

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

September 25, 2015

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

SUBJECT: REQUEST APPROVAL TO ADOPT AMENDMENTS TO HAWAII ADMINISTRATIVE RULES (HAR), TITLE 13, SECTION 256-152, KAHALUU BAY, IN ORDER TO UPDATE LOCATION DESIGNATIONS, LIMIT COMMERCIAL SURF INSTRUCTION, AND REVISE SWIM AND SURF ZONE RESTRICTIONS WITHIN KAHALUU BAY

PURPOSE: The purpose of this amendment is to reorganize Kahaluu Bay to clearly designate swim and surf zones and additionally to regulate surf schools within Kahaluu Bay in order to limit the number of commercial surf schools allowed to operate in the bay and to enforce a teacher/student ratio for surfing instruction. Additionally, the amendment to HAR § 13-256-152 updates the rule to use GPS coordinates to describe zone designations and updates the corresponding exhibit to the rule to a current map in order to create a more user-friendly rule (See Exhibit A).

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

BACKGROUND:

On January 9, 2015, as Item J-1 of the agenda, 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 HAR § 13-256-152, to modify swim and surf zone designations and limit commercial surf instruction in Kahaluu Bay as well as introduce an updated exhibit map for Kahaluu Bay.

Upon approval by the Board to proceed to public hearing, DOBOR submitted the draft rule to the Small Business Regulatory Review Board (SBRRB) for comment on February 12, 2015 and received the unanimous approval of the SBRRB on February 18, 2015 to proceed with the rule as written. DOBOR also requested approval from the Governor to proceed to public hearing on January 27, 2015 and approval was received on February 17, 2015. On March 29, 2015 DOBOR placed legal ads in the Star Advertiser, West Hawaii Today and the Hawaii Tribune Herald, in accordance with Chapter 91 HRS. DOBOR also worked with the DLNR Public Information Office to issue a press release, posted notice of the public hearing on the DLNR Facebook feed and updated the website to include the notice of public hearing and a copy of the proposed amendment.

The public hearing was held on April 29, 2015 at Kealahou High School in Kailua Kona from 6 P.M. – 8 P.M. Approximately 25 people signed the attendance sheets for the meeting with 6 individuals providing oral testimony. A total of 18 pieces of written testimony were received by US Postal Service, Facsimile, hand delivery, or by email.

Sixteen individuals who provided written or oral testimony were opposed to the proposed rule. Those opposed to the rule had a variety of viewpoints. Several of the individuals opposed to the proposed rule were concerned about a potential exclusion of the public from the surf zone which is a misunderstanding of the rule. The proposed rule exclusively limits *commercial* surf instruction to 4 permitted entities who are only allowed to operate within the surf zone. The general public is not restricted in any way from use of the bay with the exception that surfboards and other vessels are not allowed into the swim zone which is restricted for swimming purposes only. Other opposition testimony included opposition on any restriction for canoes, opposition to the limitation of 4 commercial surf permits and opposition to any buoy or marker within the bay which would interrupt the view plane or aesthetic of the bay.

Eight individuals who provided written or oral testimony supported the rule stating that the limitation of commercial surf instruction within the bay is necessary to prevent the crowding caused by the use of Kahaluu Bay as a surf instruction site. Issues raised by those in support were the current amount of crowding and illegal parking around the bay, the safety issues posed by the number of commercial activities in the Bay, and that restriction on commercial activity would provide more opportunity for local residents to enjoy the bay. Those in support of the rule also requested amendments to clarify that all types of surfing were allowed (not just surf boarding), that snorkeling would be allowed throughout the Bay, and that the number of permitted surf instruction activities be decreased even further.

DOBOR initiated the Kahaluu Bay rule amendment at the request of the public in response to legitimate concerns regarding overcrowding in the bay. The proposed amendments were drafted in cooperation with several community groups and address the issues of overcrowding and commercial activity in a manner that allows limited commercial activity as well as an increased opportunity for both residents and visitors to engage in safe recreational activity in the Bay. The rule does not infringe upon or limit the public's use of, or access to Kahaluu Bay, but rather works to continue maintaining the integrity of the bay as a popular recreational site. Having considered all the testimony received during the public hearing process for the aforementioned rule, DOBOR does not find that any additional amendments to the substantive portions of the proposed rule are necessary.

