

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

November 14, 2014

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

REQUEST APPROVAL TO INITIATE RULE-MAKING PROCEEDINGS AND HOLD PUBLIC HEARINGS TO AMEND HAWAII ADMINISTRATIVE RULES, TITLE 13, SECTION 13-256-73.13, AHU O LAKA SAFETY ZONE, BY REMOVING THE SUNSET DATE IN HAR §13-256-73.13(E) AND THEREBY MAKING HAR §13-256-73.13 PERMANENT. HAR §13-256-73.13 PROHIBITS POSSESSION, USE, OR CONSUMPTION OF ALCOHOL IN THE AHU O LAKA 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.

PURPOSE: To remove the sunset date and make HAR §13-256-73.13 permanent. HAR §13-256-73.13 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. HAR §13-256-73.13 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 Exhibits A and B).

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

BACKGROUND:

In recent years, significant concerns grew regarding the safety and health of visitors to Ahu O Laka, particularly during holidays and weekends when large crowds consistently congregated in the area. During such times, drug and alcohol use, combined with overcrowding in the limited sandbar area, led to several instances of injury and even death.

Concern over the use of Ahu O Laka began in 2005, when, according to media accounts, a Labor Day concert of over 400 people with approximately 60-70 boats occupied the area, and led to a riot of approximately 40 to 45 people, resulting in the near-drowning of one woman, and the injury of her brother during his attempts to rescue her. During the riot, people were pushing,

shoving, throwing bottles, and yelling. Division of Conservation and Resource Enforcement (DOCARE) officers spent an hour and a half breaking up fights and dispersing people.¹ Two free concerts were held at Ahu O Laka that year, drawing hundreds of visitors to the area. Both concerts ended in fights.²

In 2006, Senator Clayton Hee, citing the escalation of alcohol-related violence at Ahu O Laka, introduced Senate Bill No. 2004, which would have designated Ahu O Laka as a state monument, and led to rules to ban alcohol at the sandbar.³ Residents of Kaneohe and Kahului supported this measure, and continued to voice concerns to their neighborhood boards over the pollution, violence, and desecration occurring in this culturally significant site. Many felt that Ahu O Laka was no longer a safe place for families to enjoy.⁴ Although passed by the legislature, Senate Bill No. 2004 was subsequently vetoed by former governor Linda Lingle.⁵

On Labor Day 2007, the media reported that a confrontation involving dozens of people ended in an alleged stabbing with two men taken separately to Castle Medical Center and one treated by paramedics at Heeia Kea pier.⁶ Due to this incident, the Department of Land and Natural Resources partnered with the U.S. Coast Guard to provide boater education and conduct equipment checks for the following Memorial Day, temporarily curbing the disorderly behavior observed at Ahu O Laka.⁷

However, on Memorial Day 2011, drinking and drug use at Ahu O Laka was again implicated in the death of a young man. During that day, over 200 boats and 500 people were reported to have congregated at Ahu O Laka, crowding the Heeia Kea Small Boat Harbor as people loaded and unloaded their boats. Although seven DOCARE officers were in place to monitor crowd activities that day, a later altercation at the boat harbor between the young man and another individual resulted in the young man's death, due to blunt force trauma and bleeding in his brain. A Honolulu Star-Advertiser article stated that the medical examiner eventually found alcohol and cocaine in the deceased's system.⁸ This very recent incident, combined with the long history of drug and crowd-related violence at Ahu O Laka, indicated a strong and urgent necessity to better address the drinking and overcrowding at Ahu O Laka during upcoming 3-day holidays.

¹ <http://archives.starbulletin.com/2005/11/04/news/story04.html>

² <http://the.honoluluadvertiser.com/article/2005/Nov/03/ln/FP511030316.html/>

³ <http://the.honoluluadvertiser.com/article/2007/Sep/10/ln/hawaii709100329.html/>

⁴ <http://www1.honolulu.gov/refs/nco/nb30/07/30sepmin.htm;>

<http://www1.honolulu.gov/refs/nco/nb29/06/29marmin.htm>

⁵ <http://the.honoluluadvertiser.com/article/2007/Sep/10/ln/hawaii709100329.html/>

⁶ <http://archives.starbulletin.com/2007/09/05/news/story07.html>

⁷ <http://archives.starbulletin.com/2008/05/24/news/story07.html>

⁸ http://www.staradvertiser.com/news/breaking/No_charges_will_be_filed_in_Memorial_Day_fight_death.html

At its June 23, 2011 meeting, the Board of Land and Natural Resources (Board) adopted section HAR §13-256-73.13 as an emergency rule which was then signed and filed with the Office of the Lieutenant Governor on the same date due to an imminent peril to the public's health and safety. The emergency rule ended one hundred twenty days later without renewal.

