

Small Business Regulatory Review Board Meeting

August 15, 2019

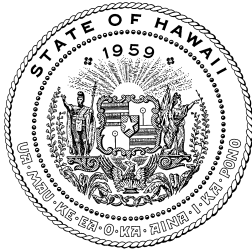
10:00 a.m.

Leipapa A Kamehameha Building

(State Office Tower)

Conference Room 405 – 235 South Beretania Street,

Honolulu, HI 96813



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
Website: dbedt.hawaii.gov/sbrrb

Tel: 808 586-2419

AGENDA

Thursday, August 15, 2019 ★ 10:00 a.m.

**Leiopapa A Kamehameha Building - State Office Tower
Conference Room 405
235 South Beretania Street, Honolulu, HI 96813**

David Y. Ige
Governor

Michael McCartney
DBEDT Director

Members

Robert Cundiff
Chairperson
O'ahu

Garth Yamanaka
Vice Chairperson
Hawai'i

Willian Lydgate
2nd Vice Chairperson
Kaua'i

Harris Nakamoto
O'ahu

Dr. Nancy Atmospera-
Walch
O'ahu

Mary Albitz
Maui

James (Kimo) Lee
Hawai'i

Jonathan Shick
O'ahu

Director, DBEDT
Voting Ex Officio

I. Call to Order

II. Approval of July 18, 2019 Meeting Minutes

III. Old Business – After Public Hearing

- A. Discussion and Action on Proposed Amendments and the Small Business Statement After Public Hearing to Title 8, **Department of Liquor Control**, Subtitle 1, **Liquor Commission**, promulgated by Department of Liquor Control, County of Maui, as follows – **Discussion Leader – Mary Albitz**

- i. Chapter 101, **Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui;**
- ii. Chapter 102, **Rules Governing the Administrative Practices and Procedures of the Liquor Commission and Liquor Control Adjudication Board of the County of Maui**

IV. Old Business – Before Public Hearing

- A. Request by Mel Wills III, Holo Holo Charters, on behalf of the Hanalei Department of Land and Natural Resources Permitted Boaters for review of recommended revisions to the Proposed Amendments to Part IV, **Rules and Regulations Governing Commercial Boating Activities at County Beach Parks**, Sections 30 to 36, promulgated by County of Kauai Department of Parks and Recreation – **Discussion Leader – Will Lydgate**

V. New Business – Before Public Hearing

- A. Discussion and Action on Proposed Amendments to Hawaii Administrative Rules (HAR) Title 13 Chapter 234, Section 26, **Fees and Charges**, promulgated by Department of Land and Natural Resources (DLNR) – **Discussion Leader – Mary Albitz**

VI. Regulation for Review

- A. Discussion and Action on Response from DLNR from the May 16, 2019 Board Meeting on Whether Bottomfish Restricted Fishing Areas Should be Opened and/or Disestablished under HAR Title 13 Chapter 94, **Bottomfish Management** – **Discussion Leader – Mary Albitz / Rob Cundiff**

VII. 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, as follows:
- i. Proposed Appropriations Request for the 2020 Legislative Session
 - ii. Launch of Board's New Website
 - iii. Meetings with Board Members and State Department Directors

VIII. Next Meeting: Thursday, September 19, 2019, at 10:00 a.m., 235 South Beretania Street, Leiopapa A Kamehameha Building (State Office Tower), Conference Room 405, Honolulu, HI 96813

IX. Adjournment

If you require special assistance or auxiliary aid and/or services to participate in the public hearing process (i.e., sign language, interpreter, wheelchair accessibility, or parking designated for the disabled), please call (808) 586-2419 at least three (3) business days prior to the meeting so arrangements can be made.

II. Approval of July 18, 2019 Meeting Minutes

Small Business Regulatory Review Board

MINUTES OF REGULAR MEETING - DRAFT

July 18, 2019

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 10:00 a.m., with a quorum present.

MEMBERS PRESENT:

- Robert Cundiff, Chair
- Garth Yamanaka, Vice Chair
- William Lydgate, Second Vice Chair
- Dr. Nancy Atmospera-Walch
- Mary Albitz
- Jonathan Shick
- James (Kimo) Lee
- Mark Ritchie

ABSENT MEMBERS:

- Harris Nakamoto

STAFF: DBEDT

Dori Palcovich

Office of the Attorney General

Jennifer Polk-Waihee

II. APPROVAL OF JUNE 20, 2019 MINUTES

Ms. Albitz made a motion to accept the June 20, 2019 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 Proposed Amendments and the Small Business Statement After Public Hearing to HAR Title 4 Chapter 66, Pesticides, promulgated by Department of Agriculture (DoAg)

Discussion leader and Second Vice Chair Lydgate stated that these rules are after public hearing where much feedback was received from testifiers. Ms. Victoria Matsumura, Case Developer at DoAg, explained that under Act 45, SLH 2018, a few more changes to the rules were made since the first time these rules were in front of this Board.

Six hearings were held beginning in November 2018; two on the Big Island, one on Oahu, one on Molokai and one on Maui. Twenty-one written comments and recommendations for additional rule changes were made; however, DoAg was unable to change some of the recommendations due to the statute’s mandates.

Changes to the rules, because of the commentary at the public hearings, include the reporting requirements of RUP (restricted use pesticide) which were initially not well received by the small business community. The compromise made by DoAg was that the new reporting requirement only requires “one” form for businesses to complete which will function as both reporting and recordkeeping purposes, to be retained for two years.

Another change was that the definition of “run-off” was expanded to more closely comply with the EPA definition. Also, it was indicated that after Lobbyist Mr. Tim Lyons expressed concern about increasing the application period for approval of education credits from 14 days prior to the scheduled class date to 30 days, DoAg opted to add a provision to the fee schedule allowing a fee of up to \$100 to be charged to expedite approval of the provider offering continuing education classes; this fee can be waived if the approval process does not interfere with staff responsibilities.

In addition, there was testimony expressing concern as to whether the proposed retailer pesticide warning sign requirements was feasible. Despite these concerns, it was explained that due to a legislative directive, retail signage requirements have been required by law since 2007 and as a result, DoAg is unable to amend the rules; only the Hawaii legislature can change the retail signage requirements in statute.

Mr. Lydgate noted that retailers will likely be surprised with the “labeling of pesticides” requirement. Ms. Matsumura responded that the bigger retailers in Hawaii such as Long’s, Home Depot, etc., have been notified of the labeling requirements.

Chair Cundiff stated that DoAg has done an excellent job at reaching out to the stakeholders to ensure businesses were involved in the process. He asked if small businesses were concerned with the definition changes and the changes to the buffer zones. Ms. Matsumura responded that private citizens and some of the schools were concerned with the buffer zones, and the farmers and schools questioned how they were to know where the buffer zones are located.

Second Vice Chair Lydgate made a motion to move the proposed rules to the Governor for adoption. Mr. Ritchie seconded the motion, and the Board members unanimously agreed.

IV. NEW BUSINESS – Before Public Hearing

A. Discussion and Action on Proposed Amendments to Part IV, Rules and Regulations Governing Commercial Boating Activities at County Beach Parks, Sections 30 to 36, promulgated by County of Kauai Department of Parks and Recreation

Discussion leader and Second Vice Chair Lydgate stated that the proposed amendments pertain to changes at the Weke Boat Ramp, which is used by commercial boaters. In the absence of a County of Kauai representative, Mr. Lydgate read the reasons for the rule amendments, “the Department proposes to amend its existing rules and regulations governing commercial boating activity at county beach parks by: 1) moderately extending the allowable hours of operation; 2) amending compliance and enforcement provisions to allow for incremental fines rather than automatic permit revocation; 3) minor non-substantive

changes in formatting and language; and 4) clarifying the scope of commercial activity that may be carried out at the County's Weke Road Boat Ramp."

Second Vice Chair Lydgate noted that many of the changes are housekeeping in nature which will make it easier to enforce and give more leeway to commercial boat operators at the boat ramp. However, an item not addressed was that commercial operators cannot use the hose that is in the county beach park. Second Vice Chair Lydgate also noted that many of the operators were consulted by the County prior to the submission of the rules to this Board. He further mentioned that it would be helpful if a County of Kauai representative communicate with this Board after the public hearing for a proper dialogue.

Chair Cundiff added that it appears the changes to the rules are meant to assist small business and make it easier and less restrictive; Ms. Albitz concurred. Mr. Shick commented that there may be some kick-back regarding the changes to the extended operating hours.

Second Vice Chair Lydgate made a motion to move the proposed rules to public hearing. Ms. Atmospera-Walch seconded the motion, and the Board members unanimously agreed.

B. Discussion and Action on Proposed Amendments to HAR Title 11 Chapter 148.1, Certification of Adult Foster Homes, promulgated by Department of Health (DOH)

Discussion leader Ms. Atmospera-Walch stated that the rule changes impact those small businesses within Hawaii's home and community-based care homes of which foster care homes are part of. As the rules will clarify DOH's practices and align with required policies all licensed providers will be affected by the rule changes.

Ms. Tracey Comeaux, Brand Chief, and Ms. Sharon Adric, Compliance Section Supervisor at DOH's Developmental Disabilities Division, explained the rules' proposed changes as well as the history of the rules dating back to 1988. The small businesses impacted by the changes are the adult foster homes, which provide care for individuals with developmental or intellectual disabilities. Foster homes are private family homes that provide 24-hour care to not more than two adults, 18-years and older, and who are unrelated to the certified caregiver.

A specific change to the rules is that it will require each adult foster home to obtain and maintain general liability and automobile liability insurance, which is required by statute. The cost of the insurance may increase the cost of operating the adult foster home; however, the individual cost of the insurance coverage is unknown to DOH. Automobile insurance is needed because caregivers are required, as part of their responsibilities, to transport individuals who reside in the homes to medical appointments as well as to community activities and events.

If, however, an owner of an adult foster care home does not obtain the insurance coverage, DOH must receive an alternative transportation plan from the caregiver. Chair Cundiff stated that DOH has had a long period of time to prepare for the implementation of the law and to work with the stakeholders.

Ms. Atmospera-Walch made a motion to move the proposed rules to public hearing. Mr. Ritchie 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:

1. Review of "Discussion Leader Assignments" for Board Members' State and County Agencies' Administrative Rule Review

In preparation of discussing the board members' discussion leader assignments, a matrix spreadsheet was created and distributed for review so there is a fair workload and representation of the various agencies.

During the discussion, it was confirmed that board members from his/her own respective counties will be the discussion leader for that particular county as he/she will likely be more in-tune with the regulatory activity in that community. The following assignments were determined:

Lead Discussion Leaders

Department of Public Safety - Johnathan Shick

Back-up Discussion Leaders

Department of Accounting & General Services – Mary Albitz

Department of Agriculture – Kimo Lee

Department of Budget & Finance – Garth Yamanaka

Department of Defense – Mark Ritchie

Department of Hawaiian Home Lands - Kimo Lee

Department of Public Safety - William Lydgate

Public Utilities Commission - Jonathan Shick

Ms. Atmospera-Walch made a motion for the Board to accept the lead and back-up discussion leader assignments as discussed. Ms. Albitz seconded the motion, and the Board members unanimously agreed.

2. Meetings with Board Members and State Department Directors

Chair Cundiff noted that meetings with the State department directors have been ongoing. However, now that adjustments have been made to the discussion leader assignments as well as changes in State director assignments, he suggested that new letters from this Board are sent to the directors, introducing the new assigned discussion leaders, if applicable.

Meetings with the directors should entail what this Board's purview is and how each can help one another. It was suggested that the letters include an introduction of the new website. "Back-up" discussion leaders probably would not need to meet with the agencies unless they really want to.

Chair Cundiff reminded the members that back-up discussion leaders are only engaged if the lead discussion leaders are unable to attend the board meeting when the agency's rule they are assigned to is being heard.

Mr. Ritchie made a motion to incorporate the Board's website into the new letters of introduction to the state directors. Mr. Shick seconded the motion, and the Board members unanimously agreed.

B. Discussion and Approval of Board's Proposed New Website Prior to Anticipated Launch Date, August 15, 2019

Chair Cundiff reminded the members that the test website link was sent out to them for review. A lot of great work has been done on the new website as it tends to represent who the Board is and what the Board does. Mr. Lydgate concurred and added that the website is a great improvement from the existing site and it is a better representation of the Board.

Ms. Rosemary Warfield, Manager of eGovernment Services & Customer Services, at HIC (Hawaii Information Consortium) indicated that the site is 98% complete. While aesthetically the website is much more attractive, it is a living, breathing thing where changes can be made. The next step is to approve the website to go live unless the members find that additional, major changes are needed.

On July 30th DBEDT staff Mr. Ritchie, Ms. Palcovich, and Ms. Alcos will partake in website training. Ms. Alcos will be the "lead" employee working on and updating the website on a regular basis. It was noted that changes and updates, after the website is launched, can be made anytime.

Mr. Ritchie stated that the "regulatory review card" section of the website has been revamped by taking a different approach; conversational language was incorporated into this section to explain why a small business would want to "submit a regulation for review." Overall, he believes the new website meets the "wish-list" of the changes the Board members wanted to have done.

Going forward, additional major changes to the website, such as creating a mailing list to request a specific agency's proposed rules, will require extra work and programming. HIC's Mr. Cosner noted that currently there are no per se means to make comments on the website but there are ways to contact DBEDT employees through the website. In regard to the public requesting an agenda, Deputy Attorney General advised the Board to be careful because there are restrictions regarding requesting and receiving agendas.

Second Vice Chair Lydgate made a motion to move the Board's new website live onto the Internet. Ms. Atmospera-Walch seconded the motion, and the Board members unanimously agreed.

- VI. **NEXT MEETING** – The next meeting is scheduled for Thursday, August 15, 2019 in Conference Room 405, 235 South Beretania Street, Leiopapa A Kamehameha Building (State Office Tower), Honolulu, Hawaii at 10:00 a.m.
- VII. **ADJOURNMENT** – Ms. Albitz made a motion to adjourn the meeting and Ms. Atmospera-Walch seconded the motion; the meeting adjourned at 11:12 a.m.

