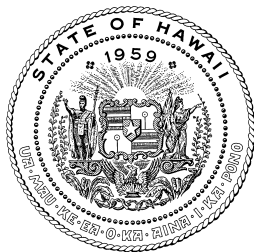


**Small Business Regulatory Review Board Meeting**

**November 17, 2022**

**10:00 a.m.**



## SMALL BUSINESS REGULATORY REVIEW BOARD

Department of Business, Economic Development & Tourism (DBEDT)  
No. 1 Capitol District Building, 250 S. Hotel Street, Fifth Floor, Honolulu, HI 96813  
Mailing Address: P.O. Box 2359, Honolulu, HI 96804  
Email: [dbedt.sbrrb.info@hawaii.gov](mailto:dbedt.sbrrb.info@hawaii.gov)  
Website: [sbrrb.hawaii.gov](http://sbrrb.hawaii.gov)

Tel: 808 798-0737

### AGENDA

**Thursday, November 17, 2022 ★ 10:00 a.m.**  
**No. 1 Capitol District Building**  
**250 S. Hotel Street, Conference Room 436**  
**Honolulu, HI 96813**

**David Y. Ige**  
*Governor*

**Mike McCartney**  
*DBEDT Director*

#### Members

**Robert Cundiff**  
*Chairperson*  
*O'ahu*

**Mary Albitz**  
*Vice Chairperson*  
*Maui*

**Jonathan Shick**  
*2nd Vice Chairperson*  
*O'ahu*

**Dr. Nancy Atmospera-Walch**  
*O'ahu*

**William Lydgate**  
*Kaua'i*

**James (Kimo) Lee**  
*Hawai'i*

**Garth Yamanaka**  
*Hawai'i*

**Taryn Rodighiero**  
*Kaua'i*

**Sanford Morioka**  
*O'ahu*

**Tessa Gomes**  
*O'ahu*

**Mark Ritchie** for  
Director, DBEDT  
*Voting Ex Officio*

As authorized under Act 220, Session Laws of Hawaii 2021 and Chapter 92-3.7 Hawaii Revised Statutes (HRS), the public can participate in the meeting either:

**A. By attending the in-person meeting at:**  
**No. 1 Capitol District Building, 250 S. Hotel Street**  
**Conference Room 436, Honolulu, HI 96813; or**

**B. Via Video-audio livestream or via Telephone - to join the Video-audio livestream meeting, go to:**

<https://us06web.zoom.us/j/88945374966?pwd=cDhqWEEzZGZHYmJLM05tMHU5Mm5HQj09>

**C. To Join via Telephone: Dial 1-669-900-6833 with Meeting ID 883 5814 0200 Passcode 066739**

When the Chairperson asks for public testimony during the meeting, you may indicate that you want to provide oral testimony by using the raise hand function or, if calling in by telephone, entering \* and 9 on your phone keypad. When recognized by the Chairperson, you will be unmuted. If calling in by phone, you can unmute and mute yourself by pressing \* and 6 on your keypad.

Members of the public may also submit written testimony via e-mail to: [DBEDT.sbrrb.info@hawaii.gov](mailto:DBEDT.sbrrb.info@hawaii.gov) or mailed to SBRRB, No. 1 Capitol District Building, 250 S. Hotel Street, Room 506A, Honolulu, HI 96813, or P.O. Box 2359, Honolulu, HI 96804. All written testimony should be received no later than 4:30 p.m., Wednesday, November 16, 2022.

Copies of the Board Packet will be available on-line for review at: [Agendas & Minutes – Small Business Regulatory Review Board \(hawaii.gov\)](#). An electronic draft of the minutes for this meeting will also be made available at the same location when completed.

The Board may go into Executive Session under Section 92-5 (a)(4), HRS to Consult with the Board's Attorney on Questions and Issues Concerning the Board's Powers, Duties, Immunities, Privileges and Liabilities.

**I. Call to Order**

**II. Approval of October 20, 2022 Meeting Minutes**

**III. New Business – Before Public Hearing**

- A. Discussion and Action on Proposed New Hawaii Administrative Rules (HAR) Title 13 Chapters 230 and 256, **General Provisions; Ocean Recreation Management Rules and Areas**, promulgated by Department of Land and Natural Resources (DLNR) – **Discussion Leader – Taryn Rodighiero**

**IV. Old Business – After Public Hearing**

- A. Discussion and Action on the Small Business Statement After Public Hearing and the Proposed Amendments to HAR Title 13 Chapter 256-152, **Kahaluu Bay Ocean Waters**, promulgated by DLNR – **Discussion Leader – Taryn Rodighiero**
- B. Discussion and Action on the Small Business Statement After Public Hearing and the Proposed Amendments to HAR Title 13 Chapter 251 Subchapters 1, 2, 3, and 7, **Commercial Activities on State Ocean Waters, Navigable Streams and Beaches**, promulgated by DLNR – **Discussion Leader – Taryn Rodighiero**

**V. 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

**VI. Next Meeting:** Thursday, December 8, 2022 at 10:00 a.m., held via Zoom and In-Person at 250 S. Hotel Street, Conference Room 436, Honolulu, HI 96813

**VII. Adjournment**

INDIVIDUALS REQUIRING SPECIAL ASSISTANCE OR AUXILIARY AIDS OR SERVICES (e.g., sign language interpreter, captioner, computer-assisted note taker, wheel chair accessibility, parking designated for the disabled or other accommodation).

Any individual needing an auxiliary aid/service or other accommodation due to a disability may contact the Small Business Regulatory Review Board office at 808-798-0737 and/or [jetaime.k.ariola@hawaii.gov](mailto:jetaime.k.ariola@hawaii.gov) as soon as possible, preferably at least three (3) working days prior to the meeting. Requests made less than three working days prior to the meeting cannot be assured. Upon request, this notice is available in alternate formats such as large print or electronic copy.

## **II. Approval of October 20, 2022 Meeting Minutes**



## Small Business Regulatory Review Board

### MEETING MINUTES - DRAFT

October 20, 2022

- I. **CALL TO ORDER:** Chair Cundiff called the meeting to order at 10:01 a.m., with a quorum present, which was open to the public.

**MEMBERS PRESENT:**

- Robert Cundiff, Chair
- Mary Albitz, Vice Chair
- Jonathan Shick, 2<sup>nd</sup> Vice Chair
- Garth Yamanaka
- Taryn Rodighiero
- Mark Ritchie

**ABSENT MEMBERS:**

- Dr. Nancy Atmospera-Walsh
- James (Kimo) Lee
- William Lydgate
- Tessa Gomes
- Sanford Morioka

**STAFF:** DBEDT

Dori Palcovich  
Jet'aime Ariola

Office of the Attorney General

Alison Kato

II. **APPROVAL OF September 15, 2022 MINUTES**

Vice Chair Albitz motioned to accept the September 15, 2022 meeting minutes, as presented. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

III. **NEW BUSINESS** – Before Public Hearing

- A. Discussion and Action on Proposed Amendments to HAR Title 16 Chapter 115, Professional Engineers Architects Surveyors and Landscape Architects, promulgated by Department of Commerce and Consumer Affairs (DCCA)

Discussion leader Ms. Rodighiero reminded the board members that this rule was reviewed and deferred from last month because there was some confusion as to what specific changes were being made.

Ms. Lee Ann Teshima, Executive Officer at DCCA's Professional and Vocational Licensing Division, explained that in January 2022 this Board reviewed proposed changes to HAR Chapter 115. However, after the Board provided approval and subsequent to going to public hearing, additional amendments to the rules were promulgated.

Thus, last month's confusion occurred because the proposal included both changes from January 2022 and the most current changes; as such, the proposal today only includes the subsequent changes for consideration. Chair Cundiff noted that the rule proposal is very clear and the information is very thorough.

Second Vice Chair Shick questioned whether the change of the dates in the rules for applying for the engineering licenses would fall in-line with national requirements and wondered if there might potentially be some confusion with the dates of the national registration versus the state registration. Mr. Clayton Pang, Chair of the EASLA Board, DCCA, responded that the dates were changed because the majority of the exams are converting to computer-based in a testing center which no longer requires twice a year testing.

Ms. Rodighiero motioned to move the proposed rule amendments onto public hearing. Mr. Yamanaka seconded the motion, and the Board members unanimously agreed.

#### **IV. ADMINISTRATIVE MATTERS**

##### **A. Discussion and Action on the following:**

1. Board's Draft 2022 Annual Report Summary for Submission to the Hawaii State Legislature, under Section 201M-5(f), Hawaii Revised Statutes (HRS)

There is a noticeable improvement in the Matrix graph at the back of the Report that shows a lesser number of rules being "opposed" from past years. It appears this is because many of the agencies are now providing more outreach to the stakeholders, resulting in a smoother rule review process than in past years. Chair Cundiff will amend the "Chair's Message" in this Report to include this sentiment and how overtime this Board has adapted to understand how it impacts the business community and the results of its efforts. Vice Chair Albitz added that a "majority" of the agencies are assisting with the Board's efforts.

Mr. Yamanaka motioned to accept the draft *2022 Annual Report Summary* for publication with forthcoming changes to be made to the Chair's Message. Ms. Rodighiero seconded the motion, and the Board members unanimously agreed.

2. Board's Draft 2022 201M-7 Periodic Review: Evaluation Report for Submission to the Hawaii State Legislature under Section 201M-7, HRS

The members discussed an on-going lack of submission of rules for the 201M-7 Report from the County of Hawaii; Vice Chair Albitz noted that there are similar issues with Maui. Deputy Attorney General Kato confirmed that there would be no legal cause for incurring penalties upon the counties for lack of participation or nonsubmittal of the required rule information; she suggested that public pressure might be the best route to take against the counties.

Chair Cundiff noted that there is not much this Board can do to force the issue of submitting the required rule information from the counties except to reach out to the county representatives and share with them the information that it is required to the Board per statute. Second Vice Chair Shick added that advocacy and outreach to the small business community may also be helpful because if the businesses knew what changes were being proposed it may help with the counties' accountability.

Vice Chair Albitz stated that state legislators should be aware that some of the counties are not accountable. Chair Cundiff added that knowing who the county contacts are is also important in sharing and advising who this Board is, what it does, and that the Board is here to support small business. Going forward, DBEDT staff will provide this Board's neighbor island members with correspondence and contact information.

Mr. Ritchie motioned to accept the draft *2022 201M-7 Periodic Review: Evaluation Report* for publication. Second Vice Chair Shick seconded the motion, and the Board members unanimously agreed.

**B. Update on the Board's Upcoming Advocacy Activities and Programs in accordance with the Board's Powers under Section 201M-5, HRS**

**1. Board's Phase II Website Project**

Ms. Rosie Warfield and Mr. Mark Moran, representatives from NIC Hawaii, presented the specific changes that were made to the Board's existing website. These changes, which were officially launched on September 19<sup>th</sup>, include the following:

- Amended the content layout to the homepage
- Adjusted the resource section
- Added filtering to the meeting/agendas page
- Updated the MailChimp newsletter

In addition to offering a back-end video library system on WordPress where DBEDT staff can go into the site and train themselves on all the different aspects of the new features, a live training session was held for them. Ms. Warfield explained that we are now in a 90-day window for support and despite any tweaking or fixing of any of the features on the website, the project is essentially complete.

Chair Cundiff thanked Ms. Warfield and Mr. Moran for all their efforts as they have been very attentive, responsive and professional during the process. In response to Vice Chair Albitz's inquiry as to whether it is possible to open up the meeting packets into a new window so users can easily go back to the main page, it was indicated that it may be possible; NIC Hawaii will get back to the Board if this can be done.

**2. Board's Attendance at the September 17, 2022 Hawaii Small Business Fair at Leeward Community College**

Mr. Ritchie updated the members on the success of the small business fair after a two-to-three-year hiatus. Approximately 200 attendees showed up to learn about opening up and maintaining a small business. There were 30 different business-related classes in four separate time slots and 30 to 35 exhibitors, both government agencies and non-profits, offering business support services.

Mr. Richie complimented Ms. Ariola for her fine outreach work at the fair; Mr. Ariola stated that she was very happy to attend the fair and offer information to small businesses about the Board.

V. **NEXT MEETING** - Thursday, November 17, 2022 at 10:00 a.m.

VI. **ADJOURNMENT** – Vice Chair Albitz made a motion to adjourn the meeting and Ms. Rodigheiro seconded the motion; the meeting adjourned at 11:01 a.m.

DRAFT

### **III. New Business**

- A. Discussion and Action on the Proposed New HAR Title 13 Chapters 230 and 256,  
**General Provisions; Ocean Recreation Management Rules and Areas,**  
promulgated by DLNR

PRE-PUBLIC HEARING SMALL BUSINESS IMPACT STATEMENT  
TO THE  
SMALL BUSINESS REGULATORY REVIEW BOARD  
(Hawaii Revised Statutes §201M-2)

Date: \_\_\_\_\_

Department or Agency: \_\_\_\_\_

Administrative Rule Title and Chapter: \_\_\_\_\_

Chapter Name: \_\_\_\_\_

Contact Person/Title: \_\_\_\_\_

E-mail: \_\_\_\_\_ Phone: \_\_\_\_\_

A. To assist the SBRRB in complying with the meeting notice requirement in HRS §92-7, please attach a statement of the topic of the proposed rules or a general description of the subjects involved.

B. Are the draft rules available for viewing in person and on the Lieutenant Governor's Website pursuant to HRS §92-7?

☐ Yes ☐ No

If "Yes," provide details: \_\_\_\_\_

**I. Rule Description:**

☐ New ☐ Repeal ☐ Amendment ☐ Compilation

**II. Will the proposed rule(s) affect small business?**

☐ Yes ☐ No

(If "No," no need to submit this form.)

\* "Affect small business" is defined as "any potential or actual requirement imposed upon a small business . . . that will cause a direct and significant economic burden upon a small business, or is directly related to the formation, operation, or expansion of a small business." HRS §201M-1

\* "Small business" is defined as a "for-profit corporation, limited liability company, partnership, limited partnership, sole proprietorship, or other legal entity that: (1) Is domiciled and authorized to do business in Hawaii; (2) Is independently owned and operated; and (3) Employs fewer than one hundred full-time or part-time employees in Hawaii." HRS §201M-1

**III. Is the proposed rule being adopted to implement a statute or ordinance that does not require the agency to interpret or describe the requirements of the statute or ordinance?**

☐ Yes ☐ No

(If "Yes" no need to submit this form. E.g., a federally-mandated regulation that does not afford the agency the discretion to consider less restrictive alternatives. HRS §201M-2(d))

**IV. Is the proposed rule being adopted pursuant to emergency rulemaking? (HRS §201M-2(a))**

☐ Yes ☐ No

(If "Yes" no need to submit this form.)

