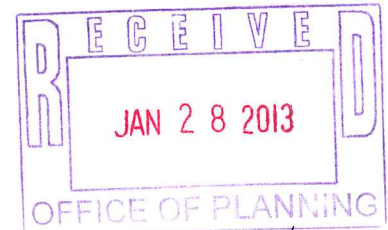




**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
NATIONAL OCEAN SERVICE  
OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT  
Silver Spring, Maryland 20910

**JAN 18 2013**

Mr. Leo Asuncion, Manager  
Hawaii Coastal Zone Management Program  
Department of Business, Economic Development and Tourism  
235 S. Beretania St., 6th Floor  
P.O. Box 2359  
Honolulu, HI 96804



74564

Dear Mr. Asuncion:

Thank you for the Hawaii Department of Business, Economic Development & Tourism's October 23, 2012, request that new and revised statutes, administrative rules, and ordinances and changes to the federal consistency provisions be incorporated into the Hawaii Coastal Management Program (CMP). You requested that the changes described below be incorporated as routine program changes (RPCs), pursuant to Coastal Zone Management Act (CZMA) regulations at 15 C.F.R. part 923, subpart H, and Office of Ocean and Coastal Resource Management (OCRM) Program Change Guidance (July 1996). OCRM received the request on November 1, 2012, and OCRM's decision deadline was extended until January 18, 2013.

Based on our review of your submission, we concur, with the qualifications described below, that the changes are RPCs and we approve the incorporation of the changes as enforceable policies of the Hawaii CMP. Federal Consistency will apply to the approved changes to enforceable policies only after you publish notice of this approval pursuant to 15 C.F.R. § 923.84(b)(4). Please include in the public notice the list of changes provided in this letter, and please send a copy of the notice to OCRM.

### **CHANGES APPROVED**

See enclosed list of the changes incorporated into the Hawaii CMP.

### **QUALIFICATIONS**

States may not incorporate enforceable policies by reference. If an approved enforceable policy refers to another regulation, policy, standard, guidance, or other such requirement or document (hereinafter "referenced policy"), the referenced policy itself must be submitted to and approved by OCRM as an enforceable policy in order to be applied under the federal consistency review provisions of the CZMA. Therefore, no requirement or document referenced in the approved enforceable policies may be applied for federal consistency unless that requirement or document has separately been approved by OCRM.

The inclusion of completed state and county permit applications as necessary data and information is allowed under 15 C.F.R. § 930.58(a)(2). The State has provided a list of the applicable permits, all of which are based on enforceable policies that are part of the approved



Hawaii CMP. Although the State may require completed permit applications as a means to acquire the information necessary to initiate its federal consistency review, any third party approvals embedded in a permit application are not applicable for the purposes of satisfying the necessary data and information requirements.

### **CHANGES NOT APPROVED**

OCRM has not approved the incorporation of Ka'ula Island as a wildlife sanctuary under HAR Chapter 13-126, Exhibit 1 because this designation would impose policies on federal lands or waters. The CZMA does not authorize states to establish regulatory standards for federal lands or waters and, in fact, excludes federally controlled lands and waters from the state's coastal zone. *See* 16 U.S.C. § 1453(1). Moreover, a state policy that purports to regulate or otherwise establish standards for federal agencies or federal lands or waters would not meet the CZMA's definition of "enforceable policy," which requires that state policies be legally binding under state law. *See* 16 U.S.C. § 1453(6a). Since Hawaii has no regulatory authority over federal lands or waters under the CZMA, the designation of Ka'ula Island as a wildlife sanctuary cannot be legally binding under state law, as required by CZMA section 304(6a). This denial also applies to any other wildlife sanctuaries that include federal lands or waters even though they have not been specifically identified in this letter.

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

OCRM received comments from the U.S. Navy regarding the wildlife sanctuary rules, including a comment that Ka'ula Island is federally owned, which is addressed above.

Thank you for your cooperation in this review. Please contact Steve Frano at (808) 525-5373, if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Joelle', with a long horizontal flourish extending to the right.