DRAFT

III. Old Business – After Public Hearing

A. Discussion and Action on Proposed Amendments and the Small Business Statement After Public Hearing to HAR Title 8 Department of Liquor Control, Subtitle 1, Liquor Commission, promulgated by Department of Liquor Control, County of Maui, as follows:

- i. Chapter 101, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui;**
- ii. Chapter 102, Rules Governing the Administrative Practices and Procedures of the Liquor Commission and Liquor Control Adjudication Board of the County of Maui**

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

Department or Agency: Department of Liquor Control, County of Maui

Administrative Rule Title and Chapter: Chapter 101 and Chapter 102

Chapter Name: Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui and Rules Governing Administrative Practices and Procedures of the Liquor Commission and Liquor Control Adjudication Board of the County of Maui

Contact Person/Title: Glenn Mukai, Director

Phone Number: (808) 243-7754

E-mail Address: liquor@mauicounty.gov Date: July 16, 2019

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?

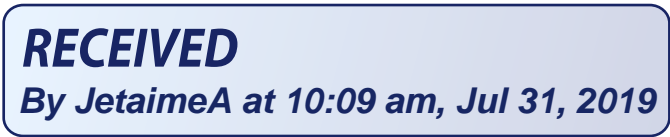
Yes No

(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.

Department's Small Business Review and Advisory Committee was part of the process.

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

Yes. Proposed rules were proposed by the Small Business Review and Advisory Committee to delete antiquated rules, address changes within the liquor industry, update to conform with state laws, etc.

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.

Opinions or comments from affected small business were primarily solicited from the members of the SBRAC who represent the various licensees from different classes of licenses, notice of public hearing, etc.

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

Opposition - support standard drink definition, oppose restaurant licensee off-premises liquor sales and removal of drink limit per person at one time. Small business oppose to standard drink definition, support restaurant license uniform hours for off premises sales, and support the removal of drink limit per person to allow fights and to be compliance with state law.

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

Corporation Counsel response - Chapter 281, HRS, allows restaurant licensee to have off-premises liquor sales and allows the serving of up to 32 ounces of beer to one person at one time.

4. The number of persons who:

(i) Attended the public hearing: Approximately 50+

(ii) Testified at the hearing: 24

(iii) Submitted written comments: 22

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

(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.

The amendments were to be in compliance with State law and supported by small business. Definition for "standard drink" did not move forward due to the possible negative impact to small business and may not be in the compliance with state law.

Small Business Regulatory Review Board / DBEDT
Phone: (808) 586-2594 / Email: 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](http://dbedt.hawaii.gov/sbrrb-impact-statements-pre-and-post-public-hearing)

Amendments to Title 08, Chapter 101,
Rules Governing the Manufacture and Sale
of Intoxicating Liquor of the County of Maui

and

Chapter 102, Rules Governing Administrative
Practices and Procedures of the Liquor Commission
and Liquor Adjudication Board of the County of Maui

1. Section 08-101-5, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended by adding definitions to be appropriately inserted and to read as follows:

"Drink" means any quantity of wine, beer, or distilled spirits served in a container.

"Hosted bar" means a bar at an event at which the drinks are or have been paid by the host.

"No host bar" means a bar at an event at which guests are required to pay for the drinks themselves. Eff 7/1/00; am and comp 7/15/02; am and comp 4/22/12; am and comp 6/18/15; am and comp 11/29/15; am and comp 3/4/17; am and comp 1/14/18; am and comp [] (Auth: HRS §§ 91-2, 281-17) (Imp: HRS §281-17)"

2. Section 08-101-25, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended by amending subsections (a) and (e) to read as follows:

"(a) Hours during which licensed premises may be open for the transaction of business shall be as follows:

- (1) Dispensers, [restaurants,] clubs, transient vessels, tour or cruise vessels, and specials: any hour of the day from 8:00 a.m. to 2:00 a.m., the following day[.], and 6:00 a.m. to 11:00 p.m. for off-premises retail liquor sales for special license only.
- (2) Cabarets: any hour of the day from 8:00 a.m. to 4:00 a.m., the following day.
- (3) Hotels and condominium hotels: from 6:00 a.m. to 4:00 a.m., the following day, and any hour of the day for room service.
- (4) Retailers: any hour of the day from 6:00 a.m. to 11:00 p.m.
- (5) Manufacturers [and wholesalers]: from [5:00 a.m. to 9:00 p.m.] any hour of the day for manufacture and wholesale, 6:00 a.m. to 11:00 p.m. for off-premises retail liquor sales, and any hour of the day from 8:00 a.m. to 2:00 a.m., the following day for on-premises consumption liquor sales.
- (6) Brewpubs: any hour of the day from 8:00 a.m. to 2:00 a.m., the following day for on-premises consumption liquor sales, any hour of the day for manufacture and wholesale, and 6:00 a.m. to 11:00 p.m. for off-premises retail liquor sales.

- (7) Small craft producer pubs: any hour of the day from 8:00 a.m. to 2:00 a.m., the following day for on-premises consumption liquor sales, any hour of the day for manufacture and wholesale, and 6:00 a.m. to 11:00 p.m. for off-premises retail liquor sales.
- (8) Caterers: any hour of the day from 6:00 a.m. to 2:00 a.m., the following day.
- (9) Wineries: any hour of the day for manufacture and wholesale, and from 6:00 a.m. to 11:00 p.m. for off-premises retail sales and on premises wine tasting activities.
- (10) Restaurants: any hour of the day from 8:00 a.m. to 2:00 a.m., the following day for on-premises consumption liquor sales, and 6:00 a.m. to 11:00 p.m. for off-premises retail sales, pursuant to Section 281-31(c), Hawaii Revised Statutes.
- (11) Wholesalers: any hour of the day. [Eff 7/1/00; am and comp 6/18/15; am and comp 3/4/17; am and comp 7/29/17; am and comp 1/14/18; am and comp] (Auth: HRS §§ 91-2, 281-17) (Imp: HRS §281-17)”

(e) Licensee may operate or be open for business for other than the sale, service, or consumption of liquor prior to or beyond the hours prescribed by the commission [, upon submitting an application and obtaining prior approval from the commission.], provided an “employee approved by the Director” shall be within and in active charge of the premises at all times. [Eff 7/1/00; am and comp 6/18/15; am and comp 3/4/17; am and comp 7/29/17; am and comp 1/14/18; am and comp] (Auth: HRS §§ 91-2, 281-17) (Imp: HRS §281-17)”

3. Section 08-101-30, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended by amending subsections (a) and (h) to read as follows:

“(a) Applications for liquor licenses, renewals, transfers, management agreement, solicitor’s permit, or change of partner(s) in a partnership, limited liability partnership, member, manager, organizer or any person of a limited liability company, or officer(s), director(s), and stockholder(s) owning or controlling twenty-five percent or more of the outstanding stock or ownership of a corporation, thereof, and all notices of public hearing sent, and affidavits filed by applicants in connection with and part of such applications, shall be in the respective original forms and accompanied by the following necessary documentation and any other original forms or documents which may be prescribed from time to time by the commission, which shall be considered as part of the application.

- (1) [Department of health clearance;
- (2)] State [and federal] tax [clearances] clearance or that the applicant has entered into and is complying with an installment plan agreement with the department of taxation for the payment of delinquent taxes in installments;
- [[3]](2) Floor plans (not construction plans) drawn to scale;
- [[4]](3) Tax map (drawn to scale) and list of all tax map key numbers, names and addresses of property owners, and lessees and owners of record of shares in a cooperative apartment situated within a radius of five hundred feet of the proposed premises;
- [[5]](4) Personal history statement;

- [(6)](5) Verification of any corporation, partnership, association, limited liability company, limited liability partnership, or any other entity;
- [(7)](6) Affidavit of mailing of notices of public hearing and certificate of mailing as verified by the United States Postal Service;
- [(8)](7) Transferor's gross sales report;
- [(9)](8) Transferor's endorsement of transfer;
- [(10)](9) Executed copy of agreement of sale, lease, rental agreement, which states that the premises and its operation must be under the licensee's exclusive control at all times;
- [(11)](10) Additional fee assessment agreement;
- [(12)](11) Coast guard documentation;
- [(13)](12) Zoning clearance;
- [(14)](13) Building permit;
- [(15)](14) Criminal history record check;
- [(16)](15) Stockholder's list;
- [(17)](16) Certificate of occupancy, miscellaneous inspection report, and clearance from the department of fire control (miscellaneous inspection report and clearance from the department of fire control shall indicate that all governmental regulations and administrative rules have been complied with); and
- [(18)] Guaranty or bond; and
- [(19)](17) Copy of a federal or State governmental picture identification and social security card for each person. [Eff 7/1/00; am and comp 7/15/02; am and comp 4/22/12; am and comp 6/18/15; am and comp 11/29/15; am and comp 3/4/17; am and comp 1/14/18; am and comp 12/30/18; am and comp] (Auth: HRS §§ 91-2, 281-17) (Imp: HRS §281-17)"

(h) A change of location application is subject to all requirements and hearings as a new application for a license[.], provided the Director may approve a change of location within the County without hearing upon the filing of the application for change of location and any required documents for a Class 9 tour or cruise vessel license and for a Class 8, transient vessel license. The liquor license for the existing premises shall become void upon the issuance of the license for the new location. Licensee shall meet all requirements as a new license, pay the prorated license fee, and if applicable, file a gross sales report on all liquor sold under the original license and pay the assessment fee prior to the issuance of the license. All records of the original license shall be part of the licensee's change of location application and record. [Eff 7/1/00; am and comp 7/15/02; am and comp 4/22/12; am and comp 6/18/15; am and comp 11/29/15; am and comp 3/4/17; am and comp 1/14/18; am and comp 12/30/18; am and comp] (Auth: HRS §§ 91-2, 281-17) (Imp: HRS §281-17)"

4. Section 08-101-31, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended to read as follows:

"§08-101-31 No license issued, when. No license shall be issued:

- (1) To any minor or to any person who has been convicted of a felony and not pardoned, or to any other person not deemed by the commission to be a fit and proper person to have a license; provided that the commission may grant a license under the rules of the commission to a partnership, trust,

association, limited liability partnership, limited liability company, corporation, or any other person, that has been convicted of a felony where the commission finds that the partner, member, manager, organizer, or any person of a limited liability partnership, limited liability company or organization's officers, directors, and any person owning or controlling twenty-five percent or more of the outstanding stock are fit and proper persons to have a license;

- (2) To any partner in a partnership, or a corporation, trust or association, the officers, directors, or any other person of which, or any of them, would be disqualified under subsection (1) from obtaining the license individually, or any person of which, owning or controlling twenty-five percent or more of the outstanding capital stock, or any other person, would be disqualified under such subsection (1) from obtaining the license individually; provided that for publicly-traded companies or entities ultimately solely owned by a publicly-traded company, only the officers and directors designated as primary decision-makers shall be considered to determine disqualification under paragraph (1);
- (3) To any applicant for a license, or a renewal of a license, or in the case of a transfer of a license, where both the transferor and the transferee, failed to present to the issuing agency a tax clearance certificate from the department of taxation[,] showing that the applicant or the transferor and transferee do not owe the State government any delinquent taxes, penalties, or interest; or that the applicant, or in the case of a transfer of a license, the transferor or transferee, has entered into an installment plan agreement with the department of taxation for the payment of delinquent taxes in installments and that the applicant is or the transferor or transferee is, in the case of a transfer of a license, complying with the installment plan agreement[;] or when the applicant or the transferor or transferee, in the case of a transfer of a license, is validly challenging a tax assessment, penalty, or other proceeding that prevents the issuance of a signed certificate from the state tax agency, the commission shall issue a license that is valid for the period of time necessary to resolve the challenge;
- (4) To any applicant who has a partner in the partnership, limited liability partnership, member, manager, agent, organizer, or any person owning or controlling twenty-five percent or more of a limited liability company, or any officer, director or any person owning or controlling twenty-five percent or more of the outstanding stock of any corporation, trust, or association, or any other person, who has had any liquor license revoked less than two years previous to the date of the application for any like or other license under the rules of the commission;
- (5) To any person owning or controlling twenty-five percent or more of the outstanding stock of the corporation, trust, or association of a licensee, who is currently delinquent in filing the gross liquor sales report of any license that was issued, or currently owing any fees or monies due to the department, or both. "Any fees or monies" shall include but not be limited to license fees, publication fees, and any assessment of a penalty imposed by the department, commission, or board. Any licensee, who has any person, or person owning or controlling twenty-five percent or more of the outstanding stock of a corporation, trust, or association of a licensee, who

is delinquent in filing the gross liquor sales report of any other license that was issued, or currently owing any fees or monies to the department, shall not exercise its license until the gross sales report is filed and percentage fee paid;

- (6) To a limited liability company, the members, managers, organizers, or any person, of which or any of them, would be disqualified under subsection (1) from obtaining the license individually, would be disqualified under that paragraph from obtaining the license individually;
- (7) To a limited liability company, partnership, limited liability partnership, or corporation, that may consist of a limited liability company, partnership, limited liability partnership, corporation, or any other person or any combination thereof, the members, managers, organizers, partners, officers, directors, or any person thereof, of which any of them would be disqualified under subsection (1) from obtaining the license individually, or a person owning or controlling twenty-five percent or more of the outstanding stock of such corporation would be disqualified under that paragraph from obtaining the license individually; or
- (8) To an applicant for a class 2, class 4 except for convenience minimarts, class 5, class 6, class 11, class 12, class 13, class 14, class 15, or class 18 license, unless the applicant for issuance of a license or renewal of a license, both the transferor and the transferee, present to the issuing agency proof of liquor liability insurance coverage in an amount of \$1,000,000. [Eff 7/1/00; am and comp 7/15/02; am and comp 4/22/12; am and comp 6/18/15; am and comp 3/4/17; am and comp 12/30/18; am and comp] (Auth: HRS §§ 91-2, 281-17) (Imp: HRS §281-17)”

5. Section 08-101-33, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended by amending subsection (f) to read as follows:

“(f) In no case shall any application for renewal of a liquor license be accepted unless it includes the completed application, basic fee payment, State [and Federal] tax [clearances,] clearance and all other required documents. [Eff 7/1/00; am and comp 7/15/02; am and comp 4/22/12; am and comp 6/18/15; am and comp 3/4/17; am and comp 1/14/18; am and comp 12/30/18; am and comp] (Auth: HRS §§ 91-2, 281-17) (Imp: HRS §281-17)”

6. Section 08-101-35, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended by adding a new subsection to be appropriately designated and to read as follows:

“(d) If a licensee closes out of the business for which the license is held, during the term for which the license was issued, the licensee shall within five days from the date of closing the same, give commission notice thereof and surrender the licensee’s license for cancellation, unless the licensee obtains prior approval from the commission to place its license with the commission for safekeeping. For the purposes of this subsection, “safekeeping” means the holding of a liquor license at the commission office while the licensee is not operating or expired. [Eff 7/1/00; am and comp 7/15/02; am and comp 4/22/12; am and comp] (Auth: HRS §§ 91-2, 281-17) (Imp: HRS §281-17)”

7. Section 08-101-50, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended by amending subsections (b) and (d) to read as follows:

“(b) Basic fee. This fee shall be paid in advance not later than each June 15th, prior to the fiscal year for which the license is issued. The fee paid for a license issued on any other date shall be reckoned proportionally from the first day of the month in which the business is commenced to the expiration date or to the next payment due date.