\* \* \*

**If the proposed rule affects small business and are not exempt as noted above, please provide a reasonable determination of the following:**

1. Description of the small businesses that will be required to comply with the proposed rules and how they may be adversely affected.
  
  
  
  
  
  
  
  
  
  
2. In dollar amounts, the increase in the level of direct costs such as fees or fines, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs associated with compliance.

If the proposed rule imposes a new or increased fee or fine:

- a. Amount of the current fee or fine and the last time it was increased.
  
  
  
  - b. Amount of the proposed fee or fine and the percentage increase.
  
  
  
  - c. Reason for the new or increased fee or fine.
  
  
  
  - d. Criteria or methodology used to determine the amount of the fee or fine (i.e., Consumer Price Index, Inflation rate, etc.).
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3. The probable monetary costs and benefits to the agency or other agencies directly affected, including the estimated total amount the agency expects to collect from any additionally imposed fees and the manner in which the moneys will be used.

4. The methods the agency considered or used to reduce the impact on small business such as consolidation, simplification, differing compliance or reporting requirements, less stringent deadlines, modification of the fines schedule, performance rather than design standards, exemption, or other mitigating techniques.
5. The availability and practicability of less restrictive alternatives that could be implemented in lieu of the proposed rules.
6. Consideration of creative, innovative, or flexible methods of compliance for small businesses. The businesses that will be directly affected by, bear the costs of, or directly benefit from the proposed rules.
7. How the agency involved small business in the development of the proposed rules.
  - a. If there were any recommendations made by small business, were the recommendations incorporated into the proposed rule? If yes, explain. If no, why not.



8. Whether the proposed rules include provisions that are more stringent than those mandated by any comparable or related federal, state, or county standards, with an explanation of the reason for imposing the more stringent standard.

If yes, please provide information comparing the costs and benefits of the proposed rules to the costs and benefits of the comparable federal, state, or county law, including the following:

- a. Description of the public purposes to be served by the proposed rule.
- b. The text of the related federal, state, or county law, including information about the purposes and applicability of the law.
- c. A comparison between the proposed rule and the related federal, state, or county law, including a comparison of their purposes, application, and administration.
- d. A comparison of the monetary costs and benefits of the proposed rule with the costs and benefits of imposing or deferring to the related federal, state, or county law, as well as a description of the manner in which any additional fees from the proposed rule will be used.
- e. A comparison of the adverse effects on small business imposed by the proposed rule with the adverse effects of the related federal, state, or county law.

\* \* \*

Small Business Regulatory Review Board / DBEDT  
Phone: (808) 586-2594 / Email: [DBEDT.sbrrb.info@hawaii.gov](mailto:DBEDT.sbrrb.info@hawaii.gov)

This Statement may be found on the SBRRB Website at: <http://dbedt.hawaii.gov/sbrrb/resources/small-business-impact-statements>

## Small Business Regulatory Review Board

### MINUTES OF REGULAR MEETING

February 26, 2019

Conference Room 436, 250 South Hotel Street, Honolulu, Hawaii 96813

- I. **CALL TO ORDER:** Chair Borge called the meeting to order at 10:03 a.m., with a quorum present.

**MEMBERS PRESENT:**

- Anthony Borge, Chair
- Robert Cundiff, Vice Chair
- Garth Yamanaka, Second Vice Chair
- Harris Nakamoto
- Mary Albitz
- William Lydgate
- Carl Nagasako

**ABSENT MEMBERS:**

- Nancy Atmospera-Walch

**STAFF:** DBEDT

Dori Palcovich  
Jet'aime Alcos

Office of the Attorney General

Margaret Ahn

- II. **INTRODUCTION OF MR. MICHAEL McCARTNEY, DIRECTOR, DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM (DBEDT)**

Chair Borge introduced Mr. Michael McCartney, DBEDT's newly appointed director. Director McCartney stated that he looks forward to working with this Board and appreciates the work this Board does. Chair Borge, in turn, expressed appreciation for the support provided to this Board by DBEDT.

- III. **APPROVAL OF JANUARY 17, 2019 MINUTES**

Vice Chair Cundiff made a motion to accept the January 17, 2019 minutes, as amended. Mr. Nakamoto seconded the motion, and the Board members unanimously agreed.

- IV. **REGULATION REVIEW CARD**

- A. Discussion and Fact Finding on Request Received through this Board's Regulation Review Card for Proposed New Rules and Regulations for "Crafting Safe and Sustainable, Commercial Manta Ray Viewing Procedures for Manta Ray Snorkel and Dive Sites" under Department of Land and Natural Resources' (DLNR's) Division of Boating and Ocean Recreations (DOBOR)

a. Draft Hawaii Administrative Rules, Title 13 Subtitle 11 Ocean and Coastal Areas, Part 1 Small Business Facilities and Provisions Generally Applicable to All State Navigable Water, Chapter 230 General Provisions, promulgated by DLNR

Chair Borge explained that the draft rules are for discussion and fact-finding purposes and relate to concerns raised by Mr. Keller Laros of Mana Pacific Research Foundation, via regulation review card, and from testimony received by Mr. Iko Balanga and Ms. Holly Crane, owners of Anelakai Adventures, regarding the creation of the rules for commercial manta ray viewing procedures.

Program Specialist Mr. Cliff Inn and Legal Fellow Mr. Todd Teshima from DLNR's DOBOR, updated the members on the status of the draft rules, which are currently with the Attorney General's (AG's) Office. Once DOBOR receives the rules back from the AG's, they will be reviewed by the Board of Land and Natural Resources (BLNR). After that, the rules will come before this Board and then go out for public hearings.

Chair Borge stated that one concern posed by Mr. Laros was the permitting process. Mr. Teshima responded that there are currently 51 commercial permits in the Big Island and the rules do not limit or require specific permits as they are "general" commercial permits; however, he also noted that no other permits are being issued.

Thirteen buoys are being considered for installation at each site with one buoy dedicated for recreational-use at all times. The buoys are part of C.I.P. (capital improvement projects) where authorization for their installation is required from the State Legislature. The rules were drafted with the assumption that the buoys are already installed, but they are not; therefore, they must be installed before the rules are enforced. However, because it is anticipated that the Legislature will likely be unable to provide for the C.I.P. funds this session, DLNR will move forward next year with either a funding request or use other funds currently available.

It was mentioned that House Bill 1460 authorizes funds from the Boating Special Fund to be used for any day-use mooring buoy system in the State. The Boating Special Fund is only for repair and maintenance on existing buoys without legislative authorization. DOBOR needs to reinstall existing buoys because new buoys being considered for installation must be designed a certain way due to redundancy and to meet certain standards.

Chair Borge explained that there is an overall business-need for reviewing the limitation on the permittees due to the limited natural resources and landscaping where the manta rays congregate; there is also a need to put forth the qualifications and specifications for granting permits. Mr. Inn added that there appear to be three concerns to address: 1) the timeframe to create and formalize the rules; 2) opportunity for growth; and 3) natural resources; all of which are currently being reviewed. If the Legislature provides the required funding, the estimated timeframe for completion of the rules is late-2019 to early 2020.

Ms. Albitz questioned whether attrition of the permits will occur as it relates to Section 13-256-26 (e) (1) (iii), which states that ongoing records showing continuous manta ray viewing operations is not required if an operator has initially obtained a permit. In response,

Mr. Teshima believed the reason this section was written was that once an operator qualifies for a permit, he/she would not then be required to continue to qualify; it was not intended for a permittee to “sit on a permit” as operators are still required to submit the required documentation such as gross receipts, tax information, etc., to renew his/her permit.

Mr. Iko Balanga and Ms. Holly Crane, owners of Anelakai Adventures in Kailua-Kona, Hawaii, provided testimony by supporting the “intent” of the rules for the safety of manta rays, but oppose the negative impacts on the safety and accessibility of ocean guests and on the invasiveness of the manta rays. Anelakai is the only company of the 50+ operating companies that has a self-contained, non-motorized light board.

Concern was conveyed with Anelakai’s perceived inability to continue as a small, local business providing safe Hawaiian ocean cultural experiences to the people on the company’s tours largely due to the company utilizing double-hulled, six-man 24-foot canoes. The draft rules, as written, are impractical and unsafe for guests especially those who cannot otherwise view the mantas because of physical or mental challenges thereby excluding their protected class under the American Disabilities Act and Hawaii and Federal civil Rights laws.

An additional concern is the exclusion of a safe, business model that provides a paddling canoe as a light board as well as back-up safety mechanisms for other businesses. Mr. Balanga does not agree that it would be safer to moor the company’s canoes and swim the guests away from its natural security toward a “campfire.”

Mr. Balanga and Ms. Crane requested this Board urge DOBOR to work with their company to amend and clarify the rules to allow the company to continue providing unique services to protect manta rays and guests. Also requested was that an option in the rules be created to allow DLNR discretion to require qualified, proven double-hulled paddling canoes as light boards within the viewing zone established at Kaukalaelae Point and/or within a separate zone inside Keauhou Bay. Currently, the rules as written will require Anelakai Adventures to “tie off,” and put a guide and light board in the water.

Chair Borge thanked Mr. Balanga and Ms. Crane for attending the meeting today. As DOBOR is still refining the rules, additional changes and suggestions may be made until the rule proposal is submitted to BLNR. He suggested that specific concerns discussed today be put into writing, including the commercial limitation on capacity; he will also encourage all stakeholders to continue to provide input to DOBOR.

Second Vice Chair Yamanaka made a motion to send a letter to Mr. Keller Laros of Mana Pacific Research Foundation thanking him for his recent inquiry and outlining the discussion that transpired at today’s Board meeting. Ms. Albitz seconded the motion, and the Board members unanimously agreed.

## **V. LEGISLATIVE MATTERS**

- A. Discussion on House Bill 539, Related to the Small Business Regulatory Review Board – Appropriation for staffing, commissioner inter-island travel, and other related operating expenses associated with the Small Business Regulatory Review Board under the Department of Business, Economic Development and Tourism

Anelakai Adventures  
P.O. Box 390858  
Kailua-Kona, Hawai'i  
96739

October 26, 2022

Board of Land and Natural Resources  
P.O. Box 621  
Honolulu, Hawai'i  
96809

**Re: Item J.2 on the Board's Oct. 27, 2022 agenda, requesting approval to initiate rulemaking proceedings, including public hearings to amend Hawaii Administrative Rules (HAR) Chapter 13-230, General Provisions, re: Section 13-230-8, Definitions, and HAR Chapter 13-256, Ocean Recreation Management Rules and Areas, to add new Sections 13-256-26, Manta Ray Viewing, and 13-256-165, Makako Bay Manta Ray Viewing Zone, 13-256-26, Kaukalaelae Point Manta Ray Viewing Zone, as regulations for Manta Ray viewing activities.**

Aloha e Chairperson Case and BLNR Board Members,

Mahalo nui for this opportunity to provide testimony supporting the intent of these much improved draft rules for the safety of manta rays, and opposing the remaining negative impacts on the safety and accessibility of ocean guests of all physical abilities, on the invasiveness upon manta rays, and on our ability as a small, local business that focuses on providing safe, respectful, Hawaiian ocean cultural experiences to people with all levels of ocean knowledge and capabilities.



Anelakai Adventures  
([www.anelakaiadventures.com](http://www.anelakaiadventures.com)) offers the only manta ray experience that provides access for children, non-swimmers and people with physical and mental challenges to safely view manta rays. It does so by being the only company without a lightboard, in part because it acts as its own light source. Anelakai also provides the only completely eco-friendly, non-motorized access to view the mantas: via traditional paddling power in double-hulled canoes that have been innovatively rigged for everyone's safety, including the manta rays, our guests and ocean guests arriving via other vessels. All aspects of our vessel have been designed to assure safety for people and

marine life. Our staff has been trained in safety, compassion, ocean skills and Hawaiian cultural and natural resource knowledge. Aloha and safety are our top priorities as ambassadors of the Hawaiian waterman and waterwoman lifestyle.

Below, we share our concerns with how the current draft rules for manta ray viewing still provide incomplete care for manta rays, visitors and for small, local businesses that care deeply about the ability to show true aloha for our home, culture, natural resources and visitors. We brought these concerns to the Small Business Regulatory Review Board (SBRRB) on Feb. 26, 2019. They graciously wrote to us on Mar. 1, 2019 (letter attached), asking us to continue providing information to the Division of Boating and Ocean Recreation (DOBOR) and requesting DOBOR to work with us to amend and clarify the draft rules that they presented at that time.

DOBOR did just that. We are grateful for their willingness and their efforts to meet, talk and email with us over the past three years, despite the impacts of the COVID-19 pandemic. The draft rules are much improved, and we appreciate the staff's work and communication. The staff expressed the intention to assure that our business would be able to continue to operate, either with an explicit exemption or because the rules would clearly allow for our operations.

In reviewing this draft, however, that intention is not clear to us. We have several questions about the ultimate interpretation and implementation of the rules, particularly in how they will impact the safety of mantas and guests and how they seem to put us out of business. We remain concerned about elements of the draft rules that would make it impossible for our small business to survive, including the question of how the permits will be issued: via lottery, auction or first-come, first-served. Manta ray tours are the main source of our income, and we have maintained our compliance (and will continue to do so) with the existing rules for commercial entities in Keauhou and with the drafted requirements for obtaining manta ray viewing permits. However, unlike the much larger, motorized vessels, we can only take a maximum of 6 people at a time in our double-hulled canoes, and because we only use human-, paddle-power, being able to have just one vessel permitted for approximately 2 hours a night constricts us to taking out 6 people a night – if we get a permit – which is not viable.

### **Anelakai Adventures**

Based in Keauhou Bay, we have commercial use permits for our double-hulled canoes, which allow us to offer eco-friendly, culturally aware ocean tours, including manta ray tours in the evening, if weather and ocean conditions permit. We are only paddle-powered, so we stay at Kaukalaelae Point for our manta ray tours. Anelakai is a long-term member of that ocean

community, which is a tight-knit ‘ohana that looks out for and supports each other and each other’s safety and guests, and meets all of the draft regulations’ safety and other requirements to attain a permit to provide manta ray viewing operations.

