

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

April 25, 2014

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

REQUEST THAT THE BOARD OF LAND AND NATURAL RESOURCES APPROVE THE AMENDMENTS AND COMPILATION OF HAWAII ADMINISTRATIVE RULES (HAR), CHAPTER 13-231, OPERATION OF BOATS, SMALL BOAT HARBORS, AND PERMITS; CHAPTER 13-251, WAIKIKI AND KAAPALI OCEAN WATERS; CHAPTER 13-253, REGISTRATION AND PERMIT FEES; AND AMENDMENTS TO HAWAII ADMINISTRATIVE RULES, SECTION 13-256-3 COMMERCIAL OPERATOR PERMIT REQUIREMENTS AND SECTION 13-256-4 COMMERCIAL VESSEL AND WATER SPORTS EQUIPMENT REGISTRATION REQUIREMENTS. ATTACHED TO THIS AGENDA AND INCORPORATED HEREIN ARE CHAPTER 13-231 (EXHIBIT 1), CHAPTER 13-251 (EXHIBIT 2), CHAPTER 13-253 (EXHIBIT 3), AND SECTIONS 13-256-3 AND 13-256-4 (EXHIBIT 4).

PURPOSE:

The purpose of these amendments is to bring parity to all Waikiki catamaran registration certificate holders and KAAPALI catamaran commercial use permit holders. Currently, there are separate rules found across four chapters regarding Maui and Waikiki catamaran registration and permitting requirements even though the services provided are the same. Over the years, the fee schedules for Maui and Waikiki catamarans have diverged to the point of unfairness. KAAPALI catamaran operators pay a commercial use fee of 3% of gross receipts. Waikiki catamaran operators do not pay a commercial use fee.

Furthermore, operator permits have been required for surf instruction, canoe operation, etc., for anyone operating in Waikiki or KAAPALI ocean waters. For reasons unknown to the current division administration, this requirement was never implemented in KAAPALI. For Waikiki, staff has been required to ensure that operators possess the ability to provide commercial water sports instructions. However, the division does not possess the expertise to determine whether an individual is adequately trained to engage in water sports instruction nor should the department assume that liability. We propose to issue commercial use permits to the companies that engage in water sports activities and it will be the companies' responsibility to ensure they hire competent staff.

Lastly, the amendments would update and streamline commercial permit requirements, some of which have not changed in decades.

Request that the Board of Land and Natural Resources Approve the Amendments and Compilation of Hawaii Administrative Rules (HAR), Chapter 13-231, Operation of Boats, Small Boat Harbors, and Permits; Chapter 13-251, Waikiki and Kaanapali Ocean Waters; Chapter 13-253, Registration and Permit Fees; and Amendments to Hawaii Administrative Rules, Section 13-256-3 Commercial Operator Permit Requirements and Section 13-256-4 Commercial Vessel and Water Sports Equipment Registration Requirements. Attached to this Agenda and Incorporated Herein are Chapter 13-231 (Exhibit 1), Chapter 13-251 (Exhibit 2), Chapter 13-253 (Exhibit 3), and Sections 13-256-3 and 13-256-4 (Exhibit 4)

April 25, 2014

Item J-5

REMARKS:

On May 24, 2013, the Board of Land and Natural Resources authorized the Division of Boating and Ocean Recreation (DOBOR) to proceed with rulemaking procedures regarding the HAR chapters listed above. The public hearings were held during the month of October 2013. Based on testimony received, DOBOR made further revisions to the proposed rule amendments and requested to go back out to public hearing at the February 14, 2014 Board meeting. DOBOR held the second round of public hearings during the month of April 2014. The following is a breakdown of the oral and written comments received during the public hearing process.

1. Describe how opinions or comments from the public and affected small business were solicited.

A request to engage in rulemaking was brought before the Board of Land and Natural Resources and the meeting followed proper sunshine law requirements. Legal ads were placed in the newspapers in accordance with Hawaii Revised Statutes, §91-3, and the proposed rule amendment package was placed on DOBOR's website. Copies of the proposed amendments were made available at the small boat harbor offices. A press release was issued to notify people of the proposed amendments.