	<u>Class</u>	<u>Kind</u>	<u>Basic Fee</u>
(1)	Manufacturers (including rectifiers)	(A) Beer	\$ 600
		(B) Wine	600
		(C) Wine manufactured from fruits grown in the State	300
		(D) Alcohol	200
		(E) Other liquors	640
(2)	Restaurant	(A) General	600
		(B) Beer and Wine	300
		(C) Beer	150
(3)	Wholesale	(A) General	2,400
		(B) Beer and Wine	1,800
		(C) Alcohol	200
(4)	Retail	(A) General	560
		(B) Beer and Wine	260
		(C) Alcohol	200
(5)	Dispenser	(A) General	600
		(B) Beer and Wine	300
		(C) Beer	150
(6)	Club		320
(8)	Transient Vessel, per day		25
		Monthly	100
		Yearly	1,200
(9)	Tour or Cruise Vessel		300
(10)	Special, per day	(A) General	25
		(B) Beer and Wine	15
		(C) Beer	10
	<u>Fundraising event</u>		<u>0</u>
(11)	Cabaret		1,200
(12)	Hotel		1,200
(13)	Caterer		600
(14)	Brewpub		1,000
(15)	Condominium Hotel		1,200
(16)	Winery		1,000
(18)	Small craft producer pub		1,000

[Eff 7/1/00; am and comp 7/15/02; am and comp 6/18/15; am and comp 9/3/16; am and comp 3/4/17; am and comp 1/14/18; am and comp] (Auth: HRS §§91-2, 281-17) (Imp: HRS §281-17)”

- (d) Percentage fee.
- (1) Licensees in classes 2(A), (B) and (C), 4(A) and (B), 5(A), (B) and (C), 6, 9, 11, 12, 13, [14,] 15, [16, 18,] and temporary license, as defined in subsection (b) of this section, shall be subject to the basic fee plus a percentage fee. Licensees in class 1 (other than a class 1 manufacturer, whose wine is manufactured from fruits grown in the State), and class 3, class 14, class 16 and class 18, as defined in subsection (b) of this section, shall be subject to basic fee plus the percentage fee of retail (on premises and or off premises) liquor sales to any person for private use and consumption. Licensees in class 9, as defined in subsection (b) of this section, shall be subject to basic fee plus percentage fee of four times the total amount of liquor purchased from class 1 manufacturers' licensee, class 3 wholesale dealers' licensee, class 14 brewpub licensee, class 16 winery licensee, and class 18 small craft producer pub licensee. Licensee shall report the retail value of any complimentary drinks or donated liquor, or both, in their annual gross sales report.
- (2) The percentage fee for each current fiscal year shall be based upon the following formula, which shall establish the percentage to be applied to the gross sales or four times the total amount of liquor purchased of each licensee:

$$\frac{EE - BF - C}{EGS} = \text{Percentage}$$

EE = Estimated Expenditures (current fiscal year)

BF = Basic Fees (current fiscal year)

C = Carryover (prior fiscal year)
(Carryover in excess of twenty per cent as provided in section 281-17.5, HRS)

EGS = Estimated Gross Sales (prior fiscal year)

- (3) Licensees in the above-mentioned classes shall file with the director on a form prescribed by the commission a report showing true and accurate gross sales of liquor and any other pertinent record or records requested therein. The form shall be furnished by the director and shall be completed, filed at, and accepted by the department not later than 4:30 p.m. on July 31 after the date of expiration of such licenses, and at such other times or intervals as the director may require. If the 31st of July falls on Saturday, Sunday, or legal County of Maui holiday, the last day for the filing of the gross liquor sales report shall be 4:30 p.m. on the first County of Maui working day following. The gross sales of liquor report shall be on the original form(s) and contain the original signature; duplicates or copies shall not be accepted.
- The director may reject, refuse to accept, or return any gross liquor sales report that is inaccurate, incomplete, illegible, or does not meet any requirement(s) of or not in compliance with any rule of the commission or chapter 281, HRS.
- (4) After a tally of all total gross liquor sales filed by the due date by the licensees, the percentage fee due and payable shall be assessed each licensee and shall be paid within thirty-one calendar days of receipt of said assessment.

- (5) In case of transfer of such licenses, the report shall be filed and paid by the transferor immediately after approval by the commission and before the actual transfer of the license and the business of the licensee-transferor. The percentage fee based on the current applicable percentage fee shall be paid prior to the issuance of the license.
- (6) Any licensee who fails to file the report or fails to pay the percentage fee due on or before the due date shall not exercise his license after the due date and until said report has been filed or percentage fee paid, or both.
- (7) Where licenses are revoked, expired, or canceled, or the licensee closes out the business for which the license is held, the report shall be filed and the percentage fee due paid within five calendar days of the revocation, expiration, cancellation or closing out the business. The percentage fee due shall be based on the current applicable percentage.
- (8) Any licensee who fails to pay the percentage fee by the due date shall be assessed a late charge of five percent per month on the balance due until such fees are paid in full. The five percent late charge shall be a flat fee (not be prorated) that will be charged for any portion of the month payment is due.
- (9) Any licensee who fails to pay the percentage fee within ninety days of the due date, shall be notified and scheduled for hearing. Upon satisfactory proof of such prohibited activity, the license shall be revoked.
- (10) No licensee shall fail to accurately report revenues from gross liquor sales or to properly complete the gross liquor sales report. It shall be the licensee's responsibility to maintain complete and accurate records in order to properly complete and submit the gross liquor sales report pursuant to the rules of the commission. Records shall be maintained for a period of four years.
- (11) All licensees shall have available for inspection within the County, books or records, or both, showing all income, purchases, and expenses of their liquor license business. These books and records, including but not limited to daily sales records, price lists, employee time sheets, and invoices, shall be made available for inspection or auditing, or both, by the department, through its auditor(s) or otherwise, at any time upon demand and shall be preserved for a period of four years, except that the commission may, in its discretion, consent to destruction of such books and records within such period or may require that they be kept longer. Licensee or its employees shall record the sale of liquor at the time of the transaction on its daily sales records.
- (12) Any licensee who fails to pay any fee due on or before the due date or when any check, money order, or the like that is utilized by the licensee for payment of such fee is returned by any financial institution for non-payment due to insufficient funds or for any other reason, shall not exercise the license until said fee and any related service charges are paid in cash, certified check, or money order, and such payment is duly processed by the department.
- (13) Any licensee who failed to file the gross sales of liquor report by the due date, shall be assessed the percentage fee equal to the highest percentage fee due and payable by the licensee of the same class or the highest percentage fee due and payable by any licensee if there is no licensee in the same class. [Eff 7/1/00; am and comp 7/15/02; am and comp

6/18/15; am and comp 9/3/16; am and comp 3/4/17; am and comp 1/14/18; am and comp] (Auth: HRS §§91-2, 281-17) (Imp: HRS §281-17)”

8. Section 08-101-52, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended to read as follows:

“§08-101-52 Guaranty. (a) The applicant or licensee shall post a bond that is approved by and filed with the department. The bond shall be not less than \$5,000 or 1.5 times the total license fees paid in the current fiscal year or for any licensee that operated less than one full fiscal year, 1.5 times the prorated amount as determined by the department to reflect the basic fee and percentage fee of a year of operation, whichever is greater, shall be irrevocable and subject to the following conditions and any other conditions and restrictions set forth by the department.

- (1) The bond cannot be canceled or terminated without written permission from the department. The bond company shall pay the total sum forthwith to the department whenever there is any attempt to cancel or terminate the bond without the expressed written consent of the department, or the failure to submit payment for renewal by the due date for renewal by the principle.
- (2) The licensee shall automatically increase the penal sum of the bond to reflect any required increase pursuant to this section upon written notification by the director.
- (3) Payment shall be immediately paid upon written demand by the director.
- (4) The bond certificate and yearly renewal certificate shall be filed with the department.
- (5) The term of the bond shall be for the entire period of the term of the license to be issued.
- (6) The bond shall contain the name of the agent and the agent’s telephone number and address.

(b) In lieu of the bond, an individual, partners of the partnership, limited liability partnership, members, managers, organizers, or any person of a limited liability company, officers, directors, and stockholders owning or controlling twenty-five per cent or more of the outstanding stock of a corporation, trust, or association that is issued a liquor license shall be personal guarantor(s) of and liable for any payments or monies due to this department. The individual, partners of the partnership, limited liability partnership, members, managers, organizers or any person of a limited liability company, officers and directors of a corporation, trust, or association that is issued a liquor license, shall be personally liable for all costs associated with the enforcement or collection, including but not limited to attorneys’ fees and court costs, in the event that suit is instituted to enforce this guaranty.

(c) Licensee shall not exercise its license whenever it withdraws or cancels any bond or personal guarantee, unless the licensee files a bond whenever any personal guarantee is canceled or withdrawn or files the required personal guarantee(s) whenever any bond is canceled or withdrawn, and files its gross liquor sales report and makes payment of the percentage fee due on the date of the filing of the withdrawal or cancellation of the personal guarantee or bond. [Eff 7/1/00] (Auth: HRS §§ 91-2, 281-17) (Imp: HRS §281-17)] Reserved”

9. Section 08-101-69, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended by amending subsection (a) to read as follows:

“(a) No licensee of any premises licensed to sell liquor for consumption on the premises shall:

- (1) Sell, advertise, or offer to sell “all the liquor you can drink”, or more than two drinks of alcoholic beverage for a fixed price; or encourage, sponsor, permit or have any promotion, game or contest that involves the consumption of liquor or the awarding of liquor as a prize.
- (2) Serve an unlimited amount of liquor during a set period of time for a fixed price, provided this provision does not apply to class 2, class 9, class 10, and class 12 licensees:
 - (A) When such function is not open to the general public and for which a hosted bar is utilized such as weddings, private parties, and fundraising functions;
 - (B) Where champagne may be inclusive with brunch;
 - (C) Where liquor may be inclusive with luaus; [or]
 - (D) Where liquor may be inclusive with tour or cruise vessel operations[.]; or
 - (E) Where at a Class 2, 10, 12 or 18 one day fundraising event, a set amount of alcoholic beverages may be sold at a fixed price as well as an open bar may be utilized provided at a pairing (food and liquor) fundraising event, Section 08-101-86(d) of the Rules of the Liquor Commission shall not apply. [Eff 7/1/00; am and comp 4/2/07; am and comp 3/4/17; am and comp 9/25/17; am and comp] (Auth: HRS §§91-2, 281-17) (Imp: HRS §281-17)”

10. Section 08-101-70, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended by amending subsection (a) to read as follows:

“(a) On every licensed premises, an on-duty employee duly approved by the director must be in active charge of each premises during all times that such premises is open for business[.], provided this section shall not apply to Class 8, transient vessel except for a Class 8, transient vessels that have been issued an annual license. [Eff 7/1/00; am and comp 7/15/02; am and comp] (Auth: HRS §§91-2, 281-17) (Imp: HRS §281-17)”

11. Section 08-101-74, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended by amending subsection (a) to read as follows:

“(a) Persons who apply to the commission for registration or as an employee approved by the director shall present:

- (1) Valid positive unexpired identification in the form of a passport with photograph, a laminated state driver’s license with photograph, or other laminated government identification with photograph. School identification cards, city or county identification cards, or identification

- cards issued for the purpose of check cashing or other identification cards not issued by a government agency shall be unacceptable;
- (2) The department may reject any identification presented or require a second valid identification for verification;
 - (3) [Proof of a social security number;
 - (4)] The completed department's registration form as prescribed by the commission. [Eff 7/1/00; am and comp] (Auth: HRS §§91-2, 281-17) (Imp: HRS §§281-17)"

12. Section 08-101-77, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended to read as follows:

"§08-101-77 [Certification certificate for "employee approved by the director", counties. Any person holding a valid certificate for "employee approved by the director" or its equivalent issued by any department or commission within the State may exchange such certificate for a valid department certificate subject to verification, an expiration date set forth by the director, submission of proper documents, and any related fees. [Eff 7/1/00] (Auth: HRS §§91-2, 281-17) (Imp: HRS §281-17)] Reserved"

13. Section 08-101-84, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended by amending subsection (b) to read as follows:

"(b) No more than two drinks of [any liquor] distilled spirits at one time to an individual shall be permitted; provided however, distilled spirits may be served in container(s) up to one quart in capacity for any special occasion upon obtaining a special permit therefor from the director. Beer or wine may be served in a container, not to exceed the U.S. liquid measurement of one quart (.946 liter) or served to a customer in "flights" not to exceed a total volume of thirty-two ounces at any one time. [Eff 7/1/00; am and comp 7/15/02; am and comp 4/22/12; am and comp 3/4/17; am and comp] (Auth: HRS §§91-2, 281-17) (Imp: HRS §281-17)"

14. Section 08-101-86, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended to read as follows:

"(a) Current prices of alcoholic beverages shall be at all times posted and exposed to view of patrons within the interior of a licensed premises authorized to sell liquor for consumption on the premises.

(b) All class 5, category D licensees shall post all beverage prices, alcoholic or non-alcoholic, and any other price for services or commodities that may be charged to the patrons.