Keauhou’s culturally and historically significant location also provides a perfect setting for educating guests about Hawai‘i as well as mantas while they paddle in canoes that are lashed together in the traditional way, with rope. Each hull of our lashed double-hulls holds four people, for a total of eight per vessel, including two staff members: one who is the lead steersperson. Thus, our commercial operations only allow for six visitors per tour. Those six visitors are screened by our staff to determine their abilities and comfort levels in the ocean, because we want to assure that any special needs are met and that everyone is comfortable and has a positive experience.

People with physical or mental challenges, small children, people uncomfortable or unsure in the ocean, and non-swimmers in general are afforded an opportunity to go to sea safely in our canoes and view the mantas from their seats, unlike any other vessel currently offering

manta viewing (please see sample testimonials at the end of this letter). We are honored to be able to offer this opportunity to people who have been turned away from everyone else, but who want to be able to experience Hawai‘i’s ocean environment and life. We are well-known for offering these services to groups and to individuals. This has become a defining part of our business and a gift that we cherish being able to give, and that we want to assure that the final HAR rules would not eliminate.



Equally, because we have proven over the years that there is a safe and comfortable way to provide access to the ocean and to viewing the mantas, we effectively supply DOBOR with their only compliance to the American Disabilities Act (ADA) in this arena. The ADA, among other things, prohibits discrimination on the basis of mental or

physical disabilities in commercial facilities and by state and local government – including commercial activities that are licensed by the state – as do Federal and Hawai‘i Civil Rights laws. This community or class of people is often excluded from ocean activities because all of these laws allow for exemptions if there is not a safe alternative and if the activity is not



fundamental to their lives and well-being as important members of our society. In this case, we provide the safe alternative, which would be eliminated if these draft rules are approved as they are currently written, thereby effectively excluding this protected class.

Anelakai is committed to safety on and in the water. We require that all of our staff be CPR, first aid and lifeguard certified, and we have life vests, lifeguard buoys, first aid kits, fire extinguishers, flares, proper lighting, an AED and oxygen on board as part of our safety gear and required safety training. None of this is currently required, nor are any of these safety protocols for vessels, staff or guides included in the draft regulations.

Furthermore, our vessels' innovative design creates a controlled situation that keeps



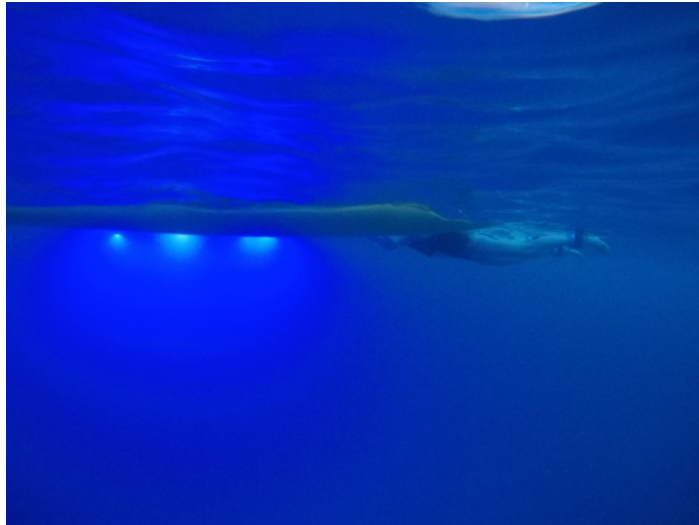
everyone either sitting inside or floating between the hulls for manta and human safety and control purposes. People can view the mantas from the comfort of their seats in the canoe, or via masks from the water, holding rods between the two hulls and with their feet suspended on the surface of the water by floats. Thus, everyone is kept together, easily able to climb in and out of the canoe by a ladder between the hulls, and are constantly monitored and accessible by our staff. If a person panics or needs assistance, we can have them back in the canoe in seconds. We also can and have

provided assistance to guests from other vessels who have panicked or run into trouble in the ocean. We are concerned that none of this oversight, security and care would be allowed under the current draft rules, because our paddle-powered vessel may not be allowed into the viewing area.

Not only do our double-hull canoes provide a peaceful, safe experience for visitors of every ability and capacity, but it also provides a safer, more controlled experience for the mantas. Because no one is free swimming, no one is kicking fins underwater, and we have no engines, the deepest possible elements in the water are our rounded hulls (no skegs or propellers), which



are stationary, and our steering paddles, which do not go much deeper – if at all – than the hulls themselves. In comparison, please see photo of the dive fins and legs of other snorkelers and of guides requiring very long fins to push and hold in place multiple visitors holding onto a light board, usually with the long fins and their legs moving while straight down into the water column. These fins regularly hit mantas, and our culturally sensitive and eco-friendly canoes, paddles and guests never have.



We have our own light source, which is not submerged so as not to entangle or injure the mantas, and which attracts the plankton that attracts the mantas. Because our steerspeople are in constant control of the canoe (we strive not to moor, raft or anchor so that our lines also cannot entangle mantas), our visitors are kept inside or between the hulls and are not free-swimming or free-floating, we essentially are our own light board, with a smaller footprint and much smaller potential impact into the water column where mantas swim. Because there is no definition or parameters for light boards, we do not know what their size or lumens requirements would be.

Having tried to be active participants in DOBOR's consultations process for these draft



rules and regulations, we are pleased with some of the evolutions that we have witnessed. For example, it is a relief that each Manta Ray Viewing Operations Permit will only be issued for one of the viewing zones (Makako Bay or Kaukalaelae Point). Any conflicts that we have witnessed among tour operators and any overwhelm of the site at Kaukalaelae Point

have been because of vessels from Makako Bay not finding enough mantas in their waters and motoring to our area, where they usually live boat (keep their engines running and vessels moving) because there is not enough room for them. It is also a relief that SCUBA will not be allowed at Kaukalaelae Point for manta ray viewing, because having people of various skill levels diving within the water column and moving their long fins below and around the mantas has caused problems in the past.

We also strongly support the requirement for propeller guards being installed on outboard and inboard motors for vessels permitted to offer manta ray viewing operations. One of the reasons we have never had a motor on our double-hulled canoes is to protect marine life, our guests and our staff in the water from the unintentional and extreme damage that propellers can cause. We are curious, however, as to why a vessel in this area should be allowed not to have a propeller guard “if a crew member, other than the person operating the vessel, is designated as a lookout to ensure safety at all times.” (See Draft Rules §13-256-26(d)(2)(vii).)

While the regulations stipulate that only 24 permits will be offered for each viewing zone, there are no stipulations as to the size of vessels or the number of visitors allowed in each zone or to be allowed to be brought by each vessel. Without a schedule for which permitted vessels will be able to use which mooring at what time, on which date, the rules appear to be creating a scenario of motorized vessels racing each other to limited moorings, while being unable to



guarantee to their guests whether or not they will be able to moor and therefore be able to put their guests into the water. Rather than supporting the existing Keauhou ‘ohana situation, the draft rules likely would create a negative, competitive situation where mantas and guests are more at risk. The draft rules, which allow one company one vessel permit and only allow each to be moored for 2 to 2 ½ hours at a time, also seem to be promoting larger vessels that can bring

more people at once, which fundamentally counters the stated intent of promoting the safety of mantas and guests.

Furthermore, the draft rules provide for a ratio allowing one guide to control as many as eight people in the water – all swimming, and all presumably attached to a light board. This scenario is an improvement over the past ratio of 1:10, but still must presume that the guide will need very long fins and have to be extremely strong in the water to push or pull as many as eight people and a light source away from their vessel and to the viewing campfire. Currents, winds, swells and potentially frightened and cold swimmers of mixed abilities among an unlimited amount of other guides and swimmers far away from their support vessels portends a dangerous, uncontrolled situation where rescue is about 100 feet away on a vessel that cannot see the people in the water and is not allowed to approach the area – whether under motor power or not – unless there is an emergency. Also, if one of the guide's 8 guests is injured, becomes frightened, cramps, or has other difficulties, the guide cannot separate the guests and leave seven alone to return one to the vessel. Nothing about this scenario speaks to the safety or comfort of the visitors, the guides or the mantas.

This scenario also could unnecessarily exclude our safe, respectful business model of a providing a paddling canoe as a light board, an opportunity for people of varied abilities to share the special Hawaiian ocean experience with mantas, and a back-up safety mechanism for other Keauhou-based businesses. We have often helped guests from other companies who are panicked or confused and allowed them



to come sit in or hold onto the canoe to calm down. We like to present our canoes as beacons of safety to all of the other light boards in the water and invite them to come to us if they are in need. We do not agree that it would be safer to moor our canoe and swim our guests away from its natural security toward a “campfire”.

While a “campfire” setting (currently undefined or regulated as to light source or lumens) for manta ray viewing may make sense for SCUBA visitors who can then all sit in place on the ocean floor and not disturb the mantas above them in the water column, it puts both mantas and swimmers more at risk in a snorkeling setting. Also, Kaukalaelae Point has more currents than

Makako, which is part of why SCUBA does not belong at Kaukalaelae, and part of why light boards that are not at least tethered to a vessel do not belong at Kaukalaelae Point. One guide with a large board and non-trained swimmers attached to that board will be hard pressed to swing the board against the current, hold the board and people in place, and swim them against the current – either away from or back to their vessel. All of this must be done – if at all – with huge fins that can hurt the mantas, and all of it would be done out of visual sight from the vessels and people on the vessels that could help the guides and visitors.

### Questions:

- Can our unique operation be exempted in any way from these rules, which were crafted because of the negative impacts of too many unregulated motor vessels with too many people?
- §13-230-8 Definitions:
  - The proposed, new definition for “canoe”, in Hawai‘i’s rules, now describes non-Pacific Islander vessels and may or may not include the various traditional canoes that are integral to Hawaiian culture: outrigger canoes (which still have their own definition), double-hull canoes, sailing canoes, fishing canoes, voyaging canoes, etc. This seems insulting to the host culture, and it raises concerns for our non-motorized, double-hulled paddling canoes being able to continue to be permitted to provide any kind of commercial operation, including for manta ray viewing.
  - Bolded words are suggested additions to the Dec. 2020 proposed definition of “Canoe” to assure that Anelakai’s safety-conscious, sustainable double-hulls clearly fit within this definition and within the Manta Ray Viewing set of rules: “**Paddling** Canoe” means [~~outrigger canoe.~~] a narrow, open-top, manually propelled watercraft without rudders, fins, keels, **skegs** or any other type of protrusions extending from the vessel’s hull **or hulls**, which is steered and propelled solely by use of single-bladed paddles, and in which **paddlers** sit on bench-type seats in an elevated position from the bottom of the hull.”
  - “**Hawaiian or Polynesian Canoe**” means [~~outrigger canoe.~~] a narrow-hulled vessel, which is steered by use of single-bladed paddles, and lashed with rope to spars (‘iako), another hull, an outrigger (ama), or a deck. A Hawaiian or Polynesian canoe may be propelled by use of single-bladed paddles, sails and motors.

- **Note:** The purpose of the second proposed definition is to be inclusive. It would apply to voyaging canoes, paddling canoes, sailing canoes and fishing canoes, some of which are not yet represented at all in these rules, but all of which are part of Hawai‘i’s unique seascape. In Anelakai’s case, both of these definitions would apply to our double-hulls, but only the Paddling Canoe version – which with our proposed amendments allows for more than one hull and for non-paddlers to sit on the deck (like we sometimes have physically challenged people do) – would be referenced in the Manta Ray Viewing rules, because it only allows for non-invasive paddle power.)
  - The proposed definition for “Commercial manta ray viewing operation” reads that “an operator for hire carries passengers or brings participants into the water, or both, to engage in manta ray viewing at areas where illumination is used for the purpose of attracting plankton.” This would seem to allow for our double-hulled canoes to continue to carry passengers view manta rays from the canoe itself, which could be wonderful for us, if we can continue to be our own light source.
  - The proposed definition for “Manta ray viewing zone campfire” remains the same, which means it still only references an “intended gathering point for in-water participants to view manta rays”, not for people viewing from canoes. **Question:** Does this mean that we can still operate our canoe as its own light source, out of people’s way? **Suggestion:** If not, we suggest proposing the following amendment to the definition: “means the intended gathering point for in-water participants and permitted paddling canoes to view manta rays.”
  - The definition for “Manta ray viewing zone”, which is defined as “an area where manta rays are intended to be viewed, whether commercially or non-commercially”, leaves open the possibility that the viewing does not have to occur around a “campfire”, which is not specifically defined anywhere. This could be helpful for us, or just confusing.
- §13-256-26 Manta Ray Viewing:
    - (b)(1) Now, only 24 of these permits will be allowed for each zone from the beginning; no longer is there an attrition plan built in to get the permit numbers from 30 to 24 over time. **Question:** How is this impacted by the idea that there may not be as many mooring buoys as originally planned? Anelakai notes that it does not need a mooring, since it is under paddling power, has its own light

source and will need to be able to bring our visitors directly to the mantas (not swim them away from the safe and equal opportunity view options of the canoe).

- (b)(2) each commercial manta ray viewing operation can only work in one zone and during viewing hours (4pm-4am) and will be limited to what reads as maybe a single, two-hour shift per night. This is not viable for Anelakai with only as many as 6 passengers per night in one double-hull canoe, especially since we only go out when safety and weather conditions allow, and paddling takes a bit of time, making each of our potential shifts at least 1½ hours long. A lot of the motor vessel companies run 30- to 40-minute tours, whereas Anelakai's visitors are in the water (only between our hulls) for an hour. If we are not able to be exempted from these rules, we suggest amending this section – to be compatible with the section (b)(5) suggested amendment below – to allow for more than one shift by adding an “s” to the word “shift” at the end of the section so that it also matches the language in (b)(5), which allows for “shifts”, so that we could potentially take out a canoe twice a night: “Commercial manta ray viewing operations shall only be conducted during manta ray viewing hours and shall be subject to two-hour shifts as determined and assigned by the department. No commercial manta ray viewing operator may operate within any manta ray viewing zone outside of their assigned shifts.”
- (b)(5) limit of 60 passengers within 24 hours, with a 1:8 ratio of guide to guests, no matter how many of the guests are in the water (**Suggestion:** Shouldn't there instead or also be a cap on the number of people in the water at a time with the mantas?). Only one commercial permit per company (which means only one vessel). Because Anelakai's one vessel only allows us to take out as many as 6 people at a time, if we cannot be exempted from these rules or be allowed the possibility of taking out our canoe twice a night, for flexibility purposes we suggest amending this section to read: “...No more than one commercial manta ray viewing operation permit shall be issued per person or business entity, **or to no more than two licensed, double-hulled paddling canoes per person or business entity.**” (Note that this amendment requires the previous suggested change to the definition of “canoe”).
- (b)(6) Each permitted vessel shall have a capital “M” on both sides of the vessel. (**Question:** At no point is a double-hull canoe defined or described as a vessel that can be designated and permitted. Should they be?)