2. Summary of public and small business comments.

DOBOR received numerous comments from the public with the majority of the comments coming from Waikiki catamaran operators, Waikiki water sports businesses, and commercial launch ramp users. The comments received are broken down as follows:

KAUAI 04/03/2014 PUBLIC HEARING ASSESSMENT:

ATTENDANCE

Two individuals attended the Kauai County public hearing.

SUMMARY

None provided oral testimony.

OAHU 04/02/14 PUBLIC HEARING ASSESSMENT:

ATTENDANCE

Approximately seventy people were in attendance and fifty three people signed the attendance sheets.

Request that the Board of Land and Natural Resources Approve the Amendments and Compilation of Hawaii Administrative Rules (HAR), Chapter 13-231, Operation of Boats, Small Boat Harbors, and Permits; Chapter 13-251, Waikiki and Kaanapali Ocean Waters; Chapter 13-253, Registration and Permit Fees; and Amendments to Hawaii Administrative Rules, Section 13-256-3 Commercial Operator Permit Requirements and Section 13-256-4 Commercial Vessel and Water Sports Equipment Registration Requirements. Attached to this Agenda and Incorporated Herein are Chapter 13-231 (Exhibit 1), Chapter 13-251 (Exhibit 2), Chapter 13-253 (Exhibit 3), and Sections 13-256-3 and 13-256-4 (Exhibit 4)

April 25, 2014

Item J-5

ORAL TESTIMONY

Fourteen people provided oral testimony.

WRITTEN TESTIMONY

One piece of written testimony was received from the law office of George K. Lindsey, Jr. The testimony was primarily focused on commercial catamaran operations occurring on Waikiki beach and ocean waters.

SUMMARY

Testimony received pertained to the proposed amendments as they relate to operator permits and catamaran operations on Waikiki beach and near shore waters. The majority of people felt that the operator permit requirements should be left in the rules because they feel the State should certify Surf School Instructors, Canoe Captains, etc. instead of the businesses for safety reasons.

MAUI 04/03/2014 PUBLIC HEARING ASSESSMENT:

ATTENDANCE

Fourteen individuals attended the Maui County public hearing.

ORAL TESTIMONY

Ten people provided oral testimony.

WRITTEN TESTIMONY

No written testimony received

SUMMARY

Comments were made that the rule amendments had too many gray areas and that DLNR should not charge a use fee. More community involvement is needed. Administrative decisions need to reflect the rules as written and exemptions should not be made. Questioned whether size limits still applied to Waikiki and Kaanapali catamarans. Requested clarity on how the words "shall" and "may" are being used. Feel that the rules need to be applied in an equal and fair manner to all boaters.

HAWAII ISLAND 04/03/2014 PUBLIC HEARING ASSESSMENT (KONA):

ATTENDANCE

Twenty seven individuals signed the attendance sheets at the Hawaii Island public hearing in Kona.

Request that the Board of Land and Natural Resources Approve the Amendments and Compilation of Hawaii Administrative Rules (HAR), Chapter 13-231, Operation of Boats, Small Boat Harbors, and Permits; Chapter 13-251, Waikiki and Kaaanapali Ocean Waters; Chapter 13-253, Registration and Permit Fees; and Amendments to Hawaii Administrative Rules, Section 13-256-3 Commercial Operator Permit Requirements and Section 13-256-4 Commercial Vessel and Water Sports Equipment Registration Requirements. Attached to this Agenda and Incorporated Herein are Chapter 13-231 (Exhibit 1), Chapter 13-251 (Exhibit 2), Chapter 13-253 (Exhibit 3), and Sections 13-256-3 and 13-256-4 (Exhibit 4)

April 25, 2014

Item J-5

ORAL TESTIMONY

Testimony received from 5 individuals was, in general, opposed to the proposed rule amendments.

WRITTEN TESTIMONY

Five individuals submitted oral testimony or written testimony identical to documents DOBOR received by email.