(c) For the purpose of this section, there shall be a clear and legible sign, menu, table tents, placard, or marker which shall be in the English language, situated in a conspicuous location and clearly legible from the distance of where any patron is situated.

[(d) The volume of a wine pour shall be disclosed on the price list for wine sold by the glass.] [Eff 7/1/00; am and comp 4/22/12; am and comp] (Auth: HRS §§91-2, 281-17) (Imp: HRS §281-17)"

15. Section 08-101-87, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended to read as follows:

“(a) In case a license is revoked, cancelled, or not renewed, the remaining liquor inventory shall be offered for credit to the wholesaler or manufacturer authorized to sell such liquor. In the event the wholesaler or manufacturer declines the offer, a written request shall be made to the director for approval to sell or transfer the remaining liquor inventory~~],~~ to the transferee in a transfer of a license, or to utilize the remaining liquor inventory for personal use, or to destroy the remaining liquor inventory~~],~~ or to sell or transfer to a licensee as approved by the director. The value of the remaining liquor inventory shall be indicated on the request. [Eff 4/22/12; am and comp] (Auth: HRS §§91-2, 281-17, 281-97) (Imp: HRS §281-17)”

16. Section 08-101-97, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended to read as follows:

“(a) Licensee must have and maintain exclusive control of the premises and shall be subject to all State laws and rules of the commission, at all times. Licensee must conduct, maintain and operate all its business including the payment of all taxes, liquor purchase, and all related monies due under the license issued~~],~~ unless otherwise authorized by the commission.

(b) All licensed premises shall be considered open for business whenever there is a private party, business meeting, or its like.

(c) Licensee may not discriminate or exclude anyone due to race, gender, or any other discriminating classification.

(d) Licensed premises shall be open to the general public at all times unless otherwise authorized by the Commission.

(e) Nothing in this rule shall be construed or interpreted to prohibit a licensee from exercising the right to deny service to any person for failure to conform to the usual and regular requirements, standards, and regulations for the licensed premises so long as the denial, requirements, standards and regulations are uniformly applied to all persons without regard to race, color, disability, religion, sex, sexual orientation or ancestry. [Eff 7/1/00; am and comp] (Auth: HRS §§ 91-2, 281-17) (Imp: HRS §281-17)”

17. Section 08-101-99, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended by amending subsection (a) to read as follows:

“(a) No liquor consumption and/or service shall be allowed in the following areas~~],~~ except as otherwise approved by the commission:

- (1) Food and beverage preparation areas, except for Chef's Table events approved by special permit;
- (2) Storerooms, walk-in refrigerators and freezers, except for wine cellar events approved by special permit;
- (3) Elevators and stairwells;
- (4) Employee and service corridors;
- (5) Employee lounges, employee dining rooms and employee locker rooms;
- (6) Restrooms; and

- (7) Areas for dancing, music, and entertainment[.], when utilized for dancing, music and entertainment. [Eff 4/22/12; am and comp 3/4/17; am and comp] (Auth: HRS §§91-2, 281-17, 281-78) (Imp: HRS §281-17)”

18. Section 08-101-100, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended to read as follows:

“§08-101-100 Deliveries by [manufacturers, wholesalers, retailers;] industry member and retailers; peddling prohibited; exception.

(a) Except as specifically allowed herein, peddling in any sense is strictly prohibited. Before removing any liquor from a licensed premises for delivery to a customer under the [manufacturer's or wholesaler's,] industry member's and/or retail dealer's license, the licensee must have in hand in his office, store, or warehouse, a bona fide order therefor. Provided, however, duly licensed wholesale dealers may, without a bona fide and specific order therefor, remove beer from licensed premises to delivery vehicles for the purpose of selling said beer directly to persons who may lawfully sell liquors at retail in their original packages or dispense liquor for consumption on the premises.

(b) [A manufacture or wholesaler licensee] An industry member shall deliver any liquor ordered or purchased by a retailer into the retailer's premises. Delivery of any liquor to any other location except the retailer's licensed premises is strictly prohibited. Provided, however, any retailer or its duly authorized employee may pick up any order of liquor directly from the [wholesaler's or manufacturer's] industry member's licensed premises, and such liquor must come to rest within the retailer's premises prior to any sale.

(c) An industry member may make [Deliveries] deliveries to a licensee's catered or other location by permit. [Eff 7/1/00; am and comp 3/4/17; am and comp] (Auth: HRS §§ 91-2, 281-17) (Imp: HRS §281-17)”

19. Section 08-101-106, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended by amending the title to read as follows, and further to amend subsection (h) to read as follows:

“§08-101-106 [Manufacturer, brewpub, and wholesale dealer licensees;] Industry members; special restrictions.

- (h) [Manufacturers' or wholesale dealers' licensee,] Industry member, may:
- (1) Furnish or give a sample of distilled spirits, wine or malt beverages to a retailer who has not purchased the brand from that industry member within the last twelve months. Industry member may give a sample of not more than three gallons of malt beverage, not more than three liters of any brand of wine, and not more than three liters of distilled spirits, which shall be invoiced and clearly marked “sample” on each container.
 - (2) Conduct tasting and sampling activities at a licensed premises authorized for on-premises consumption. Industry member must purchase the products used from the licensee, but may not purchase them from the licensee for more than the ordinary retail price. Industry members may, conduct tasting and sampling activities upon its licensed premises for the introduction of new products, upon obtaining a permit from the director. Industry member staff may taste sample liquor while conducting the

tasting and sampling activities or education seminar to assess the quality controls, blending decision, the various other attributes of the liquor for quality control, training or education seminar purposes by permit from the director. Taste shall mean taking a sip of said sample of liquor, and swirling within one's mouth, without swallowing or consuming of said liquor.

- (3) Give or sponsor educational seminars for employees of retailers either at the [wholesaler's or manufacturer] industry member's premises or at the retailer's premises. Examples would be seminars dealing with the use of a retailer's equipment, training seminars for employees of retailers, or tours of wholesaler's or manufacturer's premises. This section does not authorize the wholesaler or manufacturer to pay a retailer's or its employee's expense in conjunction with an educational seminar such as travel and lodging, nor does it allow the consumption of liquor by any on-duty employee. This does not preclude providing nominal hospitality during the event.
- (4) Give or sell point of sale advertising specialties to a retailer if these items bear advertising matter and are primarily valuable to the retailer as point of sale advertisement. These items include such things as posters, placard, designs, inside signs (electric, mechanical or otherwise), window decorations, trays, coasters, mats, menu cards, meal checks, paper napkins, foam scrapers, backbar mats, thermometers, clocks, t-shirts, hats, and calendars. An industry member may add the name or name and address of the retailer to the advertising specialty.
 - (A) The total value of all advertising specialties furnished by an industry member to a retailer may not exceed \$300 per brand in any one calendar year per licensed premises. The value of the advertising specialty is the actual cost of that item to the industry member who initially purchased it. Transportation and installation costs are excluded;
 - (B) Industry members may not pool or combine their dollar limitation in order to provide a retailer with retail advertising specialties valued in excess of \$300 per brand;
 - (C) All point of sale advertising materials and consumer advertising specialties must bear conspicuous and substantial advertising matter about the product or the industry member which is permanently inscribed or securely affixed; or
 - (D) Industry members and retailers are required to keep and maintain records on the licensed premises for a three-year period of all items furnished to retailers.
- (5) Accept the return of any liquor product from a retailer for "ordinary and usual commercial reasons" after the product has been purchased, so long as the product meets the following conditions and limitations for such returns:
 - (A) Defective products which are unmarketable due to product deterioration, leaking containers, damaged labels, or mutilated and missing strip stamps;
 - (B) Error in products delivered where there is a discrepancy between products ordered and delivered may be corrected within a reasonable period of time of not more than five calendar days;

- (C) Products which may no longer be lawfully sold due to a change in law or regulation, a particular size or brand is no longer permitted to be sold; or there is a change in the formula, proof, label or container of the product, or where the industry member has discontinued the production or importation of a product; or
- (D) Termination of business where the licensee may return products on hand at the time the licensee terminates the operation of the business.

An industry member is under no obligation nor required to accept the return of products for the reasons listed.

- (6) Give or sell product displays to a retailer, subject to the following limitations:
 - (A) The total value of all product displays furnished by an industry member under this section may not exceed \$300 per brand in use at any one time in any one retail establishment. The value of a product display is the actual cost to the industry member who initially purchased it with transportation and installation costs excluded;
 - (B) Product display means any wine racks, bins, barrels, casks, shelving and the like from which distilled spirits, wine, or malt beverages are displayed on and sold;
 - (C) Industry member may not pool or combine their dollar limitations in order to provide a retailer a product display in excess of \$300 per brand;
 - (D) Product display shall bear conspicuous and substantial advertising matter; and
 - (E) Industry member may assist a retailer in setting a product display in a retail premises.
- (7) Give or sell outside signs to a retailer, providing:
 - (A) The sign must bear conspicuous and substantial advertising matter about the product or the industry member which is permanently inscribed or securely affixed;
 - (B) The retailer is not compensated, directly or indirectly, such as through a sign company, for displaying the signs; and
 - (C) The cost of the signs may not exceed \$400.
- (8) Provide a recommended shelf plan or shelf schematic for distilled spirits, wine or malt beverages.

(i) Manufacturers' or wholesale dealers' licensee, shall, at all liquor establishments, stock, rotate, and affix the prices to distilled spirits, wine, or malt beverages which they sell, and check for outdated or spoiled liquor products, at least once a month and at the time of delivery of any liquor product, unless the retailer requests in writing that this service not be provided or be discontinued. [Eff 7/1/00; am and comp 7/15/02; am and comp 3/4/17; am and comp] (Auth: HRS §§91-2, 281-17) (Imp: HRS §281-17)"

20. Section 08-101-112, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended by amending subsection (a) to read as follows:

“(a) [Any] No holder of a class 3, wholesale dealers' licensee, or a class 1, manufacturer's license [who is a liquor licensee in other counties within the State, may] shall refuse to sell liquor to two or more licensees [participate in pool buying of liquor products] pursuant to any pool buying agreement between [the same licensee] licensees [from different counties,] which has been filed with and approved by the commission; provided that:

- (1) The pool buying agreement is in writing and designates one of the licensees as the agent of the others for the purpose of pool buying;
- (2) Any order for pool buying from the holder of a manufacturer's license shall be placed by the agent and payment for that order shall be made by the agent;
- (3) Each pool buying order shall contain an inventory and cost of the liquor products purchased by each liquor license number of the different counties;
- (4) The holder of a manufacturer's license in selling to the agent shall follow invoice, record keeping, and delivery procedures which are in compliance with this chapter and the rules of the commission of each county having jurisdiction over the seller;
- (5) Licensee of the pool buying agreement shall maintain invoices and any records of the liquor products purchased pursuant to the pool buying agreement within the licensed premises for a period of four years and shall be made available forthwith for inspection by the department or its authorized personnel; and
- (6) Each pool buying transaction shall be completed on the day transacted, and where the pool buying agreement is between or among licensees from different counties, the transaction shall be deemed completed when the product has been delivered to a freight forwarder, water carrier or private trucking firm for delivery to the licensees. [Eff 7/1/00; am and comp] (Auth: HRS §§91-2, 281-17) (Imp: HRS §281-17)”

21. Section 08-101-113, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended to read as follows:

“§08-101-113 [(Reserved)] “Growlers” or containers used for off-premises consumption. A growler or other glass, ceramic, or metal container used by manufacturers, restaurants, retail dealers, brewpubs, wineries, and small craft producer pubs for sale of product for off-premise consumption by patrons shall be a single-use container that is filled on-premises or a container that is resealable once opened, and intended for multiple fills and use. [Eff] (Auth: HRS §) (Imp: HRS §281-17)”

22. Section 08-101-114, Rules Governing the Manufacture and Sale of Intoxicating Liquor of the County of Maui, is amended to read as follows:

“§08-101-114 Trade shows and/or other exhibitions. Any trade exhibitor, trade organization or other exhibitor shall apply for the issuance of a permit, without hearings, fees, notarizing of documents, submission of floor plans, and other requirements, to receive liquor from within or outside the State for display and sampling on a not-for-sale basis at trade exhibitions, shows or other exhibitions, subject to the following terms and conditions:

- (1) Liquor shipped into the County under this section shall be in [750 milliliter-sized] containers, be appropriately marked “Sample - Not For Sale or Resale,” and shall come to rest at the warehouse of a holder of a class 3, wholesale dealers’ licensee, within the County, and be held in the licensed premises for at least forty-eight hours before delivery to or picked up by the person who was issued a permit to receive such liquor;
- (2) The applicant shall submit an inventory of all liquor shipped into the County at the time of the application, and a closing inventory of all liquor used during the event within five working days after the close of the event. Any liquor not utilized at the event shall become the property of the department and it shall be the permit holder's responsibility to transport all liquor not utilized at the event to this department for disposal;
- (3) The applicant shall obtain and certify that all necessary clearances from other governmental agencies have been obtained for the event;
- (4) The applicant shall be subject to and shall comply with the rules of the commission, State liquor laws, and shall be subject to any penalties as provided by law;
- (5) Sample tasting shall be limited to one ounce per person per brand but not more than three ounces of liquor in total shall be provided to any person;
- (6) Liquor may be sampled on a complimentary basis only and at no time under any circumstances shall any holder of a permit or its employee, directly or indirectly, sell or be compensated for such sample;
- (7) At no time under any circumstances shall any holder of a permit or its employee sell, serve, or furnish any liquor to, or allow the consumption of any liquor by any person at the time under the influence of liquor, drugs, or any combination thereof, or to any person under twenty-one years of age;
- (8) Liquor shall be consumed on the approved area that the holder of the permit have exclusive control and clear view of, and any liquor shall not be removed from the area, except as may be approved by the director;
- (9) The director shall not approve any permit application unless it includes a written statement signed by the owner or representative of the property that the function will be subject to the liquor laws and to inspection by investigators. Application shall be submitted at least ten working days prior to the event. [Eff 7/1/00; am and comp] (Auth: HRS §§ 91-2, 281-17) (Imp: HRS §281-17)”

23. Section 08-102-11, Rules Governing the Administrative Practices and Procedures of the Liquor Commission and Liquor Control Adjudication Board of the County of Maui, is amended by amending subsection (b) to read as follows:

“(b) The petition shall be submitted in thirteen copies and shall include:
(1) A statement of the nature of petitioner’s interest;

- (2) A draft or the substance of the proposed rule or amendment or a designation of the provision sought to be repealed; [and]
- (3) An explicit statement of the reasons in support of the proposed rule, amendment, or repeal[.] and
- (4) Proposed rule, amendment, or deletion shall be written and submitted in its entirety in ramseyer and standard formats or any other format as may be required by the rules of the commission and/or the Hawaii Revised Statutes. [Eff 2/7/00; am and comp _____] (Auth: HRS section 91-2, 281-17) (Imp: HRS section 281-17)”

24. Section 08-102-82, Rules Governing the Administrative Practices and Procedures of the Liquor Commission and Liquor Control Adjudication Board of the County of Maui, is amended to read as follows:

“Section 08-102-82 Transaction of business. A majority of the board shall constitute a quorum for the transaction of business. The concurring vote of the majority of the members shall be necessary to take any action.

