

March 15, 2017 ~ SBRRB Meeting Checklist

Member Attendance				
	Airline Preference	From	Details	Attend
Anthony Borge, Chair	NA	Oahu	Parking Pass	NO?
Kyoko Kimura	HA	Maui	Parking Pass	Yes
Harris Nakamoto, Vice Chair	NA	Oahu	NA	Yes
Director's ex officio - Mark Richey	NA	Oahu	NA	Yes
Robert Cundiff	NA	Oahu	Parking Pass	Yes
Nancy Atmospera-Walch	NA	Oahu	NA	?
Garth Yamanaka	HA	B.I.	Parking Pass	Yes
Need to Change				

Pre Meeting Checklist	
Conference Room #436 (Confirm each month)	X
Poll Board Attendance - in process	✓
Draft Agenda to Chair for approval	Approved
Prepare TAF's for Director's approval - ASAP (Linda) - Group TAF	Kyoko Toledo Smith Done
Copies of Rule Package for Lt. Gov's Office (2) and Scan for Posting on State Calendar	✓
Send Chair Minutes for Approval	✓
Post approved agenda on 1) SBRRB website, 2) State Calendar, 3) Lt. Governor's Office	✓✓
Send Agendas to those people who requested it - IMPORTANT	Done
Upload Meeting Documents onto Board's Website in Calendar	✓
Include "discussion leader" names on the agendas to Board members only.	✓
Prepare Agenda ONLY for "Chair" with Names of Attendees	✓
Mail parking permits to those Board members noted (Sent in Nov. 2016 six (6) permits)	111111 Womxn 6 More

STAFF				
Dawn Apuna				Via I-pad
Dori Palcovich				

Post Meeting Checklist	
Dean Marai - 587-3804	
C.Shr 587-3810	

Visitors Sign-in-Sheet - Small Business Regulatory Review Board - March 15, 2017

	Name	Title	Organization	Email	Phone
1	Dean Masuji	Energy Analyst	DBEDT Energy Div.	dean.masuji@hawaii.gov	587-5832
2	Micheal Gavros	Legal Fellow	DBEDT/DBER	micha.l.gavros@hawaii.gov	587-0142
3	Todd Tsuchimura	Legal Researcher	DBER/DBER	todd.3@hawaii.edu	587-0142
4	Dee Reckliffe	Administrator	SHPO DA	romal.reckliffe@hawaii.gov	587-0781
5	Alfred Herrera	ETS		alfred.herrera@hawaii.gov	
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74-425 Kealakehe Pkwy, # 3-B

Kailua Kona, HI 96740

www.hawaiifishingandboating.com

March 10, 2017

Small Business Regulatory Review Board
Dept. of Business, Economic Development & Tourism
P.O. Box 2359
Honolulu, Hawaii 96804

Testimony regarding Proposed Amendments to HAR Title 13, Subtitle 11, Ocean Recreation and Coastal Areas, on the agenda for 3/15/2017 SBRRB meeting:

Members of the Small Business Regulatory Review Board need to understand that the large package of DLNR Division of Boating and Ocean Recreation (DOBOR) rule changes on your agenda for the March 17, 2017 SBRRB meeting, have NOT been shared with the ocean recreation businesses, boaters, and the general public in Hawaii.

As has become the practice of the DLNR-DOBOR, not to hold Public Information Meetings for proposed rule changes. This practice disenfranchises the ocean recreation industry, because there is no opportunity to ask questions, understand the reasoning of the rule makers, or to suggest changes, during the final Public Hearing process.

Public Information Meetings are designed to provide the general public with the opportunity to understand proposed rules, and the motivations of the rule makers, and to offer suggestions to make those rules better, or less of a burden, to those effected by them. Without Public Information Meetings the public is largely denied the opportunity to effectively contribute to and participate in the rule making process.

The SBRRB should demand that the DLNR-DOBOR hold Public Information Meetings, accessible to the hundreds of small businesses that make up the State's ocean recreation industry, before proceeding with rule changes, especially large rule change packages like the one being considered on your agenda today.

Thank you for your consideration of our concerns.

Rick Gaffney, President



Chamber of Commerce HAWAII

The Voice of Business

Written Comments on the Proposed Amendments to Hawaii Labor Relations Board Rules of Practice and Procedure Thursday, November 10, 2016 at 5:30 P.M. Wahiawa District Park, Oahu, Hawaii

NOV 15 PH: 12
HAWAII LABOR
RELATIONS BOARD

Dear Board Members:

The Chamber of Commerce Hawaii ("The Chamber") submits the following comments regarding the Board's proposed regulations regarding HRS § 337-4.6 and HRS § 377-7.

The Chamber is Hawaii's leading statewide business advocacy organization, representing about 1,000 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

We express concerns that the proposed rules do not fully take into account the transformational impact of eliminating the secret ballot election in the union certification process. We provide the following comments and suggestions.

A. Ensuring That Employees Are Completely Informed Regarding Unionization

We fully support the policies underlying the Hawaii Labor Relations Act that permit employees covered thereby to choose to be or not to be represented by a labor organization. It should be universally agreed that the choice of whether to unionize is a significant one for employees and their families. Therefore, it is critical that employees make an informed decision on the subject.

To avoid a situation where employees are voting for or against unionization without knowledge of all of the facts, we respectfully submit that the proposed regulations be amended to provide that, once a union has obtained authorization cards from 25% of the employees in the prospective bargaining unit, the union be required to file a Statement of Interest with the Board stating its intention to attempt to unionize the bargaining unit. This will allow all of the employees to research the effects of unionization, and to fact check the claims being made by others for or against unionization. If a union fails to file such a Statement of Interest but later files a Petition, the union should be required to utilize a secret ballot election to be certified, thereby ensuring that employees are fully informed before making the significant decision for or against unionization.

Accordingly, we propose that a new regulation be inserted between § 12-41-72 and § 12-41-73 that reads as follows:

Statement of Interest. Once any individual or labor organization has obtained signed authorization cards from 25% of the employees in the unit it wishes to represent, that individual



Chamber of Commerce HAWAII

The Voice of Business

Therefore, we propose that a new subsection (10) be added to § 12-41-71, which adds to the required language on authorization cards the following:

(10) A statement that no secret ballot election will be held and that the individual or labor organization may obtain the right to act as the employee's exclusive bargaining representative on the basis of the authorization cards alone.

D. The Proposed Rules Do Not Adequately Provide Checks and Balances

We believe that the process needs to have checks and balances to represent the accurate and sentiment of the employees.

When card check is the law, the protections of the secret ballot election go away and the balancing of the harms is reversed. The only way to ensure that questionable activity has not taken place is to make the cards available for inspection by interested parties and to permit such parties more than 14 days to determine if the authorization cards are truly valid. In this way, any employee whose signature was forged on a card will know that this has occurred and can take steps to rectify the matter.

Therefore, we propose that § 12-41-75(a) be amended to read as follows:

(a) Upon the filing of the petition, written notice thereof with a copy of the petition shall be sent by the Board to the employer and other interested parties, together with copies of all authorization cards claimed to be valid by the individual or labor organization seeking to represent the employees. In addition, the Board shall, upon receipt of a petition, serve a copy thereof on each employee who allegedly signed a valid authorization card, together with a copy of said card. The notice shall include the date when the petition was filed, the name and address of the petitioner, the name and address of the employer involved, a description of the appropriate unit, and a statement that parties and interested persons (including employees in the proposed bargaining unit) shall have 14 30 days from the date of the notice to file:

- (1) Objections to the allegation that the employer has annual gross revenues of more than \$5,000,000;
- (2) Objections to the description of the appropriate unit, including the job classifications or positions to be included or excluded from the appropriate unit and the approximate number of employees in the appropriate unit;
- (3) Objections to the petitioner's designation of the question regarding representation that has arisen;
- (4) Objections to any of the authorization cards or to how the authorization cards were collected (including claims of fraud or coercion in the procurement of the authorization cards); and
- (45) A Petition to intervene as provided in §12-41-13, in so far as it is applicable.

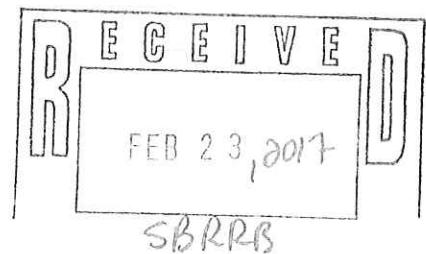
E. The Proposed Regulations Are Inconsistent With the Statute In Defining Covered Employers

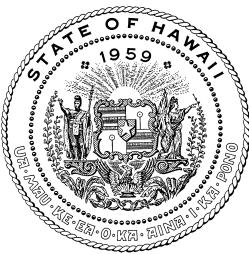


Chamber of Commerce HAWAII

The Voice of Business

Thank you for the opportunity to provide comments.





SMALL BUSINESS REGULATORY REVIEW BOARD

Department of Business, Economic Development & Tourism (DBEDT)
No. 1 Capitol District Bldg., 250 South Hotel St. 5th Fl., Honolulu, Hawaii 96813
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804
Email: dbedt.sbrb@hawaii.gov
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Governor

Luis P. Salaveria
DBEDT Director

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Oahu

Kyoko Y. Kimura
2nd Vice Chairperson
Maui

Robert Cundiff
Oahu

Nancy Atmospera-Walch
Oahu

Garth Yamanaka
Hawaii

Director, DBEDT
Voting Ex Officio

AGENDA

Wednesday, March 15, 2017 ★ 10:00 a.m.

No. 1 Capitol District Building

250 South Hotel Street - Conference Room 436

I. Call to Order

II. Approval of February 15, 2017 Meeting Minutes

III. Old Business

A. Discussion and Action on the Small Business Statement After Public Hearing and Proposed Amendments to Hawaii Administrative Rules (HAR) Title 12, Subtitle 7, **Boards**, Chapter 41, **Hawaii Labor Relations Board – Rules of Practice and Procedure**, promulgated by Hawaii Labor Relations Board / Department of Labor and Industrial Relations - *attached and incorporated as Exhibit 1*

IV. New Business

A. Discussion and Action on Proposed Amendments to HAR Title 13, Subtitle 11, **Ocean Recreation and Coastal Areas**, listed below, promulgated by Division of Boating and Ocean Recreation / Department of Land and Natural Resources – *attached and incorporated as Exhibit 2*

a. Part I - Small Boat Harbors and Other Boating Facilities

1. Chapter 230, General Provisions
2. Chapter 231, Operations of Boats, Small Boat Harbors, and Permits
3. Chapter 232, Sanitation and Fire Safety
4. Chapter 233, Motor Vehicle and Parking Rules
5. Chapter 235, Offshore Mooring Rules and Areas

b. Part II – Boating

6. Chapter 240, General Provisions
7. Chapter 242, Accidents, Reports, Fines, Enforcement and Records
8. Chapter 243, Vessel Equipment Requirements
9. Chapter 244, Rules of the Road; Local and Special Rules
10. Chapter 245, Waterway Marking Systems

c. Part III - Ocean Waters, Navigable Streams & Beaches

11. Chapter 250, General Provisions
12. Chapter 251, Commercial Activities on State Ocean Waters, Navigable Streams, and Beaches
13. Chapter 253, Registration and Permit Fees

- 14. Chapter 254, Local Ocean Waters
- 15. Chapter 255, Waikiki Beach
- 16. Chapter 256, Ocean Recreation Management Rules

- B. Discussion and Action on Proposed new HAR Title 15, Chapter 37, **Solar Water Heater Variance**, promulgated by Department of Business, Economic Development and Tourism - *attached and incorporated as Exhibit 3*

V. Legislative Matters

- A. Update on House Bill 1382 HD1, **Relating to Procurement** – Assists small business in the state procurement process by establishing a temporary small business assistance initiative, small business advisory council, small business office, and small business procurement coordinator position within the state procurement office, and appropriates funds.
- B. Update on House Bill 75 HD1, **Relating to the Small Business Regulatory Flexibility Act** – Extends the time given to an agency to submit a small business impact statement to the departmental advisory committee on small business and the Small Business Regulatory Review Board.
- C. Update on House Bill 587 HD1, **Relating to Small Business** - Appropriates funds to the Department of Business, Economic Development, and Tourism to provide additional resources to the Small Business Regulatory Review Board.
- D. Update on House Bill 1042 HD1, **Relating to the Small Business Regulatory Flexibility Act** – Adopts a more explicit definition of “small business,” clarifies the powers of the Small Business Regulatory Review Board, increases the number of board members from nine to eleven, and clarifies when reporting by the agencies is required for submission to the board and for submission by the board to the Legislature.
- E. Update on Senate Bill 762, **Relating to the Small Business Regulatory Review Board** – Appropriates funds to DBEDT to provide additional resources for the small business regulatory review board.
- F. Update on Senate Bill 908, **Relating to the Small Business Regulatory Flexibility Act** – Adopts a more explicit definition of “small business,” clarifies the powers of the Small Business Regulatory Review Board, increases the number of board members from nine to eleven, and clarifies when reporting by the agencies is required for submission to the board and for submission by the board to the Legislature.

G. Update on Senate Bill 1059, **Relating to Small Business** – Establishes and defines a three-year small business assistance initiative and its parts within the state procurement office to develop an effective small business state contracting program. It also establishes a small business assistance coordinator position, small business office, and small business advisory group as part of the initiative; appropriates funds for the administration and operation of the initiative and repeals the initiative on June 30, 2020.

VI. Administrative Matters

A. Update on the Board's Upcoming Advocacy Activities and Programs in accordance with the Board's Powers under Section 201M-5, Hawaii Revised Statutes

VII. Next Meeting: Scheduled for Wednesday, April 19, 2017, at 10:00 a.m., Capitol District Building, Conference Room 436, Honolulu, Hawaii

VIII. Adjournment

If you require special assistance or auxiliary aid and/or services to participate in the public hearing process (i.e., sign language, interpreter, wheelchair accessibility, or parking designated for the disabled), please call (808) 586-2594 at least three (3) business days prior to the meeting so arrangements can be made.

Exhibit 1

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HAWAII ADMINISTRATIVE RULES

TITLE 12

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

SUBTITLE 7

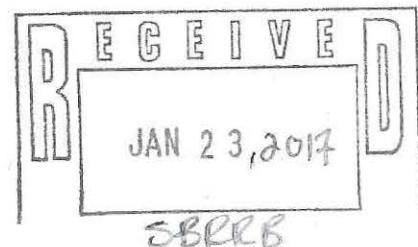
BOARDS

CHAPTER 41

HAWAII LABOR RELATIONS BOARD RULES OF PRACTICE AND PROCEDURE

Month Day, Year

Chapter 41, Title 12, Hawaii Administrative Rules, is
amended to add new Subchapters 9 and 10.



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Chapter 41, Title 12, Hawaii Administrative Rules, is amended by adding new Subchapters 9 and 10 as follows:

"Subchapter 9 Streamlining Union Certification

§12-41-69 Scope of streamlining union certification
§12-41-70 Definitions
§12-41-71 Streamlining Union Certification
§12-41-72 Application of streamlining union certification
§12-41-73 Filing of petition
§12-41-74 Notice of petition
§12-41-75 Investigation of petition
§12-41-76 Notice of hearing
§12-41-77 Hearing
§12-41-78 Eligibility and validity of authorization
§12-41-79 Decision and Order
§12-41-80 Certification of representative

Subchapter 10 Facilitating Initial Collective Bargaining Agreements Subject to Chapter 377, Hawaii Revised Statues

§12-41-81 Request to bargain
§12-41-82 Notice of dispute and request for conciliation
§12-41-83 Contents of notice
§12-41-84 Board determination of jurisdiction and the possibility of settlement and termination of dispute
§12-41-85 Appointment of conciliator
§12-41-86 Duties of conciliator
§12-41-87 Confidential information
§12-41-88 Report of conciliator
§12-41-89 Certification of termination
§12-41-90 Arbitration
§12-41-91 Selection and certification of arbitration panel

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§12-41-92 Findings and decision of arbitration panel
§12-41-93 Payment for conciliation and arbitration
§12-41-94 Closing of dispute in an initial collective
bargaining agreement case"

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"SUBCHAPTER 9

STREAMLINING UNION CERTIFICATION

§12-41-69 Scope of streamlining union certification. This subchapter governs the general procedure relating to selection and certification of an exclusive representative for the purposes of collective bargaining pursuant to section 377-4.6, HRS. [Eff.] (Auth: HRS §377-4.6) (Imp: HRS §377-4.6)

§12-41-70 Definitions. As used in this subchapter:

"Appropriate unit" means a unit that is appropriate for the purposes of collective bargaining and that is the subject of a petition filed pursuant to this subchapter.

"Exclusive representative" means an individual or labor organization certified by the board under section 377-4.6, HRS, as the exclusive collective bargaining agent to represent all employees in an appropriate unit without discrimination and without regard to employee organization membership.

"Petition", means a petition that is filed pursuant to this subchapter. [Eff.] (Auth: HRS §377-4.6) (Imp: HRS §377-4.6)

§12-41-71 Streamlining Union Certification.

(a) An employee, group of employees, or any individual or labor organization acting on their behalf may collect signed valid authorization cards from employees as defined in section 377-4.6(c), HRS, designating the individual or labor organization as their exclusive representative.

(b) The authorizations shall include the following:

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- (1) The full name, address, and job title of the employee;
- (2) The name and address of the employer;
- (3) The identification of the individual or labor organization that is collecting authorization cards as the exclusive representative;
- (4) An indication that the employee designates the individual or labor organization as his or her exclusive representative;
- (5) A statement that by signing the card, the employee is acknowledging that if a majority of the employee's co-workers in an appropriate unit sign similar cards showing majority support, the card may be used by the individual or labor organization to obtain certification as the employees' exclusive representative without an election similar to that under section 377-1(11);
- (6) An acknowledgement by the employee that the information given to the employee is in a language understandable to the employee;
- (7) The declaration of the employee that the information contained in the authorization cards is true and correct; and
- (8) The legible signature or mark of the employee, and if using a mark a signature of a witness, and the date of the signature or mark.

[Eff.] (Auth: HRS §377-4.6) (Imp:
HRS §377-4.6)

S12-41-72 Application of streamlining union certification. Streamlining union certification under section 377-4.6, HRS, shall apply to an "employee" as defined under section 377-1, HRS, provided that the employee is employed by an employer with annual gross revenue of more than \$5,000,000. The annual gross revenue of an employer shall mean revenue derived by the employer from all sources, including parents, subsidiaries, and other affiliates wherever located

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based upon financial statements in the preceding fiscal year or, if the employer has operated for less than one year, based upon the actual or projected annual gross revenue reasonably projected by the board of said employer. [Eff.] (Auth: HRS S377-4.6) (Imp: HRS S377-4.6)

S12-41-73 Filing of petition. (a) An employee, group of employees, or any individual or labor organization acting on their behalf seeking certification as the exclusive representative shall file a petition on a form furnished by the board. The original shall be signed, filed with the board, and include the following:

- (1) The full names, addresses, email addresses and affiliation, if any, of the petitioner, and the name and telephone number of its principal representative to be contacted;
- (2) The name and address of the employer, the general nature of the business, the number of employees constituting the appropriate unit, and annual gross revenue of the employer;
- (3) A full description of the appropriate unit, including the job classifications or positions of employees sought to be included and excluded and the approximate number of employees in the appropriate unit;
- (4) The name and address of any known persons or organizations that claim to represent any of the employees in the appropriate unit;
- (5) An allegation that no other individual or labor organization is currently certified or recognized as the exclusive representative of any of the employees in the appropriate unit;
- (6) An allegation that more than fifty percent of the employees within the appropriate unit have designated the petitioner as their exclusive representative;

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- (7) An allegation that the employer of the appropriate unit has an annual gross revenue of more than \$5,000,000; and
- (8) Any other relevant facts pertinent to the petition.

A petition may be withdrawn at any time prior to the final issuance of a final order of the board.

[Eff.] (Auth: HRS §377-4.6) (Imp: HRS §377-4.6)

§12-41-74 Notice of petition (a) Upon the filing of the petition, written notice thereof with a copy of the petition shall be sent by the Board to the employer and other interested parties. The notice shall include the date when the petition was filed, the name and address of the petitioner, the name and address of the employer involved, a description of the appropriate unit, and a statement that parties and interested persons shall have 14 days from the date of the notice to file:

- (1) Objections to the allegation that the employer has annual gross revenues of more than \$5,000,000;
- (2) Objections to the description of the appropriate unit, including the job classifications or positions to be included or excluded from the appropriate unit and the approximate number of employees in the appropriate unit;
- (3) Objections to the petitioner's designation of the question regarding representation that has arisen; or
- (4) A Petition to intervene as provided in §12-41-13, in so far as it is applicable.

(b) The employer shall post the notice where notices are normally posted affecting all employees in the appropriate unit not less than three days after receipt of the notice. [Eff.] (Auth: HRS §377-4.6) (Imp: HRS §377-4.6)

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§12-41-75 Investigation of petition. (a) Upon the filing of the petition, the board or the hearings officer shall conduct an investigation to determine whether:

- (1) Petitioner has collected valid authorization cards from more than fifty percent of the employees in an appropriate unit designating petitioner as their exclusive representative for collective bargaining purposes;
- (2) There is agreement among the parties regarding the composition of the appropriate unit;
- (3) The employer earns annual gross revenues of more than \$5,000,000; and
- (4) There is no other individual or labor organization that is certified or recognized as the exclusive representative of any of the employees in the appropriate unit.

(b) Pursuant to the investigation, the board or the hearings officer may ask the employer to submit:

- (1) Information showing the nature of the employer's business and its revenues;
- (2) Existing or recently expired collective bargaining agreements, if any;
- (3) An alphabetized list of all employees in the appropriate unit with their full names, addresses, and job classifications who are or were employed by the employer within the six months immediately preceding the petition's filing date;
- (4) Copies of the W-4 forms for each employee included on the alphabetized list as required in §12-41-75(b)(3);
- (5) An alphabetized list of all employees in the appropriate unit with their full names, addresses, and job classifications who were employed as of the petition's filing date; and
- (6) Any other information relevant to the investigation.

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(c) Pursuant to the investigation, the board or the hearings officer shall request that the petitioner submit:

- (1) The original of each authorization card collected under §12-41-71.
 - (A) The authorization card shall be valid only if signed within six months prior to the filing of the petition in accordance with §12-41-73.
 - (B) The board or hearings officer will not accept copies of a signed authorization card.
- (2) A declaration authenticating that such authorization cards are valid and attesting to the following:
 - (A) The declarant's personal knowledge or inquiries that the declarant has made that the persons whose names appear on the authorization cards have personally signed or marked their own cards on the dates specified thereon as provided in §12-41-71;
 - (B) That the persons specified as members of the appropriate unit are or were employees of the appropriate unit during the six-month period immediately preceding the petition's filing date; and
 - (C) If the declaration is based upon inquiries the declarant has made, rather than upon personal knowledge, the declarant shall specify the nature of those inquiries.
- (3) Any other information relevant to the investigation.

(d) Responses to requests made under paragraphs (b) and (c) herein shall be made within ten days of the receipt of said requests unless an extension of time is granted by the board or hearings officer for good cause shown. [Eff.] (Auth: HRS §377-4.6) (Imp: HRS §377-4.6)

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§12-41-76. Notice of hearing. After the investigation, if it appears to the board or hearings officer that a hearing is warranted, the board or hearings officer shall issue written notice of hearing upon the parties. The initial notice shall be served by registered or certified mail with return receipt requested at least 15 days prior to the hearing and shall set the time and place of such hearing. The board or hearings officer may notice and hold a prehearing conference.

[Eff.] (Auth: HRS §§ 91-9, 377-4.6) (Imp: HRS §377-4.6)

§12-41-77 Hearing. The procedures for hearing shall be governed by the §§12-41-20 to 12-41-30, insofar as they are applicable. [Eff.]
(Auth: HRS §§ 91-9, 377-4.6) (Imp: HRS §377-4.6)

§12-41-78 Eligibility and validity of authorization. (a) The validity of the signatures appearing on the authorization cards shall be determined administratively by the board or hearings officer. A signature appearing on an authorization card filed in compliance with section 12-41-71 herein shall be presumed valid.

(b) The board and hearings officer shall maintain the confidentiality of all signatures and identities appearing on authorization cards. The authorization cards shall not be shown or furnished to any of the parties after acceptance by the board or hearings officer and shall be destroyed when the file is closed notwithstanding §12-42-8(g)(11)(A).

(c) A board or hearings officer's finding of the eligibility of an employee to sign an authorization card or of the validity of the signature of the employee on an authorization card, or both, shall be dispositive of the issue and not subject to litigation or collateral attack, except upon sufficient evidence that the signature was obtained improperly through

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fraud or coercion. If there is a dispositive finding by the board or hearings officer that the employee is eligible to sign an authorization card and that the signature of the employee on an authorization card is valid, the authorization of the employee shall be counted toward the final determination of certification by the board or the hearings officer conducting the investigation. [Eff.] (Auth: HRS §377-4.6) (Imp: HRS §377-4.6)

§12-41-79 Decision and Order. (a) Following the hearing, the board or hearings officer shall issue a decision and order determining whether:

- (1) The employer has annual gross revenues of more than \$5,000,000;
- (2) No other individual or labor organization is certified or recognized as the exclusive representative of any of the employees in the unit; and
- (3) A majority of the employees in the appropriate unit have signed valid authorizations designating the individual or labor organization specified in the petition as their bargaining representative.

(b) If the board or hearings officer determines that any of these requirements set forth under subsection (a) are not met, the petition shall be dismissed.

(c) If the hearing is held before the hearings officer, the decision and order rendered thereon shall be a recommended decision subject to the filing of exceptions and board review pursuant to the requirements set forth in HAR §§12-41-20 to 12-41-30, in so far as they are applicable. [Eff.] (Auth: HRS §§ 91-12, 377-4.6) (Imp: HRS §377-4.6)

§12-41-80 Certification of representative. Upon a finding by the board or hearings officer that all of the requirements set forth in §12-41-79(a) for certification by authorization cards have been

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satisfied, the board shall certify the petitioner as the exclusive representative of the appropriate unit. The board shall issue a copy of the certificate to the employer and so notify the parties. [Eff.]
(Auth: HRS §377-4.6) (Imp: HRS §377-4.6)

SUBCHAPTER 10

RULES FACILITATING INITIAL COLLECTIVE BARGAINING AGREEMENTS SUBJECT TO HAWAII REVISED STATUTES CHAPTER 377

§12-41-81 Request to bargain. An individual or labor organization that has been newly organized or certified as the exclusive representative may submit to the employer a written request to bargain. Within ten days after the employer's receipt of the request to bargain, the parties shall meet and commence bargaining collectively in good faith. The parties shall make every reasonable effort to conclude and sign a collective bargaining agreement. [Eff.

] (Auth: HRS §377-11) (Imp: HRS §377-4.7)

§12-41-82 Notice of dispute and request for conciliation. More than ninety days after the date on which bargaining commenced or such additional period as the parties agree upon if the parties have failed to reach an agreement, either party may notify the board of the dispute by filing a written notice of dispute and request for conciliation. The employer or exclusive bargaining representative shall file an original of the notice of dispute, with proof of service upon all parties. [Eff.]
(Auth: HRS §377-11) (Imp: HRS §§377-3, 377-4.7)

§12-41-83 Contents of notice. The notice of dispute shall contain the following:

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- (1) The names and addresses of the parties to the dispute, and the names, telephone numbers, and email addresses of their respective principal representatives to be contacted;
- (2) A description of the appropriate unit and the approximate number of employees constituting the unit;
- (3) The dates and duration of negotiation sessions, if any;
- (4) The name of the party or parties requesting conciliation; and
- (5) A clear and concise statement of any other relevant facts. [Eff.] (Auth: HRS §377-11) (Imp: HRS §§377-3, 377-4.7)

§12-41-84 Board determination of jurisdiction and the possibility of settlement and termination of dispute. Upon receiving notice of a labor dispute regarding the failure to reach an initial collective bargaining agreement involving a newly organized or certified representative, the board shall determine whether: the labor dispute is within the board's jurisdiction; and the possibility of settlement and termination of the dispute may be increased by conciliation. [Eff.] (Auth: HRS §377-11) (Imp: HRS §377-3, 377-4.7)

§12-41-85 Appointment of conciliator. If the board determines that the labor dispute is within its jurisdiction and that the possibility of settlement and termination of the dispute may be increased by conciliation, the board shall notify the governor who shall immediately appoint a conciliator. The governor shall so notify the board of the appointment of a conciliator. Upon receipt of notice of the appointment, the board shall refer the dispute to the conciliator. [Eff.] (Auth: HRS §377-11) (Imp: HRS §§377-3, 377-4.7)

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§12-41-86 Duties of conciliator. (a) The conciliator shall perform conciliation duties under the guidance of the board and shall report any findings to the board.

