the concurrent processing of SMA permits and environmental disclosure documents.
- 8) Incorporate the language relating to wetlands into various appropriate locations and remove duplicative sections.
- 9) Civil fine was amended pursuant to HRS § 205A-32 for up to \$10,000 per day of violation, and up to \$100,000 per event of violation.

ROH Chapter 25 was previously approved by NOAA on July 18, 1990.

County of Hawai‘i Rule 8 Shoreline Setback Variance, and Rule 9 Special Management Area

The County of Hawaii Planning Commission Rules 8 regarding the Shoreline Setback and Planning Commission Rules 9 regarding the SMA were amended to conform with Act 16, SLH 2020. The proposed main amendments to Rules 8 and Rules 9 seek to add sea level rise to the definition of coastal hazards, add a definition of beach to enhance beach protection, restrict construction of shoreline hardening structures at sites with beaches, increase the minimum shoreline setback from 20 feet to 40 feet, and include the construction of a single-family residence on a shoreline parcel as " development".

County of Hawaii Rules 8 and its amendments were previously approved by NOAA on July 18, 1990, and June 7, 1993, respectively. County of Hawaii Rules 9 and its amendments were previously approved by NOAA on July 18, 1990, June 7, 1993, September 18, 2001, March 12, 2009, and May 16, 2019, respectively.

MC-12, Chapter 203, Shoreline Rules

The amendments to MC-12, Chapter 202 Shoreline rules streamline the shoreline setback approval process in addition to using the best available science on coastal erosion and sea level rise to improve coastal resilience.

There are three types of shoreline rule changes to

- 1) Amend how the shoreline setback is established (§ 12-203-6). More specifically, the erosion setback is based on future projected erosion with 3.2 feet of sea level rise, referred to as the Erosion Hazard Line (EHL). The EHL was modeled and mapped by the University of Hawaii Climate Resilience Collaborative with minor adjustments by the

County of Maui to account for shoreline that are determined to be geologically stable or are accreting.

- 2) Include new categorical exceptions (§ 12-203-10). Categorical exceptions must implement Best Management Practices (BMPs). Action specific BMPs are required for five categories that require a declaration form.

The Hawaii CZM Program does not consider categorical exceptions applicable to federal consistency review.

- 3) Clarify and expand definitions of structures and activities that are allowable in the shoreline setback area (§ 12-203-12). Only minor structures and activities are allowed within the Shoreline Setback Area. For allowable activities in this section, a Shoreline Setback Approval and/or Determination Application (SSAD) is required prior to initiating construction, building, or ground-altering activities within the Shoreline Setback Area. Any structure or activity that is not expressly allowed in the Shoreline Rules may require a Shoreline Setback Variance.

County of Maui Planning Commission MC-12, Chapter 203, Shoreline Rules was previously approved by NOAA on March 12, 2009.

City and County of Honolulu, Ordinance No. 14-9 Relating to Flood Hazard Areas, ROH Chapter 21A Floodplain Management

Chapter 21 is enacted pursuant to the U.S. National Flood Insurance Act of 1968 (Public Laws 90-448 and 91-152), as amended, and the U.S. Flood Disaster Protection Act of 1973 (Public Law 93-234), as amended, and HRS Chapter 46. All proposed development within the general floodplain shall be subject to review and approval of the Director of the Department of Planning and Permitting. A floodway permit is required under this chapter for all new construction of or substantial improvements to structures within the floodway area. A flood variance may be granted for a parcel of property with physical characteristics so unusual that complying with the requirements of this chapter would create exceptional hardship to the applicant or the surrounding property owners.

Ordinance No. 07-169 Amending Chapter 27, Flood Control, Hawai'i County Code 1983, As Amended, Relating to Stormwater Management; Ordinance No. 17-56 Amending Chapter 27, Flood Control, Hawai'i County Code 1983, As Amended, to Comply with National Flood Insurance Program Regulations

Chapter 27 is enacted pursuant to the U.S. National Flood Insurance Act of 1968 (Public Laws 90-448 and 91-152), as amended, and the U.S. Flood Disaster Protection Act of 1973 (Public Law 93-234), as amended, and HRS §§ 46-1.5(5), 46-1.5(14), 46-11.5 and 46-12. No building permit, certificate of occupancy, or grading permit shall be issued, no structure shall be occupied, no exception to chapter 5, the building code, shall be certified, and no development or subdivision shall be approved in an area of special flood hazard as determined by the director of the public works, pursuant to section 27-16, without approval of the director with respect to

compliance with the provisions of Chapter 27. A variance from Chapter 27 may be issued by the director of public works only upon the applicant meeting the variance criteria of section 27-27.

Ordinance No. 1091, A Bill for An Ordinance to Amend Chapter 15, Article 1, Kaua'i County Code 1987, As Amended, Relating to Floodplain Management

Chapter 15, Article 1, is enacted pursuant to Chapter 27 is enacted pursuant to the U.S. National Flood Insurance Act of 1968 (Public Laws 90-448 and 91-152), as amended, and the U.S. Flood Disaster Protection Act of 1973 (Public Law 93-234), as amended. In addition, the legislature of the State of Hawai'i has in HRS §§ 46-1.5 and 46-11 authorized the counties to enact ordinances to promote health and safety and to quality, participate, and apply for flood insurance coverage under the National Flood Insurance Program. No building permit, certificate of occupancy, or grading permit shall be issued, or subdivision shall be approved without the approval of the County Engineer or his/her authorized representative, with respect to compliance with the provisions of this Article.

Ordinance No. 5603, 2023, An Ordinance to Replace Chapter 19.62, Maui County Code, and Create a New Chapter 16.29, Maui County Code, Relating to Flood Hazard Areas

Chapter 16.29 is enacted in accordance with the U.S. National Flood Insurance Act of 1968 (public laws 90-448 and 91-152), as amended, and the U.S. Flood Disaster Protection Act of 1973 (public law 93-234), as amended, and HRS chapter 46. A special flood hazard area development permit must be obtained from the director of public works before construction of any development begins within any special flood hazard area, flood-related erosion hazard area, or mudslide area.

Conclusion

Pursuant to 15 CFR § 923.82, the Hawai'i CZM Program finds that the statutory and regulatory changes submitted to NOAA's OCM for approval are changes either previously approved by NOAA, including modifications and additions, or under the U.S. National Flood Insurance Act of 1968 (Public Laws 90-448 and 91-152), and the U.S. Flood Disaster Protection Act of 1973 (Public Law 93-234), as amended. 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.