- (1) If the board is unable to render a decision on any complaint heard before the board, and no other motion regarding the matter is passed, the complaint shall be considered dismissed.
- (2) Whenever the board is ready to vote on any question, the chairperson shall state the question, put the question to vote, and announce the results to the board.
- (3) Unless a present board member states that the board member is disqualified or excused from voting pursuant to sections 08-102-98 and/or 08-102-99 of the rules of the commission, the board member’s silence or refusal to vote shall be recorded as an [affirmative vote] abstention. An abstention is not a vote and is not counted as a vote.
- (4) The board or its designee shall render a written decision within a reasonable time from the date of the public hearing. [Eff 2/7/00; am and comp _____] (Auth: HRS sections 91-2, 281-17) (Imp: HRS section 281-17) “

25. Material, except source notes, to be repealed is bracketed. New material is underscored.

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

IV. Old Business – Before Public Hearing

A. Request by Mel Wills III, Holo Holo Charters, on behalf of the Hanalei Department of Land and Natural Resources Permitted Boaters for review of recommended revisions to the Proposed Amendments to Part IV, Rules and Regulations Governing Commercial Boating Activities at County Beach Parks, Sections 30 to 36, promulgated by County of Kauai Department of Parks and Recreation

Alcos, Jetaime

From: Mel Wills III <captmelwills@msn.com>
Sent: Friday, August 2, 2019 4:14 PM
To: DBEDT SBRRB
Subject: Pre Public Hearing Statement / Permitted Boaters Hanalei
Attachments: 20190802152153200.pdf

Aloha,

Attached is the Pre Public Hearing Small Business Impact Statement from the Hanalei DLNR Permitted Boaters in conjunction with the documents you have already received from The County of Kauai Parks and Recreation.

I would please ask you to incorporate a few small changes to the County of Kauai Department of Parks and Recreation new proposed rules for us. I represent the Permitted Boaters and am a member of the Ocean Tourism Coalition, Tim Lyons is on the mainland and will be also sending you a letter to address our changes.

The current administration of Mayor Derek Kawakami is working very well with the five Permitted Boaters in Hanalei. We share a common goal to align the Rules and Regulations in Hanalei to reflect the best practices and make common sense changes to rules from the US Coast Guard, The DLNR, The County of Kauai and a future changes to the SMA permit. In the past there have been numerous inconsistency in all the agencies thereby making it next to impossible to be compliant on all fronts.

I represent the interest of all the Permittee's.

Please contact me with any concern's .

I will be attending your next meeting August 15th and am happy to answer all questions that may arise.

Regards,

MEL WILLS III
Holo Holo Charters
4353 Waialo Rd./ PO Box 50940
Ele'ele , Kauai HI. 96705

808 635 5795

PRE-PUBLIC HEARING SMALL BUSINESS IMPACT STATEMENT
TO THE

SMALL BUSINESS REGULATORY REVIEW BOARD

(Hawaii Revised Statutes §201M-2)

RECEIVED

By JetaimeA at 6:18 am, Aug 06, 2019

Date: 8/2/2019

Department or Agency: Permittee's of DLNR, County Dept. of Parks & Rc

Administrative Rule Title and Chapter: N/A

Chapter Name: Commercial Boating Activites at County Beach Parks

Contact Person/Title: Mel Wills III , Representative of Hanalei Boating DLNR Permittee's

E-mail: captmelwills@msn.com Phone: 808 635 5795

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.

Commercial Permitted Boating companies will be positively affected by aligning rules under United States Coast Guard, and the DLNR. These rule changes will reduce actual conflict or "conflict preemption" as argued and found in favor of Boating permittees in U.S. Court of Appeals for the Ninth Circuit 340 F.3d 1053 (9th Cir. 2003) Argued and Submitted May 9 2003 .Filed August 25th 2003

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.

The proposed rules will eliminate intentions of of the parties that lost in Federal Court to overregulate the North Shore Permitted Boaters by creating rules that led to increased operating costs and unreasonable burdens. Previous regulation eliminated the ability to be compliant with all agencies as their rules were contrary.

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.

Current penalty is permit revocation

- b. Amount of the proposed fee or fine and the percentage increase.

New fines proposed are acceptable

- c. Reason for the new or increased fee or fine.

Rules changes allow compliance between all agencies

- d. Criteria or methodology used to determine the amount of the fee or fine (i.e.,

Consumer Price Index, Inflation rate, etc.).

Fines are per Kauai County Code section 23-3.6.

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.

We are in favor of the County fee's for permits

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.

Our Coast Guard COI's limit the size of vessels thus assuring that large capacity vessels typically used around the state at many other sites will not be introduced to Hanalei thus maintaining the impact levels already accepted by the community.

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.
limited use

- b. The text of the related federal, state, or county law, including information about the purposes and applicability of the law.
Certificate of Inspection ,United States Coast Guard , passenger count

- c. A comparison between the proposed rule and the related federal, state, or county law, including a comparison of their purposes, application, and administration.
N/A

- 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.
N/A

- 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.
N/A

* * *

Small Business Regulatory Review Board / DBEDT
Phone: (808) 586-2594 / Email: 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>

Attachment

A. Statement of the topic of the Proposed Rule:

The Hanalei North Shore Permittee's (5) propose to amend its existing Rules and Regulations Governing Commercial Boating Activity at County Beach Parks by 1) moderately increasing the number of passengers to match the vessels Coast Guard Certificate of Inspection. Section 32: 2) moderately extending the allowable days of operation to comply with the new SMA proposed. Section 33: 3) Defining the allowed Ingress/Egress as defined by the DLNR/DOBOR. Section 33 : 4) Clarify minimal impact upon public facilities allowing short term parking of trailers. Section 36

B. Boating permittee's representative. In addition will send an electronic copy by email to to any interested person upon request

C. The scope of commercial activity that may be carried out at the County's Weke Road Boat Ramp and Beach fronting Black Pot Beach Park

COUNTY OF KAUA'I DEPARTMENT OF PARKS AND RECREATION

Pursuant to the authority granted to the Director of Parks and Recreation under Kaua'i County Code section 19-1.18, section 23-3.3, section 23-3.5, and section 23-3.6, the Director proposes to amend the Department of Parks Rules and Regulations as set out below. Portions of existing Rules and Regulations to be deleted are bracketed in bold with strikethrough. Proposed additions to existing Rules and Regulations are underlined and will appear in red. A public hearing on proposed amendments will be held on September 3, 2019, at the Mo'ikeha Building, Meeting Room 2A/2B, 4444 Rice Street, Līhu'e, Kaua'i starting at 9:00 a.m., or soon thereafter.

COUNTY OF KAUA'I DEPARTMENT OF PARKS AND RECREATION

Under and by virtue of the authority conferred upon him by Chapter 91, Hawai'i Revised Statutes (HRS), Chapter 23, Article 3, Kaua'i County Code (KCC) 1987 as amended, and every other enabling power, the Director of Parks and Recreation of the County of Kaua'i does hereby prescribe the following:

RULES AND REGULATIONS GOVERNING COMMERCIAL BOATING ACTIVITIES AT COUNTY BEACH PARKS PART IV

Section 30. Findings and Purpose.

Pursuant to section 23-3.3 of the KCC and Section 8 of these rules and regulations, a public hearing was conducted to determine the propriety of the proposed use of facilitating commercial boating activities under the jurisdiction of the State Department of Land and Natural Resources (DLNR)/Division of Boating and Ocean Recreation (DOBOR) and the United States Coast Guard at ~~[those]~~ designated County beach parks and beach ~~[right-of-ways]~~ rights-of-way ~~[listed in the attachment]~~.

The Department duly received applications from various individuals and organizations to conduct these activities, pursuant to Section 7 of these regulations.

As a result of the public hearing, the Department finds that the proposed use of the County beach parks identified herein facilitates commercial activities under the jurisdiction of the State ~~[Department of Land and Natural Resources (DLNR) Division of Boating and Ocean Recreation (DOBOR)]~~ DLNR/DOBOR and the United States Coast Guard. The Department further finds the proposed use to be essentially recreational in nature, complementary to the facilities of the parks and consistent with established park use.

These activities are hereby designated authorized activities in accordance with the definition provided in these rules, subject to the limitations and conditions hereinafter described.

Section 31. State Permit.

In order to operate a commercial boating activity operators must have in their possession a current and valid Ocean Recreational Management Area Commercial Permit issued by the State of Hawai'i, ~~[Department of Land and Natural Resources (DLNR), Division of Boating and Ocean~~

~~Recreation (DOBOR)] DLNR/DOBOR.~~ If a permittee forfeits his or her State permit and or their State permit is otherwise revoked or suspended, said permittee's County permit will automatically expire.

Section 32. Number of Persons.

(a) The maximum number of passengers permitted to participate in a commercial boating activity authorized by these rules within the County park shall be limited to that number allowed in the operator's current and valid Ocean Recreational Management Area Commercial Permit issued by the State of Hawai'i, ~~[Department of Land and Natural Resources (DLNR), Division of Boating and Ocean Recreation (DOBOR)] DLNR/DOBOR~~ and any and all permits issued to the County, including but not limited to ~~[sma] SMA~~, zoning and or land use permits.
Passenger counts must comply with Coast Guard (COI) remove

Section 33. Time of Use.

- (a) No commercial boating activities shall occur within the County parks on Sundays.
~~Oct 15th through March 15th.~~
- (b) ~~[Permittees shall limit their commercial boating and accessory activities within the County parks between the hours of 7:00 a.m. and 7:00 p.m.] Commercial boating activities are permitted one-half hour before sunrise to one-half hour after sunset. No commercial boaters shall operate one-half hour after sunset to one-half hour before sunrise.~~
- (c) Special events authorized by permit shall take precedence over commercial boating activities allowed by these rules. Permits issued under these rules shall include a provision stating that the activity may be suspended by the Director to accommodate special events.
- (d) At the Director's discretion, no commercial boating activities shall occur within the County parks during periods when maintenance or repair of County beach park property or equipment is being performed or when a park is closed. The Department will give permittees thirty days prior notice of any such scheduled activities.
- (e) The use of Weke Boat Ramp for supply service vessels shall be allowed during the permitted timeframe referenced in 33(b).
 - (1) Each Permittee shall be allowed no more than two supply service vessel trips per day.
 - (2) Supply service vessels launching from Weke Boat Ramp shall only be used to transfer supplies to and from Permittee's primary tour vessel. Supply service vessels may be used for passenger loading and unloading at Weke Boat Ramp for six passengers
- (f) In the event of an emergency, Weke Boat Ramp may be accessed. Permittee shall notify DOPR officials as soon as practicable.
- (g) Passengers may be loaded and unloaded along the beach fronting Black Pot Beach Park and at Weke Ramp using the DLNR/DOBOR Ingress/ Egress zone.

Section 34. Fees.

The fees for conducting commercial boating activities shall be as stated in section 23-3.4 of the KCC.

Section 35. Permits.

(a) Permits to conduct commercial boating activities shall be issued only for ~~[those]~~ the following County beach parks and beach ~~[right-of-ways]~~ rights-of-way: ~~[listed in the attachment.]~~
Black Pot Beach Park; TMKs (4) 5-5-01:004 and (4) 5-5-01:011;

Weke Road Right-of-Way within Black Pot Beach Park

(b) Permits for operation of commercial boating activities shall have a duration of up to one year and shall expire automatically, without notice to the permit holder, on the date specified on the permit and or if a permittee forfeits his or her State permit and or their State permit is otherwise revoked or suspended.

(c) The Director, or his authorized representative, may renew a permit for additional periods of up to one year provided the permittee is in compliance with all applicable rules. Permit renewal shall also be contingent upon the permittee renewing or attaining any necessary state and federal permits. A renewed permit shall be subject to the terms and conditions of these rules and any subsequent amendments.

(d) The Permittee shall notify the Director within five [~~5~~] business days of any changes regarding the information provided in the permit application.

Section 36. General Conditions.

(a) Permittees must possess any and all license(s) required to conduct business in the State of Hawai'i. Copies of all license(s) shall be provided to the Parks Permit Section of the Department prior to any permit being issued.

(b) Permittees must have in current force and effect an insurance policy, in which the combined limit of liability for bodily injury and property damage is \$1 million per occurrence and \$2 million in the aggregate. The insurance certificate shall name the County of Kaua'i as additional insured. A copy of the certificate shall be provided to the Parks Permit Section of the Department prior to any permit being issued. Permittee shall be responsible for providing the Department with an updated copy of the certificate of insurance if such certificate expires during the term of the permit.

(c) Permittees shall use inclement weather as criteria to cease operations (i.e. continuous rain, flash flood warning, strong currents, heavy debris and high winds, or any other weather or water conditions that may cause a hazard).

(d) Picnic tables and benches and other facilities owned by the County shall not be used by permittees for commercial purposes, nor shall they be used for storage or as a staging area for commercial boating activities, equipment and or supplies. Loading or unloading of equipment at County beach parks shall be restricted to areas designated by the Department. All equipment not being utilized shall be stored at the operator's place of business. Equipment shall not, under any circumstances, be dragged across grassy recreational surfaces and slopes within County parks. County showers and [~~hosebibs~~] hose bibs shall not be utilized by the permittee for cleaning of equipment.