RECOMMENDATIONS:

That the Board

1. Approve and adopt the proposed amendments to HAR § 13-256-152.

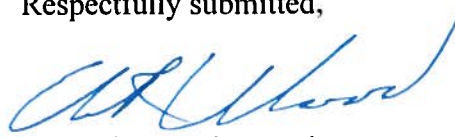
Request Approval to Adopt Amendments to
Hawaii Administrative Rules (HAR), Title 13,
Section 256-152, Kahaluu Bay, in Order to Update
Location Designations, Limit Commercial Surf
Instruction, and Revise Swim and Surf Zone
Restrictions Within Kahaluu Bay

September 25, 2015

Item J-5

2. 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 (HAR Chapter 256, Exhibit H-5, Kahaluu Bay Ocean Waters Map).

APPROVED FOR SUBMITTAL



Suzanne D. Case
Chairperson

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

Amendment to Section 13-256-152
Hawaii Administrative Rules

[Date of adoption by agency]

1. Section 13-256-152, Hawaii Administrative Rules, is amended to read as follows:

~~"§13-256-152 Kahaluu Bay [Swimming Zone] ocean waters. [(a) Kahaluu Bay Swimming Zone means the area confined by the boundaries shown on Exhibit "HHH-1", dated February 7, 1990 and located at the end of this subchapter. The boundaries are as follows:~~

~~—Beginning at a point at the low water mark of Kalaau o Kalakani Point, then by azimuth measured clockwise from True South, 166 degrees to a point on the low water mark on the northern side of the Kahaluu Bay, then along the shoreline in a southerly direction to the point of beginning.~~

~~(b) Restrictions. Kahaluu Bay Swimming Zone is designated as a swimming and diving zone. No person shall operate or moor a vessel within this zone.]~~

(a) Kahaluu Bay ocean waters means the area shown on Exhibit "H-5", dated November 20, 2014, located at the end of this subchapter and incorporated herein. The boundaries are as follows:

Beginning at the low water mark of Kalaau o Kalakani Point at 19°34'37.81"N, 155°58'10.50"W; then to a point on the low water mark on the northern side of the Kahaluu Bay at Kamoa Point at 19°35'09.24"N, 155°58'15.91"W; then along the shoreline in a southerly direction to the point of beginning.

(1) Restrictions. Kahaluu Bay ocean waters is designated as a swimming, surf boarding, and diving zone. No commercial water sports instruction or commercial tours may be conducted in Kahaluu Bay ocean waters without a permit from the department.

(b) Kahaluu Bay Zone A is described as follows: Beginning at a point on the low water mark on the northern side of the shoreline at 19°34'59.48"N, 155°58'06.11"W (hand rail); then south easterly along the shoreline to the north lifeguard tower at 19°34'48.67"N, 155°57'58.88"W; then seawards northwesterly to Pyramid Rock at 19°34'50.21"N, 155°58'07.98"W; then seawards north easterly ending at the point of beginning.

(1) Restrictions. Zone A is designated as a surfing zone.

(2) The department may issue a total of up to four permits for commercial surf school instruction within Zone A. Each permit shall authorize surf school instructors to conduct surfing instruction only within Zone A.

(3) Each instructor shall have no more than four students in the water at a given time, with a maximum of eight students per surf school permit in the water at any given time. The maximum of one-to-four instructor-to-student ratio must be maintained at all times while in the water.

(4) The instructor shall, at a minimum, possess a current Red Cross advanced life saving certificate, and be authorized by the County of Hawaii to conduct surf instruction on County property at Kahaluu Bay.

(5) The department may designate the site of instruction within Kahaluu Bay Zone A and hours of operation for each permittee, and may change the site whenever such changes are found by the department to be necessary.

(c) Kahaluu Bay Zone B is described as follows: Beginning at Kalaau O Kalakani Point at 19°34'37.81"N, 155°58'10.50"W; then northeasterly along the shoreline to the north lifeguard tower at 19°34'48.67"N, 155°57'58.88"W; then seawards northwesterly to Pyramid Rock at 19°34'50.21"N, 155°58'07.98"W; then seawards in a southerly

direction ending at Kalaau O Kalakani Point at the point of beginning.

(1) Restrictions. Zone B is designated as a swim zone. No person shall operate or moor any vessel within this zone, including but not limited to boats, motorboats, surfboards, paddleboards, sailboards, kayaks, and canoes.