(b) The conciliator's function shall be to use his or her best efforts to resolve the dispute within twenty days immediately succeeding the date upon which the request for conciliation was made, or such additional time as is agreed upon by all parties to the dispute.

(c) The conciliator may hold separate or joint meetings with the parties or their representatives, which shall be private and nonpublic in nature.

(d) Conciliation meetings shall be conducted at such time and place as may be designated by the conciliator. [Eff.] (Auth: HRS §377-11) (Imp: HRS §§377-3, 377-4.7)

§12-41-87 Confidential information. (a) Any information disclosed by the parties to the conciliator in the performance of such conciliator's duties shall not be divulged voluntarily or by compulsion.

(b) All files, records, reports, or other papers received or prepared by a conciliator while serving in such capacity shall be classified as confidential. The conciliator shall not produce any confidential records of or testify in regard to any conciliation conducted by such conciliator, on behalf of any party to any cause pending in any type of proceeding, unless otherwise required by law. [Eff.] (Auth: HRS §377-11) (Imp: HRS §§377-3, 377-4.7)

§12-41-88 Report of conciliator. (a) The conciliator shall, either orally or in writing, report the progress of conciliation efforts, as well as the terms of the termination of the dispute if any, if so requested by the board. [Eff.] (Auth: HRS §377-11) (Imp: HRS §§377-3, 377-4.7)

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§12-41-89 Certification of termination. (a)

If, within twenty days immediately succeeding the date upon which the request for conciliation was made, or such additional time as is agreed upon by all parties, the conciliator succeeds or does not succeed in terminating the dispute by conciliation, the conciliator shall immediately certify such fact to the board and the conciliator's appointment shall end.

(b) Upon the termination of the appointment of the conciliator, the board shall so notify the governor. [Eff.] (Auth: HRS §377-11)
(Imp: HRS §§377-3, 377-4.7)

§12-41-90 Arbitration. If the conciliator fails to bring the parties to agreement within the period required by section 12-41-89, the board shall immediately notify the parties that the labor dispute shall be referred to a three-member arbitration panel established in accordance with section 89-11(e)(2)(A), Hawaii Revised Statutes, and rules as prescribed by the board. [Eff.] (Auth: HRS §377-11)
(Imp: HRS §§89-11, 377-4.7)

§12-41-91 Selection and certification of arbitration panel. Two members of the arbitrator panel shall be selected by the parties; one shall be selected by the employer and one shall be selected by the exclusive representative. The neutral third member of the arbitration panel, who shall chair the arbitration panel, shall be selected by mutual agreement of the parties. In the event that the parties fail to select the neutral third member of the arbitration panel within thirty days from the date of the labor dispute, the board shall, request the American Arbitration Association, or its successor in function, to furnish a list of five qualified arbitrators from which the neutral arbitrator shall be selected. Within five days after receipt of such

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list, the parties shall alternately strike names from the list until a single name is left, and that arbitrator named shall be immediately appointed by the board as the neutral arbitrator and chair of the arbitration panel, and the board shall serve a copy of its certification of appointment of such panel upon all parties. [Eff.] (Auth: HRS §377-11)
(Imp: HRS §§89-11, 377-4.7)

S12-41-92 Findings and decision of arbitration panel. The arbitration panel shall file with the board the original of all findings and decisions, which shall be binding upon the parties for a two-year period, unless amended during that period by written consent of the parties, with proof of service upon all parties. [Eff.] (Auth: HRS §377-11)
(Imp: HRS §§89-11, 377-4.7)

S12-41-93 Payment for conciliation and arbitration. All costs, including those of a neutral arbitrator or conciliator, shall be borne equally by the parties involved in the dispute. [Eff.] (Auth: HRS §377-11) (Imp: HRS §377-4.7)

S12-41-94 Closing of dispute in an initial collective bargaining agreement case. (a) Upon written notification to the board by the employer or exclusive representative of the execution of an initial collective bargaining agreement, where a request was made to the Board for conciliation, or upon the board's own knowledge and information, the board shall issue a "Notice of Intent to Dismiss Labor Dispute Case Because of Mootness" stating that the board will dismiss such labor dispute case because of mootness, unless it receives written notification from any party to the proceeding within ten days of the issuance of such notice, setting forth reasons why the case should not be dismissed.

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(b) Ten days after issuance of such notice, if no objections to dismissal are received, the board shall issue an order dismissing such case." [Eff.] (Auth: HRS §377-11) (Imp: HRS §377-4.7)

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This amendment to Chapter 41, Title 12, Hawaii Administrative Rules, to add new Subchapters 9 and 10 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 _____, and filed with the Office of the Lieutenant Governor.

Chair, Hawaii Labor Relations Board

Director, Department of Labor and Industrial Relations

APPROVED AS TO FORM:



Jim S. Halina
Deputy Attorney General

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Exhibit 2

DEPARTMENT OF LAND AND NATURAL RESOURCES

Amendments to chapters 13-230, 13-231, 13-232, 13-233, 13-235, 13-240, 13-242, 13-243, 13-244, 13-245, 13-250, 13-251, 13-253, 13-254, 13-255, 13-256, Hawaii Administrative Rules

[Date of adoption by agency]

1. Section 13-230-4, Hawaii Administrative Rules, is amended to read as follows:

"§13-230-4 Penalties and prosecution. (a) Violation of rules, penalty. Any vessel, its agent, owner, or crew that violates the rules of the department, including vehicular parking or traffic movement and unauthorized discharge, dumping, or abandoning of any petroleum product, hazardous material, or sewage in violation of the state water quality standards established by the department of health, [shall] may be fined or deprived of the privilege of operating or mooring any vessel in state waters for a period of not more than thirty days, in accordance with section 200-14, Hawaii Revised Statutes.

(b) General administrative penalties. Except as otherwise provided by law, the board is authorized to set, charge, and collect administrative fines and to recover administrative fees and costs, including attorney's fees and costs, or bring legal action to recover administrative fines and fees and costs, including attorney's fees and costs, or payment for damages or for the cost to correct damages resulting from a violation of subtitle 8 of title 12 or any rule adopted thereunder in accordance with section 200-14.5, Hawaii Revised Statutes. Each day or instance of violation shall constitute a separate offense." [Eff 2/24/94; am and comp 12/7/13; am _____]
(Auth: HRS §§200-2, 200-3, 200-4, 200-14, 200-14.5)
(Imp: HRS §§200-2, 200-3, 200-4, 200-14, 200-14.5)

2. Section 13-230-8, Hawaii Administrative Rules, is amended to read as follows:

"§13-230-8 Definitions. When used in these rules promulgated pursuant to chapter 200, Hawaii Revised Statutes, unless otherwise specifically provided or the context clearly indicates otherwise:

"Abandon" when applied to animals, means to leave an animal at any location, whether intentionally, recklessly, or negligently, without the owner intending to return for the animal and without the permission of the public or private property owner.

"Adult" means a person who has reached majority.

"Agreement" means the agreement between the boat owner and the State as required by section 13-231-2.

"Anchoring device" means a device made of metal or similar material, attached by rope or chain to a vessel, which can be deployed to submerged land to secure the vessel in a particular place.

"Approved" means that a fitting, appliance, apparatus, or item of equipment to be fitted or carried in a vessel, or by any particular arrangement, is sanctioned by the commandant of the Coast Guard, unless otherwise stated by the department.

"Approved backflow prevention device" means a backflow prevention device that meets the requirements contained in standard 1001, American Society of Sanitary Engineers or the Uniform Plumbing Code adopted by the Uniform Plumbing Code adopted by the International Association of Plumbing and Mechanical Officials (IAPMO).

"Approved marine surveyor" means a person who has been approved by the chairperson to inspect a vessel for an owner seeking a permit to moor a vessel in a small boat harbor in accordance with sections 13-231-45(h) and 13-231-45(i).

"Approved vessel inspector" means an employee of the department who has been designated by the chairperson to inspect a vessel for compliance with criteria necessary to obtain a mooring permit.

"Assigned berth" means a berth that is assigned to a permittee by a valid regular mooring permit.

"Background" means that portion of the hull or superstructure, or a specially provided backing plate, upon which the numbers are placed, but shall not include any border, trim, outlining or shading of the numerals or letters.

"Barge" means a non-self-propelled vessel.

"Berth" means any place where a vessel is anchored, moored, or made fast or laid alongside a dock, quay, catwalk or pier.

"Bicycle" means every device propelled by human power upon which any person may ride, having two tandem wheels which are sixteen inches in diameter or greater, and including any device generally recognized as a bicycle though equipped with two front or two rear wheels.

"Boat" means a small vessel propelled by oars or paddles or by sail or power.

"Boat dealer" means a person engaged wholly or partly, for gain or compensation, in the business of selling vessels or offering vessels for sale, buying or taking in vessels for the purpose of resale, or exchanging vessels.

"Boat livery" means a person or entity who is engaged in the business of renting, leasing, or chartering vessels.

"Boat manufacturer" means a person engaged in:

- (1) The manufacture, construction, or assembly of boats or associated equipment;
- (2) The manufacture or construction of components for boats and associated equipment to be sold for subsequent assembly; or
- (3) The importation into the United States for sale of boats, associated equipment, or components thereof.

"Boat owner" means the legal owner of a vessel where there is no security interest held by anyone on the vessel, a buyer under a purchase money security interest, a debtor under any security interest, a demise charterer of a vessel, or a lessee or charterer of a vessel under lease or charter which provides the lessee or charterer with exclusive right to possession

of the vessel to the exclusion of the lessor or the person from whom the vessel is chartered. The documentation of ownership must meet the requirements of section 13-241-5(c).

"Recreational boating accident":

- (1) Means a collision, accident, or other casualty involving:
 - (A) A person's death;
 - (B) The injury to a person requiring medical treatment beyond first aid;
 - (C) Damage to a vessel amounting to \$2,000 or more;
 - (D) Complete loss of a vessel; or
 - (E) The disappearance of a person from a vessel under circumstances indicating death or injury to that person.
- (2) Includes damage to a vessel or its equipment, loss of life, or injury to any person or object:
 - (A) On board a vessel;
 - (B) Caused by a moving vessel's wake, wash, or waves, or by a vessel's capsizing, or collision with another vessel or object;
 - (C) Caused by flooding, fire, or explosion; or
 - (D) Caused when a person falls overboard.

"Bona fide fishing tournament" means a fishing tournament sponsored by a boat club, fishing club or yacht club, or a business or non-profit organization formed for the primary purpose of sponsoring a fishing tournament where participation is invited from the general public.

"Buoy" means any floating aids to navigation moored to the seabed and used to convey a message.

"Business" [includes all professions, trades, occupations, and callings carried on for a profit or livelihood, every kind of commercial enterprise, and the operation of games, machines, or mechanical devices] means any and all activities engaged in or caused to be engaged in by any person or legal entity, including, but not limited to, solicitations and

advertisements, with the object of making a profit or obtaining an economic benefit either directly or indirectly.

"C.F.R." means the Code of Federal Regulations.

"Camping" means the use and occupation of any portion of a State small boat harbor, boat launching facility or any other property managed by the department as a temporary or permanent dwelling place or sleeping place (including the laying down of bedding for the purpose of sleeping). Camping includes being in possession of a backpack, tents, blankets, tarpaulins, or other obvious camping paraphernalia, or storing personal belongings, or making any fire, or using any tents or shelter or other structure or vehicle for sleeping or doing any digging or earth breaking or carrying on cooking activities. The above-listed activities constitute camping when it reasonably appears, in light of the circumstances, that the participants, in conducting these activities, are in fact using the area as a living accommodation regardless of the intent of the participants or the nature of any other activities in which they may also be engaging.

"Canoe" means outrigger canoe.

"Carrying passengers for hire" means the carriage of any person or persons by a vessel for compensation flowing, whether directly or indirectly, to the owner, charterer, operator, agent, or any other person interested in the vessel.

"Catamaran" means a multi-hulled vessel with a broad, flat deck that is affixed on top of closed cylinders which are used for buoyancy, the basic design of which is usually implemented with two rows of floats as a catamaran or with three rows of floats as a trimaran.

"Certificate" means a certificate of number issued by the department for an undocumented vessel.

"Chairperson" means the chairperson of the board of land and natural resources of the State of Hawaii or the chairperson's duly authorized representative or subordinate.

"Civil union" means a union between two individuals established pursuant to chapter 572B, Hawaii Revised Statutes.

"Civil union partner" means an individual who is a party to a civil union established pursuant to chapter 572B, Hawaii Revised Statutes.

"Coast Guard" means the United States Coast Guard, or its successor agency.

"Colony" means a collective of free-roaming, abandoned, stray, or feral cats.

"Commercial Activity" means [the use of or activity for which compensation is received by any person for goods or services or both rendered to customers or participants in that use or activity. Display of merchandise or demanding or requesting gifts, money, or services, shall be considered a commercial activity] to engage in any action or attempt to engage in any action designed for profit, which includes, but is not limited to, the exchange or buying and selling of commodities; the providing of services relating to or connected with trade, traffic, or commerce in general; any activity performed by the commercial operator or its employees or agents in connection with the delivery of such commodities or services; and the soliciting of business, including the display or distribution of notices, business cards, or advertisements for commercial promotional purposes.

"Commercial fishing motorboat" means a motorboat used for taking fish for profit or gain or as a means of livelihood.

"Commercial high speed boating" means the use of an open ocean racing boat to provide high speed rides to passengers who pay compensation for the rides.

"Commercial high speed boating" does not include:

- (1) The use of an open ocean racing boat during an official racing competition; or
- (2) The use of an open ocean racing boat while practicing for a racing competition; provided that no passenger pays compensation for riding the boat during the practice.

"Commercial motorboat" means any motorboat used for hire, profit or gain.

"Commercial ocean recreation activities" means any ocean recreation activity offered for a fee.

"Commercial purposes" includes the staging, loading and discharge of passengers or supplies at a State boating facility for further transport to a vessel's offshore location by means of a water taxi or any other vessel, or provisioning a vessel before or after a voyage involving the carriage of passengers for hire.

"Commercial vessel" means a vessel engaged in any trade, business, or commercial activity, including, but not limited to, carrying passengers for hire, charter fishing, bare boat (demise) or any type of charter maintenance, harvesting coral or similar resources, construction, towing, tow-boating, or other trade or business wherein the vessel is used in any manner to promote the venture, or is registered with the State or documented by the United States Coast Guard for commercial use.

"Compensation" means any valuable consideration.

"Contrivance" means any man-made object or artificial arrangement not used or intended to be used for transportation which may be floated upon or suspended [with in] within or on the water.

"Department" means the department of land and natural resources of the State of Hawaii.

"Dinghy" means a small open boat under thirteen feet in length, which may be propelled by oars, sails or an outboard motor and carried on or towed by a larger boat or yacht [; it may be propelled by oars, sails or an outboard motor].

"Display area" means the area on a sign or buoy used for display of a waterway marker symbol.

"Diver's flag" means a red flag with a white diagonal running from the masthead to lower outside corner.

"Documented vessel" means any vessel which has a valid marine document issued by the Coast Guard, in accordance with the Code of Federal Regulations, Subchapter G, Part 67, Documentation of Vessels.

"Dormant vessel" means a vessel or contrivance, other than a houseboat, that has not been navigated from or has not vacated an assigned mooring or facility within or offshore of a [state] State small boat harbor at least once within a ninety-day period, or cannot be made seaworthy upon thirty days' notice to the owner.

"Enforcement officer" means a police officer and any other State or county officer charged with the enforcement of State laws.

"Federal laws and requirements" means all statutes, regulations, and other laws of the United States, which may be applicable to these rules.

"Feral" means having escaped or been released from domestication and reverted to a wild state.

"Firm" includes a business organization such as a sole proprietorship, partnership or corporation which is licensed to engage in or conduct business in the State.

"Foreign built vessel" means any vessel whose hull was constructed in a country other than the United States.

"Forward half of the vessel" means any portion of the vessel in front of a point equidistant from the stem and stern of the vessel.

"Free diver" means a person who is using a mask and snorkel, other than for SCUBA diving, who submerges under water or breaks the surface of the water.

"Global Positioning System" (GPS) means the method of terrestrial navigation using a GPS electronic instrument, receiving data from a network of orbiting satellites to locate one's position by latitude and longitude.

"Gross receipts" means all moneys paid or payable to the account of the commercial use permittee or catamaran registration certificate holder, for services rendered, or resulting from trade, business, commerce, or sales by the vessel or water sports equipment owner when the services, trade, business, commerce, or sales have a direct relationship to the vessel or permitted activity.

"Guardian" means a person invested by a court of law with the power, and charged with the duty, of taking care of a person and of managing the property of that person.

"Hanai" means a child who is taken permanently to be reared, educated, and loved by someone other than natural parents -- traditionally a grandparent or other relative. The child is given outright; natural parents renounce all claims to the child. Usually the child is given at infancy.

"Handboard" means any type of surf riding board that is (a) with or without skegs, (b) worn on one or both of the operator's hands, (c) is less than 16 inches in overall length, and (d) is used for the sport of wave riding.

"Harbor resident" means the owner, co-owner, or their spouse[~~of each,~~] and their legal dependents authorized by the department to reside on board a vessel used as the principal habitation of the owner.

"Hearing officer" means a person appointed by the chairperson to hear appeals.

"High seas" means all parts of the sea that are not included in the exclusive economic zone, in the territorial sea, or in the internal waters of the United States.

"Highway" means "street" as defined in this section.

"Houseboat" means any vessel which is fitted for use as a permanent or temporary place of habitation, and is either stationary or [~~to be~~] capable of being moved by oars, sweeps, or towing.

"Hull" means the shell, frame, or body of a vessel, exclusive of masts, yards, sails, riggings, machinery, and equipment.

"Immediate family" means any person and his or her spouse and dependent children under twenty-one years of age.

"Inland waters" mean the waters shoreward of the territorial sea baseline.

"Interest" includes any claim of right, title, ownership of stock, shares, profit, benefit or gain in

a corporation, partnership, joint venture or any other business entity that has a use permit.

"Kayak" means a watercraft that has an open or covered top and is designed to hold one or more participants and propelled by use of a single- or double-bladed paddle.

"Launch" means a small motorboat that is open or that has the forepart of the hull covered.

"Legal dependent" or "dependent" means those persons who are defined as dependents by law, e.g., a spouse or minor child, or who are defined as dependents under Internal Revenue Service regulations or by the Armed Forces of the United States, or any of the following persons who are dependent upon a permittee for all or a substantial portion of the person's living expenses:

- (1) Spouse;
- (2) A son or daughter who is
 - (A) Unmarried and under eighteen years;
 - (B) Unmarried and under twenty years if a full-time student at a high school, business school, or technical school [~~or~~];
 - (C) [~~unmarried~~] Unmarried and under twenty-two years if a full-time undergraduate student at a college; or
 - [~~(C)~~] (D) Unmarried and physically handicapped so as to be incapable of self-support;
- (3) A parent or grandparent if physically handicapped so as to be incapable of self-support;
- (4) A grandchild, brother, or sister under eighteen years of age.

"Legal owner" includes a person who holds unencumbered title to a vessel or is a secured party under a security interest for the vessel.

"Length" [means "vessel length" as defined in this section] when applied to vessels covered by these rules, means the measurement of a vessel from end to end over the deck. It is a straight-line measurement of the overall length from the foremost part of the

vessel measured parallel to the centerline.
Bowsprits, boomkins, rudders, motor brackets, and
similar fittings or attachments or sheer are not to be
included in the measurement.

In case of a vessel of an open type or with a cockpit,
the measurement is taken between the foremost and
aftermost extremities of the hull exclusive of sheer.
In vessels having more than one deck, it is the length
measured from the foremost part of the bow to the
aftermost part at the stern exclusive of sheer.

"Lienholder" means a person holding a recorded
security interest in a vessel.

"Lifeboat" means a boat carried aboard a vessel
and used solely for lifesaving purposes, but not
including dinghies, tenders, speedboats, or other
types of craft carried aboard a vessel and used for
other than lifesaving purposes.

"Liquor" or "intoxicating liquor" shall mean the
same as defined in section 281-1, Hawaii Revised
Statutes.

"Litter" means any and all types of debris and
substances, whether liquid or solid, and materials
such as garbage, refuse, rubbish, glass, cans,
bottles, paper, wrappings, fish or animal carcasses,
or any other nauseating or offensive matter or any
machinery, appliance or automobile, or parts thereof,
or any other substances which render small boat harbor
lands or facilities unsightly, noxious, or otherwise
unwholesome to the detriment of the public health and
welfare or the enjoyment of the small boat harbor for
recreational purposes.

"Livery boat" means a vessel which is rented,
leased, or chartered by a person who is engaged in the
business of renting, leasing, or chartering vessels.

"Living aboard" means the substantial use of a
vessel as a place of abode, dwelling, living quarters,
or residence, including, but not limited to, the
regular use for such purposes during weekends.

"Machinery" means all internal combustion engines
located within the vessel and all motor or mechanical
devices capable of propelling vessels.

"Majority" means the age specified under section 577-1, Hawaii Revised Statutes.

"Minor" means a person who has not reached the age of majority.

"Moor" means to secure a boat by making it fast with cables, lines or anchors.

"Mooring" means a [device for holding a vessel in place, when an anchor, concrete block or similar device is placed or dropped on submerged land with a rope or chain attached to a buoy to which the vessel is attached] buoy attached by rope or chain to a permanently placed weight or structure situated within a submerged land area and to which a vessel can be made permanently or temporarily secured.

["Mooring device" means the use of a buoy attached by rope or chain to a permanently placed weight or structure situated within a submerged land area and to which a vessel can be made permanently or temporarily secured.]

"Motorboat" means any vessel which is equipped with propulsion machinery, including steam. This term includes, but is not limited to, wet bikes, motorized surfboards, and any other vessel temporarily or permanently equipped with a motor.

"Navigable streams" means the waters of estuaries and tributaries of the streams of each island of the State, where boating and water related activities, recreational or commercial, may be carried on, whether the mouths of said streams are physically opened or not to ocean waters for intra or interstate commerce or navigation.

"Nonresident" means a person who is not a resident of the State of Hawaii.

"Ocean recreation management area" (ORMA) means ocean waters of the State that have been designated for specific activities as described in Chapter 13-256, Hawaii Administrative Rules, Ocean Recreation Management Rules and Areas.

"Ocean waters" means all waters seaward of the shoreline within the jurisdiction of the State.

"Open ocean racing boat" means a motorized vessel which:

- (1) Is designed, modified, or restored for the primary purpose of high speed board racing; and
- (2) Has the capacity to carry not more than the operator and five passengers.

"Operate" means to navigate or otherwise use a vessel on or in the waters of the State.

"Operator" means a person who operates, or who has charge of the navigation or use of, a vessel.

"Operator permit" means the permit issued by the department which authorizes either the direct operation or the offering for a fee, surfboards and sailboards or any vessel, watercraft or water sports equipment on the ocean waters and navigable streams of the State.

"Outrigger canoe" means a canoe having the inclusion of a rig known as an outrigger which acts as a counterpoise or balance, rigged out from the side of the canoe. A number of spars (iako), usually two but up to as many as ten depending on the canoe's origin and purpose, are lashed across and to the canoe gunwales, extending outwards for a given distance and truncating with the attachment of a flotation device (ama).

"Owner" shall be synonymous with the word "boat owner" as defined in this section.

"Paddleboard" means any type of board that is (a) without skegs, (b) does not exceed four feet in length, and (c) is used for the sport of surfriding.

"Paipo board" shall be synonymous with the word "paddleboard" as defined in this section.

"Parasailing" means the activity in which an individual is transported or carried aloft by a parachute, sail, or other material attached to a towline, which is towed by a vessel.

"Parent" includes legal guardian and legal adoptive parent, except where the guardianship or adoption was acquired primarily to obtain resident status for the ward or adopted child. It shall also include a person who can legally claim an unmarried minor as a dependent for federal income tax purposes, but only when such person has been in loco parentis to

the minor for the twelve-month period immediately preceding the residence determination date.

“Park” or “parking” means the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading merchandise or passengers.

“Passenger” means every person carried on board a vessel other than:

- (1) The owner or the owner's representative;
- (2) The operator;
- (3) Bona fide members of the crew engaged in the business of the vessel who have contributed no consideration for their carriage and are paid for their services; or
- (4) Any guest on board a vessel which is being used exclusively for pleasure purposes who has not contributed any consideration, directly or indirectly, for the guest's carriage.

“Person” means any individual, firm, partnership, corporation, trust, association, joint venture, organization, institution, or any other legal entity.

“Personal flotation device” is a technical term for a life preserver that has been approved and certified by the United States Coast Guard and capable of providing at least ninety per cent of factory-rated flotation capacity.

~~“Personal partner” is an individual considered to be a “personal partner” of the principal habitation permittee who is not a relative by biology or adoption to the principal habitation permittee. While living together on the vessel, the principal habitation permittee and personal partner shall not have a landlord-tenant relationship.]~~

“Pet owner” means any person owning, harboring or keeping a dog, cat, or other domestic pet, or having custody thereof.

“Power driven catamaran” means a catamaran propelled by machinery whether under sail or not.

“Power-driven vessel” means any vessel propelled by machinery.

"Pram" means a small lightweight nearly flat-bottomed boat with a broad transom and usually square-bow often used as a dinghy.

"Principal owner" means a person whose name appears on a certificate of number as the primary owner or who is named as managing owner of a Coast Guard documented vessel.

"Principally used" means a measurement of the time when a vessel is on the waters of the United States, a state, territory, province, or country and includes the time when the vessel is not in motion, as for instance when the vessel is moored or at anchor, as well as the time when the vessel is being navigated.

"Reciprocal beneficiary" means ~~[two adults who are parties]~~ an adult who is a party to a valid reciprocal beneficiary relationship and ~~[meet]~~ meets the requisites for a valid reciprocal beneficiary relationship as set forth in chapter 572C, Hawaii Revised Statutes.

"Recreation" means activities in which there is direct and intimate contact with water including, but not limited to, fishing, swimming, surfing, boating, water skiing, and viewing or enjoying historical, archeological, scenic, or scientific sites.

"Recreational vessel" means any vessel that is being used for pleasure and not for conducting commercial activity.

"Regatta" or "marine parade" means an organized water event of limited duration which is conducted according to a prearranged schedule.

"Registration sticker(s)" means a pair of stickers, plates, tabs, or other devices issued by the department with certificates of number and renewals thereof to be affixed to the vessel to indicate that the vessel's certificate of number is current and valid.

"Regular permittee" means a person holding a valid regular mooring permit.

"Regulatory marker" means a waterway marker which indicates the existence of regulatory areas, speed zones or restricted areas and which has no equivalent

in the United States Coast Guard system of navigational aids.

"Residence" or "residence status" means a combination of physical presence in a place and the intent to make such place one's permanent home.

"Residency determination date" means:

- (1) The date a person applies for a use permit or for application renewal;
- (2) The date of issuance or renewal of a use permit;
- (3) The date the department makes a residency status determination following the receipt of a completed questionnaire submitted by a person classified as a nonresident pursuant to the provisions of section 13-230-27; or
- (4) The date of a hearing officer's decision on a petition submitted to the department as prescribed in section 13-230-28.

"Roadway" means that portion of a street or highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder. In the event a highway includes two or more separate roadways, the term "roadway" shall refer to each roadway separately but not to all such roadways collectively.

"Rules" means the rules governing small boat harbors, facilities under the jurisdiction of the department, and State ocean waters as set forth in [this part] these rules.

"Rules of the road" means the federal statutory and regulatory rules governing navigation of vessels. These rules are published by the Coast Guard in pamphlet form and known as Navigation Rules - International - Inland COMDTINST M16672.2B.

"Sailboard" means any type of board that exceeds four feet in length and is propelled by a detachable sail apparatus.

"Sailing vessel" means any vessel propelled by sail only. Every power-driven vessel which is under sail and not under power is to be considered a sailing vessel, and every vessel under power, whether under

sail or not, is to be considered a power-driven vessel.

"SCUBA" means self-contained underwater breathing apparatus and includes all forms of self-contained underwater breathing apparatuses, e.g., re-breathers, open-circuit, semi-closed or closed circuit or surface-supplied breathing apparatuses.