(e) Permittees shall not be allowed to store, display, [~~show case~~] or showcase their business in any County beach park or parking lot.

(f) Vehicles used for commercial boating activities shall not be driven onto or be parked in any County beach area. All customers and or employees shall be shuttled to and from the County parks and any and all loading and unloading of customers and or [~~instructors~~] employees shall take place at a loading and unloading location designated by the Department. Use of loading and unloading areas by permittees shall be limited to active loading and unloading for a period not exceeding thirty minutes. All vehicles used for shuttling [~~instructors~~] employees, supply service vessels, and or customers shall clearly indicate that they are owned and or operated [~~in~~] on behalf of the permittee and shall further display the permit issued by the Department allowing the shuttling to take place.

(g) Trash generated by commercial operations shall be disposed of properly.

(h) Permittees shall at all times use due care for their clientele and other users and defend, hold harmless, and indemnify the County, its officers, agents, and employees from and against all claims or demands for damages, including claims for property damage, personal injury, or death arising out of or incident to the operations permitted under any permits.

(i) ~~[Soliciting and or conducting business is prohibited within any or the beach parks or parking lot.]~~ Permittees shall not solicit business within any beach park, beach park parking lot, or adjacent County road right-of-way.

(j) Commercial notices or advertisements for commercial boating activities shall not be displayed, posted or distributed within any of the beach parks or parking lot.

(k) Permittees and any ~~[instructors]~~ employees operating under their permit shall be required to present their permit, when requested, to any authorized representative of the Department, any police officer and or any individual acting under the authority of any County, State ~~[of]~~ or Federal governmental agency.

(l) Permittees shall be responsible for the safety of persons under their charge and for determining that their physical capability and experience are adequate to safely participate under the existing sea ~~[and surf]~~ conditions.

(m) Should it be adjudged that harm or death has resulted from the permittee's negligence or use of faulty equipment, the permit issued to the permittee shall be immediately revoked upon notice, review and consideration by the Department of Parks and Recreation without the possibility of future permits.

(n) All permittees must possess off-site, permitted commercial staging areas and shuttle their customers to and from any County ~~[Beach Parks]~~ beach park. Solicitation of moneys and or exchanging of moneys is prohibited within the County parks.

(o) Permittees shall comply with all Federal, State and County laws and ordinances and the rules of the Department.

(p) Permittees shall demonstrate to the Director's satisfaction their experience and familiarity with seasonal and high surf conditions typical of the location requested.

~~[(q) Permittees shall complete a course provided by the Department regarding the customary and historical place names (reef, channels, rivers, landmarks, etc.) typical of the location and surrounding areas being requested.]~~

~~[(r)]~~ (q) Permittees shall demonstrate to the Director's satisfaction their personal years of experience, knowledge, and history of performing the requested activity for the specific location requested.

~~[(s)]~~ (r) Permittees and their patrons shall use designated pathways to gain access to the beach areas through park property.

~~[(t)]~~ (s) Permittees shall conduct operations so as to impose no more than minimal impact upon public facilities and the physical features of the County parks. No fueling, washing or storage of boats, trailers or supplies are permitted in the County park overnight, identified herein, County parking lots, ~~or in road~~ [rights of way] rights-of-way. *Day use of truck and trailer parking is permitted.* ← remove

~~[(u) Permittee failing to perform in accordance with the conditions of these rules and regulations shall forfeit any further use of an existing permit and will not be allowed to apply in person, member of a firm, corporation, or entity for a period of two years from the date of failure to perform.]~~

~~[(v)]~~ (t) Non-compliance with any and all terms and conditions of ~~[this agreement]~~ these rules and regulations or permits issued under these rules and regulations shall ~~[automatically]~~ subject the permit holder to civil fines of not less than two hundred dollars (\$200.00) and not more than two thousand dollars (\$2000.00) for each offense. Repeated non-compliance shall ~~[render this agreement null and void]~~ result in the revocation of any permit issued under these rules and regulations, and the permittee shall be required to cease and desist all commercial operations on County property immediately upon notification by the Department.

(u) Any permittee whose permit is revoked under these rules will not be allowed to apply for a new permit in person, or as a member of a firm, corporation, or entity for a period of two-years from the date of revocation.

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

Date: 7/11/2019

Department or Agency: County of Kauai, Department of Parks and Recreation

Administrative Rule Title and Chapter: N/A

Chapter Name: Commercial Boating Activities at County Beach Parks

Contact Person/Title: Darcie Agaran, Executive Secretary to the Director

E-mail: dagaran@kauai.gov Phone: (808) 241-4456

- 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: Proposed Rule Amendments are available for viewing at the...(see attachment)

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.

Commercial Boating companies governed by this rule will be positively affected in that their allowable hours of operation will be extended, and rather than being subject to automatic permit revocation in the event of non-compliance, commercial boating companies will be subjected to a tiered schedule of fines prior to permit revocation.

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.

In lieu of automatic permit revocation for non-compliance under the current rules, the proposed rule amendment provides greater flexibility by implementing fines for non-compliance in a range from \$200-\$2,000 per offense with a... (see attachment)

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.

Current penalty is automatic permit revocation.

- b. Amount of the proposed fee or fine and the percentage increase.

Newly proposed fines range from \$200 to \$2,000 per offense

- c. Reason for the new or increased fee or fine.

The imposition of tiered fines in lieu of automatic permit revocation gives the Department enforcement flexibility while saving... (see attachment)

- d. Criteria or methodology used to determine the amount of the fee or fine (i.e.,

Consumer Price Index, Inflation rate, etc.).

Fines amounts are prescribed by the County's Peddlers and Concessionaires Ordinance, Kauai County Code section 23-3.6.

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.

No additional fees are being imposed. The only fee we are collecting is the current permit fee for conducting commercial boating activities, which is \$100.00 per year.

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.

The proposed amendment reduces the impact on commercial boating companies by: 1) doing away with a zero tolerance policy of automatic permit revocation for non-compliance; 2) allowing extended hours of commercial operation from one-half hour before sunrise to one-half hour after sunset, rather than hard hours of 7am to 7pm, which are more restrictive for commercial operators. Note that the proposed change in hours of operation is being sought at the request of commercial boating operators; and 3) clarifying... (see attachment)

5. The availability and practicability of less restrictive alternatives that could be implemented in lieu of the proposed rules.

N/A

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.

N/A

7. How the agency involved small business in the development of the proposed rules.

The County met with the commercial boaters and the commercial boaters expressed their desire to not be specific with time frames as the days are longer during the summer months.

- 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.

Yes, we are proposing to change the period of time that commercial boating activities would be permitted to one-half hour before sunrise to one-half hour after sunset. This was the recommendation that was agreed upon by the commercial boaters.

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.

N/A

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.
N/A

- b. The text of the related federal, state, or county law, including information about the purposes and applicability of the law.
N/A

- c. A comparison between the proposed rule and the related federal, state, or county law, including a comparison of their purposes, application, and administration.
N/A

- 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.
N/A

- 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.
N/A

* * *

Small Business Regulatory Review Board / DBEDT
Phone: (808) 586-2594 / Email: 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>

Attachment

A. Statement of the Topic of the Proposed Rule:

The Department proposes to amend its existing Rules and Regulations Governing Commercial Boating Activity at County Beach Parks by: 1) moderately extending the allowable hours of operation; 2) amending compliance and enforcement provisions to allow for incremental fines rather than automatic permit revocation; 3) minor non-substantive changes in formatting and language; and 4) clarifying the scope of commercial activity that may be carried out at the County's Weke Road Boat Ramp.

B. ...Department of Parks and Recreation. In addition, the Department will send an electronic copy by email to any interested person upon request.

2. ...penalty of permit revocation for "repeated noncompliance."

c. ...commercial boating companies from the possibly drastic immediate loss of their permit to operate.

4. ...the scope of commercial activity that may be carried out at the County's Weke Road Boat Ramp.

RECEIVED

By *JetaimeA* at 12:03 pm, Jul 11, 2019

COUNTY OF KAUA‘I DEPARTMENT OF PARKS AND RECREATION

Pursuant to the authority granted to the Director of Parks and Recreation under Kaua‘i County Code section 19-1.18, section 23-3.3, section 23-3.5, and section 23-3.6, the Director proposes to amend the Department of Parks Rules and Regulations as set out below. Portions of existing Rules and Regulations to be deleted are bracketed in bold with strikethrough. Proposed additions to existing Rules and Regulations are underlined and will appear in red. A public hearing on proposed amendments will be held on (Date) at the Mo‘ikeha Building, Meeting Room 2A/2B, 4444 Rice Street, Lihu‘e, Kaua‘i starting at 9:00 a.m., or soon thereafter.

COUNTY OF KAUA‘I DEPARTMENT OF PARKS AND RECREATION

Under and by virtue of the authority conferred upon him by Chapter 91, Hawai‘i Revised Statutes (HRS), Chapter 23, Article 3, Kaua‘i County Code (KCC) 1987 as amended, and every other enabling power, the Director of Parks and Recreation of the County of Kaua‘i does hereby prescribe the following:

RULES AND REGULATIONS GOVERNING COMMERCIAL BOATING ACTIVITIES AT COUNTY BEACH PARKS PART IV

Section 30. Findings and Purpose.

Pursuant to section 23-3.3 of the KCC and Section 8 of these rules and regulations, a public hearing was conducted to determine the propriety of the proposed use of facilitating commercial boating activities under the jurisdiction of the State Department of Land and Natural Resources (DLNR)/Division of Boating and Ocean Recreation (DOBOR) and the United States Coast Guard at ~~[those]~~ designated County beach parks and beach ~~[right-of-ways]~~ rights-of-way ~~[listed in the attachment]~~.

The Department duly received applications from various individuals and organizations to conduct these activities, pursuant to Section 7 of these regulations.

As a result of the public hearing, the Department finds that the proposed use of the County beach parks identified herein facilitates commercial activities under the jurisdiction of the State ~~[Department of Land and Natural Resources (DLNR) Division of Boating and Ocean Recreation (DOBOR)]~~ DLNR/DOBOR and the United States Coast Guard. The Department further finds the proposed use to be essentially recreational in nature, complementary to the facilities of the parks and consistent with established park use.

These activities are hereby designated authorized activities in accordance with the definition provided in these rules, subject to the limitations and conditions hereinafter described.

Section 31. State Permit.

In order to operate a commercial boating activity operators must have in their possession a current and valid Ocean Recreational Management Area Commercial Permit issued by the State of Hawai‘i, ~~[Department of Land and Natural Resources (DLNR), Division of Boating and Ocean~~

Recreation (DOBOR)] DLNR/DOBOR. If a permittee forfeits his or her State permit and or their State permit is otherwise revoked or suspended, said permittee’s County permit will automatically expire.

Section 32. Number of Persons.

(a) The maximum number of passengers permitted to participate in a commercial boating activity authorized by these rules within the County park shall be limited to that number allowed in the operator’s current and valid Ocean Recreational Management Area Commercial Permit issued by the State of Hawai‘i, ~~[Department of Land and Natural Resources (DLNR), Division of Boating and Ocean Recreation (DOBOR)] DLNR/DOBOR~~ and any and all permits issued to the County, including but not limited to ~~[sma] SMA~~, zoning and or land use permits.

Section 33. Time of Use.

- (a) No commercial boating activities shall occur within the County parks on Sundays.
- (b) ~~[Permittees shall limit their commercial boating and accessory activities within the County parks between the hours of 7:00 a.m. and 7:00 p.m.]~~ Commercial boating activities are permitted one-half hour before sunrise to one-half hour after sunset. No commercial boaters shall operate one-half hour after sunset to one-half hour before sunrise.
- (c) Special events authorized by permit shall take precedence over commercial boating activities allowed by these rules. Permits issued under these rules shall include a provision stating that the activity may be suspended by the Director to accommodate special events.
- (d) At the Director’s discretion, no commercial boating activities shall occur within the County parks during periods when maintenance or repair of County beach park property or equipment is being performed or when a park is closed. The Department will give permittees thirty days prior notice of any such scheduled activities.
- (e) The use of Weke Boat Ramp for supply service vessels shall be allowed during the permitted timeframe referenced in 33(b).
 - (1) Each Permittee shall be allowed no more than two supply service vessel trips per day.
 - (2) Supply service vessels launching from Weke Boat Ramp shall only be used to transfer supplies to and from Permittee’s primary tour vessel. Supply service vessels shall not be used for passenger loading and unloading at Weke Boat Ramp.
- (f) In the event of an emergency, Weke Boat Ramp may be accessed. Permittee shall notify DOPR officials as soon as practicable.

Section 34. Fees.

The fees for conducting commercial boating activities shall be as stated in section 23-3.4 of the KCC.

Section 35. Permits.

(a) Permits to conduct commercial boating activities shall be issued only for ~~[those]~~ the following County beach parks and beach ~~[right-of-ways]~~ rights-of-way: ~~[listed in the attachment.]~~
Black Pot Beach Park; TMKs (4) 5-5-01:004 and (4) 5-5-01:011;

Weke Road Right-of-Way within Black Pot Beach Park

(b) Permits for operation of commercial boating activities shall have a duration of up to one year and shall expire automatically, without notice to the permit holder, on the date specified on the permit and or if a permittee forfeits his or her State permit and or their State permit is otherwise revoked or suspended.

(c) The Director, or his authorized representative, may renew a permit for additional periods of up to one year provided the permittee is in compliance with all applicable rules. Permit renewal shall also be contingent upon the permittee renewing or attaining any necessary state and federal permits. A renewed permit shall be subject to the terms and conditions of these rules and any subsequent amendments.

(d) The Permittee shall notify the Director within five ~~[(5)]~~ business days of any changes regarding the information provided in the permit application.

Section 36. General Conditions.

(a) Permittees must possess any and all license(s) required to conduct business in the State of Hawai'i. Copies of all license(s) shall be provided to the Parks Permit Section of the Department prior to any permit being issued.

(b) Permittees must have in current force and effect an insurance policy, in which the combined limit of liability for bodily injury and property damage is \$1 million per occurrence and \$2 million in the aggregate. The insurance certificate shall name the County of Kaua'i as additional insured. A copy of the certificate shall be provided to the Parks Permit Section of the Department prior to any permit being issued. Permittee shall be responsible for providing the Department with an updated copy of the certificate of insurance if such certificate expires during the term of the permit.