- (c)(2)(iii) Can only be at a buoy for about 2 ½ hours then have to detach and leave the area for at least 30 minutes before returning. **Question:** This ability to return seems counter to the apparent limit of a single shift for each permittee, per 13-256-26(b)(2) above, which makes our suggested amendment more pragmatic. If a vessel does not moor, but only remains free-paddling, like a double-hulled canoe, does this time limit apply?
- (d) Prohibitions in the zones:
  - (1) No one shall:
    - (i) operate a vessel above the slow-no-wake speed (easy for Anelakai)
    - (ii) anchor any vessel (Anelakai does not and will not)
    - (iii) raft any vessel (**Note:** unless one is defined as a kayak, canoe or paddleboard, which is why it is important to assure that Anelakai's double-hulled paddling canoes meet the definition of at least one kind of canoe, just in case they need to raft for safety purposes)
  - (2) During manta ray viewing hours, no one shall:
    - (i) Navigate any motorboat (except for when attaching or detaching from a buoy or in an emergency) within 100 feet of any manta ray viewing zone campfire. (**Note:** here, the word "campfire" – which is not defined anywhere – is used on its own):  
“...navigating a vessel within one hundred feet of any manta ray viewing zone campfire shall be allowed only for ingress and egress purposes or in emergency situations, if a campfire is available.”  
**Questions:** Does that mean that this rule only applies in Makako Bay, which is shown in the map as having a set location for a campfire? Also, this subsection seems to limit the ability of a paddling canoe to enter a “manta ray viewing zone campfire” but only if an undefined “campfire” is available. We thought that non-motorized, double-hulled canoes would be able to safely paddle into the viewing area at Kaukalaelae Point. **Suggestion:** If this subsection applies to Kaukalaelae Point, to allow our canoe to continue to operate as intended, we suggest the following amendment (as well as request a definition for “campfire” if it is to be used as a term by itself): “...providing further that navigating a motorboat [~~vessel~~] within one hundred feet of any manta ray”

viewing zone campfire shall be allowed only for ingress and egress purposes or in emergency situations, if a campfire is available.”

(iv) “Use subsurface vessel lighting or excessive topside lighting if a campfire is available.” **(Question:** Can continue to paddle into the viewing area and use its onboard lighting?)

(v) “Use any point source of illumination for the purpose of attracting plankton or manta rays more than 100 feet from any campfire.” **(Question:** Can Anelakai can continue to paddle into the viewing area and use its onboard lighting?)

(vii) Use a motor without a propeller guard unless a crewmember who is not operating the vessel is designated as a lookout.

**(Question:** This seems strange and unsafe. Why was this language amended so that not everyone has to use a propeller guard?)

## Conclusion

Mahalo nui again for this opportunity to voice our concerns and to offer suggested paths to solutions. We share DOBOR’s intentions for safety and sustainability for manta ray viewing opportunities in West Hawai‘i, and we hope that our questions and proposed solutions are helpful to the future of manta rays, their respectful visitors and our small, local business that serves an under-represented community of uniquely abled and physically challenged people who seek a safe, eco-friendly, Hawaiian ocean experience.

We would be happy to answer any questions and to further collaborate on solutions. Please feel free to contact us, the co-founders of Anelakai Adventures: Iko Balanga via e-mail [iko@anelakaiadventures.com](mailto:iko@anelakaiadventures.com) or via phone at (808) 896-4294; and Holly Crane via e-mail at [holly@anelakaiadventures.com](mailto:holly@anelakaiadventures.com), or via phone at (808) 987-7975.

Me ke aloha,

Iko Balanga

Holly Crane

Attachment: March 1, 2019 letter from SBRRB

Copied: SBRRB



**Additional photos and reviews of Anelakai's services and operation, contrasted with images of motorized vessels' operations with lightboards**



Here is a family getting ready to paddle out for their sunset manta ray viewing tour on a double-hulled canoe: no motors, no gas, no oils, ecofriendly, nonimpactful to the manta rays and culturally respectful. Please note that we always have two (2) steerspeople for each outing, one in each hull.

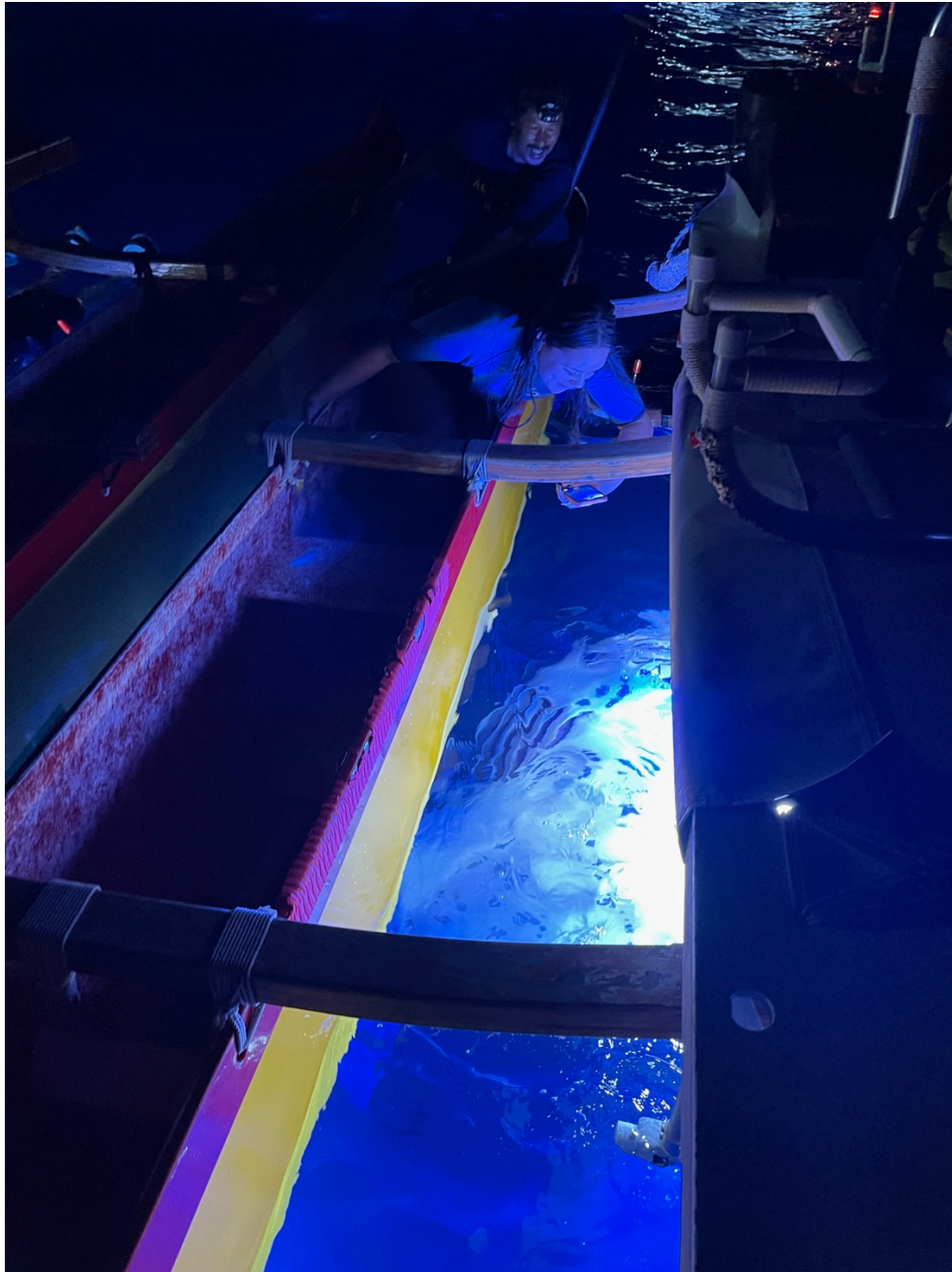


This is how our guests view the Manta Rays: between the hulls, 4 ½ feet away from our lights, and using ankle floats to keep their legs level on the surface. Guides stay in the canoe right next to them to ensure their safety and comfort at all times.



Preston is autistic and this is the only way he can safely view the Manta Rays – from his seat in the canoe. He said it was one of the best days of his life.



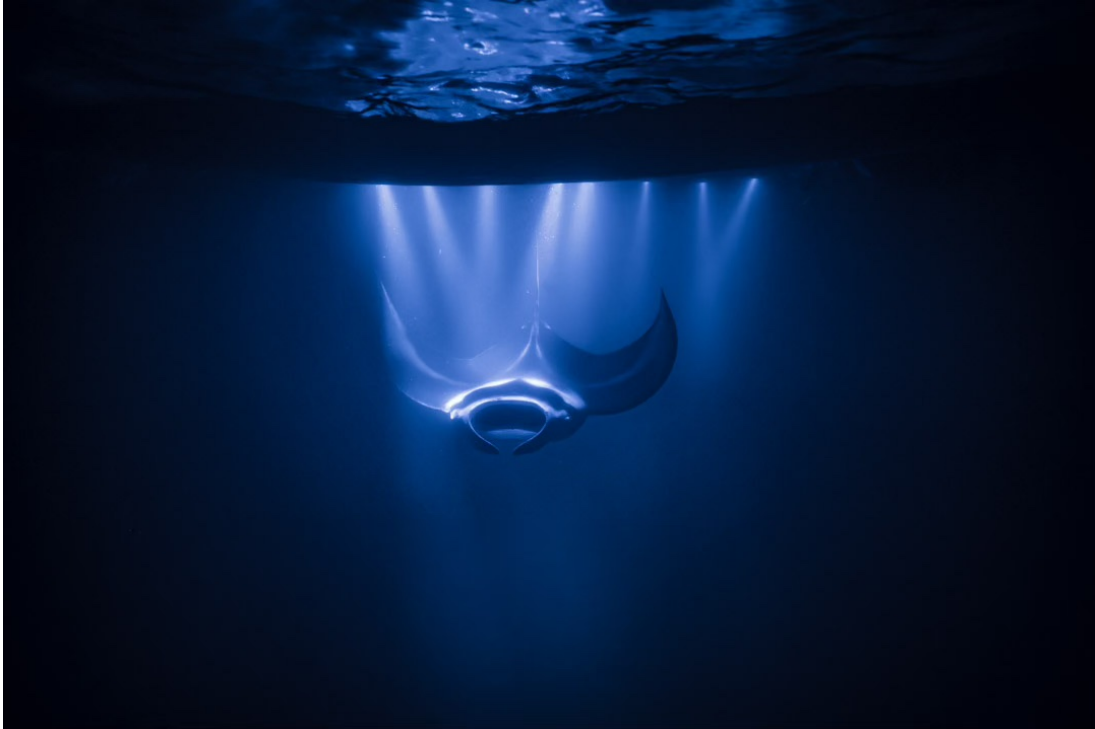


Many of our guests book with us so that they don't have to get in water and can view from their seat in the canoe. For some it is because they cannot swim; for others it is because they are not comfortable in the water, perhaps more so at night. Still others are physically or mentally

challenged, and our canoes provide the only accessible means of experiencing this natural wonder.



Underwater view of a Manta Ray doing backflips under our guests safe between the hulls of our canoe.



Manta Ray doing a back flip under the smooth hull of the canoe feeding on plankton attracted by the lights.





A view from our canoe of us working in harmony with other companies' light boards. While we have concerns about the safety of the other vessels' guests and the manta rays with the light board methods, we strive to create a community of care in the ocean out of Keauhou.



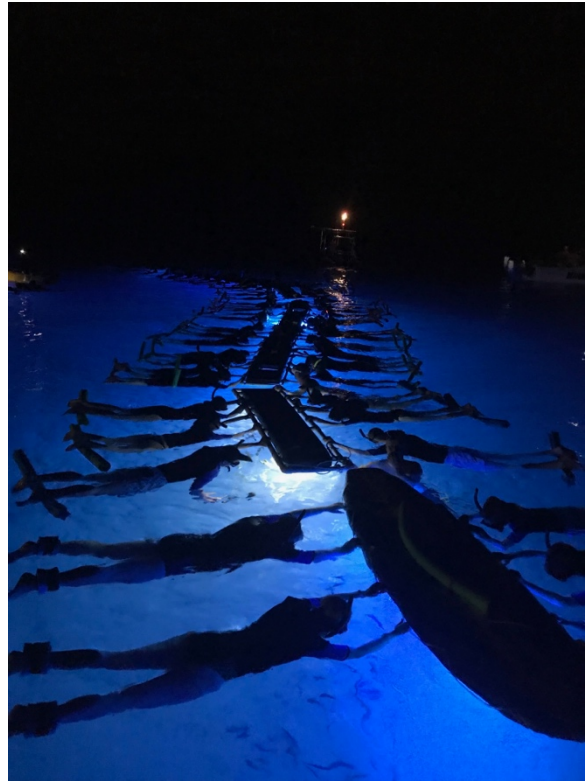
A link of light boards from just two commercial motor boats that stretches more than 100 feet long. Our double-hulled canoe, which is only 24 feet long, should be able to be in the same viewing area as these much more expansive light boards.

This is another view from our canoe as we line up with other light boards at the site. Our canoe is only 24 feet long. As you can see this string of lightboards is much longer than that with many more guests, several types of lightboards and means of keeping guests' afloat, including pool noodles that easily blow or get swept away, becoming marine debris and leaving guests' feet and legs dangling.

**Reviews cut and pasted directly from TripAdvisor (no corrections made to spelling errors), with links provided from each title:**

**[Manta-fest!](#)**

We saved the best Hawaii adventure for our last evening and it was AWESOME! I have some mobility issues, knew I wasn't going to snorkel, but hoped my husband and I could see Mantas together. Boy did we see them. I had called Anelakai before booking and they were very helpful, listening to my concerns and answering my questions. A couple days before our tour we popped down to Keauhoe to see how easy it would be for me to get into the canoes. The crew was so helpful. They answered questions and helped figure out what the tides might look like and how high or low the step into the canoe would be for our tour. The night of our 6:30 tour, they came prepared to help me in and made sure I was comfortable. Captain "Donut" and Mana'o were a great team: instructing how to paddle, entertaining with jokes, educating us about Mantas, giving local restaurant tips. The dive spot is just outside the harbor and you suit up and are in the water within the first 10 minutes. We lucked out with perfect weather, calm seas and a warm night. Once they turned on the lights the plankton started to gather and then the mantas immediately came to scoop them up. They fed continuously the whole time we were out there. We saw at least 7 different individual Mantas which the crew knew by their markings. The lights are placed in between the two canoes so if you are unable to get into the water you are just as close as the snorkelers...you just don't get wet. You are not allowed to touch them but they were that close. Those in the water had mantas swimming and brushing against them. So amazing. We had so much fun. Thank you for being the only company that made it possible for me to experience the mantas on the water.