"Security interest" means an interest in a vessel reserved or created by agreement and which secures payment or performance of an obligation. The term includes the interest of a lessor under a lease intended for security. A security interest is "perfected" when it is valid against third parties generally, subject only to specific statutory exceptions contained in article 9, chapter 490 and section 490: 1-201, Hawaii Revised Statutes.

"Sheer" means the longitudinal upward curve of the deck, gunwales, and lines of a vessel, when viewed from the side.

"Shore waters" or "shores" means any shores or waters between the three nautical mile limit and the shoreline of the islands of the State of Hawaii.

"Shoreline" means the upper reaches of the wash of the waves, other than storm and seismic waves, at high tide during the season of the year in which the highest wash of the waves occurs, usually evidenced by the edge of vegetation growth, or the upper limit of debris left by the wash of the waves.

"Sign" means any device for carrying a message which is attached to another object such as a piling, buoy, structure or land itself.

"Skeg" means any fin-like projection.

"Sleeping place" means a place used by a person for the purpose of sleeping, where the person is or may be asleep inside a tent, sleeping bag, or some form of temporary shelter or is or may be asleep atop of or covered by materials such as a cot, mat, bedroll, bedding, sheet, blanket, pillow, bag, cardboard, or newspapers.

"Slow-no-wake" means as slow as possible without losing steerage way and so as to make the least

possible wake. This would almost always mean speeds of less than five miles an hour.

"Small boat harbor" means those harbors or portions of harbors, and any interest in property, whether real, personal, or mixed connected therewith under the care and control of the department, which are [r] used as described in section 200-9, Hawaii Revised Statutes [as constructed, maintained, and operated for the primary purpose of promoting recreational boating activities and the landing of fish].

"Snorkeler" shall be synonymous with the word "free diver" as used in this section.

"Spouse" means a marriage partner, reciprocal beneficiary, or civil union partner of an individual.

"Stand" or "standing" means the halting of a vehicle whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in receiving or discharging passengers.

"State" means the State of Hawaii.

"State aid to navigation" means a waterway marker which is the equivalent of a United States Coast Guard aid to navigation.

"Stay aboard" or "staying aboard" means a person or persons aboard any vessel with prior notice to the department or a stay aboard permit between the hours of 12:00 midnight and 6:00 A.M., while the vessel is moored in a [state] State small boat harbor or offshore mooring area.

"Stop" or "stopping", when prohibited, means any halting, even momentarily, of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic control sign or signal.

"Stray" means any dog, cat, or other animal without a microchip or other registered owner-identifier or is living or roaming off its owner's property without permission to be on other public or private property. Strays may also be feral or abandoned.

"Street" means the entire width between boundary lines of every way publicly maintained in any small boat harbor when any part thereof is open to the public for purposes of vehicular traffic.

"Surfboard" means any type of board that exceeds four feet in length and is used for the sport of surf riding.

"Symbols" means geometric figures such as a diamond, circle, or rectangle, used to convey a basic message.

"Tahiti moor" means the mooring of a vessel where one end of the vessel is moored by a rope or chain attached to a buoy that is attached to a pile or device that includes, but is not limited to, an anchor, concrete block or similar device placed or dropped on submerged land. The other end of the vessel is moored to the facility that includes, but is not limited to, breakwaters, catwalk, piers, and docks where direct access can be made from the facility to the vessel either by gangway, plank, or stepping onto the vessel.

"Temporarily assigned berth" means a berth that is allocated to a permittee by a valid temporary mooring permit for interim use of the facility.

"Temporary mooring" means mooring pursuant to a temporary use permit. Calculation of the allowable period for temporary mooring shall include cumulative days moored with and without a permit.

"Temporary permittee" means a person holding a valid temporary mooring permit for the interim use of a berth or offshore mooring.

"Tender" means a dinghy or a larger launch used to carry persons and supplies to and from large vessels.

"Territorial sea baseline" means the line from which the territorial sea is measured, which is generally the low water line along the coasts including the coasts of islands and special closing lines drawn tangent to the headlands across the mouths of rivers, bays, inlets, and other similar indentations.

"Thrill craft" means any motorized vessel that falls into the category of personal watercraft, which:

- (1) Is generally less than thirteen feet in length as manufactured;
- (2) Is generally capable of exceeding a speed of twenty miles per hour;
- (3) Can be operated by a single operator, but may have the capacity to carry passengers while in operation; or
- (4) Is designed to provide similar operating performance as a personal watercraft through a combination of small size, power plant, and hull design.

The term includes, but is not limited to, a jet ski, waverunner, wet bike, surf jet, miniature speed boat, hovercraft, and every description of vessel which uses an internal combustion engine powering a water jet pump as its primary source of motive propulsion, and is designed to be operated by a person or persons sitting, standing, or kneeling on, or being towed behind the vessel.

"Tow-in surfing" means utilizing a surfboard, often equipped with foot straps, to surf waves with the assistance of a thrill craft that is equipped with a rescue sled, bow tow-line, and a tow-in-rope.

"Transient vessel" means any vessel visiting the State for a period of less than ninety days.

"Ultralight or experimental float equipped aircraft" means an aircraft of light weight construction and limited range, generally carrying not more than two individuals, able to land on water surfaces using floats.

"Unassigned berth" means a berth that is not assigned to a permittee by a regular mooring permit.

"Underway" means the vessel is not at anchor, aground, or made fast to shore.

"Undocumented vessel" means any vessel which does not have a valid marine document issued by the Coast Guard, in accordance with the Code of Federal Regulations, Subchapter G, Part 67, Documentation of Vessels.

"Use permit" as used in these rules, means the authorization by the department to utilize [state] State boating facilities, offshore mooring areas, offshore moorings [~~and state ocean waters~~], State ocean waters, and navigable streams, as evidenced by the fully executed "agreement" described in section 13-231-2, Hawaii Administrative Rules.

"Vacation" means a period spent away from home or business in travel or recreation.

"Vehicle" means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, but excludes mopeds, devices moved by human power, or devices used exclusively upon stationary rails or tracks.

"Vessel" means all description of watercraft, used or capable of being used as a means of transportation on or in the water, except a seaplane.

"Vessel carrying passengers for hire" means any vessel which [~~is used for the carriage of any person or persons for a valuable consideration whether~~] carries any person or persons for a valuable consideration that goes directly or indirectly [~~flowing~~] to the owner, charterer, operator, agent, or any person who has [~~a lien on~~] an interest in the vessel.

"Vessel engaged in fishing" means any vessel engaged in fishing with nets, lines, trawls, or other fishing apparatus which restrict maneuverability, but does not include a vessel fishing with trolling lines or other fishing apparatus which do not restrict maneuverability.

"Vessel length" means the end-to-end measurement of a vessel, taken over the deck, parallel to the waterline from the foremost part of the bow to the aftermost part of the stern; provided, that hull platings, plankings, and extensions aside from the hull proper, such as a bowsprit, are not to be included in the measurement; provided further, that an open-type vessel or one with a cockpit shall be measured as if a complete deck existed at the upper level of the hull.

"Vessel length overall" means the distance between the fore-and-aft extremities of a vessel including hull platings, plankings and any extensions beyond the hull proper, such as bowsprit, [bumpkin] boomkin, steering device, or other extensions.

"Vessel used as a place of principal habitation" means a vessel on which any person remains overnight ninety times or more in a calendar year while the vessel is moored in a [state] State small boat harbor.

"Visiting vessel" means a vessel [having a mooring within the State and] temporarily moored in [another state] a State small boat harbor while having a use permit applicable to a different State small boat harbor or other boating facility under the jurisdiction of the department.

"Water sledding" means the activity in which an individual is transported or carried over the surface of the water on an apparatus attached to a towline and towed by a vessel.

"Water sports equipment" means any equipment, contrivance, frame or other device that one or more persons may wear, lie, sit, or stand upon or in, and which is primarily for use in or on the water for pleasure, recreation or sports, and not necessarily for transportation.

"Waters of the State" means any waters within the jurisdiction of the State, the marginal seas adjacent to the State, and the high seas when navigated as part of a journey or ride to or from the shores of the State.

"Water taxi operations" means the shuttling of persons or cargo to or from the small boat harbor facility or a shoreside location authorized for such use under chapter 13-256, Hawaii Administrative Rules, to a destination or vessel located outside the small boat harbor boundary.

"Waterway marker" means any device designed to be placed in, or near, the water to convey an official message to a boat operator on matters which may affect health, safety, or well-being, except that such devices of the United States or an agency of the

United States are excluded from the meaning of the definition.

"Wildlife" means any member of any non-domesticated species of the animal kingdom, and game mammals and game birds living in a wild and non-domesticated state, whether reared in captivity or not, including any mammal, fish, bird, amphibian, reptile, mollusk, crustacean, arthropod, or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or parts thereof."

[Eff 2/24/94; am 4/27/02; am 6/16/03; am and comp 12/7/13; am] (Auth: HRS §§200-2, 200-4, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

3. Section 13-230-21, Hawaii Administrative Rules, is repealed.

"[§13-230-21 Definitions. For the purpose of this subchapter:

"Adult" means a person who has reached majority.

"Dependent" means those persons who are defined as dependents by law, e.g., a spouse or minor child, or who are defined as dependents under Internal Revenue Service regulations or by the Armed Forces of the United States.

"Guardian" means a person invested by a court of law with the power, and charged with the duty, of taking care of the person and of managing the property of that person.

"Hanai" means a child who is taken permanently to be reared, educated, and loved by someone other than natural parents — traditionally a grandparent or other relative. The child is given outright; natural parents renounce all claims to the child. Usually the child is given at infancy.

"Hearing officer" means a person appointed by the chairperson to hear appeals concerning the determination of residency status.

~~"Majority" means the age specified under section 577-1, Hawaii Revised Statutes.~~

~~"Minor" means a person who has not reached majority.~~

~~"Nonresident" means a person who is not a resident of the State of Hawaii.~~

~~"Parent" includes legal guardian and legal adoptive parent, except where the guardianship or adoption was acquired primarily to obtain resident status for the ward or adopted child. It shall also include a person who can legally claim an unmarried minor as a dependent for federal income tax purposes, but only when such person has been in loco parentis to the minor for the twelve month period immediately preceding the residence determination date.~~

~~"Personal partner" is an individual considered to be a "personal partner" of the principal habitation permittee who is not a relative by biology or adoption to the principal habitation permittee. While living together on the vessel, the principal habitation permittee and personal partner shall not have a landlord-tenant relationship.~~

~~"Residence" or "residence status" is a combination of physical presence in a place and the intent to make such place one's permanent home.~~

~~"Residency determination date" means:~~

- ~~(1) The date a person applies for a use permit or for application renewal;~~
- ~~(2) The date of issuance or renewal of a use permit;~~
- ~~(3) The date the department makes a residency status determination following the receipt of a completed questionnaire submitted by a person classified as a nonresident pursuant to the provisions of under section 13-230-27; or~~

(4) The date of a hearing officer's decision on a petition submitted to the department as prescribed in section 13-230-28
[Eff 2/24/94; am 8/8/11] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)]"

4. Section 13-230-25, Hawaii Administrative Rules, is amended to read as follows:

"§13-230-25 Particular categories. (a) Adults. The resident status of every adult shall be established by the adult's own acts and intentions and shall not be derived from any other person, except as specifically provided otherwise in these rules.

(b) Minors.

- (1) Unemancipated minor. The residence of an unemancipated minor is the residence of the minor's father, if living, or the residence of the minor's mother, if the father is deceased.
- (2) Divorced parents. If the parents of an unemancipated minor are divorced, the minor's residence is that of the person to whom the minor's custody has been awarded by the court. If no award of custody has been made, the minor's residence is that of the father. However, if the minor maintains the minor's primary abode with the parent not having legal custody, residence of the minor is determined by that parent with whom the minor's primary abode is maintained.
- (3) Separated parents. If the parents of an unemancipated minor are separated, without a divorce having been granted or custody award having been made, the minor's residence is that of the father if the minor is not

living with either parent. If the minor maintains primary abode with a parent, the minor's residence is the residence of that parent.

- (4) Death of a parent who had custody. The residence of an unemancipated minor becomes that of the surviving parent upon the death of the parent who had the minor's custody.
- (5) Both parents deceased. If both parents are deceased, the residence of the unemancipated minor remains that of the last parent to die until changed by court order. Upon court appointment of a guardian for the minor, the residence of the minor becomes that of the guardian.
- (6) A nonresident unemancipated minor attending an institution of higher learning outside of Hawaii or on active duty with the United States Armed Forces, whose parents become residents of Hawaii, and who would reach majority before deriving Hawaiian residence from the minor's parents' new status, may be classified as a resident for fee purposes when the minor's parents have completed twelve consecutive months of residence; provided that such classification will be lost if actions inconsistent with resident status are taken after leaving such institution or discharge from the military (e.g., failure to promptly make a home in Hawaii).
- (7) If an unemancipated minor's parents lose their Hawaii residence, the minor will be classified as a nonresident at the next residence determination date. However, if the parents' change of residence is due to

obedience to active-duty military orders, the minor shall continue to pay only resident fees and charges as long as one of the minor's parents remain on active duty and in a Hawaii resident status.

(8) Emancipated minors. An emancipated minor shall be considered an adult for purposes of residence hereunder. The following shall constitute indications of emancipation, no one of which is controlling:

- (A) Financially independent or self-supporting.
- (B) Subsistence not provided by parent or legal guardian.
- (C) Prior military service.
- (D) Other primary and secondary indications of residence enumerated under section 13-230-24.
- (E) Any other conduct inconsistent with parental control and custody.

(9) Hanai. A person may base the person's residency on that of other than the parent or legal guardian, provided that the relationship between the person and the person or persons other than the parent or legal guardian is that of "hanai".

(c) Aliens. In addition to all other requirements herein, an alien shall be classified as a resident only upon the alien's admission to the United States for permanent residence (immigration visa). Residence of a minor alien can only be derived from another person (e.g., a parent) when both that person and the minor achieve resident status.

(d) Military personnel. Service in the armed forces of the United States shall not of itself negate establishment of residence in Hawaii. For instance, a

nonresident member of the United States Armed Forces whose last duty station is in Hawaii and who does all other things necessary to establish a bona fide Hawaiian domicile, including discharge from the military in Hawaii, may be classified as a resident. In addition, a person who establishes a Hawaiian domicile but who enters the military service prior to the expiration of twelve months from the date of such establishment may add the period of the person's military service on to the former period to satisfy the twelve-month rule.

(e) Married persons and persons in other legal relationships. A married person or reciprocal beneficiary or civil union partner may establish resident status, either on the basis of indications of residence, or on the basis of the indications of residence of the person's spouse. However, the person must clearly state intent to make Hawaii the person's permanent residence. For purposes of the liveaboard fee, the person holding a principal habitation permit may rely on the residency indications of a [personal partner] reciprocal beneficiary who lives on board the vessel." [Eff 2/22/94; am and comp 12/7/13; am] (Auth: HRS §§200-2, 200-4, 200-10)
(Imp: HRS §§200-2, 200-4, 200-10)

5. Section 13-231-3, Hawaii Administrative Rules, is amended to read as follows:

"§13-231-3 Use permits; issuance. (a) [~~"Use permit"~~ as used in these rules means the authorization by the department to utilize state boating facilities, offshore mooring areas, offshore mooring, state ocean waters, and navigable streams, as evidenced by the fully executed "agreement" described in section 13-

231-2. The department may issue the following types of use permits:

- (1) Mooring permit. A use permit which authorizes the docking, mooring, or anchoring of a vessel at a small boat harbor or offshore mooring area.
 - (A) Regular mooring permit. A use permit which authorizes the permittee to moor a vessel in a state small boat harbor or at an offshore mooring area for a period not to exceed one year from the date of issuance.
 - (B) Temporary mooring permit. A non-renewable use permit which authorizes the permittee to moor a vessel in a state small boat harbor or at an offshore mooring area for a period of thirty days or less from the date of issuance.
 - (C) All applicants for a mooring permit shall provide documentation of the applicant's ownership structure, including the ownership structure of any entity that would own or control, directly or indirectly, the mooring permit.
- (2) Waikiki catamaran registration certificate. A Waikiki catamaran registration certificate is a document, issued by the department, that may authorize its holder to utilize state boating facilities, offshore and onshore mooring, in Waikiki ocean waters and beach. All applicants for a Waikiki catamaran registration certificate shall provide the following information:
 - (A) Vessel Documentation or registration.
 - (B) Vessel Certificate of Inspection (if applicable).
 - (C) Certificate of business liability insurance pursuant to the requirements of section 13-231-65 of these rules.

- (D) Certificate of good standing from the Hawaii Department of Commerce and Consumer Affairs.
- (E) Tax clearance certificate from the department of taxation.
- (F) Conservation District Use Permits (if applicable)
- (G) Affidavit describing any and all sales or transfers of any ownership interest in the business.
- (H) Documentation of the applicant's ownership structure, including the ownership structure of any entity that would own or control, directly or indirectly, the Waikiki catamaran registration certificate.
- (3) Stay aboard permit. A use permit which authorizes use of a state small boat harbor or offshore mooring by the permittee for the purpose of staying aboard a vessel while moored in a state small boat harbor or at an offshore mooring or at anchor.
- (4) Vacation permit. A use permit which authorizes use of the small boat harbor or an offshore mooring area by the permittee for the purpose of using a vessel as a vacation site while moored in a state small boat harbor or at an offshore mooring or at anchor.
- (5) Principal habitation permit. A use permit which authorizes use of the small boat harbor by the permittee for the purpose of using the vessel as a principal place of habitation while moored in Ala Wai or Keehi small boat harbor or in the Keehi Lagoon mooring area.
- (6) Commercial use permit. A use permit which authorizes the owner of a commercial vessel to engage in commercial activities as specified in the permit. All applicants for a commercial use permit shall provide the following information:

- (A) Vessel Documentation or registration.
- (B) Vessel Certificate of Inspection (if applicable).
- (C) Certificate of business liability insurance pursuant to the requirements of section 13-231-65 of these rules.
- (D) Certificate of good standing from the Hawaii Department of Commerce and Consumer Affairs.
- (E) Tax clearance certificate from the department of taxation.
- (F) Conservation District Use Permits (if applicable)
- (H) Affidavit describing any and all sales or transfers of any ownership interest in the business.
- (J) Documentation of the applicant's ownership structure, including the ownership structure of any entity that would own or control, directly or indirectly, the commercial use permit.

(7) Storage permit. A use permit which authorizes use of a small boat harbor storage area for vessels or other items on land at a small boat harbor.

(8) Miscellaneous permit. A use permit which authorizes use of a small boat harbor, [or] an offshore mooring area, or State ocean waters for other purposes as may be authorized by the department in its use permit and is consistent with these rules and applicable laws.

(b) Use permits, or where applicable, Waikiki catamaran registration certificates, shall be issued only after the department has determined that all applicable laws have been complied with and that all fees and charges have been paid.

(c) The issuance of any use permit by the department shall not create a property interest in favor of the permittee to an unrestricted use of [state] State small boat harbors, facilities or [state] State ocean waters." [Eff 2/24/94; am and comp

9/25/14; am _____] (Auth: HRS §§200-2, 200-3, 200-4, 200-6) (Imp: HRS §§200-2, 200-3, 200-4, 200-6)

6. Section 13-231-6, Hawaii Administrative Rules, is amended to read as follows:

"§13-231-6 Revocation of use permit. (a) If after notice and lapse of a reasonable period of time set by the department, the permittee fails to remedy any breach of the duties, covenants or conditions of the use permit or to desist from violating or permitting violation of these rules, the department may revoke the permittee's use permit.

(b) In addition to subsection (a), the department may revoke a use permit for a deliberate misstatement or [wilful] willful failure to disclose any material fact in an application for a vessel number, documentation, registration of a vessel, or any of the use permits specified in section 13-231-3.

(c) A permittee's failure to pay all fees owed to the department within thirty days of the date payment is due shall result in suspension of the right to conduct business under the commercial use permit or catamaran registration certificate until all past due fees are paid in full. Each and every notification of default shall be sent by certified mail, return receipt requested to the last address of record of the permittee on record with the division of boating and ocean recreation. Any delinquency beyond the due date, even within the thirty days, may cause the commercial use permit or catamaran registration certificate to be revoked." [Eff 2/24/94; am and comp 9/25/14; am _____] (Auth: HRS §§200-2, 200-4, 200-10, 200-22, 200-24) (Imp: HRS §§200-2, 200-4, 200-10, 200-22, 200-24)

7. Section 13-231-13, Hawaii Administrative Rules, is amended to read as follows:

"§13-231-13 Joint and several liability; non-transferability of use permits. (a) All individuals

and entities who have signed any agreement with respect to a vessel shall be jointly and severally liable for the full performance of such agreement. No use permit shall be transferable, so that whenever a permittee parts with possession or transfers the title to or interest in the vessel identified in the permit to another person by any arrangement, the use permit shall expire except as provided herein. The new possessor, transferee, or owner shall have no right to use the permit.

(b) Upon written application to and approval by the department:

- (1) The original mooring permittee may retain the mooring space under the permittee's mooring permit; provided that within thirty days the permittee moves into the space another vessel owned by the permittee of appropriate characteristics for occupancy of the berth or mooring space and pays the appropriate fees therefor;
- (2) A principal owner of a vessel may retain a berth or mooring space if that owner acquires the interest of one or more co-owners because a co-owner has died or moved out of the State;
- (3) An owner may retain the berth or mooring space if an interest in a vessel is transferred to the owner's spouse or immediate family member or a [personal partner] reciprocal beneficiary authorized to live on board under a principal habitation permit;
- (4) The spouse or immediate family member, or a [personal partner] reciprocal beneficiary authorized to live on board under a principal habitation permit, of a permittee, may retain all use permits upon the death of the permittee, provided that the permittee's will, trust, or a court decree (the department may require a court decree if the department finds it necessary) states that the spouse or immediate family member, or a

~~[personal partner]~~ reciprocal beneficiary authorized to live on board under a principal habitation permit shall be awarded ownership of the vessel identified in the use permit; or

(5) The department may extend the deadline for the permittee holder to place a new vessel in the assigned berth or mooring space or in operation if conclusive evidence is presented to the department that the granting of additional time for compliance is reasonable and essential to prevent undue hardship, provided that any extension of time necessary to place a new vessel in the berth or mooring space or in operation shall not exceed one hundred twenty days from the date of sale or transfer of the previously assigned vessel.

(c) Notwithstanding the requirements of subsection (a), the department may permit a one-time change in ownership of the permittee's vessel from personal ownership to corporate or other business ownership, provided that the individual holds a valid commercial use permit, a valid catamaran registration certificate, or is engaged in commercial fishing as a primary means of livelihood, and notifies the department in writing of an intended change in ownership. The transfer of all use permits or registration certificates from the individual to the new corporation or other business entity shall be completed within one year of the date of receipt of the notification of intended change of ownership. The following requirements and conditions shall apply to the foregoing change in ownership:

- (1) The ownership of any corporation or other business entity formed under the provisions of this subsection shall include the original individual owner;
- (2) The permittee or certificate holder shall apply for the reissuance of the commercial permit, mooring permit, catamaran registration certificate, and any other use

permits in the name of the corporation or other business entity in accordance with the application procedures established by this chapter. Each application shall be accompanied by a copy of the charter of incorporation or other evidence acceptable to the department that the new corporation or other business entity is properly registered with the department of commerce and consumer affairs and is licensed to do business in the State; and

(3) Each application for change of ownership shall be reviewed by the department in accordance with the provisions of section 13-231-82.

(d) No corporation or other business entity shall be eligible for the initial issuance of a mooring permit at a state small boat harbor unless the entity is eligible for a then available commercial use permit or catamaran registration certificate.

(e) "Immediate family member" means, for purposes of this section, a natural individual who by blood line or adoption is a child, grandchild, parent, or grandparent of the deceased." [Eff 2/24/94; am and comp 9/25/14; am _____] (Auth: HRS §§200-2, 200-4, 200-9, 200-10) (Imp: HRS §§200-2, 200-4, 200-9, 200-10)

8. Section 13-231-15, Hawaii Administrative Rules, is amended to read as follows:

"§13-231-15 Boat owner required to report change of ownership, address, and other changes. (a) The owner of any vessel moored, stored, or left in a small boat harbor or offshore mooring area shall notify the department in writing within seven days if:

- (1) The owner no longer has possession of the vessel;
- (2) All or any interest in the vessel is transferred to another person or persons;

- (3) The owner's address or telephone number changes;
- (4) The vessel is chartered, leased, or rented; or
- (5) There is any change of agents or their telephone numbers or addresses.

(b) The new possessor or owner of any interest in any vessel moored in a small boat harbor or offshore mooring area shall within seven days after acquiring the same, inform the department in writing concerning the acquisition. If the vessel is owned by a corporation, the duties and obligations of the "owner" as prescribed in this section devolve upon the person who owns or controls a majority of the stock of the corporation. If there is no such ownership or control, the corporation must perform the duties and obligations. "Transfer" [as used in this section includes transfers of stock in a corporate owner if the transfer affects a change in the majority stockholder. "Interest" as used in this section includes ownership of stock in a corporation that owns a vessel moored in a small boat harbor or offshore mooring area] includes any change in control, by whatever means, of any entity that owns or controls, directly or indirectly, a use permit.

(c) Evidence of any [wilful] willful misstatement or omission of fact regarding the ownership of a vessel moored in a [state] State small boat harbor or offshore mooring area, or regarding transfer of ownership of a corporation or other business entity to which a mooring permit, commercial use permit, catamaran registration certificate, or other permit has been issued, including failure to notify the department of a change of ownership, shall be cause for immediate termination of all permits and catamaran registration certificates held by the

parties involved, and may be a bar against the issuance of any permit or catamaran registration certificates in the future." [Eff 2/24/94; am and comp 9/25/14; am _____] [Auth: HRS §§200-2, 200-3, 200-4, 200-10] [Imp: HRS §§200-2, 200-3, 200-4, 200-10]

9. Section 13-231-26, Hawaii Administrative Rules, is amended to read as follows:

"§13-231-26 Use of a vessel as a place of principal habitation. (a) A vessel owner who holds a valid regular mooring permit issued by the department authorizing the owner to moor the owner's vessel in Ala Wai or Keehi small boat harbors may use that vessel as a place of principal habitation if the owner has applied for and secured a principal habitation permit issued by the department in accordance with these rules, provided that the owner and the vessel meet the requirements set forth in these rules.

(b) A permit authorizing the use of a vessel as a place of principal habitation shall not be issued if the vessel is owned by a corporation.

(c) No person shall be issued a permit authorizing the use of any vessel as a place of principal habitation while the vessel is moored at the following locations in Ala Wai small boat harbor:

- (1) Berths 23 through 79;
- (2) The area leased to the Waikiki Yacht Club;
- (3) The area leased as a marine fueling facility; and
- (4) A haul-out facility.

(d) A vessel owner may utilize the owner's vessel as a place of principal habitation while moored in the area leased to the Hawaii Yacht Club if the owner has applied for and holds a valid principal habitation permit issued by the department in accordance with these rules.

(e) Only the vessel owner, co-owner, the spouse or, in the alternative, one personal partner reciprocal beneficiary of each, and their legal

dependents may be issued a principal habitation permit. [A "personal partner" is an individual considered to be a "significant other" of the vessel owner principal habitation permittee who is not a relative by biology or adoption of the vessel owner principal habitation permittee.] While living together on the vessel, the vessel owner principal habitation permittee and [personal partner] reciprocal beneficiary shall not have a landlord-tenant relationship. The department shall retain the right to limit the total number of people allowed to live on a particular vessel based on reasonable health, safety, security, or environmental concerns for persons on the vessel, other permittee's at the harbor, public use of the harbor, or the harbor itself, and may deny the issuance of a principal habitation permit if such issuance would exceed the limit determined by the department to be appropriate.