(c) Permittees shall use inclement weather as criteria to cease operations (i.e. continuous rain, flash flood warning, strong currents, heavy debris and high winds, or any other weather or water conditions that may cause a hazard).

(d) Picnic tables and benches and other facilities owned by the County shall not be used by permittees for commercial purposes, nor shall they be used for storage or as a staging area for commercial boating activities, equipment and or supplies. Loading or unloading of equipment at County beach parks shall be restricted to areas designated by the Department. All equipment not being utilized shall be stored at the operator's place of business. Equipment shall not, under any circumstances, be dragged across grassy recreational surfaces and slopes within County parks. County showers and ~~[hosebibs]~~ hose bibs shall not be utilized by the permittee for cleaning of equipment.

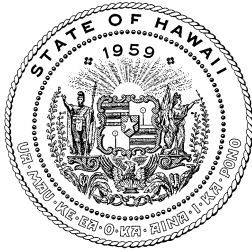
(e) Permittees shall not be allowed to store, display, ~~[show case]~~ or showcase their business in any County beach park or parking lot.

(f) Vehicles used for commercial boating activities shall not be driven onto or be parked in any County beach area. All customers and or employees shall be shuttled to and from the County parks and any and all loading and unloading of customers and or ~~[instructors]~~ employees shall take place at a loading and unloading location designated by the Department. Use of loading and unloading areas by permittees shall be limited to active loading and unloading for a period not exceeding thirty minutes. All vehicles used for shuttling ~~[instructors]~~ employees, supply service vessels, and or customers shall clearly indicate that they are owned and or operated ~~[in]~~ on behalf of the permittee and shall further display the permit issued by the Department allowing the shuttling to take place.

- (g) Trash generated by commercial operations shall be disposed of properly.
- (h) Permittees shall at all times use due care for their clientele and other users and defend, hold harmless, and indemnify the County, its officers, agents, and employees from and against all claims or demands for damages, including claims for property damage, personal injury, or death arising out of or incident to the operations permitted under any permits.
- (i) ~~[Soliciting and or conducting business is prohibited within any or the beach parks or parking lot.]~~ Permittees shall not solicit business within any beach park, beach park parking lot, or adjacent County road right-of-way.
- (j) Commercial notices or advertisements for commercial boating activities shall not be displayed, posted or distributed within any of the beach parks or parking lot.
- (k) Permittees and any ~~[instructors]~~ employees operating under their permit shall be required to present their permit, when requested, to any authorized representative of the Department, any police officer and or any individual acting under the authority of any County, State ~~[of]~~ or Federal governmental agency.
- (l) Permittees shall be responsible for the safety of persons under their charge and for determining that their physical capability and experience are adequate to safely participate under the existing sea ~~[and surf]~~ conditions.
- (m) Should it be adjudged that harm or death has resulted from the permittee's negligence or use of faulty equipment, the permit issued to the permittee shall be immediately revoked upon notice, review and consideration by the Department of Parks and Recreation without the possibility of future permits.
- (n) All permittees must possess off-site, permitted commercial staging areas and shuttle their customers to and from any County ~~[Beach Parks]~~ beach park. Solicitation of moneys and or exchanging of moneys is prohibited within the County parks.
- (o) Permittees shall comply with all Federal, State and County laws and ordinances and the rules of the Department.
- (p) Permittees shall demonstrate to the Director's satisfaction their experience and familiarity with seasonal and high surf conditions typical of the location requested.
- ~~[(q) Permittees shall complete a course provided by the Department regarding the customary and historical place names (reef, channels, rivers, landmarks, etc.) typical of the location and surrounding areas being requested.]~~
- ~~[(r)]~~ (q) Permittees shall demonstrate to the Director's satisfaction their personal years of experience, knowledge, and history of performing the requested activity for the specific location requested.
- ~~[(s)]~~ (r) Permittees and their patrons shall use designated pathways to gain access to the beach areas through park property.
- ~~[(t)]~~ (s) Permittees shall conduct operations so as to impose no more than minimal impact upon public facilities and the physical features of the County parks. No fueling, washing or storage of boats, trailers or supplies are permitted in the County parks identified herein, County parking lots, or in road ~~[rights-of-way]~~ rights-of-way.
- ~~[(u) Permittee failing to perform in accordance with the conditions of these rules and regulations shall forfeit any further use of an existing permit and will not be allowed to apply in person, member of a firm, corporation, or entity for a period of two years from the date of failure to perform.]~~

~~[(v)]~~ (t) Non-compliance with any and all terms and conditions of ~~[this agreement]~~ these rules and regulations or permits issued under these rules and regulations shall ~~[automatically]~~ subject the permit holder to civil fines of not less than two hundred dollars (\$200.00) and not more than two thousand dollars (\$2000.00) for each offense. Repeated non-compliance shall ~~[render this agreement null and void]~~ result in the revocation of any permit issued under these rules and regulations, and the permittee shall be required to cease and desist all commercial operations on County property immediately upon notification by the Department.

(u) Any permittee whose permit is revoked under these rules will not be allowed to apply for a new permit in person, or as a member of a firm, corporation, or entity for a period of two-years from the date of revocation.



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
Website: dbedt.hawaii.gov/SBRRB

Tel: 808 586-2419

MEMORANDUM

David Y. Ige
Governor

Michael McCartney
DBEDT Director

Members

Robert Cundiff
Chairperson
O'ahu

Garth Yamanaka
Vice Chairperson
Hawai'i

William Lydgate
2nd Vice Chairperson
Kaua'i

Harris Nakamoto
O'ahu

Nancy Atmospera-Walch
O'ahu

Mary Albitz
Maui

Jonathan Shick
O'ahu

James Kimo Lee
Hawai'i

Director, DBEDT
Voting Ex Officio

TO: Patrick Porter, Director
Department of Parks and Recreation, County of Kaua'i

FROM: Robert Cundiff, Chair *RKC*
Small Business Regulatory Review Board

DATE: July 23, 2019

SUBJECT: Proposed Amendments to Part IV, Rules and Regulations Governing
Commercial Boating Activities at County Beach Parks, Sections 30-36

The Small Business Regulatory Review Board (SBRRB) provides recommendations to State and County agencies on proposed rules and proposed rule amendments pursuant to Chapter 201M, Hawaii Revised Statutes.

Please be advised that at the SBRRB's July 18, 2019 board meeting, the members reviewed the above-captioned proposed amendments to Part IV, Rules and Regulations Governing Commercial Boating Activities at County Beach Parks, before the public hearing.

Upon review, the members unanimously agreed to pass the amendments onto public hearing. Additionally, the members are interested in hearing back from the Department of Parks and Recreation as to what occurred during the public hearing.

Thank you for keeping the SBRRB apprised of the regulatory activity at the County of Kaua'i's, Department of Parks and Recreation.

c: Governor David Y. Ige
William Lydgate, SBRRB Discussion Leader

V. New Business – Before Public Hearing

A. Discussion and Action on Proposed Amendments to HAR Title 13 Chapter 234, Section 26, Fees and Charges, promulgated by DLNR

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

RECEIVED
By JetaimeA at 6:19 am, Jul 31, 2019

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.)

* * *

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

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

Pre-Public Hearing Small Business Impact Statement Attachment

Department of Land and Natural Resources, Division of Boating and Ocean Recreation
Proposed amendments to Hawai'i Administrative Rules Section 13-234-26

2. The passenger fee amounts in HAR § 13-234-26 would increase as follows:
 - \$0.30 per passenger embarking or disembarking for passenger vessels engaging only in interisland commerce increased to \$3.00 per passenger embarking or disembarking per day for the Lahaina small boat harbor (increase of \$2.70 applied to Lahaina small boat harbor only, per passenger per day).
 - \$1.00 per passenger embarking or disembarking for passenger vessels engaging in international or interstate commerce increased to \$2.00 per passenger embarking or disembarking per day for small boat harbors other than Lahaina small boat harbor (increase of \$1.00 for small boat harbors other than Lahaina small boat harbor, per passenger per day).

- 2a. The current fees in HAR § 13-234-26 are:
 - \$0.30 per passenger embarking or disembarking for passenger vessels engaging only in interisland commerce.
 - \$1.00 per passenger embarking or disembarking for passenger vessels engaging in international or interstate commerce.

The fees in Section 13-234-26 have not been increased since the section was adopted in February 1994.

- 2b. Proposed fee increases and percentages of increases in Section 13-234-26 are:
 - \$0.30 to \$3.00 per passenger per day for the Lahaina small boat harbor only (900% increase).
 - \$1.00 to \$2.00 per passenger per day for small boat harbors other than Lahaina small boat harbor (100% increase).

- 2c. Increased fees are intended to align DOBOR fees for small boat harbors and other boating facilities with current market rates. DOBOR has not raised its fee in several years and therefore is not maximizing the revenue-generating potential of its small boat harbors and facilities.

- 7a. DOBOR worked with cruise ship company representatives to attempt to develop a stepped or delayed fee increase. However, DOBOR could not reach any stepped or delayed increases because any such increases would have resulted in a loss in revenue.

DEPARTMENT OF LAND AND NATURAL RESOURCES

Amendments to section 13-234-26
Hawaii Administrative Rules

[Date of adoption by agency]

1. Section 13-234-26, Hawaii Administrative Rules, is amended to read as follows:

§13-234-26 Passenger fees. (a) Any passenger or cruise vessel ~~[which is]~~ used for private gain ~~[and]~~ that does not have a valid mooring permit or commercial permit and ~~[which]~~ uses state small boat harbors, property, or facilities ~~[shall pay the following fees in addition to any other fees required by this chapter:~~

- ~~(1) Per passenger (includes in transit) --
embarking to or from shore to
ship.....\$2~~
- ~~(2) Passengers in transit on a vessel on a
continuous trip whose point of origin and
termination is a state small boat harbor, a
total of disembarking and embarking at each
port per passenger.....\$1.50~~
- ~~(3) Passengers] for embarking and disembarking
passengers ~~[on occasional and infrequent
use]~~ on a special charter ~~[when]~~ approved in
[advance of voyage as provided in]
accordance with section 13-231-
57(c) (3) ~~[.....\$1.50]~~
shall pay \$2.00 per passenger.~~

(b) ~~[Any passenger vessel using a dock, pier or wharf in a state small boat harbor for disembarking and embarking passengers by means of any boat or lighter while moored offshore, shall pay a fee per passenger for disembarking and embarking at each small boat harbor as follows:~~

- ~~(1) Passenger vessels engaging only in
interisland commerce:.....\$.30~~
- ~~(2) Passenger vessels engaging in international
or inter-state commerce:.....\$1.00~~

~~Vessels operated by a federal or state agency are exempt from the provisions of this subsection.]~~ Any passenger or cruise vessel which uses a dock, pier, or wharf in a state small boat harbor for private gain by means of any boat or tender while moored offshore shall pay a fee per passenger as follows:

(1) For Lahaina small boat harbor..\$3.00 per day

(2) For all other small boat harbors or facilities.....\$2.00 per day

(c) Passenger counts shall be determined by a vessel's passenger list. A passenger or cruise vessel required by this section to pay passenger fees shall file [A] a report [shall be filed] with the department on a form acceptable to the department within thirty [days after the date of embarking or disembarking of passengers over state facilities] calendar days after the vessel departs a state small boat harbor or state boating facility, and [the] any charges due shall be remitted along with the report.

(d) Fees required by this section shall be in addition to any other fees required by this chapter.

(e) Vessels operated by a federal, state, or county agency in an official capacity shall be exempt from the provisions of this section. [Eff 2/24/94; am

] (Auth: HRS §§200-4, 200-6, 200-10, 200-22, 200-24) (Imp: HRS §§200-4, 200-6, 200-10, 200-22, 200-24)

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

3. The amendments to section 13-234-26, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on _____ by the Board of Land and Natural Resources, and filed with the Office of the Lieutenant Governor.

SUZANNE D. CASE
Chairperson
Board of Land and Natural Resources

APPROVED FOR PUBLIC HEARING:

Deputy Attorney General

VI. Regulation for Review

A. Discussion and Action on Response from DLNR from the May 16, 2019 Board Meeting on Whether Bottomfish Restricted Fishing Areas Should be Opened and/or Disestablished under HAR Title 13 Chapter 94, Bottomfish Management

DAVID Y. IGE
GOVERNOR OF
HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAIHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

July 24, 2019

RECEIVED

By JetaimeA at 12:07 pm, Jul 26, 2019

Mr. Anthony Borge, Chair
Small Business Regulatory Review Board
Department of Business, Economic Development, and Tourism
P.O. Box 2359
Honolulu, Hawaii 96804

Re: Hawaii Administrative Rules (HAR), Title 13 Section 94(8)(d), "Bottomfish Restricted Fishing Areas"

Dear Mr. Borge,

Thank you for your letter dated May 30, 2019 and your interest in the State of Hawaii's Bottomfish Restricted Fishing Areas (BRFAs).

The Department of Land and Natural Resources (DLNR) acknowledges your suggestion that a periodic review be performed on HAR Section 13-94(8)(d), Bottomfish restricted fishing areas, and on the conservation areas listed under Exhibit A: BRFAs 4-8-2010, to determine how, if at all, the restrictions may be less burdensome on small business.

This rule amendment was in fact made for the purpose of making the bottomfish restricted fishing areas less burdensome to small business.

As for additional small business considerations, commercial fishers were consulted throughout this process. Conversations with commercial fishers demonstrated that the opening of BRFAs would be less burdensome on their small business. This benefit to the commercial fishers was one of the primary drivers in the opening of the four selected BRFAs.

The BRFAs were originally established in 1998 to provide refuge for the deep-7 bottomfish species following a federal stock assessment that suggested certain species were in danger of being overfished. Nineteen BRFAs were originally established. In 2007 the network of BRFAs was amended to the current 12 BRFA network. No other action has been taken to open or close BRFAs since 2007, until the State decision in January 2019 to open four BRFAs.

