

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Boating and Ocean Recreation
Honolulu, Hawaii 96813

July 27, 2012

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

SUBJECT: REQUEST APPROVAL TO ADOPT AMENDMENTS TO TITLE 13, CHAPTER 256, OCEAN RECREATION MANAGEMENT RULES AND AREAS, SUBCHAPTER 5, WINDWARD OAHU OCEAN RECREATION MANAGEMENT AREA, BY ADOPTING A NEW SECTION 13-256-73.13, AHU O LAKA SAFETY ZONE, TO RESTRICT THE FOLLOWING WHILE IN THE SAFETY ZONE: 1) POSSESSION OR USE OF ALCOHOL, 2) ENTRANCE WHILE UNDER THE INFLUENCE OF ALCOHOL OR DRUGS, AND 3) DISORDERLY BEHAVIOR

PURPOSE: The proposed new section identifies a safety zone around Ahu o Laka (also known as the Kaneohe Sandbar) in Kaneohe Bay to protect the public while visiting Ahu o Laka during three-day weekends involving a State holiday. The new rule prohibits possession, use, or consumption of alcohol in the safety zone; prohibits a person under the influence of alcohol, narcotics, or drugs from remaining in or entering the safety zone; and prohibits disorderly behavior while in the safety zone (See Exhibit A).

STATUTE: Sections 200-2, 200-3, 200-4, 200-14, 200-14.5, Hawaii Revised Statutes

BACKGROUND:

On April 13, 2012, the Board of Land and Natural Resources (Board) approved the Division of Boating and Ocean Recreation's (DOBOR) request to initiate rule making regarding amendments to Title 13, Chapter 256, HAR, by adopting a new Section, 13-256-13.13, relating to the Ahu o Laka safety zone, Item J-1.

Upon approval by the Board to proceed to public hearing, DOBOR submitted the draft rule to the Small Business Regulatory Review Board for comment. DOBOR also placed a legal ad in the Star Advertiser according to Chapter 91 HRS, worked with the DLNR Public Information Office to issue a press release, and updated the website to include the notice of public hearing.

The public hearing was held June 28, 2012 at the Heeia Kea State Park. Approximately forty nine people signed the attendance sheets for the meeting with 17 individuals providing oral testimony. A total of 14 pieces of written testimony were received by US Postal Service, hand

Request Approval to Adopt Amendments to Title 13, Chapter 256, Ocean Recreation Management Rules and Areas, Subchapter 5, Windward Oahu Ocean Recreation Management Area, by Adopting a New Section 13-256-73.13, Ahu O Laka Safety Zone, to Restrict the Following While in the Safety Zone:
1) Possession or Use of Alcohol, 2) Entrance While Under the Influence of Alcohol or Drugs, and
3) Disorderly Behavior

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delivered, or by email. A single piece of written testimony signed by multiple parties was tabulated separately.

The general consensus was that the current rules are adequate and just need to be enforced. Other comments received were closed containers should be allowed on vessels, the proposed secured area is too large, the rule penalizes responsible boaters, to many closed weekends, and an ambassador program should be established to monitor activities that occur at Ahu o Laka.

Having considered all the testimony received during the public hearing process for the aforementioned rule, DOBOR recommends making the following non-substantive amendment:

- Amend the restrictions from 12:00 a.m. to 11:59 p.m. on any three-day weekend involving an observed state holiday designated in section 8-1, Hawaii Revised Statutes, to 12:00 a.m. to 11:59 p.m. on Memorial Day, July 4th, and Labor Day including any three day weekend associated with these holidays.

With this amendment, DOBOR feels that the proposed HAR adequately addresses the concerns of the public and the needs of the Department and should be approved by the Board.

RECOMMENDATIONS:

That the Board

1. Approve and adopt the amendment to Title 13, Chapter 256, Ocean Recreation Management Rules and Areas, Subchapter 5, Windward Oahu Ocean Recreation Management Area.
2. Adopt a new Section, 13-256-73.13, Ahu o Laka Safety Zone, to restrict the following while in the safety zone during the holidays proposed in the submittal:
 - a. Possession or use of alcohol,
 - b. Entrance while under the influence of alcohol, and
 - c. Disorderly behavior.