SUMMARY

The majority of the people in attendance were opposed to the rule amendments. Testimony received stated that the rules are difficult to read and understand. The hearing is in violation of the Hawaii Administrative Procedures Act. Requested definitions to be added to each section. Stated proposed amendments were in violation of Circuit Court of Appeals due to no nexus, opposed to commercial use permit limits for launch ramps.

HAWAII ISLAND PUBLIC HEARING ASSESSMENT (HILO):

ATTENDANCE

One individual attended the Hawaii Island public hearing in Hilo.

SUMMARY

DOBOR did not receive any oral or written testimony at the Hilo public hearing.

PUBLIC HEARING ASSESSMENT OF EMAILED TESTIMONY (RECEIVED BY 04/10/14, 4:30 P.M.):

28 individuals submitted testimony via e-mail. One piece of testimony was received after the published due date and was not counted. One piece of testimony was received by post. One individual provided oral testimony and e-mail testimony. That individual's e-mailed testimony is duplicated and is therefore not counted twice in this summary. The main focus of the written testimony received via e-mail was on commercial permits and fees. Most testified that the new fees outlined in the proposed amendments would be too great a burden for commercial operators, large and small. Eight people supported any initiative that reduced or limited commercial activity in State waters, harbors and on beaches, citing overcrowding on the beaches and in the harbors resulting in compromised safety. The repeal of DLNR's blue cards for instructors and vessel operators received the second highest volume of testimony. Nine individuals opposed the repeal citing safety as their priority. Only two pieces of testimony supported the repeal of the blue cards. Two individual pieces of testimony suggested that the commercial operators create their own set of criteria to establish minimum safety qualification standards for vessel operators and instructors.

Request that the Board of Land and Natural Resources Approve the Amendments and Compilation of Hawaii Administrative Rules (HAR), Chapter 13-231, Operation of Boats, Small Boat Harbors, and Permits; Chapter 13-251, Waikiki and Kaanapali Ocean Waters; Chapter 13-253, Registration and Permit Fees; and Amendments to Hawaii Administrative Rules, Section 13-256-3 Commercial Operator Permit Requirements and Section 13-256-4 Commercial Vessel and Water Sports Equipment Registration Requirements. Attached to this Agenda and Incorporated Herein are Chapter 13-231 (Exhibit 1), Chapter 13-251 (Exhibit 2), Chapter 13-253 (Exhibit 3), and Sections 13-256-3 and 13-256-4 (Exhibit 4)

April 25, 2014

Item J-5

The majority of the testimony received pertained to the Waikiki and Kaanapali commercial catamaran operations, Waikiki Operator Permits issued by the department, and the proposed limit of two commercial use permits per person for the use of state launch ramps. Another issue (which has been discussed at several Board meetings) is to allow the grace period that was recently established for regular mooring permits to apply to all use permits issued by the department.

Based on the oral testimony received at the public hearings as well as written (including email) testimony received during this process, the division is recommending that the following revisions be incorporated into the HAR amendments:

Chapter 13-231:

- 13-231-4: Add new subsection to read as follows “(c) Notwithstanding the provisions of subsection (a), the department may issue additional offshore mooring permits to owners of vessels holding a valid commercial use permit issued pursuant to section 13-231-59”. Remove the words “or other authorization”.
- 13-231-5(b): Amend “fails to renew a regular mooring permit” to “fails to renew a use permit”.
- 13-231-11: Add the language “requirements of the United States Coast Guard” but not in the provision where they would exceed fifteen months.
- 13-231-45: Add the language “(a) and” in subsection (c). Add the language to subsection (g) and (l) regarding the inspection of United States Coast Guard certified vessels.
- 13-231-61: Amend passenger capacity as it pertains to minimum gross receipts.
- 13-231-62: Add the language “in accordance with Chapter 91, Hawaii Revised Statutes”.
- 13-231-67(e): Add the following language, “Notwithstanding this section, all owners of commercial use permits on the effective date of these rules may continue operations and be permitted to apply for and renew their commercial use permits subject to compliance with all other conditions set forth in this chapter until their total number is reduced by attrition or other means to the numbers in subsection (d).” Allow for three commercial launch ramp permits at Ala Wai and Keehi small boat harbors.