**[Highlight of our holiday!](#)**

My two sisters and I LOVED our experience seeing the mantas. There were so many of them, and they were inches away from us! They are magnificent creatures! Being in a canoe made us feel so connected to the ocean...so much more meaningful and special than chugging out in a smelly boat! It was fun to paddling the canoe. The owners, Eco and Hollie, and their staff are beyond fantastic! Caring, dedicated, knowledge and fun! They go way out of their way to make sure the experience is perfect. I am a quadriplegic, and getting into a boat is impossible without someone helping me.

Ok...lifting me! Other companies refused to take me. Then I saw Anelakai Adventures website and read a review by a man who was also paralyzed and had had an amazing trip to the mantas in the canoe. I called and was treated with such kindness, enthusiasm and assurance that I signed up on the spot! Best time ever! These guys do it for the love. They love the mantas and they love life and they love people. You feel like you're with your favourite cousins! They truly gave me the most wonderful experience I've had in years. Literally ....I could not have done it without them! I'll be back!

### [A Kind Canoe Journey Among Gentle Giants](#)

Mantas are majestic creatures that display majestic acts of unreal underwater acrobatics— everybody knows this, but what everybody doesn't know is that Anelakai is by far the best and most kind way to experience their magic. Other tours involve shuffling out onto massive rafts with literally dozens of other people. Beyond this, the boats are motorized and huge, which is an irresponsible opportunity to hurt these gentle giants. Anelakai is the opposite- you will be part of a small canoe crew, paddling out to the bay and dropping in the water without spinning blades or diesel fumes. I can say with near certainty that the mantas appreciate the smaller size, numbers, and lack of mechanical disruption. Seeing the mantas with severe propeller damage is heartbreaking and reinforced my decision to go out with this crew. Speaking of the crew, they are fabulous- knowledgeable about the creatures you are seeing (tell them you want all the manta facts!) the history and culture of canoe expeditions, and bursting with local knowledge of the best eats and sights. I truly could not imagine doing any tour but this one, and it is an experience I shall treasure always.

### [Best wheelchair accessible adventure on the Big Island](#)

Breast wheelchair friendly adventure activity I found on the big island and I called a lot of places. I felt safe and had a blast. A one in a lifetime experience. I am a complete T5 para with arthritic shoulders and I was able to enjoy the snorkel just like all the other able bodied passengers

### [If you do one thing on the Big Island do this!](#)

Incredible experience for all ages. We had my 8 year old son & 73 year old mother on charter and they both loved it! I would recommend this experience for 3 reasons. 1. Environmentally conscious - The canoe has no motor and thus no negative impact on the reef. Operators are knowledgeable and show concern for the ecosystem. 2. Safety - This is a small charter and the operators are very concerned about safety. 3. Culture- you are supporting local small business that is involved in the community. The operators are very knowledgeable about Hawaiian Culture and give you an experience you are not going to get anywhere else.

### [Best way to see the rays](#)

There are lots of options but this is the best for several reasons. First the guide to participant ratio was as 2:6 not 2:40! Our guides could name the rays by their spots, so we knew when it was Amanda Ray or Quarintina. We got to paddle out in a Hawaiian canoe trip which was also on our island bucket list. Because you are in the canoe right on the water getting wet is completely optional. One person in our boat never left the boat and had a great view. You could bring young kids, less agile elders, or folks who can't swim and they wouldn't miss a thing! That isn't true for the big boats. I am so glad a local told us about them.



## KAI HO'OU LU

October 26, 2022

Board of Land and Natural Resources  
P.O. Box 621  
Honolulu, Hawai'i  
96809

**Re: Item J.2 on the Board's Oct. 27, 2022 agenda, requesting approval to initiate rulemaking proceedings, including public hearings, to amend and add to Hawaii Administrative Rules (HAR) for Manta Ray viewing activities.**

Aloha nō Chairperson Case and BLNR Board Members,

Mahalo for the opportunity to provide testimony. After 20 years working for Native Hawaiians and Hawai'i's natural and cultural resources, a chance to support the proven track record of a business like Anelakai Adventures is a gift. Please help assure that their model of using non-motorized, double-hulled, Hawaiian paddling canoes to take a limited number of people to see the manta rays off of Kaukalelae Point is allowed to continue. Please also ensure that the definition of "canoe" does not exclude any Hawai'i or Pacific Island wa'a or any of their Constitutionally protected uses, as the old and proposed new definitions do. Voyaging, fishing, sailing, double-hulled canoes, etc. – all of which are from and of these waters – need to be recognized, honored and protected in Hawai'i's rules.

Anelakai provides access to people who otherwise could not experience the natural and cultural wonders of Keauhou and makes all of their guests felt safe and comfortable. Because their canoes are not moored and have their own lightsource, they can move their canoe out of harms way quickly and constantly be attuned to their environment and the well-being of their guests, as well as that of other guests and marine life in the ocean. The care that their operation takes of the environment and people with the practical and simple innovations to their double-hulled canoe are nothing short of impressive.

Having Hawaiian canoes, paddled by guests and steered by local people trained in safety and about the natural and cultural elements around them instead of just massive, commercial motorized vessels can only help to heal and improve the invaluable cultural landscape of Keauhou. With your help and support, and by paying attention to the details, Hawai'i will not lose more of its Hawaiianess to commercialism. Instead, Keauhou can continue to appropriately be cared for, at least in part, by the people of the place.

Please ensure that Anelakai Adventures, and other culturally and environmentally motivated local companies, are not run out of business by rules that do not at least accommodate or exempt them. They are not the reason that these rules are required: their business model never hurt the mantas, the environment or people. Mahalo nui loa for your shared consideration and care.

Me ke aloha,



Heidi Kai Guth  
Principal

DEPARTMENT OF LAND AND NATURAL RESOURCES

Amendments to Chapters 13-230 and 13-256,  
Hawaii Administrative Rules

[Date of adoption by agency]

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

"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" 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.]~~ a narrow, open-top, manually propelled watercraft without rudders, fins, keels, or any other type of protrusions extending downward from the vessel's hull, which is steered and propelled solely by use of single-bladed paddles, and in which participants sit on bench-type seats in an elevated position from the bottom of the hull.

"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 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.]~~ for compensation in any form. The action or actions may include providing or attempting to provide guide services, charters, tours, and transportation to and from the location or locations for which such services are provided.

"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 manta ray viewing operation" means an activity where an operator for hire carries passengers or brings participants into the water, or both, to engage in manta ray viewing at areas where illumination is used for the purpose of attracting plankton.

"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.]~~ consideration, including money,

barter, trade, credit, and other instruments of value, goods, and other forms of payment.

"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 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.

"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.

"Division" means the department of land and natural resources division of boating and ocean recreation.

"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 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.

"Excessive topside lighting" means any point source of illumination from a vessel shining into the water that emits more than one thousand lumens.

"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 and any offspring resulting therefrom.

"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.

"Fishing" means the same as defined in section 187A-1, Hawaii Revised Statutes.

"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:

- (1) With or without skegs;
- (2) Worn on one or both of the operator's hands;
- (3) Is less than sixteen inches in overall length, and
- (4) Is used for the sport of wave riding.

"Harbor resident" means the owner, co-owner, or their spouse 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 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 manually propelled watercraft that has an open or covered top ~~[and is]~~ designed to hold one or more ~~[participants and]~~ participants, which is generally propelled by use of a [single-or] double-bladed paddle, and in which the participant(s) sit with legs extended forward.

"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;
  - (C) Unmarried and under twenty-two years if a full-time undergraduate student at a college; or
  - (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" 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.

"Live boating" means navigating a mobile motorboat in support of watersport activities, including, but not limited to, swimming, free diving, snorkeling, and SCUBA diving. The term includes using a vessel's motors to maintain the vessel's position in the water without the use of a mooring or anchor.

"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.



"Manta ray" means any elasmobranch fish in the genus *Manta* or *Mobula*.

"Manta ray viewing hours" means the time period beginning at 1600 hours (4:00 p.m.) and ending at 0400 hours (4:00 a.m.) of the following day.

"Manta ray viewing zone campfire" means the intended gathering point for in-water participants to view manta rays.

"Manta ray viewing zone" means an area where manta rays are intended to be viewed, whether commercially or non-commercially.

"Marine life" means the same as defined in section 187A-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 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, 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 of 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:

- (1) Without skegs;
- (2) Does not exceed four feet in length; and
- (3) 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.

"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.

"Propeller guard" means a physical barrier such as a cage, screen, vane guard, shroud, ring, deflector, or similar to protect against injury to persons or marine life and damage to a vessel's propeller.

"Rafting" means tying up or otherwise attaching one vessel to another vessel that is already attached to a mooring or similar device, or to another vessel that is already anchored.

"Reciprocal beneficiary" means an adult who is a party to a valid reciprocal beneficiary relationship and 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" 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 division, and State ocean waters as set forth in Title 13, Subtitle 11 - Ocean Recreation and Coastal Areas.

"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 used as described in section 200-9, Hawaii Revised Statutes.

"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 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.

"Subsurface vessel lighting" means any source of illumination affixed, whether temporarily or permanently, to the submerged part of a vessel's hull.

"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 boating facilities, offshore mooring areas, offshore moorings, State ocean waters, and navigable streams, as evidenced by the fully executed "agreement" described in section 13-231-2.

"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 carries any person or persons for a valuable consideration that goes directly or indirectly to the owner, charterer, operator, agent, or any person who has an interest in 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.

"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, 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 small boat harbor.

"Visiting vessel" means a vessel temporarily moored in 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 division.

"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 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 12/31/18; am ] (Auth: HRS §§200-4, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

2. Chapter 13-256, Hawaii Administrative Rules, is amended by adding a new section 13-256-26 to read as follows:

**"§13-256-26 Manta ray viewing.** (a) All persons and vessels within any manta ray viewing zone designated by the department shall be subject to the provisions contained in this section. Unless otherwise required, no permit shall be required to engage in non-commercial manta ray viewing.

(b) Conducting commercial manta ray viewing operations within manta ray viewing zones designated by the department shall be prohibited without a commercial manta ray viewing operation permit and a commercial use permit issued by the department. Beginning one month after the effective date of this section, no type of permit other than a commercial manta ray viewing operation permit may authorize commercial manta ray viewing operations in any manta ray viewing zone designated by the department.

(1) The total number of commercial manta ray viewing operation permits shall not exceed twenty-four for any one manta ray viewing zone. Beginning on the anniversary of the effective date of this section, the department shall not issue any additional commercial manta ray viewing operation permits for a particular manta ray viewing zone unless the number of valid permits for that zone decreases to less than twenty-four. If the number of commercial manta ray viewing operation permits for a manta ray viewing zone has reached the limit set by this subsection, all subsequent permit applications shall be issued in accordance with the requirements of sections 13-231-60 and 13-234-23.

(2) Each commercial manta ray viewing operation permit shall only authorize operations in one manta ray viewing zone and shall not authorize operations in any other areas. Commercial manta ray viewing operations

shall only be conducted during manta ray viewing hours and shall be subject to two-hour shifts as determined and assigned by the department. No commercial manta ray viewing operator may operate within any manta ray viewing zone outside of their assigned shift.

- (3) Commercial manta ray viewing operation permit fees shall be \$300 per month. This fee shall be in addition to any other fees required by these rules. A commercial manta ray viewing operation permit shall be in addition to any other permits issued by the department.
- (4) Each commercial manta ray viewing operation permit shall be valid for up to one year from the date of issuance, with a continuing option to renew, subject to compliance with the requirements of this section, the terms and conditions of the permit, and all applicable laws and rules of the department. A commercial manta ray viewing operation permit may be renewed no more than ninety calendar days before the date of expiration. A permittee interested in renewing their commercial manta ray viewing operation permit shall notify the department of their intent to renew in writing at least sixty calendar days before expiration. Failure to notify the department of an intent to renew may constitute grounds for denying renewal of a permit.
- (5) Each commercial manta ray viewing operation permit shall authorize the carrying of no more than sixty passengers per twenty-four-hour period. Operators shall maintain a ratio of at least one guide per eight participants at any given time, regardless of how many of a vessel's participants are in the water. No more than one commercial manta ray viewing operation permit shall be issued per person or business entity.

- (6) All commercial manta ray viewing operation permit holders shall display on the permitted vessel the capital letter "M", so as to be clearly visible on both sides of the vessel, near the top of the gunwales or on the superstructure. If the vessel has a valid identification number issued by the department and displayed pursuant to chapter 13-241, the letter "M" shall be displayed as a suffix to the identification number. Unless otherwise required, the letter "M" shall be no less than six inches high by three inches wide in black or a contrasting solid color to the background.
- (7) Commercial manta ray viewing operation permit eligibility shall be subject to the following:
- (i) On the effective date of this section, an applicant must hold a valid commercial use permit with the division that authorizes commercial manta ray viewing operations.
  - (ii) At the time application for a commercial manta ray viewing operation permit is made, the applicant must have been engaged in commercial manta ray viewing operations for at least four consecutive years, as evidenced by submission of records.
  - (iii) A commercial manta ray viewing operation permit may be suspended for up to thirty business days for a first violation of any of the provisions of this section or any condition of a commercial manta ray viewing operation permit by a permit holder or any of the permit holder's employees or agents, and shall be suspended for up to sixty business days for any subsequent violations of any of the provisions of this section or any condition of a commercial manta ray viewing operation

permit by a permit holder or any of the permit holder's employees or agents within one year of the previous violation.

(iv) A commercial manta ray viewing operation permit may be revoked for a third and any subsequent violations of any of the provisions of this section or any condition of a commercial manta ray viewing operation permit by a permit holder or any of the permit holder's employees or agents within one year of the previous violation.

(v) For any violation of this section alleged by the department, the board may suspend any and all of the alleged offender's commercial permits with the division pending the outcome of any criminal, administrative, or investigative proceedings.