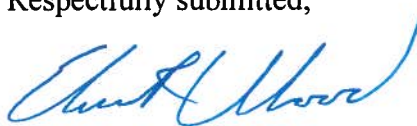
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3. Forward the HAR to the Governor's Office for final approval and filing with the Office of the Lieutenant Governor.

Respectfully submitted,



Edward R. Underwood
Administrator

Attachment: Exhibit A

APPROVED FOR SUBMITTAL



William J. Aila, Jr.
Chairperson

DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF BOATING AND OCEAN RECREATION

Amendments to Chapter 13-256, Subchapter 5
Hawaii Administrative Rules

(date)

1. Chapter 13-256, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§13-256-73.13 Ahu o Laka safety zone. (a) The Ahu o Laka safety zone is the area encompassed within the boundaries designated as Zone H-2 shown on Exhibit "X-2," "Zone H-2 Ahu o Laka safety zone, Kaneohe Bay, Hawaii" dated June 8, 2011, and located at the end of this subchapter. The boundaries of Zone H-2 are as follows:

Beginning at a point in the water at 21° 28.462'N 157° 49.203'W, then by straight lines drawn to a point at 21° 27.9647'N 157° 49.140'W, then to 21° 27.514'N 157° 48.115'W, then to 21° 28.030' N 157° 47.940'W, then back to the starting point.

(b) Zone H-2 is subject to the following restrictions from 12:00 a.m. to 11:59 p.m. on any three-day weekend involving an observed state holiday designated in section 8-1, Hawaii Revised Statutes:

- (1) No person shall possess, use, or consume alcohol within Zone H-2;
- (2) No person shall enter or remain in Zone H-2 while under the influence of alcohol, narcotics, or drugs; provided that a person may use or possess drugs legally prescribed by that person's physician; and
- (3) No person within Zone H-2 shall:
 - (A) engage in fighting or threatening, or violent or tumultuous behavior;
 - (B) make unreasonable noise;
 - (C) subject another person to offensively

coarse behavior or abusive language which is likely to provoke a violent response; or

(D) create a hazardous or physically offensive condition by any act which is not performed under any authorized license or permit.

Noise is unreasonable, within the meaning of subparagraph (3)(B), if considering the nature and purpose of the person's conduct and the circumstances known to the person, including the time of day or night, the person's conduct involves a gross deviation from the standard of conduct that a law-abiding citizen would follow in the same situation; or the failure to heed the admonition of a law enforcement officer that the noise is unreasonable and should be stopped or reduced.

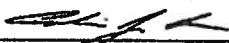
(c) In addition to any other penalty authorized by law, a violation of any of the restrictions described in subsection (b) shall be subject to penalties as provided in sections 200-14 and 200-14.5, Hawaii Revised Statutes.

(d) If any term or provision of this section, or the application thereof to any person or circumstance is found unenforceable or invalid to any extent, the remainder of this section or the application of such term or provision to persons or circumstances other than those to which it is held unenforceable or invalid, shall not be affected thereby, and each remaining term and provision of this section shall be valid and enforceable to the fullest extent permitted by law." [Eff _____] (Auth: HRS §200-4) (Imp: HRS §§200-2, 200-3, 200-4, 200-14, 200-14.5)