On July 27, 2012, the Board approved the adoption of HAR §13-256-73.13 with the recommendation that the rule contain a sunset date of three years from adoption. Since its adoption, the rule has been successfully implemented and enforced by DOCARE officers to the benefit of the general public. Therefore (DOBOR) believes that the prohibition of alcohol within the Ahu O Laka Safety Zone on certain 3 day weekends has had a positive impact on recreation and safety within Kaneohe Bay and should be made a permanent part of the Hawaii Administrative Rules.

REMARKS:

DOBOR has complied with its responsibility to consult the Office of the Prosecutor of the City and County of Honolulu, as well as the Kaneohe Bay Regional Council (KBRC), for their input on drafting the amendment to HAR §13-256-73.13 prior to public hearing. Either the entities were unavailable, or had no further comment or recommendations.

On October 6, 2014 DOBOR reached out to the Office of the Prosecutor of the City and County of Honolulu for comment on removing the sunset date from HAR §13-256-73.13 pursuant to the Intermediate Court of Appeals of the State of Hawaii's decision in State v. Bereday finding that the city and county had jurisdiction over certain activities in near-shore waters. State v. Bereday, 120 Haw. 486, 493, 210 P.3d 9, 16 (Ct. App. 2009). Additionally DOBOR solicited comment from the Prosecutor's office based on a previous informal agreement to consult with the Office of the Prosecutor on revisions to any DOBOR rule containing criminal liability that could potentially be prosecuted by the City and County of Honolulu. The Prosecutor's office responded on October 9, 2014 that they had no comments or recommendations regarding the proposed amendment to HAR §13-256-73.13.

Hawaii Revised Statutes §200-39(e) states that: "All rules adopted by the department with regard to Kaneohe Bay shall be drafted in consultation with the Kaneohe Bay regional council." However, the KBRC currently has an insufficient number of members to form a quorum and can provide no foreseeable date at which they will be available to provide input on the proposed amendment. DOBOR will consult with the KBRC on the proposed amendment if KBRC forms a quorum during the rule making process. However, given the necessity of removing the language regarding the sunset date from HAR §13-256-73.13 before the date occurs, and the uncertainty of when, and if KBRC will form a quorum, DOBOR requests permission to proceed to public hearings without consulting the KBRC at this time.

Request Approval to Initiate Rule-Making Proceedings and Hold Public Hearings to Amend Hawaii Administrative Rules, Title 13, Section 13-256-73.13, Ahu O Laka Safety Zone, by Removing the Sunset Date in HAR §13-256-73.13(E) and Thereby Making HAR §13-256-73.13 Permanent. HAR §13-256-73.13 Prohibits Possession, Use, or Consumption of Alcohol in the Ahu O Laka 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

November 14, 2014

Item J-1

RECOMMENDATION:

That the Board:

1. Grant the Division of Boating and Ocean Recreation approval to initiate rule-making proceedings and hold public hearings regarding amendment to HAR §13-256-73.13.

Respectfully submitted,



Edward R. Underwood
Administrator

Attachment: Exhibit A – Proposed Rule

APPROVED FOR SUBMITTAL



William J. Aila, Jr.
Chairperson and Member

Ramseyer Format [date]

DEPARTMENT OF LAND AND NATURAL RESOURCES

Amendment to Chapter 13-256
Hawaii Administrative Rules

[date of adoption by agency]

1. Section 13-256-73.13, Hawaii Administrative Rules, is amended 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," "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) For Memorial Day, Independence Day, and Labor Day holidays as designated in section 8-1, Hawaii Revised Statutes, if any of these three designated holidays involves a three-day weekend, Zone H-2 is subject to the following restrictions during the time period of 12:00 a.m. to 11:59 p.m. on each day of the three-day weekend:

- (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

EXHIBIT A

(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.