(c) All persons and vessels within any manta ray viewing zones designated by the department shall be subject to the following:

(1) Commercial manta ray viewing operations shall be allowed only within manta ray viewing zones designated by the department or at least seven nautical miles from any designated manta ray viewing zone boundary. Vessels in support of commercial manta ray viewing operations shall not leave a manta ray viewing zone boundary while participants or guides, or both, of that vessel are in the water.

(2) Only the department or its authorized designee may install and maintain day use mooring buoys at manta ray viewing zones. The department may remove unauthorized moorings at any time.

(i) At each manta ray viewing zone, one mooring shall be permanently reserved for non-commercial use, available on a first-come, first-served basis.



- (ii) Commercial vessels shall only moor at department-approved moorings and shall not moor at non-commercial moorings. Non-commercial operators may moor at any mooring, subject to availability.
  - (iii) For all mooring buoys, the mooring time limit during manta ray viewing hours shall be the same as the day use mooring buoy time limit specified in chapter 13-257, subchapter 1. Calculation of the time limit begins when a vessel attaches to a mooring. A vessel that has reached the mooring time limit must detach from its mooring and leave the boundaries of the manta ray viewing zone for at least thirty minutes before returning.
- (d) The following prohibitions shall apply within all designated manta ray viewing zones:
  - (1) At all times, no person shall:
    - (i) Operate a vessel at a speed in excess of slow-no-wake.
    - (ii) Anchor any vessel.
    - (iii) Raft any vessel; provided that only kayaks, canoes, and paddleboards may raft.
  - (2) During manta ray viewing hours, no person shall:
    - (i) Navigate any motorboat; provided that navigating a motorboat for the purpose of securing the vessel to a mooring shall be allowed; provided further that navigating a vessel within one hundred feet of any manta ray viewing zone campfire shall be allowed only for ingress and egress purposes or in emergency situations, if a campfire is available.
    - (ii) Engage in live boating, except for ingress and egress purposes, or in life-threatening and vessel-related emergency situations.

- (iii) Use a pole, net, spear, or any variation thereof to engage in fishing. This shall not prohibit gathering marine life by hand without using such equipment.
- (iv) Use subsurface vessel lighting or excessive topside lighting if a campfire is available.
- (v) Use any point source of illumination for the purpose of attracting plankton or manta rays more than one hundred feet from any manta ray viewing zone campfire, if a campfire is available.
- (vi) Engage in commercial SCUBA diving operations, except that commercial SCUBA diving operations shall be allowed only in the Makako Bay manta ray viewing zone.
- (vii) Navigate a vessel equipped with one or more inboard or outboard motors, except a thrill craft, without a propeller guard installed; provided that a propeller guard shall not be required if a crew member, other than the person operating the vessel, is designated as a lookout to ensure safety at all times.
- (viii) Operate any non-motorized vessel without displaying a white light, visible three hundred sixty degrees from a distance of at least two hundred feet away, to indicate the presence of the vessel.

(e) In addition to the exceptions cited in section 13-256-14, the restrictions cited in this section shall not apply to employees and vessels of the department performing official duties. The department shall also have the discretion to authorize an exemption from the restrictions cited in this section for research activity purposes, provided that:

- (1) "Research activity" shall only include basic data collection, experimental management, or

resource evaluation, or any combination thereof, that does not result in a serious or major disturbance to an environmental resource; and

- (2) The department receives a written request for a research activity exemption not less than thirty calendar days and not more than ninety calendar days before the intended date of the research activity."

[Eff ] (Auth: HRS §§200-4, 200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-8, 200-14, 200-14.5, 200-24)

3. Chapter 13-256, Hawaii Administrative Rules, is amended by adding a new section 13-256-165 to read as follows:

**"§13-256-165 Makako Bay manta ray viewing zone.**

"Makako Bay manta ray viewing zone" means the area within the boundaries shown on "Exhibit FFF1. Makako Bay Manta Ray Viewing Zone", dated September 12, 2022, incorporated herein, and located at the end of this subchapter. The boundaries are as follows:

Beginning at 19°44'26.5956"N, 156°3'15.6168"W; then in a clockwise direction along a path five feet seaward of the shoreline to 19°43'53.7456"N, 156°3'31.9176"W; then in a straight line to the point of beginning. The Makako Bay Manta Ray Viewing Zone Campfire, shown on "Exhibit FFF1. Makako Bay Manta Ray Viewing Zone", dated September 12, 2022, shall be located at 19°44'10.86"N, 156°3'14.0394"W."

[Eff ] (Auth: HRS §200-4)  
(Imp: HRS §§200-2, 200-3, 200-4)

4. Chapter 13-256, Hawaii Administrative Rules, is amended by adding a new section 13-256-166 to read as follows:

**"§13-256-166 Kaukalaelae Point manta ray viewing zone.** "Kaukalaelae Point manta ray viewing zone" means the area confined by the boundaries shown on exhibit "Exhibit FFF2. Kaukalaelae Point Manta Ray Viewing Zone", dated September 12, 2022, incorporated herein, and located at the end of this subchapter. The boundaries are as follows:

Beginning at 19°33'40.5864"N, 155°57'57.7944"W;  
then in a clockwise direction along a path five  
feet seaward of the shoreline to 19°33'22.2912"N,  
155°57'58.446"W; then in a straight line in a  
clockwise direction to 19°33'22.3848"N,  
155°58'12.1944"W; then in a straight line in a  
clockwise direction to 19°33'40.0932"N,  
155°58'10.9236"W; then in a straight line to the  
point of beginning. The Kaukalaelae Point Manta  
Ray Viewing Zone Campfire, shown on "Exhibit  
FFF2. Kaukalaelae Point Manta Ray Viewing Zone",  
dated September 12, 2022, shall be located at  
19°33'35.82"N, 155°58'2.0382"W."

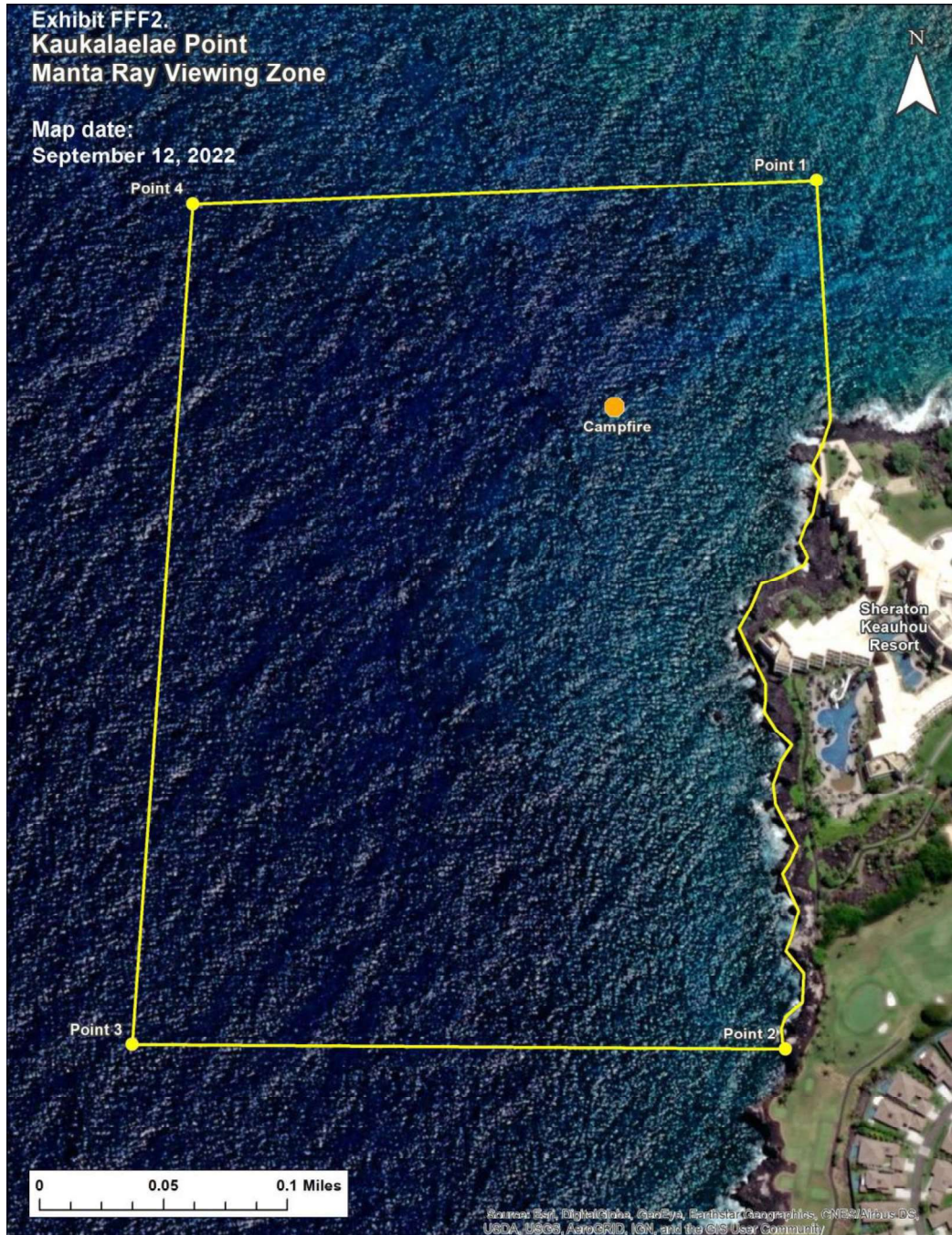
[Eff \_\_\_\_\_] (Auth: HRS §200-4) (Imp:  
HRS §§200-2, 200-3, 200-4)

**Exhibit FFF1. Makako Bay Manta Ray Viewing Zone**  
**Dated September 12, 2022**





**Exhibit FFF2. Kaukalaelae Point Manta Ray Viewing Zone**  
**Dated September 12, 2022**



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

6. Additions to update source notes to reflect these amendments are not underscored.

7. The amendments to chapters 13-230 and 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 Statutes, which were adopted on \_\_\_\_\_ by the Board of Land and Natural Resources.

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SUZANNE D. CASE  
Chairperson  
Board of Land and Natural Resources

APPROVED FOR PUBLIC HEARING:



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Deputy Attorney General



## **IV. Old Business**

A. Discussion and Action on the Small Business  
Statement After Public Hearing and  
Proposed Amendments to HAR Title 13  
Chapter 256-152, **Kahaluu Bay Ocean  
Waters**, promulgated by DLNR

SMALL BUSINESS STATEMENT  
"AFTER" PUBLIC HEARING TO THE  
SMALL BUSINESS REGULATORY REVIEW BOARD  
(Hawaii Revised Statutes (HRS), §201M-3)

Department or Agency: DLNR Division of Boating & Ocean Recreation

Administrative Rule Title and Chapter: Title 13, Chapter 256

Chapter Name: Ocean Recreation Management Rules and Areas

Contact Person/Title: Todd Tashima, General Professional

Phone Number: 808-587-0142

E-mail Address: todd.h.tashima@hawaii.gov Date: 10/28/22

A. To assist the SBRRB in complying with the meeting notice requirement in HRS §92-7, please attach a statement of the topic of the proposed rules or a general description of the subjects involved.

B. Are the draft rules available for viewing in person and on the Lieutenant Governor's Website pursuant to HRS §92-7?

☒ Yes ☐ No

(If "Yes," please provide webpage address and when and where rules may be viewed in person. Please keep the proposed rules on this webpage until after the SBRRB meeting.)

I. Rule Description: ☐ New ☐ Repeal ☒ Amendment ☐ Compilation

II. Will the proposed rule(s) affect small business?

☒ Yes ☐ No (If "No," no need to submit this form.)

\* "Affect small business" is defined as "any potential or actual requirement imposed upon a small business . . . that will cause a direct and significant economic burden upon a small business, or is directly related to the formation, operation, or expansion of a small business." HRS §201M-1

\* "Small business" is defined as a "for-profit corporation, limited liability company, partnership, limited partnership, sole proprietorship, or other legal entity that: (1) Is domiciled and authorized to do business in Hawaii; (2) Is independently owned and operated; and (3) Employs fewer than one hundred full-time or part-time employees in Hawaii." HRS §201M-1

III. Is the proposed rule being adopted to implement a statute or ordinance that does not require the agency to interpret or describe the requirements of the statute or ordinance?

☐ Yes ☒ No

(If "Yes" no need to submit this form. E.g., a federally-mandated regulation that does not afford the agency the discretion to consider less restrictive alternatives. HRS §201M-2(d))

IV. Is the proposed rule being adopted pursuant to emergency rulemaking? (HRS §201M-2(a))

☐ Yes ☒ No

(If "Yes" no need to submit this form.)

**V. Please explain how the agency involved small business in the development of the proposed rules.**

DOBOR notified affected businesses about public hearings and how to submit testimony on the rules.

**a. Were there any recommendations incorporated into the proposed rules? If yes, explain. If not, why not?**

Yes, a clarification was included regarding the types of vessels and equipment that may be used in the area.

**VI. If the proposed rule(s) affect small business, and are not exempt as noted above, please provide the following information:**

1. A description of how opinions or comments from affected small businesses were solicited.

Businesses were notified via the legal ad announcing the public hearing.

2. A summary of the public's and small businesses' comments.

Businesses opposed the shift permitting system, and some supported an outright ban on commercial activity. Most agreed that regulations were needed to address safety and user conflict concerns.

3. A summary of the agency's response to those comments.

In response to the opposition to shifts, DOBOR is removing shifts and keeping existing rule language authorizing the issuance of 4 full-day permits. DOBOR does not support an outright ban on commercial activity.

4. The number of persons who:
  - (i) Attended the public hearing: 21
  - (ii) Testified at the hearing: 10
  - (iii) Submitted written comments: 13

5. Was a request made at the hearing to change the proposed rule in a way that affected small business?

☒ **Yes**    ☐ **No**

(i) If "Yes," was the change adopted? ☒ **Yes**    ☐ **No**

(ii) If No, please explain the reason the change was not adopted and the problems or negative result of the change.

DOBOR plans to remove permit shifts as explained in VI. 3. above.

Small Business Regulatory Review Board / DBEDT  
Phone: (808) 586-2594 / Email: [DBEDT.sbrrb.info@hawaii.gov](mailto:DBEDT.sbrrb.info@hawaii.gov)

This statement may be found on the SBRRB Website at:  
<http://dbedt.hawaii.gov/sbrrb-impact-statements- pre-and-post-public-hearing>

## Small Business Regulatory Review Board

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### MEETING MINUTES - HELD THROUGH VIDEO-CONFERENCING

June 17, 2021

- I. **CALL TO ORDER:** Chair Cundiff called the meeting to order at 10:04 a.m., with a quorum present, which was open to the public.