[Eff 2/24/94; am] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24)

2. Material, except source notes, to be repealed is bracketed and stricken. New material is underscored.

3. Additions to update source notes to reflect this amendment is not underscored.

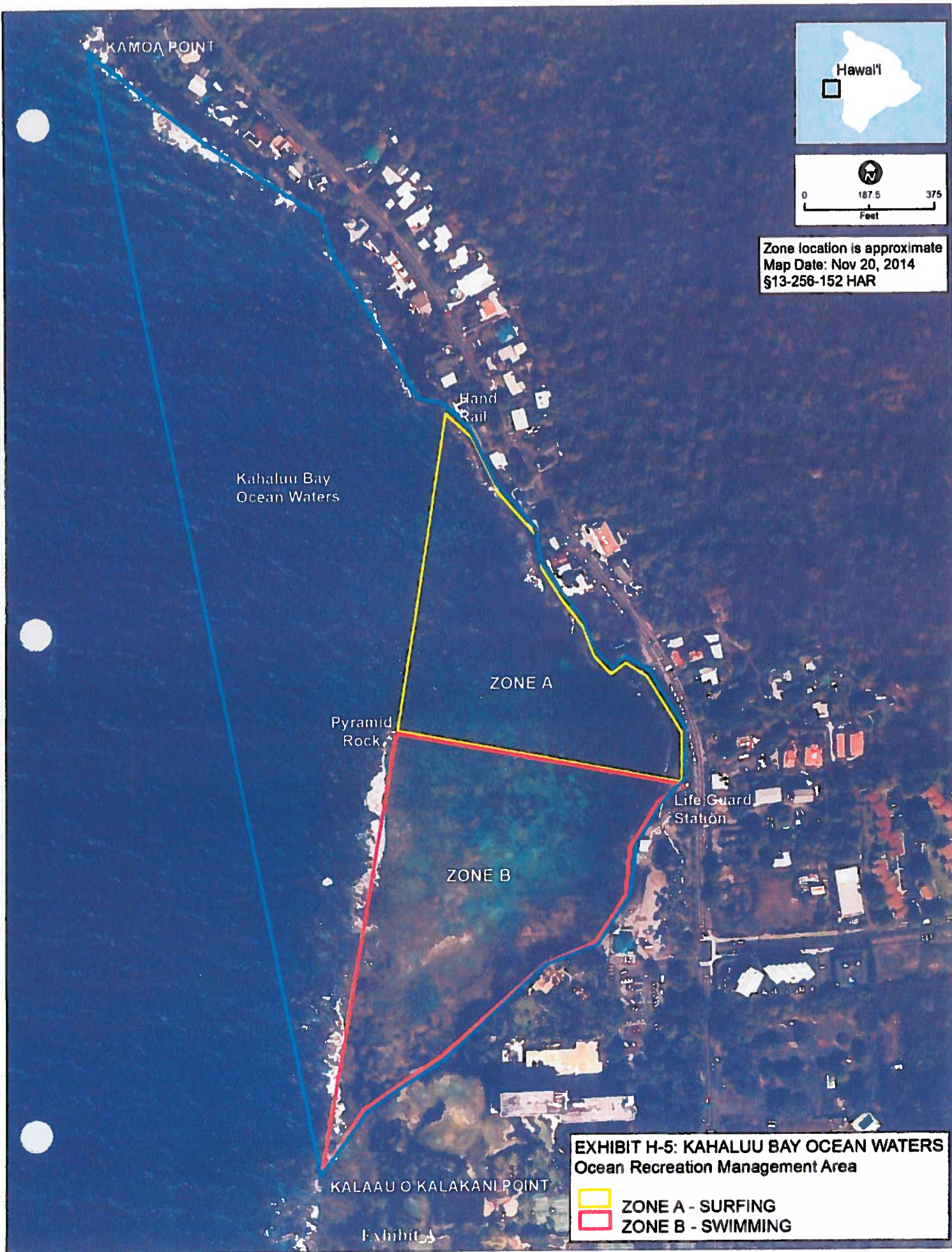
4. The amendment to section 13-256-152, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

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



KAMOEA POINT

Kahaluu Bay
Ocean Waters

Hand
Rail

ZONE A

Pyramid
Rock

ZONE B

Life Guard
Station

KALAAU O KALAKANI POINT

Exhibit 5



Hawai'i



Zone location is approximate
Map Date: Nov 20, 2014
§13-256-152 HAR

**EXHIBIT H-5: KAHALUU BAY OCEAN WATERS
Ocean Recreation Management Area**

-  ZONE A - SURFING
-  ZONE B - SWIMMING