(f) The owners of no more than one hundred twenty-nine vessels moored at Ala Wai small boat harbor shall be issued permits to use their vessels as a place of principal habitation. The owners of no more than thirty-five vessels moored at Keehi small boat harbor may be issued such permits. Any vessel used as a place of principal habitation that is temporarily absent from its mooring shall continue to be considered as one of the vessels being used as a place of principal habitation if the owner retains a principal habitation permit as provided in section 13-231-11." [Eff 2/24/94; am 8/20/12; am and comp 9/25/14; am _____] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-9, 200-10)

10. Section 13-231-28, Hawaii Administrative Rules, is amended to read as follows:

"§13-231-28 Staying aboard vessels moored at Ala Wai or Keehi small boat harbor. (a) Staying aboard a vessel moored at Ala Wai or Keehi small boat harbor is prohibited except that:

(1) Owners holding a valid regular mooring permit, the spouse or [personal partner]

reciprocal beneficiary of each, their legal dependents, and their nonpaying guests, when in the company of the owner, may stay aboard the vessel without a use permit upon written notification to the department on or before the date of stay; provided that the period does not exceed any three nights in a week and a total of any one hundred twenty nights in a calendar year, including vessels used as a vacation site;

(2) Staying aboard a vessel in excess of any three nights in a week may be permitted when done in accordance with a valid:

- (A) Stay aboard permit issued pursuant to section 13-231-22 (staying aboard transient or visiting vessels);
- (B) Stay aboard permit issued pursuant to section 13-231-29 (vessel used as a vacation site);
- (C) Stay aboard permit issued to a vessel owner holding a valid principal habitation permit authorizing a nonpaying bona fide guest to stay aboard the vessel in the company of the owner for a period not to exceed any thirty days in a calendar year.

(b) When staying aboard in accordance with subsection (a)(1), and the stay is extended past the third day, the entire period of stay will be counted against time used as a vacation site in accordance with section 13-231-29.

(c) Each harbor resident or other person authorized by the department to stay aboard a vessel in a small boat harbor in accordance with this chapter, except for those under the age of six, may secure one shower facility key. Prior to receiving the shower key, the person shall deposit with the State the amount specified in section 13-234-32. No person shall be permitted to replace a shower facility key more than two times." [Eff 2/24/94; am 8/8/11; comp 9/25/14; am _____] (Auth: HRS §§200-2, 200-

4, 200-9, 200-10) (Imp: HRS §§200-2, 200-4, 200-9, 200-10)

11. Section 13-231-29, Hawaii Administrative Rules, is amended to read as follows:

"§13-231-29 Vessel used as a vacation site. (a) Staying aboard a vessel moored in Ala Wai or Keehi small boat harbor during a vacation is authorized but limited to owners holding valid regular mooring permits authorizing them to moor their vessels in the small boat harbor, the spouse or [personal partner] reciprocal beneficiary of each, their legal dependents, and nonpaying guests when accompanied by the owner, provided that:

- (1) The aggregate period of the stay is not more than thirty days in a calendar year;
- (2) The vessel owner secures a vacation permit and a stay-aboard permit for each individual vacationer;
- (3) The vessel and its occupants comply with the sanitation, vessel equipment, and all other requirements set forth under this chapter; and
- (4) The vessel owner provides evidence that the owner maintains a bona fide shoreside residence.

(b) No vacation permit shall be issued for a vessel registered or documented as being owned by a corporation." [Eff 2/24/94; am 8/8/11; comp 9/25/14; am _____] (Auth: HRS §§200-2, 200-10) (Imp: HRS §§200-2, 200-9, 200-10)

12. Section 13-231-45, Hawaii Administrative Rules, is amended to read as follows:

"§13-231-45 Vessel Inspections. (a) ["Approved marine surveyor" as used in this section means a person who has been approved by the chairperson to inspect a vessel for an owner seeking a permit to moor a vessel in a small boat harbor in accordance with subsections (h) and (i). "Approved vessel inspector"

as used in this section means an employee of the department who has been designated by the chairperson to inspect a vessel for compliance with criteria necessary to obtain a mooring permit.] An inspection conducted by an approved vessel inspector is deemed to meet the requirements of the marine inspection required by section 200-13, Hawaii Revised Statutes, and may be valid for a period of two years.

(b) Before a regular mooring permit is issued or renewed, the vessel owner shall complete a satisfactory vessel inspection conducted by an approved vessel inspector, or present a certificate not more than two years old to the department at the owner's own expense, signed by an approved marine surveyor certifying the surveyor has inspected the vessel and considers it to fulfill the minimum requirements described in Exhibit "B" located at the end of this chapter and incorporated herein entitled "vessel inspection report" and dated July 2012. The department reserves the right to inspect any vessel to ensure that any deficiencies or omissions noted on a marine inspection have been corrected prior to issuing a mooring permit. All vessel owners shall also demonstrate to the department that their vessel is capable of navigating beyond the confines of the harbor and returning under its own power to its assigned mooring/berth prior to the mooring permit being issued.

(c) Commercial vessels carrying more than six passengers for hire are exempted from the provisions of Subsections (a) and (b) when evidence of a current Coast Guard certificate of inspection is presented.

(d) Owners of vessels failing the vessel inspection shall have thirty days to correct deficiencies and complete the inspection. Failure to do so will preclude re-issuance of the use permit or be cause for rejection of the application for mooring.

(e) The department may extend the deadline for correction of deficiencies prescribed in subsection (d) if the vessel owner presents conclusive evidence to the department that the granting of additional time is reasonable and essential due to the necessity of

replacing essential parts and gear and that reasonable and diligent efforts by the owner to secure the items necessary to repair the vessel or replacement of parts is demonstrated, and further provided that any extension of time for compliance shall not exceed sixty days.

(f) Owners of vessels that fail the vessel inspection may contest the decision before an arbitration board as established in section 200-13, Hawaii Revised Statutes. The costs of the arbitration shall be borne by the vessel owner if it is determined that the vessel does not meet the minimum requirements to moor in a small boat harbor in accordance with these rules. No additional time allowance for the correction of deficiencies will be granted following arbitration and the vessel shall be removed from the harbor. The costs of the arbitration shall be borne by the State if it is determined that the vessel does meet minimum requirements.

(g) The fee for a vessel inspection conducted by the department, pursuant to this section shall be as prescribed in section 13-234-29 provided that holders of commercial use permits and registration certificates with proof of certification of inspection from the United States Coast Guard shall be exempt from this requirement or state fees associated therewith.

(h) A person who desires to become an approved marine surveyor shall apply to the department upon a form furnished by the department and pay the application fee prescribed in section 13-234-30.

(i) An application to become an approved marine surveyor shall not be accepted by the department unless the applicant is engaged wholly or partly in the business of performing marine surveys for gain or compensation and the person's surveys are acceptable to at least one insurance company or surety company authorized to do business in the State, and is a member of a nationally recognized marine surveyor organization as approved by the department.

(j) An approved marine surveyor permit shall be valid for a period of three years from date of

issuance. The department reserves the right to revoke any approved marine surveyor permit at any time prior to the expiration of the permit.

(k) A satisfactory vessel inspection shall consist of the following:

- (1) Presentation of the vessel to be inspected at a place designated by the harbor agent;
- (2) A demonstration that the vessel is capable of being regularly navigated beyond the confines of the harbor or mooring area and maneuvering into and out of the assigned berth;
- (3) A finding that the vessel and all systems are in good material and operating condition;
- (4) A finding that the requirements described in the exhibit at the end of this chapter entitled "vessel inspection report" are met; and

Applicable standards published by the U.S. Coast Guard and the American Boat and Yacht Council, Inc. (ABYC) shall be used in conducting the vessel inspection, and are adopted and incorporated herein by reference.

(l) A marine survey shall be required for any vessel which has undergone any substantial reconstruction, alteration or modification of the original vessel design, certifying that such reconstruction, alteration or modification does not materially affect the vessel's stability or maneuverability, and the existing power plant is in good operating condition and meets the minimum power requirement necessary for safe navigation beyond the confines of the small boat harbor or offshore mooring area in which it is moored. Any vessel operating under a commercial use permit or registration certificate that can produce evidence of a valid United States Coast Guard inspection certification for the above condition shall not be required to obtain a separate marine survey. A certificate of protection and indemnity insurance for the vessel, in an amount of not less than \$100,000, naming the State as an

additional insured, shall be required in addition to the marine survey.

(m) No modification or alteration to a houseboat moored in Keehi Lagoon which changes the length, beam or size of silhouette area from that which existed at the time of issuance of the initial mooring permit shall be allowed without prior approval of the department, provided that routine maintenance and repairs for safety, security and structural integrity shall be allowed." [Eff 2/24/94; am and comp 9/25/14; am _____] (Auth: HRS §§200-1, 200-2, 200-4, 200-9, 200-10) (Imp: HRS §§200-1, 200-2, 200-4, 200-9, 200-10)

13. Section 13-231-56, Hawaii Administrative Rules, is repealed.

"[§13-231-56 Definitions, gross receipts. Gross receipts as used in this subchapter means all moneys paid or payable to the account of the vessel owner, for the rendition of services, or resulting from trade, business, commerce, or sales by the vessel owner when the services, trade, business, commerce, or sales have a direct relationship to the vessel] [Eff 2/24/94; am and comp 9/25/14] (Auth: HRS §§200-2, 200-4, 200-10) (Imp: HRS §§200-2, 200-4, 200-10)]"

14. Section 13-231-70, Hawaii Administrative Rules, is amended to read as follows:

"§13-231-70 Water taxi operations. (a) Water taxi operations may be permitted at all small boat harbors provided that the owner of the water taxi operation has been issued a commercial use permit. [For the purpose of this section, "water taxi operations" means the shuttling of persons or cargo to or from the small boat harbor facility or a shoreside location authorized for such use under chapter 13-256, Hawaii Administrative Rules, to a destination or

~~vessel located outside the small boat harbor boundary.]~~

(b) No water taxi operations may be permitted to transport passengers and crew from commercial vessels moored offshore, or the shuttling of passengers to and from a commercial vessel moored elsewhere if that vessel has not been issued a commercial use permit for the small boat harbor or other valid commercial use permit issued by the department. There shall be no restriction on the use of water taxi service by recreational vessels, vessels owned by the United States, or commercial vessels which are exempt from commercial use permit requirements under the provisions of section 13-231-57.

(c) The department may furnish a current list of commercial vessels authorized to receive water taxi service as provided in subsection (b) upon request by the owner of the vessel performing water taxi operations at no charge." [Eff 2/24/94; am and comp 9/25/14; am _____] (Auth: HRS §§200-2, 200-3, 200-4, 200-10) (Imp: HRS §§200-2, 200-3, 200-4, 200-10)

15. Chapter 13-232, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§13-232-57.1 Feeding of colonies, strays, wildlife, or feral animals prohibited. (a) While on any property under the jurisdiction of the department, no person shall feed or deliberately introduce any food material, substance, or attractant directly to, or in the vicinity of, any colony, stray, wildlife, or feral animal except as authorized by the department or the department's authorized representative.

(b) Animals include, but are not limited to birds, cats, chickens, deer, dogs, eels, fish, mongooses, pigs, rodents, seals, sharks, and turtles. An animal is considered feral when it has escaped or been released from domestication and

reverted to a wild state. "Wildlife" means any member of any non-domesticated species of the animal kingdom, and game mammals and game birds living in a wild and non-domesticated state, whether reared in captivity or not, including any mammal, fish, bird, amphibian, reptile, mollusk, crustacean, arthropod, or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or parts thereof.
"Colony" means a collective of free-roaming, abandoned, stray, or feral cats.

(c) Nothing in this section prohibits the use of bait or chum to attract fish for fishing or harvesting purposes." [Eff _____] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

16. Section 13-232, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§13-232-57.2 Animal abandonment and creating or contributing to colonies prohibited. (a) While on any property under the jurisdiction of the department, no person shall abandon an animal without an intention to return to the animal nor create or contribute to a colony.

(b) Violators shall be fined not less than \$50 and not more than \$1,000 or sentenced to a term of imprisonment of not more than thirty days, or both, for each violation and shall also be subject to penalties in accordance with chapter 143-2.6, Hawaii Revised Statutes." [Eff _____] (Auth: HRS §§200-2, 200-3, 200-4, 200-25) (Imp: HRS §§200-2, 200-3, 200-4, 200-25)

17. Section 13-232-8, Hawaii Administrative Rules, is amended to read as follows:

"§13-232-8 Marine toilets - restrictions. (a) No toilet on a vessel or contrivance shall be operated so as to discharge any untreated sewage directly or indirectly into the waters of a small boat harbor.

(b) No person on a vessel or contrivance equipped with a toilet shall use, or permit the use of that toilet on the waters of a small boat harbor unless the toilet is equipped with facilities in good operating condition that will adequately treat, hold, incinerate, or otherwise handle sewage in a manner that is capable of preventing water pollution. A water pollution control device that is acceptable for the purposes of this section is any device determined by the director of the department of health to be effective in arresting the possibility of pollution from sewage passing into or through a toilet aboard a vessel or contrivance.

(c) No person shall live on board a vessel or contrivance in any small boat harbor unless it contains one or more toilets equipped with water pollution control devices in good operating condition and of a type acceptable to the director of health; provided that, the department may permit the operator or other persons to live on board a vessel not equipped with a toilet and acceptable water pollution control device for a period not to exceed the period described in sections 13-231-21 and 13-231-22 if:

- (1) The vessel is from another state or a country other than the United States and is temporarily using the waters of this State or if the vessel has a home port in the [state] State but is visiting another small boat harbor;
- (2) Adequate on-shore toilet facilities are readily available, meaning within a walking distance of not more than two hundred feet, for [the] use by the persons living on board; and
- (3) A toilet aboard the vessel is not used while in the small boat harbor.

[“Readily available” as used in this section means within a walking distance of not more than two hundred feet.]” [Eff 2/24/94; am _____]
(Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

18. Section 13-232-10, Hawaii Administrative Rules, is amended to read as follows:

“§13-232-10 Backflow prevention device required on connections to water line - use of water operated de-watering device prohibited. (a) No person shall connect a vessel’s water supply system to a small boat harbor portable water supply system, unless an approved backflow prevention device has been installed at the hose bib or other point of connection. [—An “approved backflow prevention device” means a backflow prevention device that meets the requirements contained in standard 1001, American Society of Sanitary Engineers or the Uniform Plumbing Code adopted by the International Association of Plumbing and Mechanical Officials (IAPMO).]

(b) No person shall use any water-operated siphon or other water operated de-watering device, equipment, or mechanism connected to a small boat harbor water supply system for the purpose of removing water or any liquid from the bilges of a vessel, provided such a device may be temporarily used when necessary during an emergency to prevent a distressed vessel from sinking if an approved backflow prevention device has been installed in accordance with subsection (a).” [Eff 2/24/94; am _____]
(Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

19. Section 13-232-30, Hawaii Administrative Rules, is amended to read as follows:

“§13-232-30 Fire signal for vessels in small boat harbors. Five prolonged blasts, each from four

to six seconds in duration, on a vessel's whistle, horn, or other sound producing device indicates:

- (1) A fire on board a vessel not underway; or
- (2) A fire at any facility to which the vessel may be moored.

~~[The words "prolonged blast" used in this section mean a blast of from four to six seconds duration.] This fire signal shall not be used for other purposes in any small boat harbor." [Eff 2/24/94; am] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)~~

20. Section 13-232-57, Hawaii Administrative Rules, is amended to read as follows:

"§13-232-57 Dogs, cats or other domestic pets.

(a) ~~[This section is applicable only in Ala Wai and Kechi boat harbors.]~~ As used in this section, unless the context otherwise indicates:

~~[“At large” means:~~

- ~~(1) On a vessel not the property of the owner of the pet, without consent of the vessel owner; or~~
- ~~(2) In any public place within a small boat harbor, except when under control of the owner by leash, cord, chain, or other similar means of physical restraint, provided that such leash, cord, chain, or other means is not more than eight feet in length.]~~

~~“[Owner] Pet owner” means any person owning, harboring or keeping a dog, cat, or other domestic pet, or having custody thereof. “Stray” [or “stray dog”] means [any dog running at large] any dog, cat, or other animal without a microchip or other registered owner-identifier or is living or roaming off its owner’s property without permission to be on other~~

public or private property. Strays may also be feral or abandoned.

- (b) This section shall not apply to:
 - (1) Service animals as defined in the Title II of the Americans with Disabilities Act (ADA) as adopted by the United States Department of Justice;
 - (2) Dogs trained and used by a law enforcement agency in law enforcement activities while the dogs are engaged in the performance of such work; or
 - (3) An obedience trial, where tracking and show dogs are accompanied by their owners and are being trained or in competition, provided permission is first obtained from the department for such use.
- (c) No person shall introduce or keep a dog aged three months or older in a small boat harbor unless the dog is licensed as prescribed in chapter 143, Hawaii Revised Statutes. Officers and employees of the department, and every other person authorized by law may seize any unlicensed dog found at large within a small boat harbor, and confine and dispose of the dog as provided in chapter 143, Hawaii Revised Statutes. A dog, cat, or other domestic pet is considered at large when:
 - (1) On a vessel not the property of the pet owner, without consent of the vessel owner;
or
 - (2) In any public place within a small boat harbor, except when under control of the pet owner by leash, cord, chain, or other similar means of physical restraint,
provided that such leash, cord, chain, or

other means is not more than eight feet in length.

(d) No dog pet owner shall permit the owner's dog, cat, or other domestic pet to become a stray. Any dog, cat, or other domestic pet, while being a stray within a small boat harbor, may be seized by officers and employees of the department, or by any other person authorized by law, and shall be disposed of as provided in chapter [143] 183D-65, Hawaii Revised Statutes.

(e) No pet owner shall permit the owner's pet to excrete any solid waste in any public place or on any premises in a small boat harbor not the property of the pet's owner, provided no violation of this subsection shall occur if the owner promptly and voluntarily removes the animal waste.

(f) No person shall introduce or keep any animals except for birds, fish, or other common domestic pets within the confines of a small boat harbor.

(g) In any event no person shall introduce or keep a dog, cat, or other domestic pet at any small boat harbor where dogs, cats, or other domestic pets are prohibited by a sign or other marker posted by the department." [Eff 2/24/94; am _____] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

21. Section 13-232-58, Hawaii Administrative Rules, is amended to read as follows:

"§13-232-58 Sleeping or camping prohibited. (a) When used in these rules, promulgated pursuant to chapter 200 Hawaii Revised Statues, unless otherwise specifically provided or the context clearly provides otherwise:

"Camping" means the use and occupation of any portion of a State small boat harbor, boat launching facility or any other property managed by the department as a temporary or permanent dwelling place or sleeping place (including the laying down of bedding for the purpose of sleeping). Camping includes being in possession of a backpack, tents, blankets, tarpaulins, or other obvious camping paraphernalia, or storing personal belongings, or making any fire, or using any tents or shelter or other structure or vehicle for sleeping or doing any digging or earth breaking or carrying on cooking activities. The above-listed activities constitute camping when it reasonably appears, in light of the circumstances, that the participants, in conducting these activities, are in fact using the area as a living accommodation regardless of the intent of the participants or the nature of any other activities in which they may also be engaging.

"Sleeping place" means a place used by a person for the purpose of sleeping, where the person is or may be asleep inside a tent, sleeping bag, or some form of temporary shelter or is or may be asleep atop of or covered by materials such as a cot, mat, bedroll, bedding, sheet, blanket, pillow, bag, cardboard, or newspapers.

(b) Sleeping and/or camping in any State facility or property under the jurisdiction of the department [small boat harbor] is prohibited except on board a vessel moored in a [the] small boat harbor with the proper authorization of the department." [Eff 2/24/94; am _____] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

22. Section 13-232-60, Hawaii Administrative Rules, is amended to read as follows:

"§13-232-60 Serving, sale, and consumption of liquor in [state] State small boat harbors, and boat launching facilities. (a) It is declared to be the intent of the department to prohibit the open and unrestricted use or consumption of liquor on or within State small boat harbors and boat launching facilities. For the purpose of this section, "liquor" or "intoxicating liquor" shall mean the same [Liquor,] as defined in section 281-1, Hawaii Revised Statutes. [, shall not be consumed within any state small boat harbor or boat launching facility except on a vessel issued with a valid mooring permit, or unless otherwise permitted by the department.]

(b) No person shall sell any liquor within a state small boat harbor or boat launching facility unless that person is licensed as required by chapter 281, Hawaii Revised Statutes.]

(b) No person shall possess, other than in a container in the manufacturer's sealed condition, intoxicating liquor on any street or sidewalk, or in any public off-street parking area or any building located thereon within a state small boat harbor and/or State boat launching facility.

(c) The prohibitions contained in subsection (b) of this section shall not apply to:

- (1) Possession, use or consumption of intoxicating liquor on board a vessel with a valid mooring permit;
- (2) Intoxicating liquor procured from a vendor dispensing intoxicating liquor pursuant to a permit or license issued by the department when the intoxicating liquor is possessed or consumed in a manner and in a place consistent with the terms and conditions of such permit or license;
- (3) The consumption or possession of an intoxicating liquor in a motor vehicle upon any public street, road, or highway; or

(4) The possession of a container of wine authorized to be removed from liquor-licensed premises pursuant to HRS Section 281-31(q), provided that the container has been corked or resealed.

(d) Subject to the provisions of HRS Chapter 281, as amended, and if the sale and consumption of intoxicating liquor is permitted by a disposition or agreement with the department, the prohibitions contained in subsection (b) of this section shall not apply within the licensed premises (as described in a liquor license) of concessionaires or licensees of the department.

(e) The penalties provided in this section are criminal penalties and the article shall be enforced by the Division of Conservation and Resources Enforcement (DOCARE), the county police department, and any other authorized entity as provided by law.

(1) A DOCARE officer or police officer may arrest an alleged violator of any provision of this article or may issue a citation in lieu of arrest as provided in section 803-6, Hawaii Revised Statutes.

(2) Penalty. Any person convicted of a violation of any provision of this article shall be punished by a fine of not more than \$1,000 or by imprisonment for not more than 30 days, or both such fine and imprisonment."

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

23. Section 13-233-13, Hawaii Administrative Rules, is amended to read as follows:

"§13-233-13 Operation, parking, or storage of bicycles or play vehicles. (a) [This section is applicable only in Ala Wai and Kechi boat harbors. As used in this section, "bicycle" means every device propelled by human power upon which any person may ride, having two tandem wheels which are sixteen inches in diameter or greater, and including any

~~device generally recognized as a bicycle though equipped with two front or two rear wheels.~~

~~(b)~~] Effect of section.

- (1) The parent of any child or the guardian of any ward shall not authorize or knowingly permit the child or ward to violate this section.
- (2) This section applicable to bicycles and play vehicles shall apply whenever a bicycle or play vehicle is ridden, operated, parked, or stored within the confines of a small boat harbor.

~~[e]~~ (b) Bicycle tax. No bicycle shall be used for conveyance of any person within the confines of a small boat harbor unless the annual tax has been paid and a valid license tag is attached to the bicycle in accordance with section 249-14, Hawai'i Revised Statutes.

~~[d]~~ (c) The department may erect signs on any sidewalk, roadway, pier, wharf, catwalk, or other location prohibiting the riding of bicycles thereon, and when such signs are in place, no person shall disobey the same.

~~[e]~~ (d) Parking or storage of bicycles. No person shall park, store, place, or leave a bicycle on catwalks, piers, sidewalks, roads, parking areas, or any other public area except in bicycle parking racks.

~~[f]~~ (e) Traffic and bicycle equipment laws applicable to persons riding bicycles. Every person riding a bicycle within the confines of a small boat harbor shall be granted all the rights and shall be subject to all the duties applicable to the bicycle operator and to the driver of a vehicle by chapter 291C (Statewide Traffic Code), Hawai'i Revised Statutes, which by reference is hereby incorporated in these rules and made a part hereof as though fully recited herein, except as to those provisions of chapter 291C which by their nature can have no

application to a bicycle operator." [Eff 2/24/94; comp 4/5/08; am _____] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

24. Section 13-233-29, Hawaii Administrative Rules, is amended to read as follows:

"§13-233-29 Eligibility for parking permits; fee per vehicle. (a) Persons eligible for the parking permits described in section 13-233-28 and the fees for the permits are as follows:

Eligible persons	Fees Per Vehicle
(1) An owner holding a valid Use permit (permittee) authorizing the mooring of the owner's vessel at the small boat harbor, and any co-owner of the vessel.	\$25 per month
(2) The spouse or [personal partner] <u>reciprocal beneficiary</u> of each owner, and their legal dependents 18 years of age or older.	\$25 per month
(3) An owner or co-owner holding a valid use permit authorizing the mooring of the owner's vessel at the small boat harbor may secure a temporary parking permit, for use by bona fide guests accompanying the owner on board the vessel on a voyage outside the confines of the small boat harbor.	\$10 for each 24-hour period or fraction thereof
(4) An owner or employee of a firm, business, or organization operating under a lease or other agreement authorizing the owner, employee, firm, business, or organization to engage in a business or commercial activity at the small boat harbor.	\$90 per month

(5) Other non-boating related person(s) parking in any paid parking stalls. not less than \$100 per month

(b) Fees for permits issued after the first month of a calendar quarter shall be prorated on a monthly basis.

(c) Not more than one parking permit shall be issued to a person eligible for a parking permit."

[Eff 2/24/94; am and comp 4/5/08; am 8/8/11; am

]
[Auth: HRS §§200-2, 200-4) (Imp: HRS §§200-2, 200-4)

25. Section 13-235-5, Hawaii Administrative Rules, is amended to read as follows:

"§13-235-5 Owners required to report change in ownership, address and other changes. (a) It shall be the responsibility of an offshore mooring permittee to notify the department in writing within seven days if:

- (1) The owner no longer has possession of the vessel, houseboat or contrivance;
- (2) All or any interest in the vessel, houseboat, or contrivance is transferred to or assigned to another person or business entity; or
- (3) The owner's address or telephone number changes.

(b) Failure to comply this section will result in automatic termination of the offshore mooring permit.

~~(c) "Transfer" as used in this section means any sale, agreement of sale, assignment, lease of a vessel or the change in ownership or transfer of stock in a corporate owner which results in a change of the majority stockholder, or the transfer of interest in any other business entity which results in a change of the owner holding the majority interest.~~

~~(d) "Interest" as used in this section includes any claim of right, title, ownership of stock, shares,~~

~~profit, benefit or gain in a corporation, partnership, joint venture or any other business entity that has a mooring permit issued under this subchapter.]~~ [Eff 2/24/94; am _____] (Auth: HRS §§200-1, 200-2, 200-3, 200-4, 200-6) (Imp: HRS §§200-1, 200-2, 200-3, 200-6)

26. Section 13-235-9, Hawaii Administrative Rules, is amended to read as follows:

"§13-235-9 Restrictions on anchoring or mooring outside of a designated offshore mooring area. (a) No person shall anchor [or moor] a vessel [outside of a State offshore mooring area without a permit issued by the department, provided that recreational and commercial fishing vessels shall not be required to obtain an offshore mooring permit to moor or anchor for a period not to exceed seventy two hours except in areas where anchoring or mooring is prohibited] in an Ocean Recreation Management Area (ORMA) or a non-designated area for a cumulative period of time exceeding seventy-two hours within any fourteen day period subject to the following restrictions:

(1) Calculation of the seventy-two hour time limit shall not restart if a vessel is relocated or temporarily moved and then later returned to the same site or location or in close proximity thereto.

(2) The department or the department's authorized representative may authorize an extension of the seventy-two hour time limit if, under the particular circumstances, an extension of time is reasonable and warranted.

(b) No person shall anchor or moor a houseboat on the ocean waters or navigable streams of the State outside of a designated mooring area.

(c) No person shall live aboard any vessel or use any vessel as a principal place of habitation on the ocean waters or navigable streams of the [state] State outside of a designated mooring area, provided that staying aboard or use of a vessel as a vacation

site may be permitted in accordance with provisions set forth in sections 13-231-22, 13-231-28, and 13-231-29.

(d) The owner of a vessel desiring to moor a vessel outside a designated mooring area may be issued a permit by the department, subject to compliance with all other provisions of this chapter, provided that:

- (1) There is no designated mooring area within a reasonable distance of the desired location specified in the permit application;
- (2) A permit for installation of a mooring at that location is approved by the board of land and natural resources; and
- (3) In the case of commercial vessels, a permit is also approved for installation of the mooring by the U. S. Army Corps of Engineers.

(e) Transient or visiting vessels may be issued a temporary permit to anchor outside of a designated mooring area for a period not to exceed ninety days." [Eff 2/24/94; am _____] (Auth: HRS §§200-1, 200-2, 200-3, 200-6) (Imp: HRS §§200-1, 200-2, 200-3, 200-6)

27. Section 13-240-5, Hawaii Administrative Rules, is repealed.

"[§13-240-5 Definitions. As used in this part: "Approved" means that a fitting, appliance, apparatus, or item of equipment to be fitted or carried in a vessel, or by any particular arrangement, is sanctioned by the commandant of the Coast Guard, unless otherwise stated.]