**MEMBERS PRESENT:**

- Robert Cundiff, Chair
- Garth Yamanaka, 2<sup>nd</sup> Vice Chair
- Jonathan Shick
- James (Kimo) Lee
- Taryn Rodighiero
- Mark Ritchie

**ABSENT MEMBERS:**

- Mary Albitz, Vice Chair
- Harris Nakamoto
- Dr. Nancy Atmospera-Walch
- William Lydgate

**STAFF:** DBEDT

Dori Palcovich  
Jet'aime Alcos

Office of the Attorney General

Alison Kato

II. **APPROVAL OF May 20, 2021 MINUTES**

Mr. Lee motioned to accept the May 20, 2021 meeting minutes, as presented.  
Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

III. **OLD BUSINESS** – After Public Hearing

- A. Discussion and Action on the Small Business Statement After Public Hearing and the Proposed Adoption of HAR Title 17 Chapter 798.3, Child Care Payments, promulgated by Department of Human Services (DHS)

Discussion leader Mr. Ritchie stated that the DHS rules involve child care licensing with regards to requirements, background checks and payments. The rules reflect where a state agency has to update its Hawaii Administrative Rules due to receiving federal grant monies and updated federal rules; they have already gone to public hearing.

Ms. Dayna Luka, who is temporarily assigned as DHS's Child Care Office Administrator, reminded the board members that before the public hearing the rules were presented to this Board in September 2020. They were created to support the requirements of the child care development block grant (CCDBG) of 2014; she noted that states utilize grant monies for financial assistance to low-income families to access various aspects of childcare.

Overall, the 2014 CCDBG was intended to strengthen the protection of child care nationwide for parents to make informative choices. It assists in child development, provides equal

access and stable child care for eligible children and it enhances the quality of childcare and early childhood workforce.

Ms. Loreen Okamura, Child Care Subsidy Lead Specialist, explained that Chapter 798.3 is moving from a six-month to a twelve-month eligibility period to provide more stable child care to families. The testimonies provided at the public hearing were in support of the proposed rules; several of the comments/suggestions that were made will be considered for the next rule revision.

Mr. Ritchie motioned to forward the proposal to the Governor for adoption. Ms. Rodighiero seconded the motion, and the Board members unanimously agreed.

B. Discussion and Action on the Small Business Statement After Public Hearing and the Proposed Adoption of HAR Title 17 Chapter 800, Requirements for Listing of Exempt Center-Based Providers, promulgated by DHS

Ms. Okamura stated that testimonies at the public hearing were in support of the proposed changes and several of the comments/suggestions that were made will be considered for the next rule revision.

Mr. Ritchie motioned to forward the proposal to the Governor for adoption. Mr. Shick seconded the motion, and the Board members unanimously agreed.

C. Discussion and Action on the Small Business Statement After Public Hearing and the Proposed Adoption of HAR Title 17 Chapter 801, Background Checks, promulgated by DHS

Ms. Luka indicated that no oral or written testimonies were received at the public hearing for these rule changes. The changes are based on the requirements set forth by the CCDBG Act, which requires all individuals who work with children or who have unsupervised access to children to undergo comprehensive background checks to be cleared to work with children.

Mr. Ritchie motioned to forward the proposal to the Governor for adoption. Second Vice Chair Yamanaka seconded the motion, and the Board members unanimously agreed.

**IV. NEW BUSINESS – Before Public Hearing**

A. Discussion and Action on the Proposed Amendments of HAR Title 13 Chapter 256, Ocean Recreation Management Rules and Areas, promulgated by Department of Land and Natural Resources (DLNR)

Discussion leader, Ms. Rodighiero, explained that the proposed rules affect surfing schools in Kahalu'u Bay on the Big Island as it has been found that there is a need to regulate the number of entities in the water. The intent is to have eight limited permits on a shift basis, four permits allowed in the morning and four in the afternoon.

In response to Chair Cundiff's inquiry as to whether any conflicts or concerns may arise as a result of these rules, Mr. Todd Tashima, General Professional from DLNR's Division of Boating and Ocean Recreation (DOBOR), replied that some contention is anticipated due to the restriction of only eight possible permits going into effect versus sixteen businesses vying for the licenses.

Ms. Meghan Statts, DOBOR's Assistant Administrator, confirmed that there will definitely be some challenges ahead with the proposed rules as they only allow for four licensed operators. While it has been discussed with the County of Hawaii to allow for eight permits, (utilizing four in the morning and four in the afternoon), surfing companies are not at all happy with this arrangement.

Kahalu'u Bay is a heavily used area in the local community which is why DOBOR is working very hard with the County to determine amicable solutions for everyone involved. The options available for providing permits are first come, first served with two other options requiring statutory amendments.

Because Kahalu'u Bay is a culturally sensitive area, Second Vice Chair Yamanaka recommended that DOBOR reach out to the businesses and families for feedback to determine the fairest way to move forward with the proposed changes. Chair Cundiff suggested that DOBOR offer a temporary solution that is fair and equitable to both the permitted and non-permitted businesses currently operating in the area.

Over the members' concerns in regard to having a lottery process for permits, Mr. Tashima explained that this process was not DOBOR's first option. However, because the promulgation of these rules has been stagnant since 2016, DOBOR believed it was time to go ahead with this proposal. DOBOR would need to approach the legislature next year with alternatives to the lottery system process such as permits by auction.

Second Vice Chair Yamanaka motioned to move the proposed amendments to public hearing. Ms. Rodighiero seconded the motion, and the Board members unanimously agreed.

## **V. ADMINISTRATIVE MATTERS**

### **A. Update on the Board's Upcoming Advocacy Activities and Programs in Accordance with the Board's Powers under Section 201M-5, HRS**

Chair Cundiff explained that there is no updated news yet on the budget.

Chair Cundiff announced that Harris Nakamoto's term with this Board will end on June 30<sup>th</sup>. We appreciate all of Harris' participation and hard work over the years. He was a great mentor to Chair Cundiff when he began as a member of this Board. Because we want to thank Harris for all his hard work, DBEDT staff will be creating an electronic card that will be sent to all the board members to include any comments and thoughts to Harris in appreciation for his efforts.

## Small Business Regulatory Review Board

### MEETING MINUTES - HELD THROUGH VIDEO-CONFERENCING

October 21, 2021

- I. **CALL TO ORDER:** Chair Cundiff called the meeting to order at 10:07 a.m., with a quorum present, which was open to the public.

**MEMBERS PRESENT:**

- Robert Cundiff, Chair
- Mary Albitz, Vice Chair
- Jonathan Shick, 2<sup>nd</sup> Vice Chair
- William Lydgate
- Taryn Rodighiero
- Mark Ritchie

**ABSENT MEMBERS:**

- Dr. Nancy Atmospera-Walch
- Garth Yamanaka
- James (Kimo) Lee

**STAFF:** DBEDT

Dori Palcovich  
Jet'aime Ariola

Office of the Attorney General

Margaret Ahn

II. **APPROVAL OF September 16, 2021 MINUTES**

Mr. Ritchie made a motion to accept the September 16, 2021 meeting minutes, as amended. Vice Chair Albitz seconded the motion, and the Board members unanimously agreed.

III. **OLD BUSINESS** – Before Public Hearing

- A. Discussion and Action on Proposed Amendments and the Small Business Statement After Public Hearing for HAR Title 11 Chapter 55, Water Pollution Control, promulgated by Department of Health (DOH), as follows:

- a. Appendix B, Multi-Sector General Permit (MSGP)
- b. Appendix E, Authorizing Discharges of Once Through Cooling Water Less Than One (1) Million Gallons Per Day
- c. Appendix F, Authorizing Discharges of Hydrotesting Water
- d. Appendix G, Authorizing Discharges Associated with Construction Activity Dewatering
- e. Appendix K, Small Municipal Separate Storm Sewer Systems

Discussion leader and Vice Chair Albitz stated that this proposal represents appendices under Chapter 55 which covers NPDES General Permits. No major small business impact appears to exist as the 170 agencies that have these general permits are government agencies; she added that most small businesses are sheltered organizations and able to receive an exemption.

Mr. Darryl Lum, Engineering Section Supervisor at DOH's Clean Water Branch, explained that the purpose of the NPDES general permits is to control requirements of those agencies that may potentially be causing pollutants in state waters. In February 2021, an early outreach process to all the stakeholders and various organizations was conducted.

In August 2021, a Zoom public hearing was held with a total of 20 persons participating. While no one provided testimony at the hearing, three sets of specific comments totaling 20 were received by DOH, all of which were from government agencies regarding the general permit. No other comments were received from small businesses or from the public.

Fifteen of the 20 comments were in support of Appendix B and 5 were in support of Appendix K. Only one of the comments represented a change in the original proposed rules; this change will increase the deadline in submitting a document for the Appendix B general permit from 90 days to 180 days.

Both Chair Cundiff and Vice Chair Albitz commented on the comprehensive summary from the public hearing and feedback from of the public.

Vice Chair Albitz motioned to move the proposed amendments to the Governor for adoption. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

B. Discussion and Action on Proposed Amendments and the Small Business Statement After Public Hearing for HAR Title 13 Chapter 256, Ocean Recreation Management Rules and Areas, promulgated by Department of Land and Natural Resources (DLNR)

Discussion leader Ms. Rodighiero explained that the rule amendments regulate the number of entities in the waters of Kahalu'u Bay on the Big Island. Eight limited permits are to be created on a shift basis – four permits allowed in the morning and four in the afternoon. The public hearing had several attendees with 20 testifying and 48 providing written comments.

Mr. Edward Underwood, Administrator at DLNR's Division of Boating and Ocean Recreation (DOBOR), noted that Ms. Rodighiero explained the public hearing well and confirmed that DOBOR was allowing for either 4 full-time or 8 half-time permits. Based on comments at the public hearing, the language in the rules will be amended and proposed to include "non-motorized" vessels to cover all forms of surfing.

Ms. Rodighiero motioned to move the proposed amendments to the Governor for adoption. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.



DEPARTMENT OF LAND AND NATURAL RESOURCES

Amendments to Section 13-256-152  
Hawaii Administrative Rules

[Date of adoption by agency]

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

**"§13-256-152 Kahaluu Bay ocean waters.** (a) Kahaluu Bay ocean waters means the area confined by the boundaries shown on Exhibit ["H-5", dated November 20, 2014,] H-5, titled "Kahaluu Bay Ocean Waters, Ocean Recreation Management Area", dated August 1, 2022, located at the end of this [subchapter and incorporated herein.]subchapter. The boundaries are as follows:~~[-Beginning at the low water mark of Kalaau o Kalakani Point at 19°34'37.81"N, 155°58'10.50"W; then to a point on the low water mark on the northern side of the Kahaluu Bay at Kamo Point at 19°35'09.24"N, 155°58'15.91"W; then along the shoreline in a southerly direction to the point of beginning.]~~

Beginning at the low water mark of Kalaau o Kalakani Point at 19°34'37.81"N, 155°58'10.50"W; then to a point on the low water mark on the northern side of Kahaluu Bay at 19°35'09.24"N, 155°58'15.91"W; then along the shoreline in a southerly direction to the point of beginning.  
~~[(1) Restrictions. Kahaluu Bay ocean waters is designated as a swimming, surf boarding, and diving zone.  
(2) No commercial water sports instruction or Commercial tours may be conducted in Kahaluu Bay ocean waters without a permit from the department]~~

Kahaluu Bay ocean waters is designated as a swimming, surfing, and diving zone. No commercial water sports instruction or commercial tours shall be

conducted in Kahaluu Bay ocean waters without a permit from the department.

(b) Kahaluu Bay [~~Zone~~]ocean waters zone A is described as follows:

~~[Beginning at a point on the low water mark on the northern side of the shoreline at 19°34'59.48"N, 155°58'06.11"W (hand rail); then south-easterly along the shoreline to the north lifeguard tower at 19°34'48.67"N, 155°57'58.88"W; then seawards northwesterly to Pyramid Rock at 19°34'50.21"N, 155°58'07.98"W; then seawards north-easterly ending at the point of beginning.]~~

Beginning at a point on the low water mark on the northern side of the shoreline at 19°34'59.48"N, 155°58'06.11"W (hand rail); then southeasterly along the shoreline to the north lifeguard tower at 19°34'48.67"N, 155°57'58.88"W; then seawards northwesterly to Pyramid Rock at 19°34'50.21"N, 155°58'07.98"W; then seawards northeasterly ending at the point of beginning.

- ~~(1) Restrictions. Zone A is designated as a surfing zone.~~
- ~~(2) The department may issue a total of up to four permits for commercial surf school instruction within Zone A. Each permit shall authorize surf school instructors to conduct surfing instruction only within Zone A.~~
- ~~(3) Each instructor shall have no more than four students in the water at a given time, with a maximum of eight students per surf school permit in the water at any given time. The maximum of one to four instructor to student ratio must be maintained at all times while in the water.~~
- ~~(4) The instructor shall, at a minimum, possess a current advanced life saving certificate, and be authorized by the County of Hawaii to conduct surf instruction on County property at Kahaluu Bay.~~
- ~~(5) The department may designate the site of~~

~~instruction with Kahaluu Bay Zone A and hours of operation for each permittee, and may change the site whenever such changes are found by the department to be necessary.]~~

Kahaluu Bay ocean waters zone A is designated as a surfing zone. At all times, no person shall operate or moor any motorized vessel in this zone.

All commercial activities of any type shall be prohibited in this zone, except that the department may issue commercial use permits to authorize commercial surfing instruction within this zone; provided that:

- (1) The total number of permits authorizing commercial surfing instruction issued under this subsection shall not exceed four at any one time for Kahaluu Bay ocean waters zone A;
- (2) Each permit issued by the department pursuant to this subsection shall only authorize surfing instruction within Kahaluu Bay ocean waters zone A;
- (3) No permittee may allow more than four students in the water at any one time per surfing instruction permit, regardless of the number of surf instructors of that permittee in the water;
- (4) Each surf instructor shall, at a minimum, possess a current advanced life saving certificate; and
- (5) The department may designate the site of surf instruction within Kahaluu Bay ocean waters zone A and hours of operation for each permittee. The department may change a designated site of operation within Kahaluu Bay ocean waters zone A whenever such changes are found by the department to be necessary for reasons of public health, safety, or welfare.