[(e) This rule shall take effect ten days after the filing date with the Office of the Lieutenant Governor and shall be repealed three years from its effective date unless this provision is sooner repealed or otherwise amended.]" [Eff 8/18/12; am] (Auth: HRS §200-4) (Imp: HRS §§200-2, 200-4, 200-4.5, 200-14, 200-14.5)

2. Material, except source notes, to be repealed is bracketed.

3. This amendment to chapter 13-256, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

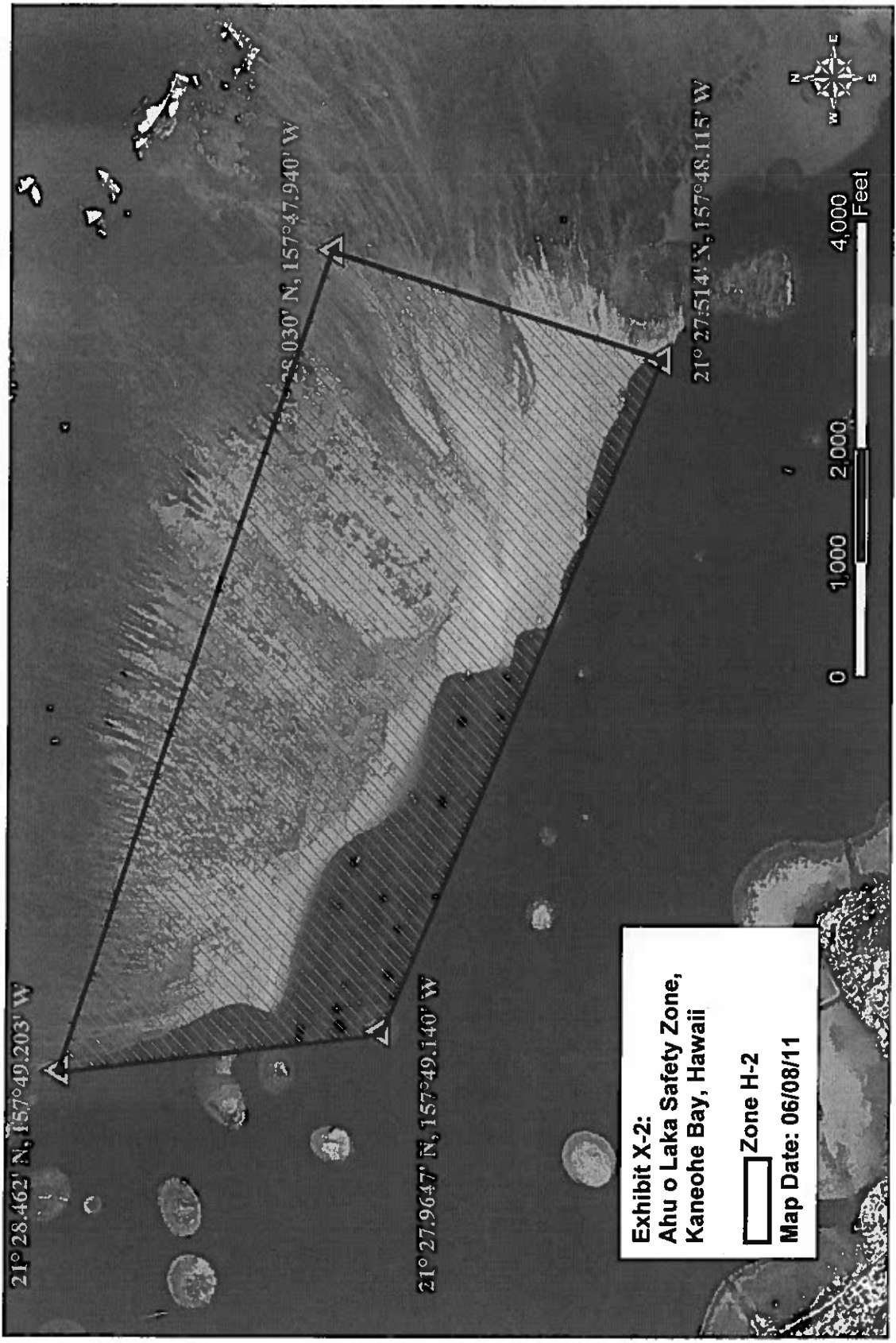
I certify that the foregoing is a copy of the rule, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which was

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:

/s/ Colin Lau
Deputy Attorney General




21° 28.462' N, 157° 49.203' W

21° 28.030' N, 157° 47.940' W

21° 27.9647' N, 157° 49.140' W

21° 27.514' N, 157° 48.115' W

Exhibit X-2:
Ahu o Laka Safety Zone,
Kaneohe Bay, Hawaii
 **Zone H-2**
Map Date: 06/08/11