"Barge" means a vessel with no motive power of its own.

"Boat dealer" means a person who is engaged in the business of selling, offering for sale, buying or taking in vessels for the purpose of reselling them.]

"Boat livery" means a person who is engaged in the business of renting, leasing, or chartering vessels.

"Boat manufacturer" means a person engaged in the business of building or assembling vessels.

"Boating accident":

- (1) Means collision, accident, or other casualty involving:
 - (A) A person's death;
 - (B) The injury to a person requiring medical treatment beyond first aid;
 - (C) Damage to a vessel amounting to \$200 or more;
 - (D) Complete loss of a vessel; or
 - (E) The disappearance of a person from a vessel under circumstances indicating death or injury to that person.
- (2) Includes damage to a vessel or its equipment, loss of life, or injury to any person or object:
 - (A) On board a vessel;
 - (B) Caused by a moving vessel's wake, wash, or waves, or by a vessel's capsizing, or collision with another vessel or object;
 - (C) Caused by flooding, fire, or explosion; or
 - (D) Caused when a person falls overboard.

"Certificate" means certificate of numbers as explained in chapter 13-241.

"Chairperson" means the chairperson of the department of land and natural resources or the chairperson's duly authorized representatives or subordinates.

"Coast guard" means the United States Coast Guard or any of its successor agencies.

"Commercial fishing motorboat" means a motorboat used for taking fish for profit or gain or as a means of livelihood.

"Commercial motorboat" means any power driven vessel used for hire, profit, or gain.

"Department" means the department of land and natural resources of the State of Hawaii.

"Diver's flag" means a red flag with a white diagonal running from the upper left hand corner to

~~the lower right hand corner (from masthead to lower outside corner).~~

~~"Documented vessel"~~ means any vessel which has a valid marine document issued by the Coast Guard, in accordance with the Code of Federal Regulations, Subchapter G, Part 67, Documentation of Vessels.

~~"Federal laws and requirements"~~ mean all statutes, regulations, and other laws of the United States, which may be applicable to this chapter.

~~"Foreign built vessel"~~ means any vessel whose hull was constructed in a country other than the United States.

~~"Forward half of the vessel"~~ means any portion of the vessel in front of a point equidistant from the stem and stern of the vessel.

~~"Free diver"~~ means a person who is using a mask and snorkel, other than for SCUBA diving, who submerges under water or breaks the surface of the water.

~~"High seas"~~ mean the following:

- ~~(1) These waters outside of Mamala Bay whose outer boundary is represented by a straight line drawn from Barber's Point Light to Diamond Head Light; and~~
- ~~(2) At all buoyed entrances from seaward to bays, sounds, rivers, or other estuaries, for which specific lines are not described in this section, the waters outside of a line approximately parallel with the general trend of the shore, drawn through the outermost buoy or other aid to navigation of any system of aids.~~

~~"Humpback whale cow/calf area"~~ are shown on Exhibit "A" dated November 23, 1988, located at the end of this chapter and described as follows:

- ~~(1) Adjoining the island of Lanai. All waters within two miles of the shoreline along the north and east coast between lines extending perpendicular to the shoreline from Kaena Point to Kamaiki Point.~~

(2) Adjoining the island of Maui. All waters inshore of a straight line drawn between Hekili Point and Puu Olai.

"Inland waters" mean the waters inshore of lines described in the definition of "high seas" in this section.

"Kaanapali ocean waters" mean the area confined by the boundaries shown and defined in Exhibit C, July 9, 1984, located at the end of this chapter.

"Length", when applied to vessels covered by this chapter, means the measurement of a vessel from end to end over the deck. It is a straight line measurement of the overall length from the foremost part of the vessel measured parallel to the centerline.

Bowsprits, bumpkins, rudders, motor brackets, and similar fittings or attachments or sheer are not to be included in the measurement. "Sheer" is the longitudinal upward curve of the deck, gunwales, and lines of a vessel, when viewed from the side.

In case of a vessel of an open type or with a cockpit, the measurement is taken between the foremost and aftermost extremities of the hull exclusive of sheer.

In vessels having more than one deck, it is the length measured from the foremost part of the bow to the aftermost part at the stern exclusive of sheer.

"Lienholder" means a person holding a security interest in a vessel.

"Lifeboat" means a boat carried aboard a vessel and used solely for lifesaving purposes, but not including dinghies, tenders, speedboats, or other types of craft carried aboard a vessel and used for other than lifesaving purposes.

"Livery boat" means a vessel which is rented, leased, or chartered by a person who is engaged in the business of renting, leasing, or chartering vessels.

"Machinery" means all internal combustion engines located within the vessel and all motor or mechanical devices capable of propelling vessels.

"Motor vessel" means any vessel more than sixty-five feet in length, which is propelled by machinery other than steam.

"Motorboat" means any vessel sixty five feet in length or less which is equipped with propulsion machinery including steam and includes wet bikes, motorized surfboards and any other vessel propelled by a motor engaged in towing discs, boards, parasails or any other device which may be towed. This term includes a vessel temporarily or permanently equipped with a motor.

"Number", "numbering", and "certificate of number" are the equivalents of the terms "register", "registration", and "certificate of registration" respectively.

"Operate" means to navigate or otherwise use a vessel on or in the waters of the State.

"Owner" means a person, other than a lienholder, having the property in or title to a vessel. This term includes a person entitled to the use and possession of a vessel subject to a security interest in another person, but excludes a lessee under a lease not intended as security.

"Passenger" means every person other than the master and members of the crew or other persons employed or engaged in any capacity on board a vessel in the business of that vessel. In the case of a vessel on an international voyage, a child under one year of age is not counted as a passenger.

"Person" means an individual, partnership, firm, corporation, association, or other legal entity including the servant, employee, agent, or representative of any of the foregoing.

"Personal flotation device" is a technical term for a life preserver that has been approved and certified by the United States Coast Guard and capable of providing at least ninety per cent of factory rated flotation capacity.

"Power-driven vessel" means any vessel propelled by machinery.

"Principally used" means a measurement of the time when a vessel is on the waters of the United States, a state, territory, province, or country and includes the time when the vessel is not in motion, as for instance when the vessel is moored or at anchor,

as well as the time when the vessel is being navigated.

"Registration stickers" mean a pair of stickers, plates, tabs, or other devices issued by the department with certificates of number and renewals thereof to be affixed to the vessel to indicate that the vessel's certificate of number is current and valid.

"Rules of the road" mean the federal statutory and regulatory rules governing navigation of vessels. These rules are published by the Coast Guard in pamphlet form and known as Navigation Rules—International—Inland COMDTINST M16672.2B.

"Sailing vessel" means any vessel propelled by sail only. Every power driven vessel which is under sail and not under power is to be considered a sailing vessel, and every vessel under power, whether under sail or not, is to be considered a power driven vessel.

"SCUBA" means self contained underwater breathing apparatus and includes all forms of self contained underwater breathing apparatuses, e.g., re-breathers, open circuit, semi-closed or closed circuit or surface supplied breathing apparatuses.

"Security interest" means an interest in a vessel reserved or created by agreement and which secures payment or performance of an obligation. The term includes the interest of a lessor under a lease intended for security. A security interest is "perfected" when it is valid against third parties generally, subject only to specific statutory exceptions contained in article 9, of chapter 490 and section 490:1-201, Hawaii Revised Statutes.

"Slow no wake" means as slow as possible without losing steerage way and so as to make the least possible wake. This would almost always mean speeds of less than five miles an hour.

"State" means the State of Hawaii.

"Underway" means the vessel is not at anchor, aground, or made fast to shore.

"Undocumented vessel" means any vessel which does not have a valid marine document issued by the Coast

~~Guard, in accordance with the Code of Federal Regulations, Subchapter C, Part 67, Documentation of Vessels.~~

~~"Vessel" means all description of watercraft used or capable of being used as a means of transportation on or in the water.~~

~~"Vessel carrying passengers for hire" means any vessel which carries any person or persons for a valuable consideration, whether that consideration goes directly or indirectly to the owner, charterer, operator, agent, or any person who has a lien on the vessel.~~

~~"Vessel engaged in fishing" means any vessel fishing with nets, lines, trawls, or other fishing apparatus which restrict maneuverability, but does not include a vessel fishing with trolling lines or other fishing apparatus which do not restrict maneuverability.~~

~~"Waters of the State" mean any waters within the jurisdiction of the State, the marginal seas adjacent to the State, and the high seas when navigated as part of a journey or ride to or from the shores of the State. [Eff 2/24/94; am 7/5/03] (Auth: HRS §§200-21, 200-22, 200-23, 200-24) (Imp: HRS §§200-21, 200-22, 200-23, 200-24)]"~~

28. Section 13-242-1, Hawaii Administrative Rules, is amended to read as follows:

"§13-242-1 Duty to render aid and give information. (a) It shall be the duty of the operator of a vessel involved in a boating accident, as defined in section [13-240-5] 13-230-8, if and so far as the operator can do so without serious danger to the operator's own vessel or persons aboard to render to the other persons affected by the accident, such assistance as may be practicable and as may be necessary in order to save them from or minimize any danger caused by the accident and also to give the operator's name, address, and identification of the operator's vessel to any person injured and to the owner of any property damaged in the accident.

(b) The duties imposed by chapter 13-242 shall be in addition to any duties otherwise provided by law." [Eff 2/24/94; am _____] (Auth: HRS §200-24) (Imp: HRS §§200-24, 200-28)

29. Section 13-242-3, Hawaii Administrative Rules, is amended to read as follows:

"§13-242-3 Immediate notice of accident; when required. (a) The operator of any recreational vessel which is involved in a boating accident as defined in section [13-240-5] 13-230-8, if the casualty results in death or injury of any person sufficient to cause reasonable belief that the injury will require medical treatment beyond first aid or if a person disappears from on board under circumstances which suggest any possibility of their death or injury shall, as soon as possible after fulfilling the requirements of section 13-242-1, by the quickest means of communication, give notice of the accident to a harbor official, police officer or the nearest police station with the following:

- (1) The date, time, and exact location of the occurrence;
- (2) The name of each person who was a casualty;
- (3) The number and name of the vessel; and
- (4) The names and addresses of the owner and operator.

(b) The above action shall be followed up by a written report as required in section 13-242-4.

(c) Whenever the operator of a vessel is physically incapable of giving an immediate notice of an accident as required in subsection (a) and there was another occupant on the vessel at the time of the accident capable of doing so, the occupant shall make or cause to be given the notice not given by the operator." [Eff 2/24/94; am _____] (Auth: HRS §200-24) (Imp: HRS §§200-24, 200-28, 200-29)

30. Section 13-242-4, Hawaii Administrative Rules, is amended to read as follows:

"§13-242-4 Written boating accident report; when required. (a) Whenever a recreational boating accident results in: (1) loss of life or the disappearance of any person; (2) injury causing any person to require medical treatment beyond first aid; or (3) actual damage to any recreational vessel or to any other property in excess of [\$200] \$2,000, then the operator of the vessel shall submit within forty-eight hours of the happening thereof, and within seven days of every other accident, a written report to the department on forms furnished by the department which report must contain information as prescribed in section 13-242-7.

(b) This section shall apply to the operator of: (1) any recreational vessel involved in a boating accident in the waters of the State; and (2) any recreational vessel required to be numbered or numbered pursuant to these rules and involved in a boating accident in any waters; provided that the report need not be filed with the department where the operator is required by federal laws and requirements to report the accident to the Coast Guard.

(c) A written accident report is not required under this section from any person who is physically incapable of making a report during the period of the incapacity.

(d) Whenever the operator is physically incapable of making a written report of a recreational boating accident as required in this section and the operator is not the owner of the vessel, then the owner of the vessel involved in the accident shall make the report not made by the operator." [Eff 2/24/94; am _____] (Auth: HRS §200-24)
(Imp: HRS §§200-24, 200-29)

31. Section 13-243-4, Hawaii Administrative Rules, is amended to read as follows:

"§13-243-4 Mufflers. A vessel propelled by an internal combustion engine shall, when in operation, be equipped with an efficient muffler, underwater exhaust or other modern device in good working order

and in constant operation capable of adequately muffling the sound of the exhaust of the engine. An engine is considered adequately muffled when the motor's exhaust at all times is muffled or suppressed so as to not create excessive or unusual noise. The discharge of cooling water through the exhaust of an inboard engine shall be considered an adequate muffling device. The use of cutouts, or open exhaust stacks is prohibited, except: (1) for motorboats competing in a race or regatta approved by the department or a federal agency; (2) while competing in official trials for speed records; or (3) for such vessels while on trial runs as is incidental to the tuning up of the boats and engines. [—The phrase "adequate muffling" means that the motor's exhaust at all times be so muffled or suppressed as to not create excessive or unusual noise. The discharge of cooling water through the exhaust of an inboard engine shall be considered an adequate muffling device.]" [Eff 2/24/94; am _____] (Auth: HRS §200-24) (Imp: HRS §200-24)

32. Section 13-243-5, Hawaii Administrative Rules, is repealed.

"[§13-243-5 Recognition of marine examination decals. In order to free enforcement personnel for other inspections and duties and in recognition of the exacting requirements of the Courtesy Marine Examination, enforcement personnel shall not stop and board any vessel properly displaying a valid United States Coast Guard Auxiliary Courtesy Marine Examination decal for the purpose of determining compliance with this chapter except upon reasonable belief that the vessel is being operated in violation of these rules or other regulations or laws. [Eff 2/24/94] (Auth: HRS §200-24) (Imp: HRS §200-22, 200-24)]"

33. Section 13-244-15.5, Hawaii Administrative Rules, is amended to read as follows:

"§13-244-15.5 Operation of power driven vessels.

(a) Any person operating a power driven vessel on the waters of the State shall be required to possess a certificate of completion from a National Association of State Boating Law Administrators (NASBLA) approved course on the safe use and operation of a power driven vessel that contains a component on Hawaii waters approved by the department. Exempt from this requirement are persons who:

- (1) Possess a valid merchant mariner credential to operate a vessel issued by the United States Coast Guard pursuant to 46 [CFR] C.F.R. Part 10;
- (2) Operate a thrill craft in a commercial thrill craft zone as authorized by the State;
- (3) Operate a [motor vessel] motorboat that is ten horsepower or less, or
- (4) Are on a voyage originating outside of the State and remain in the State less than sixty calendar days.

(b) A person under sixteen (16) years of age shall not operate a power driven vessel on the waters of the State unless the person possesses a certificate of completion and is also accompanied on-board and directly supervised by a person twenty-one (21) years of age or older who holds the required certificate of completion.

(c) A person or the person's responsible managing employee or agent engaged in the business of renting or leasing power driven vessels shall not rent or lease a power driven vessel to any person for operation on the waters of the State unless the person:

- (1) Meets all the requirements of this section by receiving a safety briefing provided by the rental or leasing business that is approved by the department; and

(2) Is identified on the rental or lease agreement for a power driven vessel by name and age. A person or the person's agent or employee renting or leasing power driven vessels who fails to request and inspect certificates or evidence of exemption is in violation of this section.

(d) A person who is operating a power driven vessel on any waters of the State and who is stopped by a law enforcement officer shall present to the officer, upon request, a certificate of completion required by this section or acceptable evidence of exemption from the required certificate. Failure to present a certificate of completion or acceptable evidence of exemption shall constitute a violation of this section, unless the person presents the required certificate or evidence of exemption to a court of law and satisfies the court that this person held a proper certificate or was exempt at the time the person was asked to produce the certificate.

(e) A person who alters, forges, counterfeits, or falsifies a certificate or other document used as evidence, or who possesses a certificate or other document that has been altered, forged, counterfeited, or falsified, or who loans or permits that person's certificate or other document to be used by another person, shall be in violation of this section.

(f) The department shall maintain a list of NASBLA approved courses that provide a department approved component on Hawaii waters, which shall include but not be limited to:

- (1) Local ocean safety principles and practices; and
- (2) Any rules or laws pertaining to protected species and power driven vessel operation in the State.

(g) This section shall be enforced beginning on the second anniversary date of the section's effective date.

(h) Pursuant to section 200-25, Hawaii Revised Statutes, any person violating this section shall be fined not less than \$50 and not more than \$1000 or

sentenced to a term of imprisonment of not more than thirty days, or both, for each violation; provided that in addition to, or as a condition to the suspension of, the fines and penalties, the court may deprive the offender of the privilege of operating any vessel in the waters of the State for a period of not more than thirty days." [Eff 11/10/12; am

] (Auth: HRS §§200-2, 200-3, 200-4, 200-21, 200-22, 200-24, 200-25) (Imp: HRS §§200-2, 200-3, 200-4, 200-21, 200-22, 200-24, 200-25)

34. Section 13-244-19, Hawaii Administrative Rules, is amended to read as follows:

"§13-244-19 Authorization required to hold regatta, marine parade, boat race or exhibition.

(a) ~~[Definition of terms used in this chapter. "Regatta" or "marine parade" means an organized water event of limited duration which is conducted according to a prearranged schedule.~~

~~(b) Authorization required; submission of application.~~

(1) Any person or organization planning to hold a regatta or marine parade which, by its nature, circumstances or location, will introduce extra or unusual hazards to the safety of persons or property on the waters of the State shall submit an application to the chairperson of the board of land and natural resources. No person shall hold such a regatta or marine parade, unless the authorization of the chairperson, has been secured, except that the chairperson's authorization is not required if prior authorization has been secured from the United States Coast Guard. Examples of conditions which are deemed to introduce extra or unusual hazards to the safety of

life include, but are not limited to: an inherently hazardous competition, the customary presence of commercial or pleasure craft in the area, any obstruction of navigable channels which may reasonably be expected to result, and the expected accumulation of spectator craft.

- (2) Where the events are to be held regularly or repeatedly in a single area by an individual or organization, the chairperson may, subject to conditions set from time to time by the department, grant a permit for the series of events for a fixed period of time, not to exceed one year.
- (3) The application shall be submitted no less than thirty days prior to the start of the proposed event.
- (4) The application shall include the following details:
 - (A) Name and address of sponsoring organization.
 - (B) Name, address and telephone number of person or persons in charge of the event.
 - (C) Nature and purpose of the event.
 - (D) Information as to general public interest.
 - (E) Estimated number and type of watercraft participating in the event.
 - (F) Estimated number and type of spectator watercraft.
 - (G) Number of boats being furnished by sponsoring organization to patrol event.
 - (H) Time schedule and description of events.

(I) A section of a chart or scale drawing showing the boundaries of the event, various water courses or areas to be utilized by participants, officials, and spectator craft.

[~~(e)~~] (b) An authorization by the chairperson does not exempt a person holding an event from compliance with applicable federal law." [Eff 2/24/94; am _____] (Auth: HRS §§200-22, 200-24) (Imp: HRS §§200-22, 200-24)

35. Section 13-244-29, Hawaii Administrative Rules, is amended to read as follows:

"§13-244-29 Makapuu ocean waters. (a) Makapuu ocean waters means the area confined by boundaries as shown on Exhibit F, June 1, 1981, and located at the end of this chapter, and also described as follows:

- (1) Beginning at a point being the mean high water mark which is directly opposite from the northeast corner of the Makapuu Beach Park building;
- (2) In the Makapuu Point direction along the mean high water mark to the tip of Makapuu Point; and
- (3) Along a straight line connecting such point described in paragraph (2) above to, and ending at, the point of beginning.

(b) Restrictions. No person shall operate a vessel in the Makapuu ocean waters as the same are defined in this section. This subsection shall not apply in the case of emergency or to patrol or rescue craft." [Eff 2/24/94; am _____] (Auth: HRS §200-24) (Imp: HRS §§200-22, 200-24)

36. Section 13-244-37, Hawaii Administrative Rules, is amended to read as follows:

"§13-244-37 Zone A, Zone B, Ingress/Egress Zones, and Ingress/Egress Corridors. The Kaanapali

ocean waters shall be divided into the following zones:

- (a) Zone A, Kaanapali ocean waters
- (1) This zone is designated primarily for swimming, bathing, snorkeling, and diving, and means the area confined by the boundaries shown and described in Exhibit G, July 1, 1984, located at the end of this chapter, which boundaries are described as follows:

Beginning at a point on the vegetation line six hundred fifty feet north along the vegetation line from the intersection of the extended centerline of Kaniau Road and the vegetation line; thence running by azimuths measured clockwise from True South: 080 degrees for a distance of two hundred feet; 146 degrees 30 minutes for a distance of three thousand seven hundred fifty feet; 206 degrees to a point on the vegetation line; thence southward along the vegetation line to the point of beginning.

- (2) No person shall navigate or moor a vessel, surfboard, sailboard, or any other water recreational device in or on the waters of Zone A, provided that this restriction shall not apply to:

- (A) Paipo boards not in excess of four feet in length and without skegs or any other ~~fin-line~~ fin-like projections protruding from the bottom of the boards;
- (B) Hawaiian design club canoes engaged in crew training;
- (C) Vessels engaged in fishing during periods of low use of the beach.

- (b) Zone B, Kaanapali ocean waters
- (1) This zone is an area designed primarily for swimming, bathing, snorkeling, and diving, and means the area confined by the boundaries shown on Exhibit G, July 1, 1984,

located at the end of this chapter and defined as:

Beginning at a point on the vegetation line seven hundred fifty feet south along the vegetation line from the southernmost tip of Keka'a Point shoreline, thence running by azimuths measured clockwise from True South: 068 degrees for a distance of two hundred feet; 156 degrees for a distance of two hundred fifty feet; 078 degrees 30 minutes for a distance of three hundred fifty feet; 156 degrees for a distance of six hundred feet; 221 degrees for a distance of five hundred feet; 287 degrees to a point on the vegetation line; thence southward along the vegetation line to the point of beginning.

- (2) Restrictions: The same restrictions and exceptions thereto applicable to Zone A are applicable to Zone B.
- (c) Ingress/Egress zones.
- (1) These zones shall be established at intervals along the shoreline to provide beach access, through corridors, for all vessels governed by this chapter. Each zone shall be five hundred feet wide at the shoreline and shall extend seaward for a distance of five hundred feet.

Zone number one begins at the point where the north bank of Wahikuli Stream intersects the vegetation line; then northward along the vegetation line for a distance of five hundred feet.

Zone number two begins at a point on the vegetation line which is two thousand three hundred feet north along the vegetation line from a point where the north bank of Wahikuli Stream intersects the vegetation line; then northward along the vegetation line for a distance of five hundred feet.

Zone number three begins at a point on the vegetation line which is two thousand four hundred feet south along the vegetation line from the mean high water mark of the southernmost tip of Keka'a Point shoreline; then southward along the vegetation line for a distance of five hundred feet.

Zone number four begins at a point on the vegetation line which is seven hundred fifty feet south along the vegetation line from the mean high water mark from the southernmost tip of Keka'a Point shoreline; then southward along the vegetation line for a distance of five hundred feet.

Zone number five begins at a point on the vegetation line which is eight hundred twenty-five feet north along the vegetation line from the vegetation line from the southernmost tip of Keka'a Point shoreline, then northward along the vegetation line for a distance of five hundred feet.

- (2) No person shall navigate a vessel within an ingress/egress zone unless operating within an ingress/egress corridor, provided that this restriction shall not apply to Hawaiian design club canoes engaged in crew training.
- (d) Ingress/Egress corridors.
- (1) These corridors shall be contained within each ingress/egress zone. Each corridor shall be one hundred feet wide and shall be established daily by markers placed by the users of the corridor to determine the best direction for approach to or departure from the shoreline under existing wind and sea conditions.
- (2) No person shall:
 - (A) Navigate a commercial vessel or non-commercial motor powered vessel to or from the beach area unless using a designated ingress/egress corridor;
 - (B) Navigate a catamaran, registered for carrying passengers for hire, in an

ingress/egress corridor, or approach the shoreline within a distance of five hundred feet, if another catamaran is beached within the boundaries of the intended corridor of use;

- (C) Beach a catamaran, registered for carrying passengers for hire, in an ingress/egress corridor in excess of thirty minutes; and
- (D) Navigate a vessel within an ingress/egress corridor at a speed exceeding slow-no-wake.

(3) Exceptions to the restrictions for Ingress/Egress Zones are applicable to Ingress/Egress Corridors.

(e) This section shall not apply in the event of an emergency, to law enforcement or rescue craft, or to vessels operating under a valid ocean waters permit issued by the department." [Eff 2/24/94, am

] (Auth: HRS §§200-2, 200-3, 200-4)

(Imp: HRS §§200-2, 200-3, 200-4)

37. Section 13-245-2, Hawaii Administrative Rules, is repealed.

"[§13-245-2 Definitions.]

"Buoy" means any [device designed to float which is anchored in the water and which is used to convey a message] floating aids to navigation moored to the seabed and used to convey a message.

"Display area" means the area on a sign or buoy [needed] used for display of a waterway marker symbol.

"Regulatory marker" means a waterway marker which indicates the existence of regulatory areas, speed zones or restricted areas and which has no equivalent in the United States Coast Guard system of navigational aids.

"Sign" means any device for carrying a message which is attached to another object such as a piling, buoy, structure or land itself.

"State aid to navigation" means a waterway marker which is the equivalent of a United States Coast Guard aid to navigation.

"Symbols" means geometric figures such as a diamond, circle, rectangle, used to convey a basic message.

"Waterway marker" means any device designed to be placed in, or near, the water to convey an official message to a boat operator on matters which may affect health, safety, or well-being, except that such devices of the United States or an agency of the United States are excluded from the meaning of the definition. [Eff 2/24/94] (Auth: HRS SS200-22, 200-23, 200-24) (Imp: HRS SS200-22, 200-23, 200-24)]"

38. Section 13-245-9, Hawaii Administrative Rules, is amended to read as follows:

"§13-245-9 Diver's flag. (a) [A "diver's flag" as defined by rule and measuring not less than twelve inches by twelve inches shall be required to be displayed on the surface of the water by any person or group of persons engaged in free diving or SCUBA diving] The following shall apply to snorkelers, free divers, and SCUBA divers who are not accompanied by a host vessel, who surface more than one hundred feet from their host vessel, or who are engaged in snorkeling or diving activities more than one hundred feet from their host vessel:

- (1) Snorkelers, free divers, and SCUBA divers shall tow a dive flag measuring not less than twelve by twelve inches, to be clearly displayed on the surface of the water and attached to an appropriate flotation device.
- (2) Individual snorkelers, free divers, and SCUBA divers shall not display more than one dive flag while engaged in snorkeling or diving activities and shall stay within one hundred feet of their dive flag.
- (3) A group of snorkelers, free divers, or SCUBA divers with 2 or more individuals in the

group shall display one dive flag for the entire group; each individual need not display their own dive flag. All group members shall stay within one hundred feet of a dive flag while engaged in snorkeling or diving activities.

(b) [Notwithstanding subsection (a), a] A diver's flag measuring not less than twelve inches by twelve inches [7] shall be displayed on the highest point of the main structure of a [non-motorized] vessel that is sixteen feet or less in length overall in order to provide an unobstructed view of the diver's flag from all directions when diving from the vessel.

(c) [Notwithstanding subsection (a), in addition to the "Alpha flag," required by the United States Coast Guard, i.e., a blue flag with a white horizontal strip running from the upper left side to the lower left side, a] A diver's flag measuring not less than twenty inches by twenty-four inches, shall be displayed on the highest point of the main structure of any [motorized or non-motorized] vessel that is greater than sixteen feet in length overall in order to provide an unobstructed view of the diver's flag from all directions when diving from the vessel.

(d) [No person shall engage in free diving or SCUBA diving, or display a diver's flag, in a manner that shall unreasonably or unnecessarily interfere with vessels or with free and proper navigation of the waterways of the State] If snorkeling, free diving, or SCUBA diving is in progress between sunset and sunrise, the diver's flag shall be clearly illuminated. A diver's flag is considered clearly illuminated when it is identifiable from at least one hundred feet away.

(e) [Except in cases of emergencies, free diving, swimming, or SCUBA diving within navigation channels shall be prohibited] There shall be no restriction on subsurface distance from a diver's flag. However, snorkelers, free divers, and SCUBA divers are prohibited from surfacing more than one hundred feet away from the diver's flag in the ocean

waters of the State and more than fifty feet from the diver's flag in navigable streams, except in cases of emergencies.