(c) Kahaluu Bay [Zone]ocean waters zone B is described as follows:  
Beginning at Kalaau O Kalakani Point at

19°34'37.81"N, 155°58'10.50"W; then northeasterly along the shoreline to the north lifeguard tower at 19°34'48.67"N, 155°57'58.88"W; then seawards [~~north-westerly~~]northwesterly to Pyramid Rock at 19°34'50.21"N, 155°58'07.98"W; then seawards in a southerly direction ending at Kalaaui O Kalakani Point at the point of beginning.

~~[(1) Restrictions. Zone B is designated as a swim zone.~~

~~-(2) No person shall operate or moor any vessel within this zone, including but not limited to boats, motorboats, surfboards, paddleboards, sailboards, kayaks, and canoes.]~~

Kahaluu Bay ocean waters zone B is designated as a swimming and diving zone. No person shall operate or moor any vessel within this zone, including, but not limited to, boats, motorboats, surfboards, paddleboards, sailboards, kayaks, and canoes." [Eff

2/24/94; am 4/22/16; am ] (Auth: HRS §§200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24)





**Exhibit H-5  
Kahaluu Bay Ocean Waters,  
Ocean Recreation Management Area**



Map date: August 1, 2022

**Kahaluu Bay  
Ocean Waters**

**Hand  
Rail**

**Zone A**

**Pyramid  
Rock**

**Life Guard  
Station**

**Zone B**

**Kala'au O  
Kalakani Point**

**Legend**



**Boundary Reference  
Points**



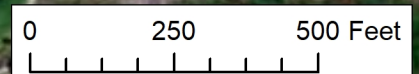
**Ocean Waters  
Boundary**



**Zone A - Surfing**



**Zone B - Swimming**



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community



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

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

I certify that the foregoing is a copy of the rule, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which, if adopted by the Board of Land and Natural Resources, will be filed with the Office of the Lieutenant Governor.

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SUZANNE D. CASE  
Chairperson  
Board of Land and Natural Resources

APPROVED AS TO FORM:

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Deputy Attorney General

## **IV. Old Business**

B. Discussion and Action on the Small Business  
Statement After Public Hearing and  
Proposed Amendments to HAR Title 13  
Chapter 251 Subchapters 1, 2, 3, and 7,  
**Commercial Activities on State Ocean  
Waters, Navigable Streams and Beaches,**  
promulgated by DLNR

SMALL BUSINESS STATEMENT  
"AFTER" PUBLIC HEARING TO THE  
SMALL BUSINESS REGULATORY REVIEW BOARD  
(Hawaii Revised Statutes (HRS), §201M-3)

Department or Agency: DLNR Div. of Boating & Ocean Recreation

Administrative Rule Title and Chapter: HAR 13-251, Subchapters 1, 2, 3, and 7

Chapter Name: Commercial Activities on State Ocean Waters, Navigable Streams, and Beaches

Contact Person/Title: Todd Tashima, General Professional

Phone Number: 808-587-0142

E-mail Address: todd.h.tashima@hawaii.gov Date: 10/28/22

A. To assist the SBRRB in complying with the meeting notice requirement in HRS §92-7, please attach a statement of the topic of the proposed rules or a general description of the subjects involved.

B. Are the draft rules available for viewing in person and on the Lieutenant Governor's Website pursuant to HRS §92-7?

☒ Yes ☐ No

(If "Yes," please provide webpage address and when and where rules may be viewed in person. Please keep the proposed rules on this webpage until after the SBRRB meeting.)

I. Rule Description: ☐ New ☒ Repeal ☐ Amendment ☐ Compilation

II. Will the proposed rule(s) affect small business?

☒ Yes ☐ No (If "No," no need to submit this form.)

\* "Affect small business" is defined as "any potential or actual requirement imposed upon a small business . . . that will cause a direct and significant economic burden upon a small business, or is directly related to the formation, operation, or expansion of a small business." HRS §201M-1

\* "Small business" is defined as a "for-profit corporation, limited liability company, partnership, limited partnership, sole proprietorship, or other legal entity that: (1) Is domiciled and authorized to do business in Hawaii; (2) Is independently owned and operated; and (3) Employs fewer than one hundred full-time or part-time employees in Hawaii." HRS §201M-1

III. Is the proposed rule being adopted to implement a statute or ordinance that does not require the agency to interpret or describe the requirements of the statute or ordinance?

☐ Yes ☒ No

(If "Yes" no need to submit this form. E.g., a federally-mandated regulation that does not afford the agency the discretion to consider less restrictive alternatives. HRS §201M-2(d))

IV. Is the proposed rule being adopted pursuant to emergency rulemaking? (HRS §201M-2(a))

☐ Yes ☒ No

(If "Yes" no need to submit this form.)



**V. Please explain how the agency involved small business in the development of the proposed rules.**

DOBOR has regularly discussed operator permit requirements with affected businesses for several years.

**a. Were there any recommendations incorporated into the proposed rules? If yes, explain. If not, why not?**

No, businesses could not come to consensus on changes to be made, so DOBOR will repeal the operator permit requirements and initiate a new rule, if necessary, to address business concerns.

**VI. If the proposed rule(s) affect small business, and are not exempt as noted above, please provide the following information:**

1. A description of how opinions or comments from affected small businesses were solicited.

Pursuant to HRS Section 91-3(g), DOBOR published a public notice of repeal in newspapers statewide to notify the public of the proposed repeal and to inform the public that they could submit comments.

2. A summary of the public's and small businesses' comments.

DOBOR did not receive any comments from the public regarding this proposed repeal.

3. A summary of the agency's response to those comments.

N/A

4. The number of persons who:

(i) Attended the public hearing: 0

(ii) Testified at the hearing: 0

(iii) Submitted written comments: 0

5. Was a request made at the hearing to change the proposed rule in a way that affected small business?

☐ Yes ☒ No

(i) If "Yes," was the change adopted? ☐ Yes ☐ No

(ii) If No, please explain the reason the change was not adopted and the problems or negative result of the change.

Small Business Regulatory Review Board / DBEDT  
Phone: (808) 586-2594 / Email: [DBEDT.sbrrb.info@hawaii.gov](mailto:DBEDT.sbrrb.info@hawaii.gov)

This statement may be found on the SBRRB Website at:  
<http://dbedt.hawaii.gov/sbrrb-impact-statements- pre-and-post-public-hearing>

## Small Business Regulatory Review Board

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### MINUTES OF REGULAR MEETING

January 16, 2020

Conference Room 405, 235 South Beretania Street, Leiopapa A Kamehameha Building  
(State Office Tower), Honolulu, Hawaii 96813

- I. **CALL TO ORDER:** Chair Cundiff called the meeting to order at 10:02 a.m., with a quorum present.

**MEMBERS PRESENT:**

- Robert Cundiff, Chair
- Garth Yamanaka, Vice Chair
- Harris Nakamoto
- Mary Albitz
- James (Kimo) Lee
- Carl Nagasako

**ABSENT MEMBERS:**

- William Lydgate, 2<sup>nd</sup> Vice Chair
- Nancy Atmospera-Walch
- Jonathan Shick

**STAFF:** DBEDT

Dori Palcovich  
Jet'aime Alcos

Office of the Attorney General

Jennifer Polk-Waihee

II. **APPROVAL OF NOVEMBER 21, 2019 MINUTES**

Mr. Lee made a motion to accept the November 21, 2019 minutes, as presented.  
Mr. Nakamoto seconded the motion, and the Board members unanimously agreed.

III. **OLD BUSINESS** – After Public Hearing

- A. Discussion and Action on the Small Business Statement After Public Hearing and Proposed New HAR Title 15, Chapter 120, Community-Based Economic Development Loan and Grants Programs, and Repeal of HAR Chapter 116, Community-Based Development Loan Program and HAR Chapter 126, Community-Based Development Grants Program, promulgated by Department of Economic, Development and Tourism (DBEDT)

Mr. Mark Ritchie, Branch Chief at DBEDT's Business Development and Support Division, explained that the proposed new rule was initially two separate rules, Chapter 116 Community-Based Development Loan Program and Chapter 126 Community-Based Development Grants Program; the new proposal combines the two rules.

One area where there is significant small business impact, albeit positive impact, is where the new rule requires small businesses to receive only one turndown; whereas the prior rules required two turndowns before the business could approach DBEDT for a loan. Overall, these two programs are good for small businesses to get off the ground.

Mr. Nakamoto made a motion to move the proposed rules onto the Governor for adoption. Ms. Albitz seconded the motion, and the Board members unanimously agreed.

#### **IV. NEW BUSINESS – Before Public Hearing**

A. Discussion and Action on Proposed Amendments to Part 5, Facilities Reserve Charge, Section III Applicability, promulgated by Department of Water, County of Kauai, as follows:

1. e. The Facilities Reserve Charge for a Guest House; and
2. f. The Facilities Reserve Charge for an Additional Rental Unit

Messrs. Edward Doi and Michael Hinazumi, Engineers from the Department of Water, County of Kauai, explained that the County recently changed an ordinance allowing guesthouses to be converted into rental units. Impact studies, in the past, addressed single family dwellings as size-limited rental units and were assessed an impact fee of \$14,115. Kauai County is looking to reduce this impact fee for the affordable housing market size-limits such as residential size-limits; this will be consistent with the charge-down of \$4,000.

Regarding any small business impact, it will likely help stimulate the development of these types of rental units and lower future connection fees. In 2015, a rate study was performed based on water usage and impact to the system. In questioning the offsets, as discussed in the rules, Mr. Hinazumi stated they were created by percentages. If the department is unable to do the facility, any developer has the option to use the facility and then will receive the offset for the FRC (facilities reserve charge).

Vice Chair Yamanaka agreed that Kauai County is the “high-test” in the state, and because the level is being reduced, that is the reason it can be considered “low income housing.” Regarding outreach in the community, there was a sizeable amount of feedback that was received by the community, all of which was positive. Regarding growth capacity, Mr. Doi explained that based on the County’s general projection of the area, it appears there is enough water to service the community in the next five to seven years.

Ms. Albitz made a motion to move the proposed amendments forward to public hearing. Vice Chair Yamanaka seconded the motion, and the Board members unanimously agreed.

B. Discussion and Action on Proposed Amendments (Repeal) of Title 13 Chapter 251, Commercial Activities on State Ocean Waters, Navigable Streams, and Beaches, promulgated by Department of Land and Natural Resources (DLNR), as follows:

1. Subchapter 1, Catamaran Captain, Canoe Captain, Canoe Second Captain, Surfboard Instructor, Sailboard Instructor and Commercial Motorboat Operator Permits
2. Subchapter 2, Suspension or Revocation of Operator Permits
3. Subchapter 3, Violation of Operator Permit Provisions
4. Subchapter 7, Special Operating Restrictions

Discussion leader, Ms. Mary Albitz introduced Ms. Meghan Statts, Assistant Administrator and Legal Fellow Mr. Todd Tashima from DLNR's Division of Boating and Outdoor Recreation (DOBOR), who explained that this proposal pertains only to Waikiki ocean waters - from Kewalo Basin to Diamond Head. The rule creates an operator card for anyone who wants to teach surf instructions or canoe paddling in Waikiki. Numerous surf schools were contacted and were asked by DOBOR to utilize the operator card for a while.

Overall, because businesses could not come to a consensus on changes to be made, DOBOR opted to repeal the operator permit requirements in the rules. The businesses that will directly benefit from the repeal are those operating commercially on Waikiki Beach and in Waikiki Ocean Waters. Further, removal of the operator permit requirements will allow businesses to independently review employee qualifications and remove the State from the qualification process. While "commercial" use permit requirements would remain, the State will not be involved in qualifying and certifying employees' ability to operate outrigger canoes and surfboards.

In response to an inquiry by Chair Cundiff as to how a small businessperson is qualified, Ms. Statts replied that First Aid and CPR training is required as well as practicing a certain number of years. These qualifications allow an instructor to provide better, safer, and proper service to clients. It is expected that most of the affected small businesses will likely support the rule change because it will provide businesses with more flexibility in hiring; DOBOR is planning to work closely with the Waikiki businesses.

Mr. Tashima explained that there is no need to go to public hearing because DOBOR is only repealing the subchapters, and Chapter 91-3, HRS provides agencies the authority to issue only public notice when it is a repeal. In order to repeal the existing rule, however, notice must be advertised in the paper. Therefore, DOBOR is requesting approval to publish notice but not to go to public hearing. Although it is believed that positive feedback is expected, if public notice results in comments that need to be responded to or acted upon, DOBOR will come back before this Board.

Vice Chair Yamanaka made a motion to issue public notice for repeal of the subject subchapters. Ms. Albitz seconded the motion, and the Board members unanimously agreed.

## **V. ADMINISTRATIVE MATTERS**

- A. Update on the Board's Upcoming Advocacy Activities and Programs in Accordance with the Board's Powers under Section 201M-5, HRS, on the following:
  - a. Board to be Interviewed on ThinkTech Hawaii's "Business in Hawaii" scheduled on January 23, 2020

Chair Cundiff introduced Ms. Dailyn Yanagida, Consultant at ThinkTech Hawaii, and thanked her for attending today's meeting. He noted that this Board was on ThinkTech Hawaii at least twice before, but since then the Board has had several changes to report such as revamping the website and creating "Regulation for Review."

DEPARTMENT OF LAND AND NATURAL RESOURCES

Repeal of Subchapters 1, 2, 3, and 7 of  
Chapter 13-251  
Hawaii Administrative Rules

October 27, 2022

1. Subchapter 1 of Chapter 13-251, Hawaii Administrative Rules, entitled "Catamaran Captain, Canoe Captain, Canoe Second Captain, Surfboard Instructor, Sailboard Instructor and Commercial Motorboat Operator Permits", is repealed.

2. Subchapter 2 of Chapter 13-251, Hawaii Administrative Rules, entitled "Suspension or Revocation of Operator Permits", is repealed.

3. Subchapter 3 of Chapter 13-251, Hawaii Administrative Rules, entitled "Violation of Operator Permit Provisions", is repealed.

4. Subchapter 7 of Chapter 13-251, Hawaii Administrative Rules, entitled "Special Operating Restrictions", is repealed.

5. The repeal of subchapters 1, 2, 3 and 7 of Chapter 13-251, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on October 27, 2022 by the Board of Land and Natural Resources.

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SUZANNE D. CASE  
Chairperson  
Board of Land and Natural Resources

APPROVED AS TO FORM:

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Deputy Attorney General

## **V. Administrative Matters**

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