Chapter 13-251:

- 13-251-03: Amend carrying capacity for minimum gross receipts from 25 to 26 and 25 to 27. Add language “held in accordance with chapter 91, Hawaii Revised Statutes.
- 13-251-37: Clarify that a propeller guard can be mechanical or a person used as a “look-out”. Amend the length of a Waikiki catamaran to 50’ and remove the repeal of (8)(b) & (c).
- 13-251-38: Add the proposed language, “with accuracy, validity”.
- 13-251-39: Remove the language, “or other vessel”.
- 13-251-40: Add the language, “an authorized”.
- 13-251-45: Add the language, “in accordance with Chapter 91, Hawaii Revised Statutes.”
- 13-251-49: Adding language to allow a catamaran to be absent for longer than thirty days as long as they are making repairs required by the USCG and add the language “in accordance with Chapter 91, Hawaii Revised Statutes.”
- 13-251-51: Remove strike through regarding attrition clause for Waikiki and limits on the number of catamarans for Kaanapali. Keep subsections (a) and (b).
- 13-251-52: Change the Section from 13-251-38 to 13-251-51. Change language from “genuineness and regularity” to “accuracy, validity, and regularity”.
- 13-251-53: Adding language to allow permanent anchors to be installed on Waikiki beach. Adding that the Land Board must approve any installation of moorings on Waikiki beach and the fee for the use of the beach for mooring and embarking and disembarking passengers will be included as part of the commercial use fee paid by the catamaran operators (instead of them obtaining a Revocable Permit from the Board at fair market value for the use of Waikiki beach). Catamaran operators must indemnify and defend the State and carry insurance for mooring and embarking and disembarking passengers on the beach.
- 13-251-76: Add the language “or registration certificate” to clarify that commercial use permits and registration certificates are treated similarly.

Based on the oral testimony received at the second round of public hearings as well as written (including email) testimony received during this process, the division is recommending further revisions to the proposed rule amendments. DOBOR recommends the following additional revisions:

Request that the Board of Land and Natural Resources Approve the Amendments and Compilation of Hawaii Administrative Rules (HAR), Chapter 13-231, Operation of Boats, Small Boat Harbors, and Permits; Chapter 13-251, Waikiki and Kaanapali Ocean Waters; Chapter 13-253, Registration and Permit Fees; and Amendments to Hawaii Administrative Rules, Section 13-256-3 Commercial Operator Permit Requirements and Section 13-256-4 Commercial Vessel and Water Sports Equipment Registration Requirements. Attached to this Agenda and Incorporated Herein are Chapter 13-231 (Exhibit 1), Chapter 13-251 (Exhibit 2), Chapter 13-253 (Exhibit 3), and Sections 13-256-3 and 13-256-4 (Exhibit 4)

April 25, 2014

Item J-5

- 13-231-03: Clarified the definition of a Waikiki Catamaran Registration Certificate.
- 13-256-03: Added Catamaran Registration Certificates.
- 13-231-65: Amended limit for vessel carrying capacity as it applies to insurance coverage for vessels greater than twenty seven feet in length.
- 13-253-1.2: Added a provision that the 3% gross receipt requirement may be waived if the business is operating from a private or county facility.

RECOMMENDATION:

1. Approve and adopt amendments and compilation made to Chapters 13-231, 13-251, 13-253, HAR; and approve amendments to subsections 13-256-3 and 13-256-4, HAR, as shown in Exhibits 1, 2, 3 and 4; and
2. Forward the HAR's to the Governor's office for final approval and filing with the Office of the Lieutenant Governor.

Respectfully submitted,



Edward R. Underwood
Administrator

Attachments

Chapter 13-231 (Exhibit 1)
Chapter 13-251 (Exhibit 2)
Chapter 13-253 (Exhibit 3)
Sections 13-256-3 and 13-256-4 (Exhibit 4)

APPROVED FOR SUBMITTAL



William J. Aila, Jr.
Chairperson and Member