(f) All vessels shall be prohibited from approaching within one hundred feet of a displayed diver's flag or within fifty feet of a displayed diver's flag on navigable streams [~~, except within marked navigation channels.~~] with the following exceptions:

- (1) Vessels approaching a displayed diver's flag to conduct SCUBA, snorkeling, or free diving activities within the one hundred foot or fifty foot restricted area shall be allowed to do so provided that the vessel approaches at a speed of slow-no-wake.
- (2) Vessels approaching a displayed diver's flag navigating through marked navigation channels are exempt from the distance restriction described in subsection (f) but shall proceed at a speed of slow-no-wake through the navigation channel when a diver's flag is displayed adjacent to the navigation channel.
- (3) Authorized representatives of the department and life saving personnel are exempt from the distance restrictions of subsection (f) when performing functions related to their duties.

(g) Except in cases of emergencies, snorkeling, free diving, swimming, or SCUBA diving within navigation channels shall be prohibited.

~~[Vessels navigating through marked navigation channels are exempt from the distance restriction described in subsection (f) but shall proceed at a speed of slow no wake through the navigation channel when a diver's flag is displayed adjacent to the navigation channel.]~~

(h) The diver's flag shall be displayed only when free diving or SCUBA diving is in progress, and its display in a water area when no diving is in progress in that area shall constitute a violation of these rules.

(i) There shall be no subsurface distance restrictions from a dive flag, however, except in cases of emergencies, free divers or SCUBA divers shall be prohibited from surfacing more than one hundred feet away from the diver's flag in the ocean waters of the State and fifty feet in navigable streams.

(j) Authorized representatives of the department and life saving personnel are exempt from the distance restrictions of subsection (f) when performing functions related to their duties.]

(h) No person shall engage in snorkeling, free diving, or SCUBA diving or display a diver's flag in a manner that shall unreasonably or unnecessarily interfere with vessels or with free and proper navigation of the waterways of the State.

(i) A diver's flag shall be displayed only when snorkeling, free diving, or SCUBA diving is in progress, and display of a diver's flag in a water area when no snorkeling or diving is in progress in that area shall constitute a violation of these rules.

[k] (j) Anyone violating any provision of this section shall be subject to fines and penalties as provided in sections 200-14, 200-14.5, and 200-25, HRS." [Eff 2/24/94; am 7/5/03; am _____]
(Auth: HRS §§200-2, 200-3, 200-4, 200-10, 200-14, 200-14.5, 200-24, 200-25) (Imp: HRS §§200-2, 200-3, 200-4, 200-10, 200-14, 200-14.5, 200-24, 200-25)

39. Section 13-250-5, Hawaii Administrative Rules, is repealed.

"[§13-250-5 Definitions. As used in this part, unless the context clearly indicates otherwise:

"Barge" means a non self-propelled, generally large, flat bottomed vessel.

"Boat" means a small vessel propelled by oars or paddles or by sail or power.

"Business" includes all activities engaged in or caused to be engaged in by any person or legal entity with the object of making a profit or obtaining an economic benefit either directly or indirectly.

"Canoe" means outrigger canoe.

"Carrying passengers for hire" means the carriage of any person or persons by a vessel for compensation flowing, whether directly or indirectly, to the owner, charterer, operator, agent, or any other person interested in the vessel.

"Catamaran" means a vessel with two or more hulls side by side.

"Chairperson" means the chairperson of the board of land and natural resources of the State of Hawaii or the chairperson's duly authorized representative or subordinate.

"Coast Guard" means the United States Coast Guard.

"Commercial high speed boating" means the use of an open ocean racing boat to provide high speed rides to passengers who pay compensation for the rides.

"Commercial high speed boating" does not include:

- (1) The use of an open ocean racing boat during an official racing competition; or
- (2) The use of an open ocean racing boat while practicing for racing competition; provided that no passenger pays compensation for riding the boat during the practice.

"Commercial motorboat" means any motorboat used for hire, profit or gain.

"Commercial ocean recreation activities" means any ocean recreation activity offered for a fee.

"Compensation" means any valuable consideration.

"Contrivance" means any man-made object or artificial arrangement not used or intended to be used for transportation which may be floated upon or suspended within the water.

"Department" means the department of land and natural resources of the State.

"Global Positioning System (GPS)" means the method of terrestrial navigation using a GPS electronic instrument, receiving data from a network of orbiting satellites to locate one's position by latitude and longitude.

"Handboard" means any type of surf riding board that is (a) with or without skegs, (b) worn on one or

~~both of the operator's hands, (c) is generally 15 inches in overall length, and (d) is used for the sport of wave riding.~~

~~"Humpback whale cow/calf area" are shown on Exhibit "B" dated November 23, 1988, located at the end of this chapter and described as follows:~~

- ~~(1) Adjoining the island of Lanai. All waters within two miles of the shoreline along the north and east coast between lines extending perpendicular to the shoreline from Kaena Point to Kamaiki Point.~~
- ~~(2) Adjoining the island of Maui. All waters inshore of a straight line drawn between Hekili Point and Puu Olai.~~

~~"Kaanapali ocean waters" means the area confined by the boundaries shown on Exhibit E (1), July 9, 1984, located at the end of chapter 13-251 and defined as:~~

~~Beginning at the intersection of the extended centerline of Wahikuli Road at the vegetation line, thence running by azimuths measured clockwise from True South; 088 degrees for a distance of one thousand feet; 177 degrees for a distance of two thousand fifty feet; 145 degrees for a distance of two thousand six hundred twenty-five feet; 117 degrees 30 minutes for a distance of two thousand fifty feet; 150 degrees for a distance of one thousand seven hundred seventy feet; 175 degrees 45 minutes for a distance of four thousand one hundred feet; 197 degrees 15 minutes for a distance of two thousand three hundred twenty-five feet; 177 degrees 30 minutes for a distance of four thousand fifty feet; 201 degrees 30 minutes for a distance of one thousand six hundred twenty-five feet; thence on a straight line to a point on the vegetation line of the south bank of Honokowai Stream; then southward along the vegetation line to the point of beginning.~~

~~"Kayak" means a portable boat styled like an Eskimo canoe and propelled by use of a double-bladed paddle.~~

"Motorboat" means any vessel sixty-five feet in length or less which is equipped with propulsion machinery including steam and includes wet bikes, motorized surfboards and any other vessel propelled by a motor engaged in towing discs, boards, parasails or any other devices which may be towed. This term includes a vessel temporarily or permanently equipped with a motor.

"Navigable streams" means the waters of estuaries and tributaries of the streams of each island of the state, where boating and water related activities, recreational or commercial, may be carried on, whether the mouths of said streams are physically opened or not to ocean waters for intra or interstate commerce or navigation.

"Ocean recreation management area" means ocean waters of the State that have been designated for specific activities as described in Chapter 13-256, Hawaii Administrative Rules, Ocean Recreation Management Rules and Areas.

"Ocean Waters" means the waters seaward of the shoreline within the jurisdiction of the State.

"Open ocean racing boat" means a motorized vessel which:

- (1) Is designed, modified, or restored for the primary purpose of high speed boat racing; and
- (2) Has the capacity to carry not more than the operator and five passengers.

"Operate" means to navigate or otherwise use a vessel, surfboard, or paddle board (paipo board).

"Operator permit" means the permit issued by the department which authorizes either the direct operation or the offering for a fee, surfboards and sailboards or any vessel, watercraft or water sports equipment on the ocean waters and navigable streams of the state.

"Outrigger canoe" means a boat equipped with a framework terminating in a float, extended outward from the side of the boat to prevent upsetting.

"Owner" means a person, other than a lienholder, having the property in or title to a vessel. The term

~~includes a person entitled to the use and possession of a vessel subject to a security interest in another person, but excludes a lessee under a lease not intended as security.~~

~~"Paipo boards" means any type of board that is (a) without skegs, (b) does not exceed four feet in length, and (c) is used for the sport of surfriding.~~

~~"Parasailing" means the activity in which an individual is transported or carried aloft by a parachute, sail, or other material attached to a towline which is towed by a vessel.~~

~~"Person" includes every individual, partnership, firm, society, incorporated association, joint venture, group, hui, joint stock company, corporation, trustee, or any other legal entity, including the servant, employee, agent, or representative of any of the foregoing.~~

~~"Power driven catamaran" means a catamaran propelled by machinery whether under sail or not.~~

~~"Recreation" means to create anew, restore, refresh, a diversion such as a hobby or other leisure time activities.~~

~~"Rules" means the rules governing Hawaii Ocean Waters, Navigable Streams and Beaches of the department of land and natural resources, State of Hawaii.~~

~~"Sailboard" means any type of board that exceeds four feet in length and is propelled by a detachable sail apparatus.~~

~~"Sailing catamaran" means a catamaran propelled by sail only, including a catamaran temporarily or permanently equipped with a motor being propelled by sail only.~~

~~"SCUBA" means self contained underwater breathing apparatus."~~

~~"Shore waters and shores" means any shores or waters between the three nautical mile limit and the mean high tide mark on the shores of the islands of the State of Hawaii.~~

~~"Skeg" means any fin-like projection.~~

~~"Slow no wake" means as slow as possible without losing steerage way and so as to make the least~~

possible wake. This would almost always mean speeds of less than five miles an hour.

"State" means the State of Hawaii.

"Surfboard" means any type of board that exceeds four feet in length and is used for the sport of surf riding.

"Territorial sea baseline" means the line from which the territorial sea is measured, which is generally the low water line along the coasts including the coasts of islands and special closing lines drawn tangent to the headlands across the mouths of rivers, bays, inlets and other similar indentations.

"Thrill craft" means any motorized vessel which is generally less than thirteen feet in length as manufactured, is capable of exceeding a speed of twenty miles per hour, and has the capacity to carry not more than the operator and two other persons while in operation. The term includes but is not limited to a jet ski, wet bike, surf jet, miniature speed boat, and hovercraft.

"Tow in surfing" means utilizing a surfboard equipped with foot straps to surf waves with the assistance of a thrill craft that is equipped with a rescue sled, bow tow line and a tow in rope.

"Ultralight float equipped aircraft" means an aircraft of light weight construction and limited range carrying not more than two individuals able to land on water surfaces using floats.

"Vessel" means any watercraft, used or capable of being used as a means of transportation on or in the water.

"Vessel length" means the end to end measurement of a vessel, taken over the deck, parallel to the waterline from the foremost part at the bow to the aftermost part at the stern; provided, that hull platings, plankings, and extensions aside from the hull proper, such as a bowsprit, are not to be included in such measurement; provided further, that an open type vessel or one with a cockpit shall be measured as if a complete deck existed at the upper level of the hull.

"Waikiki ocean waters" means the area confined by the boundaries shown on Exhibit A, June 1, 1981, located at the end of this chapter which boundaries are described as follows:

- (1) Beginning at the point where the mean high water mark intersects a line perpendicular to the shoreline and extending seaward from the Diamond Head Lighthouse;
- (2) In the Ewa direction along the mean high water mark to the point where the mean high water mark meets the revetment on the Waikiki side of the Kewalo Basin entrance channel;
- (3) Along a straight line connecting the point described in (2) above to the Kewalo Basin entrance channel buoy ("1" Black);
- (4) Along a straight line connecting the buoy described in (3) above to the Ala Wai boat harbor entrance lighted buoy (Red "2");
- (5) Along a straight line connecting the buoy described in (4) above to the Diamond Head buoy (Red "2"); and
- (6) Along a straight line connecting the buoy described in (5) above to, and ending at, the point of beginning.

"Water sledding" means the activity in which an individual is transported or carried over the surface of the water on an apparatus that is more than twelve inches wide and is attached to a towline which is towed by a vessel. If the apparatus is round with a hollow center, the width shall be measured as a straight line:

- (1) Starting from a point on the outer edge of the apparatus;
- (2) Bisecting the hollow center; and
- (3) Ending at the farthest point on the opposite outer edge.

"Water sports equipment" means any equipment, contrivance, frame or other device that one or more persons may lie, sit, or stand upon or in, and which is primarily for use in or on the water for pleasure, recreation or sports, and not necessarily for

~~transportation. [Eff 2/24/94; am 9/10/01; am 4/27/02; am 10/19/02; 10/2/03] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-24, 200-37) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24, 200-37)]"~~

40. Section 13-251-57, Hawaii Administrative Rules, is amended to read as follows:

"§13-251-57 Waikiki ocean waters. Waikiki ocean waters means the area shown on Exhibit 1, dated May 1, 2012, located at the end of this subchapter and incorporated herein. The boundaries are as follows:

Beginning at the point where the mean high water mark intersects a line perpendicular to the shoreline below the Diamond Head Lighthouse; then in the Ewa direction along the mean high water mark to the makai boundary of the Ala Wai Small Boat Harbor and buoy R"8"; then west across the channel to the seawall on the Diamond Head side of Magic Island; then following along the mean high water mark to the seaward prolongation of the parking lot on the Ewa side of Magic Island; then along the edge of the reef to the revetment on the Waikiki side of the Kewalo Basin entrance channel; then along a straight line to the Kewalo Basin entrance channel buoy R"2"; then southeasterly along a straight line to the Ala Wai boat harbor entrance lighted buoy R"4"; then along a straight line to the Diamond Head buoy R"2"; then along a straight line the point of beginning.

The Waikiki ocean waters are reserved primarily for use by bathers, swimmers, surfers, snorkelers, and other recreational uses and subject to restrictions set forth in this section. No person shall operate a vessel or watercraft within the Waikiki ocean waters within 500 feet of the shoreline at a speed in excess of slow-no-wake. Vessel operators shall exercise caution while transiting the area due to heavy use by swimmers. This section shall not apply in the event of an emergency, or to law enforcement or rescue craft,

or vessels participating under a valid regatta permit issued by the department or the Coast Guard.

(a) Zone A is described as follows:

Beginning at the breakwater makai of the Hilton Hawaiian Village rainbow tower; then following the mean high water mark northwesterly to the Duke Kahanamoku Lagoon; then southerly to $21^{\circ}16'25.36''N$, $157^{\circ}50'12.15''W$; then in a straight line ending at the starting point;

(1) Restrictions: No person shall navigate, moor, or anchor a vessel in or on the waters of Zone A, except that a manually propelled outrigger canoe or a catamaran propelled by sail may be operated in those waters if the vessel has been issued a permit by the department, or that a catamaran propelled by sail capable of carrying six persons or less, with a valid permit to operate within Waikiki ocean waters under the provisions of section 13-251-52, may anchor overnight in the area adjacent to the groin in the vicinity of the Ala Wai Heliport.

Notwithstanding this subsection, vessels operating from the Hilton Hawaiian Village pier are exempt from the restrictions in this paragraph.

(b) Zone B is described as follows:

Beginning at the breakwater makai of the Hawaiian Village Rainbow Tower; then along the mean high water mark in the Diamond Head direction to the mauka Ewa side of the natatorium; then seaward along the Ewa wall of the natatorium to the outer edge of the reef at $21^{\circ}15'52.26''N$, $157^{\circ}49'31.67''W$; then along the reef in the north direction to the seaward end of the wall at Kapahulu; then in a straight line eastward ending at the starting point;

(1) Restrictions:

(A) No person shall navigate or moor a vessel in or on the Waikiki ocean waters, except that outrigger canoes operated by a duly organized canoe club, or a sailing catamaran, or a manually propelled outrigger canoe may

be navigated, moored, or anchored in those waters if the vessel has been issued a permit by the department to navigate in the waters. Notwithstanding this subsection, a sailing catamaran may temporarily operate in [Zone D] Zone B as a power-driven catamaran when necessary to protect life or property and is if that vessel is registered by the department to operate in Waikiki ocean waters and under the immediate control of an operator who has been issued a valid permit by the department;

- (B) No person shall navigate or moor a catamaran in or on the waters of Zone B or on the shore below the mean high water mark if four catamarans are navigating or moored in such zone;
- (C) The minimum distance separating any two catamarans moored in Zone B shall be eighty feet; and
- (D) For this subchapter, surfboards are not considered to be a vessel.

- (c) Zone C is described as follows:

Beginning at the end of the Ewa groin at the Duke Kahanamoku statue; then following the groin shoreward and along the Kuhio Beach shoreline to the mauka end of the wall at Kapahulu; then to the end of the wall; then following the seawall in a northward direction to the point of beginning.

- (1) Restrictions: Zone C is designated as a swimming, bathing and wading zone. No person shall engage in fishing by any means or device from the Kuhio seawall to the shoreline between the wall at Kapahulu and the Ewa groin.

- (d) Zone D is described as follows:

Beginning at the makai-Ewa corner of the wall at Kapahulu; then 160 yards in the Diamond Head direction on a straight line perpendicular

to the beach to $21^{\circ}16'11.35"N$, $157^{\circ}49'24.49"W$; then 100 yards seaward on a straight line ending at $21^{\circ}16'10.43"N$, $157^{\circ}49'27.89"W$; then 310 yards in the Ewa direction on a straight line ending at $21^{\circ}16'19.32"N$, $157^{\circ}49'30.27"W$; then 100 yards shoreward to $21^{\circ}16'20.27"N$, $157^{\circ}49'26.90"W$; then in a straight line back to the point of beginning.

(1) Restrictions: No person shall navigate or moor a vessel or navigate or otherwise use a surfboard in or on the waters of Zone D, except that paipo boards not in excess of four feet in length and without skegs or any other fin-like projections protruding from the bottom of the boards are permitted to be used on the waters.

(e) Zone E is described as follows:

Beginning at a point where the Diamond Head wall of the Natatorium intersects the mean high water mark at $21^{\circ}15'50.66"N$, $157^{\circ}49'18.30"W$; then following the mean high water mark in a Diamond Head direction to the Colony Surf Hotel at $21^{\circ}15'44.76"N$, $157^{\circ}49'17.45"W$; then in a seaward direction to $21^{\circ}15.44.16"N$, $157^{\circ}49'19.32"W$; then north to the makai-Diamond Head corner of the Natatorium; then in a straight line to the point of beginning.

(1) Restrictions: No person shall navigate or moor a vessel in or on the waters of Zone E, except that a manually propelled outrigger canoe operated by a duly organized canoe club, or a commercially operated manually propelled outrigger canoe may be navigated in these waters if the vessel has been registered in accordance with this chapter and is under immediate control of an operator who has a valid permit issued by the department in accordance with subchapter 1." [Eff 2/24/94; am and comp 9/25/14; am] (Auth: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24) (Imp: HRS

SS200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

41. Section 13-253-1.3, Hawaii Administrative Rules, is amended to read as follows:

"§13-253-1.3 Gross receipts. [a] "Gross receipts" as used in this chapter means all moneys paid or payable to the account of the commercial use permittee or catamaran registration certificate holder, for services rendered, or resulting from trade, business, commerce, or sales by the vessel or water sports equipment owner when the services, trade, business, commerce, or sales has a direct relationship to the vessel.

(b) [Each commercial permittee or catamaran registration certificate holder shall be responsible for submitting to the department a monthly statement of its gross receipts.] [Eff and comp 9/25/14; am] (Auth: HRS SS200-2, 200-3, 200-4, 200-22, 200-24) (Imp: HRS SS200-2, 200-3, 200-4, 200-22, 200-24)

42. Section 13-254-1, Hawaii Administrative Rules, is repealed.

"§13-254-1 Definitions.

"Makapuu ocean waters" means the area confined by boundaries as shown on Exhibit F, June 1, 1981, and located at the end of this chapter, and also described as follows:

- (1) Beginning at a point, being the mean high water mark which is directly opposite from the northeast corner of the Makapuu Beach Park Building;
- (2) In the Makapuu Point direction along the mean high water mark to the tip of Makapuu Point; and

(3) ~~Along a straight line connecting the point described in (2) above to, and ending at the point of beginning.~~

~~"Operate" means to navigate or otherwise use a vessel, surfboard, or paddle board (paipo board).~~

~~"Outrigger canoe" means a boat equipped with a framework terminating in a float, extended outward from the side of the boat to prevent upsetting.~~

~~"paddleboards" (paipo boards) means any type of board that is (a) without skegs, (b) does not exceed four feet in length, and (c) is used for the sport of surfing. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)]"~~

43. Section 13-255-1, Hawaii Administrative Rules, is amended to read as follows:

"§13-255-1 Purpose and scope. The purpose of these rules is to further the public interest and welfare and to promote safety by keeping Waikiki Beach, as defined in section [13-255-5] 13-255-6, free and clear of business activities and obstructions and open for the use of the public as a bathing beach and for passing over and along by foot." [Eff 2/24/94; am] (Auth: HRS §§200-2, 200-3, 200-4)
(Imp: HRS §§200-2, 200-3, 200-4)

44. Section 13-255-5, Hawaii Administrative Rules, is repealed.

"[§13-255-5 Definitions. As used in this part, unless the context clearly indicates otherwise:

~~"Business" means all activities engaged in or caused to be engaged in by any person or legal entity with the object of making a profit or obtaining an economic benefit either directly or indirectly.~~

~~"Chairperson" means the chairperson of the board of land and natural resources of the State of Hawaii or a duly authorized representative or subordinate.~~

~~"Department"~~ means the department of land and natural resources of the State of Hawaii.

~~"Person"~~ means any individual, partnership, firm, society, incorporated association, joint venture, group, hui, joint stock company, corporation, trustee or any other legal entity.

~~"Rules"~~ means the Rules Governing Hawaii Ocean Waters, Navigable Streams and Beaches of the department of land and natural resources, State of Hawaii.

~~"State"~~ means the State of Hawaii.

~~"Waikiki Beach"~~ means any and all lands along the shores of the island of Oahu from the Diamond Head boundary of the Elks Club (Tax Map Key No. 3-1-32-6) to the Diamond Head boundary of Fort DeRussy (Tax Map Key No. 2-6-05), seaward of line "A" as shown on exhibit "A" and described in exhibit "B", dated July 13, 1965, and located at the end of this chapter, over which the State of Hawaii now has or hereafter acquires an easement for the use of the public as a bathing beach and for passing over and along by foot. [Eff 2/24/94] (Auth: HRS SS200-2, 200-3, 200-4) (Imp: HRS SS200-2, 200-3, 200-4)]"

45. Section 13-255-6, Hawaii Administrative Rules, is amended to read as follows:

"§13-255-6 Waikiki Beach uses and activities; restrictions. (a) "Waikiki Beach" as used in these rules means any and all lands along the shores of the island of Oahu from the Diamond Head boundary of the Elks Club (Tax Map Key No. 3-1-32-6) to the Diamond Head boundary of Fort DeRussy (Tax Map Key No. 2-6-05), seaward of line "A" as shown on exhibit "A" and described in exhibit "B", dated July 13, 1965, and located at the end of this chapter, over which the State of Hawaii now has or hereafter acquires an easement for the use of the public as a bathing beach and for passing over and along by foot.

[+a)] (b) Permitted activities. Waikiki Beach is open to public use for sunbathing, foot traffic, swimming, and other activities which, when engaged in, will not unduly disrupt others from enjoying the beach.

[+b)] (c) Business operations, soliciting prohibited. No person shall engage in, conduct, transact, or solicit business of any kind on or at Waikiki Beach.

[+c)] (d) Storage, parking, and display prohibited. No person shall store, park, moor, place, or display any thing or personal property on or at Waikiki Beach for the purpose of engaging in, conducting, transacting, or soliciting business of any kind; provided that an outrigger canoe or sailing catamaran registered by the department pursuant to Hawaii ocean waters and shores rules may be placed, moored, or anchored below the mean high water mark.

[+d)] (e) Structures and obstructions prohibited. No person shall construct, erect, place, deposit, or set up any building, structure, booth, wall, obstruction, or any improvement of any kind, whether temporary, portable, or permanent in nature, on or at Waikiki Beach, except such as may be approved by the department for sporting events, public safety, or for beach construction, repairs, preservation, or cleaning. In addition to any other available remedies, the department may remove, raze, or demolish the same wherever found at Waikiki Beach.

[+e)] (f) Ball, etc., playing and kite flying prohibited. No person shall throw, cast, catch, kick, or strike any type of ball, frisbee, or other similar object while on or at Waikiki Beach. No person shall fly a kite of any kind while on or at Waikiki Beach."

[Eff 2/24/94; am _____] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4, 200-6)

46. Section 13-256-3, Hawaii Administrative Rules, is amended to read as follows:

"§13-256-3 Commercial use permit or catamaran registration certificate requirements. [+a)] All

operators of commercial vessels, water craft or water sports equipment or activities conducting commercial tours or instruction on State ocean waters [shall apply for] must obtain a commercial use permit or where applicable a catamaran registration certificate to be issued by the department, except for those operating out of a [state] State commercial harbor [~~or Kewalo Basin~~]. The applicant for such permit shall comply with the applicable provisions stated in sections 13-231-50 to 13-231-70.

~~[b) The department may establish and maintain a Recreation Advisory Committee of not less than three for each recreation management area as defined in this chapter to review and make recommendations for commercial use permits or catamaran registration certificate to be issued by the department. The department shall consider the recommendations of the Advisory Committee, but is not bound by the recommendations. Members of the Recreation Advisory Committee shall have not less than three years of experience in their area of specialty.]~~ [Eff 2/24/94; am _____] (Auth: HRS §§200-22, 200-24) (Imp: HRS §§200-22, 200-24)

47. Section 13-256-5, Hawaii Administrative Rules, is amended to read as follows:

"§13-256-5 Commercial use permits; public auction. (a) Unless otherwise provided by law, all commercial use permits issued by the department under this chapter for thrill craft or parasail operations may be made at public auction under sealed bid after public notice.

(b) Before any prospective bidder is entitled to submit a bid for a commercial use permit, the prospective bidder shall, not less than six calendar days prior to the day designated for opening bids, give written notice of its intention to bid to the officer charged with issuing the commercial use permits. Each prospective bidder shall submit answers, under oath, to questions contained in a questionnaire, provided by the department, setting forth a complete

statement of the experience, competence and financial standing of the prospective bidder. The names and the number of persons who have submitted a notice of intention to bid shall not be divulged. Information contained in the answers to the questionnaire shall remain confidential, and any government officer or employee who knowingly divulges or permits to be divulged any such information to any person not fully entitled thereto shall be fined not more than \$250. A questionnaire so submitted shall be returned to the bidder after having served its purpose.

(c) Advertisement for bids. Publication of a call for tenders shall be made not less than three times on not less than three different days in a newspaper of general circulation printed and published within the State and in a newspaper of general circulation published in the county in which the designated area is located. The first publication shall be not less than three weeks prior to the date designated for the opening of tenders. Notice of the call for tenders shall contain the following:

- (1) Location where the bid questionnaire is available;
- (2) Time and place of the opening of tenders;
- (3) General description of the designated area;
- (4) Specific use for which the commercial use permit is intended; and
- (5) The upset price as established by the department. Unless a higher amount is specified for a specific commercial use permit the annual upset price shall be \$900.00, which is the monthly charge of \$75.00. If the commercial use permit is located within an area which requires less than twelve months of operation, the upset price shall be adjusted accordingly.

(d) All bids shall be sealed and delivered to the officer advertising therefor and shall be opened by the officer at the time and place to be stated in the call for tenders which time shall not be less than ten days after the last publication, in the presence of all bidders who attend, and may be inspected by any

bidder. All bids which do not comply with the requirements of the call for tenders shall be rejected. The officer calling for bids may reject any or all bids and waive any defects when in the officer's opinion such rejection or waiver will be in the best interest of the public.

(e) All bids shall be accompanied by a deposit of legal tender, or a certificate of deposit, cashier's check or certified check on a bank that is insured by the Federal Deposit Insurance Corporation, or on a savings institution insured by the Federal Savings & Loan Insurance Corporation or by a share certificate issued by a credit union insured by the National Credit Union Administration, in a sum of not less than five per cent of the amount bid, payable at sight to the officer advertising for tenders. A bid deposit may also be in the form of a surety bond conforming to the requirements of Section ~~103-31~~ 102-8, Hawaii Revised Statutes.

(f) If the highest bidder to whom the commercial use permit is awarded fails or neglects to fully comply with the terms and conditions for the issuance of the commercial use permit within ten days after the award or within such further time as the officer awarding the permit may allow, the bidder shall forfeit the bid deposit to the State. If the permit is issued, the bid deposit shall be returned to the permittee upon receipt of the first monthly payment. The deposits made by the unsuccessful bidders shall be returned to them after the commercial use permit is issued or if the commercial use permit is not awarded or issued after the officer's determination to publish another call for tenders or not to issue any commercial use permit.

(g) The commercial use permit shall be awarded to the highest qualified bidder. If there is more than one authorized commercial operating area in a particular designated area, then the permit for each operating area shall be made by a separate call for tenders.