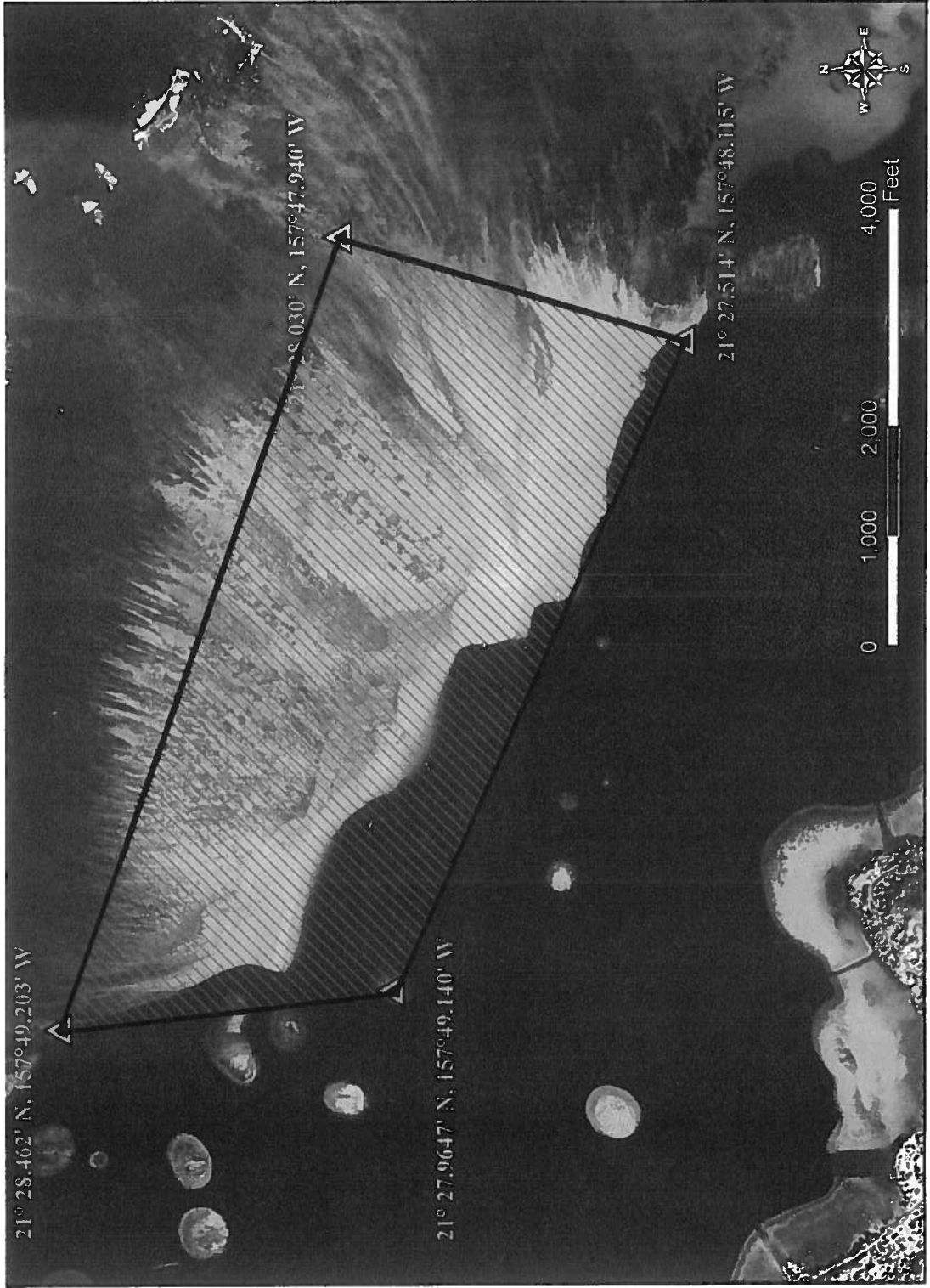
I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on _____ by the Board of Land and Natural Resources, and filed with the Office of the Lieutenant Governor.

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

APPROVED FOR PUBLIC HEARING:



Deputy Attorney General



A List of State-Recognized Holidays Under §8-1, HRS

§8-1 Holidays designated. The following days of each year are set apart and established as state holidays:

- The first day in January, New Year's Day;
- The third Monday in January, Dr. Martin Luther King, Jr., Day;
- The third Monday in February, Presidents' Day;
- The twenty-sixth day in March, Prince Jonah Kuhio Kalaniana'ole Day;
- The Friday preceding Easter Sunday, Good Friday;
- The last Monday in May, Memorial Day;
- The eleventh day in June, King Kamehameha I Day;
- The fourth day in July, Independence Day;
- The third Friday in August, Statehood Day;
- The first Monday in September, Labor Day;
- The eleventh day in November, Veterans' Day;
- The fourth Thursday in November, Thanksgiving Day;
- The twenty-fifth day in December, Christmas Day;

All election days, except primary and special election days, in the county wherein the election is held;

Any day designated by proclamation by the President of the United States or by the governor as a holiday.