Joelle Gore, Acting Chief  
Coastal Programs Division

Enclosure: Policies Approved and Incorporated into the Hawaii CMP



Enclosure to OCRM's January 18, 2012, Approval of the Incorporation of Changes to the HAWAII COASTAL MANAGEMENT PROGRAM			
Name/Description of State or Local Law/Regulation/Policy/Program Authority	State/Local Legal Citation	Date Adopted by State	Date Effective in State
ADDED:			
Powers of board of land and natural resources, exemption for Division of Boating & Ocean Recreation from special management area permit requirements	HRS §171-6(19)	06/23/2011	07/01/2011
Limu Management Area	HRS §188-22.8	07/10/2006	12/31/2006
Special Management Areas, "development" does not include civil defense warning or signal devices	HRS §205A-22(16)	05/17/2004	05/17/2004
State Building Code	HAR Chapter 3-180	10/13/2009	04/16/2010
Kahekili Herbivore Fisheries Management Area, Maui	HAR Chapter 13-60.7	04/29/2009	07/25/2009
Rules Regulating Wildlife Sanctuaries	HAR Chapter 13-126, with the exception of Ka'ula Island	12/11/2009	01/22/2010
Littering or Polluting Land Areas Prohibited	HAR §19-42-126	05/20/1982	05/20/1982
Littering or Polluting of Water Prohibited	HAR §19-42-127	05/20/1982	05/20/1982
Shoreline Setback and Coastal Protection	Kauai County Ordinance 863, Article 27, Chapter 8, Kauai County Code 1987	01/25/2008	02/25/2008
Submittal of Federal Assistance Applications and Review Time Frame	Submittal of Federal Assistance Applications and Review Time Frame, will be available at <a href="http://hawaii.gov/dbedt/czm/index.php">http://hawaii.gov/dbedt/czm/index.php</a>	Upon OCRM Approval	Date on which the public notice of OCRM approval is published
Completed State and county permit applications for activities requiring a federal license or permit are essential in evaluation of whether an activity is consistent with Hawaii CZM Program enforceable policies	Required Necessary Data and Information for Consistency Reviews of Activities Requiring a Federal License or Permit, will be available at <a href="http://hawaii.gov/dbedt/czm/index.php">http://hawaii.gov/dbedt/czm/index.php</a>	Upon OCRM Approval	Date on which the public notice of OCRM approval is published
MODIFIED:			
Shoreline Setback and Coastal Protection	Kauai County Ordinance 887, Article 27, Chapter 8, Kauai County Code 1987, §§8-27.1, 8-27.3, 8-27.7, 8-27.8, and 8-27.10	12/02/2009	01/01/2010
Powers of board of land and natural resources, fines related to public lands	HRS §§171-6(12) and 171-6(15)	07/07/2008	07/07/2008
Penalties for violations within the Conservation District	HRS §183C-7(b)	07/07/2008	07/07/2008
Special Management Areas, revisions and renumbering of "'development' does not include the following"	HRS §205A-22	06/23/2011	7/01/2011

Enclosure to OCRM's January 18, 2012, Approval of the Incorporation of Changes to the HAWAII COASTAL MANAGEMENT PROGRAM			
Name/Description of State or Local Law/Regulation/Policy/Program Authority	State/Local Legal Citation	Date Adopted by State	Date Effective in State
Water Quality Standards	HAR §§11-54-4(b)(3) and 11-54-8(b)	05/27/2009	06/15/2009
Conservation District Rules	HAR §§13-5-6, 13-5-22, 13-5-24, 13-5-39, and 13-5-41	8/12/2011	12/5/2011
Special Management Area rules	Revised Ordinance of Honolulu 11-28, §§25-1.3 and 25-3.3(e)	10/20/2011	10/20/2011
Subdivision Code and Zoning Code regarding Storm Water Management	Hawaii County Ordinance 07-56, Hawaii County Code §§23-92 and 25-2-71(e), 25-2-72(3)	04/12/2007	04/12/2007
Special Management Areas Rules and Regulations for the County of Kauai	Special Management Area Rules and Regulations of the County of Kauai §§1.4(F), (U) and (V)	11/05/2011	11/05/2011
20.205 Highway Planning and Construction, U.S. Department of Transportation, Federal Highway Administration – activities not subject to federal consistency review	Federal Assistance Programs Subject to Federal Consistency, 1990 Hawaii Coastal Zone Management Program Document, Appendix D; will be available at <a href="http://hawaii.gov/dbedt/czm/index.php">http://hawaii.gov/dbedt/czm/index.php</a>	Upon OCRM Approval	Date on which the public notice of OCRM approval is published
DELETED:			
Water Pollution Control Rules, sections regarding historic and burial sites review	HAR §§11-55-38, and 11-55-04(f), 11-55-34.08(n)	05/27/2009	06/15/2009
Rules Regulating Wildlife Sanctuaries	HAR Chapter 13-125	12/11/2009	01/22/2010
The State of Hawaii discontinued participation in the intergovernmental review process authorized by E.O. 12372	Letter from the Governor to the Director of the Office of Management and Budget, Executive Office of the President, dated July 1, 1993; 1990 Hawaii Coastal Zone Management Program Document, p. 31	7/1/1993	7/1/1993