(h) No commercial operator shall be awarded more than one commercial use permit per designated area.

Each bidder shall be awarded only one commercial use permit per designated area. Thus, if a bidder is the highest qualified bidder on more than one operating area then that bidder shall choose one operating area and the bidder's other bids shall be deemed withdrawn.

(i) Each commercial use permit shall be valid for one year with an option to renew the commercial use permit no more than four times, which shall be accomplished on or before the anniversary date of its initial issuance. A permittee interested in renewing its commercial use permit, shall however, notify the department sixty days before the expiration of the commercial use permit of its intent to renew. The terms and conditions during the renewal period shall be the same as those applicable to the initial issuance except as to the renewal option which shall in no event cause the commercial use permit to be renewed more than four times. At the end of the fourth renewal period of the permit, the permit may again be offered for public auction, provided that the previous permittee shall be offered the right of first refusal at the new upset price.

(j) Monthly payments for a commercial use permit shall be based upon 1) one-twelfth of the bid price or 2) a percentage of the monthly gross receipts equal to [two] three per cent, whichever is greater. Gross receipts is defined in ~~§ 13-256-12~~ section 13-230-8.

(k) The commercial use permit does not give the permittee any vested property rights. The department reserves the right not to issue or renew any commercial use permits." [Eff 2/24/94; am

]
[Auth: HRS §§200-2, 200-3, 200-4)

(Imp: HRS §§200-2, 200-3, 200-4)

48. Section 13-256-7, Hawaii Administrative Rules, is amended to read as follows:

"§13-256-7 Business transfer fee. (a) Whenever a stockholder or owner of an interest in a corporation or other business which has been issued a commercial use permit sells or transfers stock or interest in the corporation, either as a single transaction or as

aggregate of several transactions, to any person or business entity who is not a stockholder or owner of record on the effective date of these rules, the seller or person transferring such stock or interest shall pay to the department a business transfer fee which is the greater of (1) two per cent of the gross receipts which are directly attributable to the use of the [commercial] commercial use permit issued by the department for the twelve month period prior to the date of sale, or (2) ten per cent of the net value of the sale of the stock or interest in the business as determined by the difference between the sale price and an equal percentage of the appraised value of the assets of the business.

(b) The value of the stock or interest transferred shall be as mutually agreed to by the seller and the department. In the case of a business which engages in more than one type of business activity, only the value of the business activity which is dependent upon the possession and use of the commercial use permit shall be considered for the purposes of this section. In those cases where the transfer is made for consideration other than legal tender, the appraised or market value of the item of consideration given in exchange for the interest in the business shall be used.

(c) If the seller and the department are unable to agree on the value of the interest transferred, that value shall be determined through arbitration by an independent party acceptable to both the seller and the department. The cost of the arbitration shall be borne by the party in whose favor the final value is determined." [Eff 2/24/94; am _____] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

49. Section 13-256-8, Hawaii Administrative Rules, is amended to read as follows:

"§13-256-8 Owner required to report change in ownership, address and other changes. [(a)] In addition to the provisions in section 13-251-44, the

holder of any commercial use permit issued under this chapter shall notify the department in writing within seven days if:

- (1) The owner no longer has possession of the permitted vessel or water sports equipment [.] ; or
- (2) All or any interest in the permitted vessels or water sports equipment is transferred to or assigned to another person or business entity [.] as defined in these rules; or
- (3) The owner's address or telephone number changes.

[b] "Transfer" as used in this section means any sale, assignment or lease of the permitted vessel or water sports equipment; the change in ownership or transfer of stock in a corporate owner which results in a change of the majority stockholder; or the sale or assignment of interest in any other business entity which results in a change of the owner holding the majority interest.

[c] "Interest" as used in this section includes any claim of right, title, ownership of stock, shares, profit, benefit or gain in a corporation, partnership, joint venture or any other business entity that has a commercial permit issued under this Chapter.]" [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)

50. Section 13-256-12, Hawaii Administrative Rules, is amended to read as follows:

"§13-256-12 Gross receipts. [(a) Gross receipts as used in this chapter means all moneys paid or payable to the account of the commercial permittee, for services rendered, or resulting from trade, business, commerce, or sales by the vessel or water sports equipment owner when the services, trade,

~~business, commerce, and sales have a direct relationship to the vessel.~~

(b) —] Each commercial permittee shall be responsible for submitting to the department a monthly statement of its gross receipts." [Eff 2/24/94; am] (Auth: HRS §§200-2, 200-3, 200-4)
(Imp: HRS §§200-2, 200-3, 200-4)

51. Section 13-256-16, Hawaii Administrative Rules, is amended to read as follows:

"§13-256-16 Thrill craft operations; general provisions. (a) No person under fifteen years of age shall operate a thrill craft. No person shall permit, or mislead another person into permitting, a person under fifteen years of age to operate a thrill craft.

(b) No person shall operate thrill craft within a marine life conservation district or marine natural area reserve.

(c) Thrill craft operations shall be curtailed in certain designated areas as described in subchapters two through eleven as necessary, to: 1) avoid possible adverse impacts on humpback whales or other protected marine life; 2) provide for increased public access; 3) reduce user conflicts; and 4) promote overall public safety.

(d) Effective January 2005, all recreational thrill craft operators shall be required to possess, and make available upon demand of enforcement personnel, a certificate of completion from [an accredited institution of higher education] a State approved course on the safe use and operation of a thrill craft. The State may recognize reciprocity with other states, i.e., the National Association of State Boating Law Administrators (NASBLA) approved portion of the personal water craft course; however, all operators shall be required to complete the portions of a certificate course for Hawaii that includes, but is not limited to:

(1) Local ocean safety principles and practices;

- (2) The historical, cultural, and customary practices of Hawaii's ocean users; and
- (3) Any rules or laws pertaining to protected species and thrill craft operation in the State.

(e) All thrill craft operators and passengers shall be required to wear a personal flotation device in accordance with section 13-243-1.

(f) All persons holding or receiving a certificate of completion under this rule are exempt from section 13-244-15.5 for purposes of operating thrill craft." [Eff 2/24/94; am 7/5/2003; am] (Auth: HRS §§200-22, 200-24) (Imp: HRS §§200-22, 200-24)

52. Section 13-256-17, Hawaii Administrative Rules, is amended to read as follows:

"§13-256-17 Recreational thrill craft operations. (a) Access to and from designated recreational thrill craft operating areas shall be by the most direct route consistent with safety considerations. Thrill craft operators shall not exceed a speed of slow-no-wake when within three hundred feet of the shoreline.

(b) Thrill craft operation shall be prohibited in State waters surrounding the islands of Kahoolawe, Lanai, Molokai and Niihau. In all other [In] non-designated ocean recreation management areas of State waters, recreational thrill craft may operate [only in state waters between] seaward of five hundred feet from the shoreline or the outer edge of the fringing reef whichever is greater[and two miles off the islands of Kauai, Oahu, Maui and Hawaii. Thrill craft operation shall be prohibited in State waters surrounding the islands of Kahoolawe, Lanai, Molokai and Niihau].

(c) In designated ocean recreation management areas, recreational thrill craft may operate only within locations designated for recreational thrill craft use.

(d) No thrill craft shall be operated for profit or gain in a recreational thrill craft operating area.

(e) Recreational thrill craft may gain access to state waters only from launching or harbor facilities or from private beach front property.

(f) The State may exempt thrill craft from the requirements of this section, and allow thrill craft to operate outside of designated thrill craft areas, as described in subchapters two through eleven, conditioned upon application for, and receipt of, a miscellaneous use permit pursuant to section 13-231-13 of these rules. [Eff 2/24/94; am _____]
(Auth: HRS §§200-22, 200-24) (Imp: HRS §§200-22, 200-24)

53. Section 13-256-21, Hawaii Administrative Rules, is amended to read as follows:

"§13-256-21 Ultralight float equipped aircraft.

(a) For the purpose of this section, ultralight or experimental float equipped aircraft means an ultralight or experimental aircraft as defined by [Part 103 of the Federal Aviation Regulations and equipped with floats] section 13-230-8 of these rules.

(b) The takeoff, landing and inflight portions of all ultralight or experimental float equipped aircraft operations on or above any ocean recreation management area shall be governed by Parts 91 and 103 of the Federal Aviation Regulations, which are incorporated by reference. No person shall operate an ultralight or experimental float equipped aircraft in a careless or reckless manner so as to endanger the life or property of another.

(c) The operator of any aircraft designed to maneuver on the water shall abide by all rules governing the operation of motorized vessels during the launching, retrieval and taxi. No person shall operate an ultralight or experimental aircraft registered as an experimental or ultralight aircraft by the Federal Aviation Administration when operating within a designated ocean recreation management area while carrying passengers for hire.

(d) The use of shuttle vessels in support of ultralight or experimental float equipped aircraft operations is prohibited on the ocean waters of the [state] State, except for small watercraft carried aboard the aircraft." [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)

54. Section 13-256-22, Hawaii Administrative Rules, is amended to read as follows:

"§13-256-22 Tow-in surfing. (a) The State assumes no responsibility or liability associated with tow-in surfing.

(b) Only thrill craft may be used for tow-in surfing.

(c) All thrill craft being used for tow-in surfing shall be recorded with the department using forms provided by the department.

(d) Tow-in surfing decals shall be provided at the time the vessel is recorded with the department and shall be required to be prominently displayed on the front half of the vessel.

(e) Thrill craft not recorded with the department for tow-in surfing are prohibited from displaying a tow-in surfing decal.

(f) Effective September 1, 2004, both the thrill craft operator and surfer, who engage in, or operate a thrill craft for tow-in surfing, shall be required to possess, and make available upon demand of enforcement personnel, a certificate of completion from an accredited institution of higher education in Hawaii on the safe use and operation of a thrill craft in high surf, that includes but is not limited to:

- (1) Local ocean safety principles and practices;
- (2) Hawaii Administrative Rules as they apply to boating;
- (3) The historical, cultural, and customary practices of Hawaii's ocean users; and
- (4) Any rules or laws pertaining to protected species and thrill craft operation in the State.

(g) When operating a thrill craft for tow-in surfing, all operators shall:

- (1) Carry on board a two-way communicating device;
- (2) Tow-in a maximum of one person at any one time;
- (3) Carry dive fins and a safety knife on their person; and
- (4) Yield right of way to all other boating or ocean recreation activities by leaving the same surfing break area and remaining a minimum of one thousand feet from the other activities.

(h) Notwithstanding section 13-256-17, within designated ocean recreation management areas, thrill craft used for tow-in surfing may enter the ocean recreation management area to gain access to and from a surfing site and for board and personnel recovery, rescue, and emergency purposes only in areas

designated specifically for this activity as described in sections 13-256-23, 13-256-24 and 13-256-25.

(i) Unless otherwise provided by rule, towing surfers into waves within a designated ocean recreation management area shall be prohibited.

(j) Tow-in surfing may only be conducted during periods of high surf warning as declared by the National Weather Service in the region or around the island or islands for which the high surf warning has been issued.

(k) Notwithstanding section 13-244-18, surfers engaged in tow-in surfing shall not be required to wear a life-saving device.

(l) Thrill craft used for tow-in surfing may gain access to State waters from boat ramps, harbor facilities or from private beach front property and access the designated tow-in surfing area by the most direct route consistent with safety considerations.

(m) In addition to equipment required by the U.S. Coast Guard for vessels, all thrill craft used for tow-in surfing shall be equipped with the following:

- (1) A rescue sled that is a minimum of three feet wide, four feet long and three inches thick. The sled shall have a minimum of five hand-grip handles, two of which shall be on the port side, two on the starboard side and one at the bow of the sled. The sled shall not exceed the thrill craft load capacity recommended by the manufacturer;
- (2) A quick-release tow-rope a minimum of thirty-feet long; and
- (3) A bow tow-line a minimum of six feet long.

(n) Notwithstanding section 13-244-9, thrill craft used for tow-in surfing may be in proximity of the shoreline and tow-in surfers and travel at a speed

greater than slow-no-wake when accessing the ocean or shoreline or when retrieving a surfboard or surfer in accordance with this subchapter.

(o) The thrill craft shall be operated at all times with due care for the rights and safety of people and property and the operator shall abide by any state or federal laws as they pertain to protected species.

(p) All participants in tow-in surfing special events shall be required to possess a certificate of completion as described in subsection (f).

(q) Notwithstanding section 13-256-17(d), operators of a thrill craft used for filming tow-in surfing shall possess a certificate of completion as required by subsection (f).” [Eff 10/2/03; am

[REDACTED] (Auth: HRS SS200-2, 200-3, 200-4,
200-22, 200-24, 200-37) (Imp: HRS SS200-2, 200-3, 200-
4, 200-22, 200-24, 200-37)

55. Section 13-256-35, Hawaii Administrative Rules, is repealed.

"[§13-256-35 Owner required to report change in ownership, address and other changes. (a) In addition to the provisions in section 13-251-44, the holder of any commercial vessel permit issued under this chapter shall notify the department in writing within seven days if:

(1) The owner no longer has possession of the vessel;

(2) All or any interest in the vessel is transferred to or assigned to another person(s) or business entity; and

(3) The owner's address or telephone number changes.

(b) "Transfer" as used in this section means any sale, assignment, lease of a vessel or the change in

~~ownership or transfer of stock in a corporate owner which results in a change of the majority stockholder, or the transfer of interest in any other business entity which results in a change of the owner holding the majority interest.~~

~~(e) "Interest" as used in this section includes any claim of right, title, ownership of stock, shares, profit, benefit or gain in a corporation, partnership, joint venture or any other business entity that has a commercial vessel permit issued under this subchapter. [Eff 2/24/94] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24)]"~~

56. Section 13-256-56, Hawaii Administrative Rules, is amended to read as follows:

"§13-256-56 Wailua River restricted area. (a) Restrictions described in this section shall not apply to department vessels, department personnel or emergency, patrol or rescue craft while performing official duties.

(b) The Wailua River restricted area means the navigable waters of the Wailua River, Kauai, as defined by the boundaries as shown on Exhibit "L", titled, "Island of Kauai, Wailua River Restricted Area," dated February 27, 1998, and located at the end of this subchapter. The boundaries begin at a point at the high water mark at the mouth of the Wailua River and include all the navigable waters along the Wailua River in a westerly direction to the base of Kaholalele Falls on the north fork of the river and all of the navigable waters to the base of the Wailua Falls on the south fork of the river.

(c) The Wailua River restricted area shall be divided into four zones:

(1) Zone 'A' includes all the navigable waters beginning fifty feet into the river from the western side of the Wailua River bridge and from seventy-five feet into the Wailua River from the north shoreline to a point

approximately eighteen hundred feet along the shoreline, then extends from the banks of the north shoreline to approximately seven hundred and eighty-three yards upstream as indicated by navigational aids on both sides of the river designating the boundary between Zones 'A' and 'B', as shown on Exhibit "L-1", titled, "Island of Kauai, Wailua River Restricted Area, Zone 'A',", dated February 27, 1998, and located at the end of this subchapter.

- (2) Zone 'B' includes all waters extending approximately two miles upstream from the navigational aids on both sides of the river designating the boundary between Zones 'A' and 'B' to the base of Kaholalele Falls on the north fork of the river and approximately three and a half miles from the navigational aids designating the boundary between Zones 'A' and 'B' to the base of the Wailua Falls on the south fork of the river as shown on Exhibit "L", titled, "Island of Kauai, Wailua River Restricted Area," dated February 27, 1998, and located at the end of this subchapter.
- (3) Zone 'C' includes the waters beginning at the west side of the Wailua River bridge between the north and south banks and extends fifty feet into the river, then proceeds along the north shoreline extending seventy-five feet into the Wailua River from the north shoreline to a point approximately eighteen hundred feet along the shoreline as shown on Exhibit "L-1", titled, "Island of Kauai, Wailua River Restricted Area, Zone 'A',", dated February 27, 1998, and located at the end of this subchapter.
- (4) Zone 'D' begins at the eastern boundary of Zone 'C' and extends under the Wailua River bridge between the north and south banks, extending to the shoreline.

(d) General rules for Wailua River.

- (1) Only commercial and recreational vessels not exceeding twenty-one feet in length shall be allowed to utilize the Wailua River and shall be limited to:
 - (A) Vessels used for waterskiing;
 - (B) Motorized vessels, excluding thrill craft; and
 - (C) Manually-propelled vessels.
- (2) Commercial barges, or vessels otherwise allowed by the department, shall be exempt from vessel length restrictions described in paragraph (1).
- (3) Recreational motorized vessels, and recreational and rented manually-propelled vessels may utilize Zones 'A', 'B' and 'C' as provided for in this section.
- (4) Zone 'C' shall be designated a swimming zone indicated by marker buoys. Motorized vessels launching from launch ramp 'A' shall proceed with caution while within Zone 'C'.
- (5) All manually-propelled vessels shall be required to operate along side the northern river bank.
- (6) All vessel operators shall possess a state park permit to embark or disembark along the shores only within the state park in Zone 'B'.

(e) Commercial vessel activity requirements for Wailua River.

- (1) Unless otherwise provided by law, anyone conducting commercial activities on the Wailua River shall possess a valid commercial activity permit from the department.
- (2) All individuals possessing a commercial activity permit to utilize the Wailua river as of June 11, 1999, may retain the commercial activity permit on the effective date of these rules.
- (3) All available commercial activity permits may be issued in accordance with section 13-231-60.

- (4) Reissuance of commercial activity permits shall be in accordance with section 13-231-61.
- (5) Commercial barges, or vessels otherwise allowed by the department, may only utilize Zones 'A' and 'B'.
- (6) All commercial vessel activity is prohibited from Zones 'C' and 'D'.
- (7) Commercial waterskiing commercial activity permittees shall abide by the requirements described in subsection (g).
- (8) Commercial manually-propelled vessel commercial activity permittees shall abide by the requirements described in subsection (f).
- (f) Commercial manually-propelled vessel requirements for the Wailua River.
 - (1) Not more than fifteen manually-propelled vessel commercial activity permits, with a maximum of twelve vessels per commercial activity permit per day, and with a maximum of four guides per permit, may be issued for guided tours for the Wailua River.
 - (2) Not more than four manually-propelled vessel commercial activity permits, with a maximum of six vessels per commercial activity permit, may be issued for rented manually-propelled vessels for the Wailua River.
 - (3) In addition to the provisions in subsection (e) (1), manually-propelled vessel commercial activity permittees utilizing the Wailua River shall abide by the following:
 - (A) For guided tours, a minimum of one tour guide shall be required for each group of twelve people;
 - (B) Tour guides shall be required to wear a bright orange shirt with the company name printed on the shirt when guiding tours; and
 - (C) All commercial manually-propelled [vessels] vessel permittees shall be provided a Wailua River restricted area

decal for each commercial manually-propelled vessel and shall be required to display it on the bow of the vessel.

(g) Waterskiing activity requirements for the Wailua River.

- (1) Waterskiing may be conducted in Zone 'A' in an area designated by the department, as shown in Exhibit "L-1", titled "Island of Kauai, Wailua River Restricted Area, Zone 'A,'" dated February 27, 1998, and located at the end of this subchapter, and shall be prohibited in Zone 'C'.
- (2) Waterskiing may be conducted in Zone 'B' only between sunrise to 9:00 a.m. and from 5:00 p.m. to sunset.
- (3) A maximum of one commercial activity permit may be issued for waterskiing activities.
- (4) The vessel towing water skiers may tow not more than one person at any one time.
- (5) Waterskiing shall be conducted in accordance with section 13-244-18.
- (6) Waterskiing activities shall be exempt from the speed restrictions of section 13-244-9.
- (7) Waterskiing vessel traffic patterns shall be in a counter-clockwise direction.(8) Waterskiing tow ropes shall not exceed seventy-five feet in length.
- (9) Vessels engaged in waterskiing activities shall not exceed a speed of thirty-six miles per hour.
- (10) The only water [water] towing apparatus allowed shall be those equipped with boots, straps, or a leash on the board or ski.

(h) Launch ramp restrictions.

- (1) All commercial vessels are prohibited from utilizing Launch ramp 'A', as shown in Exhibit "L-1", titled "Island of Kauai, Wailua River Restricted Area, Zone 'A,'" dated February 27, 1998, and located at the end of this subchapter, and shall be required to utilize Launch ramp 'B', as shown in Exhibit "L-1," titled "Island of

Kauai, Wailua River Restricted Area, Zone 'A'," dated February 27, 1998, and located at the end of this subchapter.

(i) The eastern half of the lower Kaumualii area, as shown in Exhibit "L-1", titled "Island of Kauai, Wailua River Restricted Area, Zone 'A'," dated February 27, 1998, and located at the end of this subchapter, shall be used exclusively for the launching and recovery of Hawaiian outrigger canoes.

(j) The western half of the lower Kaumualii area, as shown in Exhibit "L-1", titled "Island of Kauai, Wailua River Restricted Area, Zone 'A', "dated February 27, 1998, and located at the end of this subchapter, may be utilized by recreational vessels, other than Hawaiian outrigger canoes, allowed on Wailua River." [Eff 10/19/02; 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)

57. Section 13-256-63, Hawaii Administrative Rules, is amended to read as follows:

"§13-256-63 Sharks Cove, Three Tables and Waimea Bay ocean waters. (a) Sharks Cove, Three Tables and Waimea Bay ocean waters means the area confined by the boundaries shown on Exhibit "Q", titled "Ocean Recreation Management Areas, Sharks Cove, Three Tables and Waimea Bay ocean waters", dated October 20, 2000, and located at the end of this subchapter.

- (1) Zone 'A' begins at a point in the water at approximately 21°38.296 N, 158°04.092 W, then in a northerly direction along the shoreline to Waimea Point at approximately 21°38.599 N, 158°03.916 W, then in a straight line in a southwesterly direction for approximately one thousand eight hundred thirty-seven feet back to the point of origin.
- (2) Zone 'B' begins at a point in the water Three Tables Point at approximately 21°38.751 N, 158°03.925 W; then along the shoreline in a northeasterly direction to a

point in the water at approximately 21°39.010 N, 158°03.842 W, then due west to approximately 21°39.010 N, 158°03.874 W, then in a straight line in a southwesterly direction back to the point of origin.

- (3) Zone 'C' begins at a point in the water at approximately 21°39.010 N, 158°03.842 W, then in a northerly direction along the shoreline to Kulalua Point at approximately 21°39.296 N, 158°03.823 W, then in a straight line in a southwesterly direction to approximately 21°39.010 N, 158°03.874 W, then in a straight line due east back to the point of origin.
- (4) Zone 'D' begins at Kulalua Point at approximately 21°39.296 N, 158°03.823 W, then due west for one hundred yards, then in a straight line in a southwesterly direction to the Wananapaoa Islet at approximately 21°38.340 N, 158°04.198 W, then in a straight line in a southeasterly direction to 21°38.296 N, 158°04.092 W, then in a straight line in the northeasterly direction to Waimea Point at approximately 21°38.599 N, 158°03.916 W, then in a northeasterly direction along the shoreline to approximately 21°38.751 N, 158°03.925 W and then in a straight line in a northeasterly direction to the point of origin.

(b) Following are restrictions for Zone 'A':

- (1) Except where permitted by law, motorized vessels, except sailing vessels with auxiliary engines, are prohibited in Zone 'A'.
- (2) Sailing vessels with auxiliary engines shall be required to enter and leave Zone 'A' on sail power or by oar only.
- (3) Manually-propelled vessels, i.e., kayaks, may embark and disembark from the shoreline of Zone 'A'.
- (4) Any vessel anchoring within Zone 'A' shall be prohibited from anchoring within two

hundred feet of the shoreline and shall anchor only in sandy areas.

(5) All vessels shall proceed at a speed of slow-no-wake, as defined in section [13-250-5] 13-230-8, when in Zone 'A'.

(c) Following are restrictions for Zone 'B':

(1) Manually-propelled vessels, i.e., kayaks, may embark and disembark from the shoreline in Zone 'B'.

(2) Except where permitted by law, motorized vessels, including sailing vessels with auxiliary engines, are prohibited in Zone 'B'.

(d) [Following are restrictions for Zone 'C':

{1}] Except where permitted by law, all vessels are prohibited from embarking or disembarking from the shoreline into Zone 'C'.

(e) In addition to any federal, state or county law, rule, permit or ordinance requirements, a commercial activity permit shall be required to conduct commercial SCUBA or commercial snorkeling activities in Zone 'C,' issued by the department. This applies to all for-profit and not-for-profit companies or organizations. Allocation of the commercial activity permits shall be in accordance with section 13-231-60 and the applicant shall submit the following with the application:

(1) A list of all instructors or guides to be named on the commercial activity permit. The onus shall be on the commercial activity permittee to update any additions or deletions of the names of the persons utilized for instruction or guided tours;

(2) Proof of insurance, as described in section 13-231-65, for each individual listed on the commercial activity permit;

(3) A copy of the tax clearance certificate or a letter from the state department of taxation that confirms the applicant is paying taxes;

(4) Vehicle license numbers for vehicles utilized for shuttling customers; and

(5) Proof of a leadership level professional credential, i.e., dive master or above, from an internationally recognized SCUBA diving training agency, e.g., PADI, for each instructor or guide listed on the commercial activity permit for commercial SCUBA and snorkeling activities.

(f) Commercial activity permits for commercial SCUBA or snorkeling activities shall be valid for a period not to exceed one year.

(g) Renewal of a commercial activity permit shall be in accordance with section 13-231-61, except that subsection (b) (1), (4) and (8) shall not apply. The minimum revenue standard shall be the fees provided in subsection (j).

(h) A yearly non-refundable commercial activity permit application fee of \$50 shall be paid at the time the application is submitted.

(i) In addition to the commercial activity permit described in subsection (e), a use permit, as described in subsection (j) shall be required when using Zone 'C'.

(j) A maximum of six use permits, with a combination of commercial activity permittees and customers not to exceed ten individuals, including instructors and assistants per use permit, shall be issued for any one of three time periods and the permittee shall only be allowed to use Zone 'C' during the periods reserved by the permittee via a reservation system established by the department.

(k) Use permit fees, that shall be paid in full at the time of the reservation for use periods, shall be as follows:

- (1) A seasonal user fee of \$420 or
- (2) A monthly user fee of \$75; or
- (3) A weekly user fee of \$56; or
- (4) A daily user fee of \$10.

(l) Individuals who possess a commercial activity permit and pay fees in accordance with section 13-234-25, shall be exempt from the fee requirements provided in subsection (k) but shall be

required to make reservations as described in subsection (j).

(m) Commercial activities may be allowed from April 1st through October 31st of each year but shall be prohibited between the hours of 9:00 p.m. to 8:00 a.m. and from November 1st through March 31st of each year.

(n) Individuals conducting instruction or guided tours shall be required to make available to representatives of the department a copy of the use permit upon demand.

(o) Any person who violates any of these rules or who violates any lawful command issued pursuant to these rules shall be subject to fines as prescribed in sections 200-14, 200-14.5, and 200-25, [HRS] Hawaii Revised Statutes. Prosecution of offenders shall be as provided by law.

(p) Commercial activity permittees shall make available to customers maps or charts that show the boundaries of the area(s), outlined restricted zones, and dangerous areas and conditions and shall establish an education program acceptable to the department addressing the historical, cultural, ecological significance of the area, and any rules or laws pertaining to protected species and marine resource conservation etiquette.

(q) Unless otherwise allowed by the County, commercial activity permittees shall be required to shuttle their customers to and from the parking area fronting Zone 'C', when utilizing Shark's Cove for commercial activities.

(r) Following are restrictions for Zone 'D' [] :

(1) All vessels shall proceed at a speed of slow-no-wake, as defined in section [13-250-5] 13-230-8, when in Zone 'D'.

(2) When installed, all vessels mooring in Zone 'D' shall utilize day-use-moorings or shall anchor in sandy areas.

(s) Individuals conducting special events in Zones 'A', 'B', 'C' or 'D', shall be required to obtain a special events permit in accordance with 13-244-19." [Eff 2/24/94; am 4/27/02; am

[Auth: HRS §§200-2, 200-3, 200-4, 200-10, 200-22, 200-24] (Imp: HRS §§200-2, 200-3, 200-4, 200-10, 200-22, 200-24)

58. Section 13-256-73.5, Hawaii Administrative Rules, is amended to read as follows:

"§13-256-73.5 Large snorkel tour permit restrictions. (a) No more than one-hundred fifty customers per day or the historical daily average of the months July, August, and September of the calendar years 1996 thru 2000, whichever is lower, not to be less than seventy customers per day per permit shall be permitted.

(b) The passenger carrying capacity of the vessel(s) having a capacity of over six passengers shall be established by a United States Coast Guard Certificate of Inspection.

(c) All associated operational and supporting activities on land must meet all applicable land use laws and zoning ordinances, including, but not limited to the number of passengers allowed and approved for loading from private lands or as approved by the department through a conservation district use permit.

(d) Snorkel tours shall be conducted in Zones "D" and "E" within Kaneohe bay waters, pursuant to section 13-256-73.

(e) All stops for other than snorkeling shall be within the commercial area of the sand flat area within Kaneohe [By] Bay waters designated as restricted zone I and shall not exceed two hours. Only non-motorized equipment may be used for water sports recreation.

(f) Any vessel authorized on the effective date of these rules to load passengers from the Heeia Kea small boat harbor pier under a permit issued pursuant to chapter 13-231 is permitted to load to full certified passenger capacity.

(g) Replacement or substitution of any existing vessels or equipment shall require prior written approval by the department and the department shall have discretion to permit vessel substitution with a

similar length vessel; provided that the increase shall not be greater than ten per cent of the length of the authorized vessel of record on May 22, 2000. An increase of greater than ten per cent of the length of the authorized vessel of record on May 22, 2000 is prohibited. Additional motorized and non-motorized vessels and equipment not authorized on July 1, 1993 by the department shall not be allowed.

(h) Educational and not-for-profit tours shall not be counted against daily customer limits, but the permittee's total number of passengers shall not exceed the maximum number of customers allowed per day. Not-for-profit tours and passengers shall not be mixed with commercial customers on the vessel at the same time.

(i) All vessels shall be registered in accordance with section 13-256-4(a), notwithstanding section 13-256-4(b), and display a current Ocean Recreation Management Area decal.

(j) Permittees or owners or shareholders of record of business entities holding permits may transfer any interest in the business. Any transfer of interest in the business shall result in assessment of a business transfer fee in accordance with section 13-256-7.

(k) When the Kualoa full service permit or a large full service permit turns into a large snorkel tour permit because of a transfer of ownership to a non-family member, no additional motorized or non-motorized vessels or equipment shall be allowed to be added to the existing authorized inventory.

(l) When a large snorkel tour permit transfers ownership to a non-family member no more than seventy customers per day shall be permitted." [Eff 11/7/11; am _____] (Auth: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-39) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-23, 200-24, 200-39)

59. Section 13-256-74, Hawaii Administrative Rules, is amended to read as follows:

"§13-256-74 Kailua Ocean Waters Restricted

Zones. (a) Zone A Kailua ocean waters restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit "Y", dated June 7, 1989, located at the end of this subchapter. The boundaries are as follows:

Beginning at a point on the low water mark of the shoreline at the extension of the western boundary of Kailua Beach Park; then along the low water mark of the shoreline in a eastern direction for a distance of three hundred feet; then by azimuth measured clockwise from True South, 180 degrees for a distance of one thousand one hundred fifty feet; 090 degrees for a distance of three hundred feet; then by a straight line to the point of beginning.

Zone A Kailua ocean waters restricted zone is designated for windsurfing. No person shall operate a [motor vessel] motorboat and no person shall swim in the zone when used by windsurfers.

[+e] (b) Zone B Kailua ocean waters restricted zone is the area encompassed by the boundaries of the zone shown on Exhibit "Y", dated June 7, 1989, located at the end of this subchapter. The boundaries are as follows:

Beginning at a point at the center of the bridge of Kawaiola Road at the entrance to Kaelepulei Pond; then for fifty feet either side of a line by azimuth measured clockwise from True South, 240 degrees for a distance of one thousand feet.

Zone B Kailua ocean waters restricted zone is designated an ingress/egress zone for manually propelled vessels. Swimming in the zone is prohibited when in use by vessels." [Eff 2/24/94; am

_____] (Auth: HRSSS200-2, 200-3, 200-4)

(Imp: HRS §§200-2, 200-3, 200-4)

60. Section 13-256-88, Hawaii Administrative Rules, is amended to read as follows:

"\$13-256-88 Maunalua Bay waters. (a) Maunalua Bay waters means the area encompassed by the boundaries shown on Exhibit "FF", dated May 15, 1990, and located at the end of this subchapter. The boundaries are described as follows:

Beginning at the southern point on the shoreline of Kawaihoa Point, then by azimuth measured clockwise from True South, 107 degrees for a distance of seventeen thousand and eighty-five feet to the southwestern tip of Wailupe Peninsula, then along the shoreline of Maunalua Bay to the point of beginning.

(b) Commercial ocean recreation activities shall be restricted within Maunalua Bay waters as follows:

- (1) No commercial operator shall operate a thrill craft, engage in parasailing, water sledding or commercial high speed boating, operate a motorized vessel towing a person engaged in parasailing, or operate a [motor vessel] motorboat towing a person engaged in water sledding during all weekends, and state or federal holidays.
- (2) All commercial ocean recreation activities in Maunalua Bay waters are prohibited on Sunday, effective January 1, 1991.

(c) Zone A Restricted Zone is the area encompassed by the boundaries shown of the zone on Exhibit "EE", dated February 7, 1990, and located at the end of this subchapter. The boundaries of Zone A are as follows:

Beginning at a point in the water, by azimuth measured clockwise from True South, which is 325 degrees for a distance of two thousand three hundred twenty-five feet from a point on the low water mark on the east side of Maunalua Bay boat ramp; then on a radius of two hundred feet around that point.

(d) Zone B Restricted Zone is the area encompassed by the boundaries shown of the zone on Exhibit "EE", dated February 7, 1990, and located at the end of this subchapter. The boundaries of Zone B are as follows:

Beginning at a point in the water, by azimuth measured clockwise from True South, which is 330 degrees for a distance of one thousand six hundred eighty feet from a point on the low water mark on the east side of Maunalua Bay boat ramp; then on a radius of two hundred feet around that point.

(e) Zone C Restricted Zone is the area encompassed by the boundaries shown of the zone on Exhibit "EE", dated February 7, 1990, and located at the end of this subchapter. The boundaries of Zone C are as follows:

Beginning at a point in the water, by azimuth measured clockwise from True South, which is 340 degrees for a distance of two thousand five hundred fifty feet from a point on the low water mark on the east side of Maunalua Bay boat ramp; then on a radius of two hundred feet around that point.

Zones A, B and C are designated commercial thrill craft operating zones. No commercial operator permittee shall operate more than six rental thrill craft within each designated area at any one time. No commercial thrill craft shall be operated within Zones A, B and C except between the hours of 9:00 a.m. and 5:00 p.m., Mondays through Fridays. No commercial thrill craft shall be operated within Zones A, B and C on Saturdays, Sundays and state or federal holidays.

(f) Zone D Restricted Zone is the area encompassed by the boundaries shown of the zone on Exhibit "EE", dated February 7, 1990, and located at the end of this subchapter. The boundaries of Zone D are as follows:

Beginning at a point in the water, by azimuth measured clockwise from True South, which is 012 degrees for a distance of seven hundred fifty feet from a point on the low water mark on the east side of Maunalua Bay boat ramp; then on a radius of two hundred feet around that point.

Zone D is designated a recreational thrill craft operating zone for use by inexperienced operators

only. Commercial thrill craft operations are prohibited.

(g) Zone E Restricted Zone is the area encompassed by the boundaries shown of the zone on Exhibit "EE", dated February 7, 1990, and located at the end of this subchapter. The boundaries of Zone E are as follows:

Beginning at a point in the water, by azimuth measured clockwise from True South 076 degrees for a distance of four thousand one hundred feet from Buoy "1", then 076 degrees for a distance of eight thousand four hundred feet; 168 degrees for a distance of one thousand four hundred fifty-five feet; 259 degrees for a distance of eight thousand five hundred eighty feet; then in a straight line to the point of beginning.

Zone E is designated a recreational thrill craft zone. No person shall operate a commercial thrill craft within this area. Other vessels shall exercise caution when transiting this area. This zone shall be closed to all thrill craft operations during the whale season, from December 15 to May 15 of the following year.

(h) Zone F Restricted Zone is the area encompassed by the boundaries shown of the zone on Exhibit "EE", dated February 7, 1990, and located at the end of this subchapter. The boundaries of Zone F are as follows:

Beginning at a point in the water at Buoy "1", by azimuth measured clockwise from True South, then 157 degrees for a distance of one thousand nine hundred thirty-five feet; 092 degrees for a distance of one thousand nine hundred five feet; 085 degrees for a distance of three thousand three hundred feet; 075 degrees for a distance of four thousand two hundred eighteen feet; 347 degrees for a distance of two thousand four hundred feet; 259 degrees for a distance of eight thousand eight hundred eighty feet; 000 degrees for a distance of eight hundred

eighty-five feet; then by a straight line to a point of beginning.

No person shall operate a vessel within this area at a speed in excess of slow-no-wake. This is a green sea turtle resting and foraging area.

(i) Zone G Maunalua Bay Parasail Zone is the area encompassed by the boundaries shown of the zone on Exhibit "FF", dated May 15, 1990, and located at the end of this subchapter. The boundaries of Zone G are as follows:

Beginning at entrance buoy "1" to the Hawaii-Kai Marina and Maunalua Bay boat launching ramp, establishing the eastern boundary along the extended centerline of the Ku'i channel entrance; then by straight line to buoy R-2 off Diamond Head, establishing the western boundary.

Zone G Maunalua Bay Parasail Zone is designated for parasail operations. All operating parasail vessels shall remain seaward of the boundary line. No more than two commercial operating area use permits for parasailing operations shall be authorized for this zone. No permittee shall operate more than one vessel with a parasail aloft at any one time. No person shall operate within one thousand feet of any buoy when the parasail is aloft. All other vessels using this area shall exercise extreme caution. This zone, except for that portion which is encompassed by alternate parasail zone G1, shall be closed to parasail operations from January 6 to May 15 of each year.

(j) Zone G1 Maunalua Bay Alternate Parasail Zone is the area encompassed by the boundaries shown on Exhibit "FF", dated May 15, 1990, and located at the end of this subchapter. The boundaries of Zone G1 are as follows:

Beginning at a point on the [the]eastern boundary of Zone G at the intersection of the straight line following a line from Kawaihoa Point at Koko Head to buoy R-2 off Diamond Head, establishing the shoreward boundary; then at a point on the shoreward boundary intersected by a

line on a bearing of 000 degrees to the Kahala Hilton Hotel establishing the western boundary.

Zone G1 Maunalua Bay Alternate Parasail Zone is that portion of parasail Zone G which is designated for parasail operations from January 6 to May 15 of each year. No permittee shall operate more than one parasail vessel within this zone during this period. No parasail vessel shall exceed the speed of 18 knots within this zone. All other vessels using this area shall exercise caution.

(k) Zone H Ingress-egress corridor means the area encompassed by the boundaries shown on Exhibit "HH", dated August 19, 1988, and located at the end of this subchapter. The boundaries of Zone H are as follows:

Beginning at a point at the shoreward western boundary of Maunalua Beach Park boat ramp; then by azimuth measured clockwise from True South, 120 degrees for a distance of seventy-five feet, 030 degrees for a distance of one hundred feet to a point in the water; 120 degrees for a distance of one hundred feet to a point in the water; 218 degrees for distance of one hundred feet to a point on land; then in a straight line to the point of beginning.

Zone H is designated for recreational thrill craft ingress-egress to the ocean waters of Maunalua Bay. No person shall operate or moor a vessel, surfboard, or sailboard within this area.

(l) Zone I means the area encompassed by the boundaries shown on Exhibit "HH", dated August 19, 1988, and located at the end of this subchapter. The boundaries of Zone I are as follows:

Beginning at a point in the water 270 degrees by azimuth measured clockwise from True South, at a distance of twenty-five feet from daybeacon R"2" of Ku'i channel; then 270 degrees for a distance of three hundred feet, 025 degrees for a distance of one thousand one hundred twenty-five feet; 090 degrees for a distance of

three hundred feet; then in a straight line to the point of beginning.

Zone I is designated for recreational water skiing and commercial water sledding. Only one commercial operating area use permit shall be issued for this zone for safety purposes.

(m) Maunalua Bay, Ku'i Channel speed restrictions.

(1) The speed of any watercraft shall not exceed 10 knots when within the confines of the Ku'i channel as shown on Exhibit "GG" dated May 15, 1990, and described as follows:

Beginning at a line drawn between buoys R "2" and G"1A", then through each and every daybeacon in ascending order to daybeacons R"8" and G"9".

(2) The speed of any watercraft shall not exceed 5 knots when within the confines of the Ku'i channel as shown on Exhibit "GG", dated May 15, 1990, and located at the end of this subchapter. The boundaries are described as follows:

Beginning at a line drawn between buoys R"8" and G"9", then through each and every daybeacon and buoy in ascending order to the boundaries of Hawaii Kai Marina Bridge, May Way Bridge and Kuli'ou'ou stream." [Eff 2/24/94; am _____] (Auth: HRS §§200-22, 200-23, 200-24, 200-37) (Imp: HRS §§200-22, 200-23, 200-24, 200-37)

61. Section 13-256-91, Hawaii Administrative Rules, is amended to read as follows:

"S13-256-91 Waikiki Ocean Waters Restricted
Zones. (a) Waikiki Speed Zone.

(1) Waikiki speed zone means the area confined by the boundaries shown for said zone on Exhibit "KK", dated June 30, 1988, located at the end of this subchapter. The boundaries are as follows:

Beginning at a point on the low water of the shoreline at the southern tip of Magic Island on a straight line to the Ala Wai Entrance Buoy G "1", then on a straight line to Diamond Head Buoy R "2", then on a straight line toward Diamond Head Lighthouse to intersect the Diamond Head windsurfing zone boundary, then along the boundary to the low water mark at Diamond Head Beach Park, then along the low water mark following the shoreline to the point of beginning.

(2) **Restriction.** No person shall operate a vessel or watercraft within the Waikiki speed zone at a speed in excess of slow-no-wake. Vessel operators shall exercise caution while transiting the area due to heavy use by swimmers.

- (b) Waikiki Commercial Thrill Craft Zone A.
- (1) Waikiki Thrill Craft Zone A means the area confined by the boundaries shown on Exhibit "KK", dated June 30, 1988, located at the end of this subchapter. The boundaries are as follows:

Beginning at a point in the water by azimuth measured clockwise from True South, 045 degrees for a distance of three thousand six hundred feet from the low water mark of the tip of the groin at the southern boundary of Fort DeRussy Beach Park; then on a radius of two hundred feet around that point.

- (c) Waikiki Commercial Thrill Craft Zone B.
- (1) Waikiki Commercial Thrill Craft Zone B means the area confined by the boundaries shown for said zone on Exhibit "KK", dated June 30, 1988, located at the end of this subchapter, which boundaries are described as follows:

Beginning at a point in the water by azimuth measured clockwise from True South, 025 degrees for a distance of three thousand

eight hundred feet from the low water mark of the tip of the groin at the southern boundary of Fort DeRussy Beach Park; then on a radius of two hundred feet around that point.

(d) Restrictions. Waikiki Commercial Thrill Craft Zone A and Zone B are designated commercial thrill craft areas. No commercial operator permittee shall operate more than six rented thrill craft within [it] its assigned area at any one time." [Eff 2/24/94; am _____] (Auth: HRS §§200-23, 200-24, 200-37) (Imp: HRS §§200-23, 200-24, 200-37)

62. Section 13-256-112, Hawaii Administrative Rules, is amended to read as follows:

"§13-256-112 Maui Humpback whale protected waters. The Maui Humpback whale protected waters means the area encompassed by the boundaries shown on Exhibit "00-1", dated May 15, 1990, and located at the end of this subchapter. The boundaries are described as follows:

Beginning at the shoreline of the southwestern tip of Puu Olai Point, then by azimuths measured clockwise from True South, 082 degrees for a distance of two nautical miles; 141 degrees for a distance of nineteen nautical miles; 164 degrees for a distance of three nautical miles; 184 degrees for a distance of two and five-tenths nautical miles; 200 degrees for a distance of four and three-tenths nautical miles; 295 degrees to Hawea Point; then along the shoreline of west and south Maui to the point of beginning.

Between December 15 and May 15 of the following year during the whale season, no person shall operate a thrill craft, or engage in parasailing, water sledding or commercial high speed boating, or operate a [motor vessel] motorboat towing a person engaged in water sledding or parasailing within this area." [Eff 2/24/94; am _____] (Auth: HRS §§200-22, 200-

23, 200-24, 200-37) (Imp: HRS §§200-22, 200-23, 200-24, 200-37)

63. Section 13-256-128, Hawaii Administrative Rules, is amended to read as follows:

"§13-256-128 Baldwin Park-Paia Bay Restricted Area. (a) The Baldwin Park-Paia Bay restricted area means the area confined by the boundaries shown for said zone on Exhibit "XX/YY", dated August 23, 1988, located at the end of this subchapter. The boundaries are as follows:

Beginning at a point at the low water mark at the northern tip of Fly Water Point, then by azimuth measured clockwise from True South, 157 degrees for a distance of five hundred feet; 070 degrees for a distance of six thousand two hundred feet; 344 degrees to the low water mark of the shoreline; then along the low water mark of the shoreline in an easterly direction to the point of beginning.

(b) Restrictions. The Baldwin Park-Paia Bay restricted area is designated for swimming, diving and fishing. No person shall operate a [motor vessel] ~~motorboat~~ at a speed in excess of slow-no-wake, or operate a sailboard within this area." [Eff 2/24/94; am _____] (Auth: HRS §§200-2, 200-3, 200-4) (Imp: HRS §§200-2, 200-3, 200-4)

64. Section 13-256-162, Hawaii Administrative Rules, is amended to read as follows:

"§13-256-162 Makaiwa Bay Swimming Zones. (a) Zone A.

(1) Zone A means the area confined by the boundaries shown on Exhibit "MMM", dated July 10, 1988, located at the end of this subchapter. The boundaries are as follows:

Beginning at the low water mark of the shoreline on the northwestern tip to the entrance of the boat ramp; then by azimuth measured clockwise from True South, 110

degrees for a distance of seven hundred ten feet to a point of low water of the shoreline; then along the shoreline in a south and easterly direction to the point of beginning.

(b) Zone B.

(1) Zone B means the area confined by the boundaries shown on Exhibit "MMM", dated July 10, 1988, located at the end of this subchapter. The boundaries are as follows:

Beginning at the low water mark of the shoreline on the northeastern tip to the entrance of the boat ramp; then by azimuth measured clockwise from True South, 226 degrees for a distance of five hundred forty feet to a point of low water of the shoreline; then along the shoreline in a south and westerly direction to the point of beginning.

(c) Restrictions. The Makaiwa Bay swimming zones A and B are designated for swimming and diving. No person shall 11 operate or moor a [motor vessel] motorboat within this zone." [Eff 2/24/94; am

] (Auth: HRS §§200-2, 200-3, 200-4)

(Imp: §§200-2, 200-3, 200-4)

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

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

67. The amendments to chapters 13-230, 13-231, 13-232, 13-233, 13-235, 13-240, 13-242, 13-243, 13-244, 13-245, 13-250, 13-251, 13-253, 13-254, 13-255, 13-256, 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 Statues, which were adopted on _____ by the Board of Land and Natural Resources, and filed with the Office of the Lieutenant Governor.

SUZANNE D. CASE
Chairperson
Board of Land and Natural Resources

APPROVED FOR PUBLIC HEARING:

/s/ Daniel A. Morris
Deputy Attorney General

Exhibit F:



Exhibit 3

HAWAII ADMINISTRATIVE RULES

TITLE 15
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND TOURISM

CHAPTER 37
SOLAR WATER HEATER VARIANCE

SUBCHAPTER I IN GENERAL

- §1-1 Purpose
- §1-2 Definitions

SUBCHAPTER 2 ELIGIBILITY FOR, SELECTION CRITERIA, AND TERMINATION OF SOLAR WATER HEATER VARIANCES

- §2-1 Eligibility criteria for SWHV
- §2-2 Procedure for SWHV
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SUBCHAPTER 3 ADMINISTRATION

- §3-1 Administration
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§1-1 Purpose. The purpose of this chapter is to provide rules for administration of the state solar water heater variance program authorized by chapter 196-6.5, Hawaii Revised Statutes ("HRS"). [Eff June 26, 2008, Act 204]

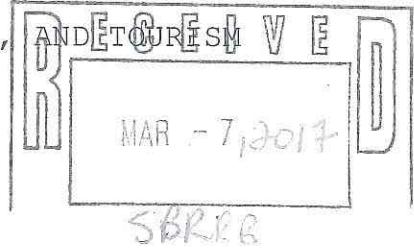
§1-2 Definitions. As used in this chapter, unless a different meaning clearly appears in the context:

"Authorized to do business in the State" means a corporation incorporated under chapter 416, HRS, a foreign corporation admitted under chapter 418, HRS, a corporation incorporated under chapter 415, HRS, or a foreign corporation admitted under chapter 415, HRS; a partnership registered under chapter 425, HRS, or 425D, HRS; or a sole proprietorship.

"County" or "counties" means the City and County of Honolulu and the counties of Hawaii, Kauai, and Maui.

"DBEDT" means the State of Hawaii Department of Business, Economic Development, and Tourism.

"Department" means the State of Hawaii Department of Business, Economic Development, and Tourism.



"Director" means the director of the Department of Business, Economic Development, and Tourism.

"Family" means any group of people, which may include children, living together as a unit.

"HRS" means Hawaii Revised Statutes, the laws of the State of Hawaii, which were passed by the State Legislature and signed by the Governor or allowed to become law without signature.

"Program" means the state solar water heater variance program authorized by chapter 196-6.5, HRS.

"Qualified professional" means any architect or mechanical engineer licensed to do business in the State, which is:

- (1) Subject to the state corporate or individual income tax under chapter 235, HRS;
- (2) Engaged in design or engineering of a Hawaii single family dwelling.

"Representative" is a person who submits a Request for Variance from the Mandatory Solar Water Heater Law on behalf of and with the consent of the homeowner or future homeowner.

"Request" means a valid "Request for Variance from the Mandatory Solar Water Heater Law" form.

"Requestor" is a homeowner or representative requesting a Solar Water Heating Variance (SWHV).

"Single family dwelling" means a building designed for one family to live in. This excludes duplexes, triplexes, apartments, condominiums, and other structures built for multiple families.

"Solar water heater" ("SWH") is a device in which water is heated by the sun to provide domestic hot water. Most SWH systems in Hawaii use a series of large glass and metal panels containing a metal pipe winding itself inside. The panels are usually installed on a building's roof. The heated water is usually stored in a large tank (80 gallons or more). In an active system, an electric pump pumps the water from the supply pipe through the pipe that runs through the panels and into the storage tank. In a passive system, the heated water moves through the pipe through natural convection.

"State" means the State of Hawaii.

"SWHV" is a "solar water heater variance," a request to be exempt from HRS chapter 196-6.5, which requires a solar water heating system for new single-family residential construction.

"Valid form" is a template, usually in Microsoft "Word" or an online form for the Request for Variance from the Mandatory Solar Water Heater Law that is designated by the State to be the most recent version that complies with state requirements.

SUBCHAPTER 2

ELIGIBILITY FOR, SELECTION CRITERIA, AND TERMINATION OF SWHV

S2-1 Eligibility-criteria for a SWHV.

(a) To be eligible for a solar water heater variance, a home shall be:

- (1) Built on or after January 1, 2010.
- (2) A single family dwelling.
- (3) Located within the state of Hawaii.

(b) The requestor shall submit to the State a valid, correctly completed Request for Variance from the Mandatory Solar Water Heater Law form.

(c) The request must be submitted by a qualified professional who is an architect or mechanical engineer licensed to do business in the State of Hawaii according to HRS 464.

(d) The form should be printed on the letterhead of the architect or mechanical engineer, or correctly completed online.

(e) A valid form can be obtained by:

(1) Accessing the DBEDT Energy Division Solar Water Heater Variance website and completing the online form;

(2) Downloading a form from the DBEDT Energy Division website; or

(3) e-mailing the program office at:

DBEDT.SWH-Variance@ hawaii.gov.

(f) A request must be submitted for each dwelling.

(g) Fee: A SWHV processing fee of \$25.00 shall be charged for each SWHV request. The request shall be processed when the fee is received.

S2-2 Procedure for SWHV.

(a) Homeowner or representative (requestor) submits a properly completed, valid Request for Variance from the Mandatory Solar Water Heater Law form and fee payment to the State via:

- (1) Online at the DBEDT Energy Division Solar Water Heater Variance website.
- (2) E-mail: DBEDT.SWH-Variance@ hawaii.gov.
- (3) Fax: 808-586-2536.
- (4) U.S. Postal Service: SWH Variance, c/o DBEDT Energy Division, P.O. Box 2359, Honolulu, HI 96804-2359.
- (5) Hand delivery.

(b) The State reviews the request.

(c) The State shall immediately inform the requestor of any errors on the request, if the request is on an invalid form, or if there is a problem with the fee payment.

(d) After review, the correct and paid requests are sent to the director or his/her designee.

(e) The director/designee approves or denies the request.

(f) The requestor is notified of the director's/designee's decision.

(g) A copy of the approved request is sent to the requestor.

(h) Information about the request is posted on the department's SWHV webpage, including the director's approval or denial of the request.

S2-3 Criteria for state review of SWHV request.

(a) Upon receiving a Request for Variance from the Mandatory Solar Water Heater Law form and fee payment, the request is reviewed to ensure that:

(1) Request is on a valid form.

(2) Fee is paid.

(3) Request is correctly completed, including:

(A) Printed on architect's or mechanical engineer's letterhead with name, address, e-mail address, and phone number. In lieu of a letterhead, the architect's or mechanical engineer's name, address, e-mail address, and phone number shall be written on the form or inputted into the online form.

(B) Return e-mail address to which the Request for Variance from the Mandatory Solar Water Heater Law form should be returned.

(C) The property's address (at least the street name), town and island.

(D) The property's Tax Map Key (TMK) number.

(E) One of the options is checked.

(F) If Option 1 (installation impractical and/or cost-prohibitive) is checked, a Life Cycle Cost Comparison, also available from the SWHV website or the program office, is included and properly completed, including architect's or mechanical engineer's stamp and signature.

(G) If Option 2 (renewable energy technology) is checked, the renewable system to be installed is circled or otherwise marked.

(H) If Option 3 (gas tankless on-demand water heater) is checked, at least one additional gas appliance is listed on the line under the Option 3 paragraph.

(I) Request is signed and stamped by the architect or mechanical engineer.

- (b) The request shall be reviewed by the department and sent to the director or director's designee for review.
- (c) The director shall approve or deny a request based upon requirements of HRS 196-6.5.
- (d) A requestor whose variance request is denied shall be notified and provided with the reasons for denial.

§2-4 Procedure for amendment of a SWHV.

- (a) A homeowner may request amendment (or termination--see following section) of an approved SWHV by submitting a written notification to the department and a revised SWHV request.
- (b) Requests for an amendment will be considered if the amendment relates to a change in the homeowner's choice of water heating device.
- (c) If the amendment is to change to a solar water heater, no fee will be required. All other amendments require payment of the current SWHV processing fee.
- (d) The request for amendment shall be reviewed by the department and forwarded to the director or his/her designee.
- (e) If approved by the director/designee, the amendment shall take effect on the date of approval.
- (f) A homeowner whose application for amendment is denied by the director/designee shall be notified and provided with the reasons for denial.

SUBCHAPTER 3
ADMINISTRATION

§3-1 Administration. (a) The department is authorized to implement and enforce the rules of this chapter.

(b) The department shall monitor the program to assure adherence to these rules, the effectiveness of the rules, and that the purpose of the program is still relevant to the intent of HRS 196-6.5.

§3-2 Fee Increases. From time to time, it may be necessary to increase the SWHV processing fee, as required in §2-1(g). A fee increase shall be instituted when approved by the department director and posted on the department's website for 30 calendar days.

§3-3 Waiver. The director may waive particular provisions of this chapter to conform to applicable federal requirements.

§3-4 Severability. If any part, section, sentence, clause, or phrase of this chapter, or its application to any person, transaction, or other circumstance, is for any reason held to be unconstitutional or invalid, the remaining parts, sections, sentences, clauses, and phrases of this chapter, or its application to other persons, transactions, or circumstances shall not be affected.

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