The Division of Aquatic Resources (DAR) believes that due to bottomfish recovery, better data, and decreased commercial pressure, opening four of the BRFAs to fishing is not likely, at this time, to adversely affect the sustainability of deep-7 bottomfish populations, and would benefit local bottomfishers as well as small businesses involved with deep-7 bottomfish. DAR recommended opening four BRFAs while carefully monitoring fishing effort and catch in those newly opened areas.

At the January 11, 2019 BLNR meeting, board members heard extensive testimony at the hearing and had the opportunity to question DLNR staff, retired DLNR staff, bottomfishers, and a Western Pacific Regional Fishery Management Council staff member before making the unanimous decision to open the four proposed BRFAs.

A condition of the decision to open four BRFAs requires DAR to report back on what has occurred in the BRFAs that have been opened. This report is due three years after the decision made in January 2019. We plan to include effort, pounds of fish taken and Catch Per Unit Effort from open BRFAs in relation to other commercial catch reporting area. The refined reporting details relevant to the open BRFAs mentioned above will provide our Division with data that is needed for our report to the BLNR.

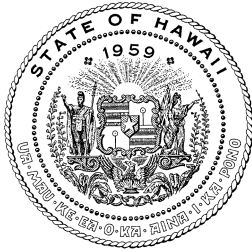
It is important to note that your letter dated May 30, 2019 has influenced the report that will be provided to the BLNR in January 2022. Due to the information provided by your letter, data such as number of commercial participants in the deep-7 bottomfish fishery and ex-vessel value of the deep-7 bottomfish fishery will also be included. Although this review date was based on biological considerations, economic data relevant to small businesses will also be included in this review.

Pending careful monitoring over time of the impact of opening up four BRFAs on bottomfish stocks, both site-based and fishery-based, and the economics of the deep-7 bottomfish fishery, the judicious approach is to open these four, not all twelve, BRFAs at this time.

Sincerely,



Suzanne Case
DLNR Chairperson



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
Website: dbedt.hawaii.gov/SBRRB

Tel: 808 586-2419

MEMORANDUM

David Y. Ige
Governor

Michael McCartney
DBEDT Director

Members

Anthony Borge
Chairperson
O'ahu

Robert Cundiff
Vice Chairperson
O'ahu

Garth Yamanaka
2nd Vice Chairperson
Hawai'i

Harris Nakamoto
O'ahu

Dr. Nancy Atmospera-
Walch
O'ahu

Mary Albitz
Maui

William Lydgate
Kaua'i

Jonathan Shick
O'ahu

James Kimo Lee
Hawai'i

Director, DBEDT
Voting Ex Officio

TO: Suzanne Case, Chairperson
Board of Land and Natural Resources (BLNR)

FROM: Anthony Borge, Chair *Anthony Borge*
Small Business Regulatory Review Board (SBRRB)

DATE: May 30, 2019

SUBJECT: Hawaii Administrative Rules (HAR) Title 13 Section 94(8)(d),
"Bottomfish restricted fishing areas"

On behalf of the SBRRB, we bring to your attention a concern regarding small business and the above-captioned HAR, in accordance with Section 201M-5(a), Hawaii Revised Statutes, which states, in part:

The board may consider any request from small business owners for review of any rule adopted by a state agency and to make recommendations to the agency or the legislature regarding the need for a rule change or legislation.

The small business concern that was recently presented to the SBRRB was whether all bottomfish restricted fishing areas should be opened and/or disestablished.

Therefore, under the SBRRB's authority, it is respectfully suggested that a periodic review be performed on HAR Section 13-94(8)(d), *Bottomfish restricted fishing areas*, and on the conservation areas listed under *Exhibit A: Bottomfish Restricted Areas (BRFAs) 4-8-2010*, to determine how, if at all, the restrictions may be less burdensome on small business.

Should you have any questions on this matter, please feel free to contact me at 487-9041.

Thank you for your consideration.

c: Governor David Y. Ige
Mary Albitz, SBRRB Discussion Leader

Testifier Mr. Roy Morioka, questioned whether small boat fishermen (i.e., “week-end warriors”) who do not fish for a living but have a commercial license are considered “commercial.” In response, Ms. Statts stated that the fees for the ramp are for only those people that have specific ramp permits, not for those who just use the ramp.

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

2. Part III Ocean Waters, Navigable Streams and Beaches – Chapter 253
Catamaran Registration Certificate, Other Registration, and Commercial Use
Permit Fees

Ms. Statts explained that the proposed amendments reflect raising the commercial use fee from \$200 to \$300 as well for housekeeping measures; Mr. Tashima added that the housekeeping measures include consolidating various definitions.

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

B. Discussion and Action on the Small Business Statement After Public Hearing and Proposed New Rules and Regulations for Kauai County Code, Section 18-5.3, Revocable Permits to Vend Within County Right of Ways, promulgated by Department of Parks and Recreation / County of Kauai

Chair Borge stated that the rules have been approved by the Kauai County Council and are in front of this Board for formality purposes. Discussion leader Mr. Lydgate summarized what had transpired since this Board reviewed the proposal prior to public hearing and noted that the Department of Parks and Recreation performed due diligence and did a good job with the outreach of the rules.

Mr. Nakamoto made a motion to accept the rules as presented. Mr. Lydgate seconded the motion, and the Board members unanimously agreed.

V. REGULATION REVIEW CARD - SBRRB Meeting - May 16, 2019

A. Discussion, Fact Finding and Action on Request Received through this Board’s “Regulation Review Card” for Discussing Whether or Not All Bottomfish Restricted Fishing Areas Should be Opened and/or Disestablished under HAR Title 13 Chapter 94 Bottomfish Management, promulgated by DLNR

Mr. Alton Miyasaka, who submitted the regulatory review card, is a retired DLNR employee and familiar with the rule-making process. He requested that this Board support a petition for the Board of Land and Natural Resources (BLNR) to place on its agenda the “disestablishing all bottomfish restricted areas” under HAR Chapter 13-94, Bottomfish Management.

Mr. Miyasaka's request also included a modification to HAR Section 13-94(8)(d) to require DLNR to go to public hearing to change the maps of the Bottomfish Restricted Fishing Areas (BRFAs). This is due to the negative impact on small businesses who are the "permitted" commercial fishers as the current process does require DLNR to go to public hearing when there is a change in the maps.

Mr. Miyasaka explained that instead of opening only 4 BRFAs, which is what DLNR has recently allowed, he is requesting that all 12 of the BRFAs are opened. By disestablishing the bottomfish restricted areas and opening up all BRFAs, it would allow for: 1) other fishery regulations to remain in effect; 2) no change of the stock assessment; 3) the continual monitoring of an annual catch; 4) the foreclosure of the fishery if the catch limit is reached; 5) overage of catch to be subtracted from the following year limit; and 6) BRFA's to be immediately reestablished if necessary.

The following summarizes the timeframe of Mr. Miyasaka's request to DLNR/BLNR: 1) BLNR met on January 11, 2019 and approved removing 4 of the 12 existing BRFA; 2) BLNR was purportedly prevented from discussing possible removal of all BRFA; and 3) BLNR chairperson purportedly intercepted Mr. Miyasaka's petition to BLNR to have a discussion to remove all BRFA. Prior to coming before this Board, the State's Ombudsman's Office was approached where Mr. Miyasaka was advised to contact DLNR's director for clarification as to why his request was rejected; the chairperson was unable to meet with him for clarification.

Testifier Mr. Roy Morioka, Board Member and Chair of Commercial, Traditional and Bottomfishing Fishing, concurred with Mr. Miyasaka's concerns and stated that nearly half of the commercial fishers in Oahu are impacted. He believed there is no need for additional closures of BRFAs and requested that this Board support the opening and disestablishing of all BRFAs for the following reasons: 1) there is already an established science-based management; 2) there are various socio-economic impacts; and 3) there are safety-at-sea reasons.

Deputy Attorney General Polk-Waihee explained that Mr. Miyasaka's request was not specifically identified under this Board's Petition statute, Section 201M-6, HRS, so it cannot be treated as such. Therefore, the request before this Board comes under the Board's general powers for review of existing administrative rules, Section 201M-5, HRS, for a rule change or legislation.

Ms. Albitz made a motion to go into executive session at 11:48 a.m.; Mr. Ritchie seconded the motion, and the Board members unanimously agreed. The motion was passed under Section 92-5(a)(4), to consult with the Board's attorney concerning the Board's powers, duties, immunities, privileges and liabilities as it relates to discussing HAR Chapter 13-94, Bottomfish Management. The executive session ended at 12:01 p.m.

Testifier Mr. Ed Watamura, Council member of WPRFMC (Western Pacific Regional Fishery Management Council) stated that WPRFMC's executive director has written letters to DLNR's Director requesting that all the BRFA's be open and disestablished on behalf of the federal government.

Vice Chair Cundiff explained that in reading the administrative rules, it gives DLNR/BLNR the ability to interpret and create restrictions in the law, and while there are restrictions to this Board's purview, the members may send a letter to DLNR suggesting that it consider doing a periodic review of the rules. Mr. Lydgate added that this Board has no authority to ask DLNR to critique or implement these rules differently.

The suggested periodic review would be specifically for Section 13-94(8)(d), Bottomfish restricted fishing areas, and for "Exhibit A: Bottomfish Restricted Fishing Areas (BRFAs) 4-8-2010." DLNR may also be approached by addressing the rule itself and how it could be modified to be less burdensome on small business. However, even though from this Board's perspective the rules lack a periodic review, DLNR cannot be forced to bring the rules to BLNR or for public review. It was added that there is nothing in the rules stating that DLNR review or remove the restriction and it was recommended that the testifiers continue their plight with the Ombudsman's Office.

Vice Chair Cundiff made a motion for this Board to send a letter to DLNR/BLNR suggesting that a periodic review be performed for HAR Section 13-94(8)(d), Bottomfish restricted fishing areas and for the conservation areas under "Exhibit A: Bottomfish Restricted Fishing Areas (BRFAs) 4-8-2010" to determine how the restrictions may be less burdensome on small business. Mr. Nakamoto seconded the motion, and the Board unanimously agreed.

VI. LEGISLATIVE MATTERS

A. Update on Senate Bill 1348 SD1 HD1 CD1, Relating to the Small Business Regulatory Review Board

Chair Borge reminded the members that this bill removed "ordinances" from the statute and made a few other minor changes. The bill, however, did not include operating funds for the Board; the funds are to cover neighbor island travel expenses as well as the website development and maintenance.

It was announced that the legislative request from DAGS' State Procurement Office for funds allocated for the creation of the State's "Small Business Office" was not approved during the legislative session and as a result this project has been put on hold.

VII. 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

a. Meetings with Board Members and State Department Directors

Mr. Nakamoto met with the Department of Human Services Director Pankaj Bahanot; the meeting went very well.

Chair Borge encouraged the members to contact the directors for a "meet and greet" to let the agencies know what the Board is about.

RECEIVED

By JetaimeA at 8:59 am, May 02, 2019

Board of Land and Natural Resources

Pursuant to Sections 13-1-10 and 13-1-27, Hawaii Administrative Rules (HAR), and Section 91-8, Hawaii Revised Statutes (HRS), I am filing this petition to respectfully ask the Board to consider opening all bottomfish restricted fishing areas. Subsection 13-1-27(b), HAR, further requires the petition to contain the following:

- (1) The name, address, and telephone number of the petitioner;**
 - a. Alton Miyasaka
 - b. Address
 - c. Phone
- (2) A statement of the nature of the petitioner's interest, including reasons for submission of the petition;**
 - a. I am the retired Acting Commercial Fisheries Program Manager, Division of Aquatic Resources, Department of Land and Natural Resources and have detailed information relating to the Hawaii bottomfish fishery from both the state and federal perspectives
 - b. During the Board of Land and Natural Resources meeting of January 11, 2019, the Board discussed item F-1, REQUEST TO OPEN THE FOLLOWING EXISTING MAIN HAWAIIAN ISLANDS BOTTOMFISH RESTRICTED FISHING AREAS (BRFA): BRFA C (POIPU, KAUAI, BRFA F (PENGUIN BANKS), BRFA J (HANA, MAUI) AND BRFA L (LELEIWI, HAWAII ISLAND), AND REQUEST TO DELEGATE TO THE CHAIRPERSON THE AUTHORITY TO IMPLEMENT THE DECISION.
 - c. The Board decision was to approve staff recommendation and to report back to the Board in 3 years
 - d. The Board was prevented from discussing the option of opening all BRFA due to the restrictive nature of the title of F-1 before it, despite obvious interest of some Board members to have this broader discussion
 - e. I want to provide the Board with the opportunity to discuss whether or not all BRFA should be opened and to provide my comments on some of the Board's questions and comments
- (3) A designation of the specific provision, rule, or order in question;**
 - a. Hawaii Administrative Rules (HAR), Section 13-94-8, Bottomfish restricted fishing areas
- (4) A clear and concise statement of the position or contention of the petitioner;**
 - a. It is my contention that given the opportunity and the facts in this matter, the Board would support the opening of all BRFA.
- (5) A memorandum of authorities, containing a full discussion of the reasons, including legal authorities, in support of such position or contention;**
 - a. As the BLNR has already held a meeting on the issue of BRFA, I believe the legal authorities to make this decision and to implement this decision has already been established. The authorities to open four BRFA would be the same for opening all BRFA. See below for a discussion of my reasons for this petition.
- (6) The signature of each petitioner.**

The Board is requested to place on its agenda an item to discuss the opening of all bottomfish restricted fishing areas (BRFA). Should the Board support opening all BRFA, the Board is further requested to direct the Department to immediately implement such actions as necessary.

The Board, at its meeting of January 11, 2019, discussed the option of approving the opening of four of the twelve bottomfish restricted fishing areas (BRFA). The title of Item F-1, provided the Board with the option of approving, or not, the opening of four BRFA. It did not allow the option of opening any other BRFA or all BRFA. Also, in the course of that discussion, certain information were not fully provided for the Board's consideration. The result was a Board decision that the Division of Aquatic Resources report back to the Board in three years, supposedly at the next bottomfish stock assessment update. The Board appears to have misunderstood what the assessment update would include and what results would be reported to the Board at that time. Part of the reason for this petition is to clarify for the Board the fact that the assessment update would have nothing to do with the Board's decision to open four BRFA.

BLNR comments/questions during BLNR meeting of January 11, 2019

- Concerned about the 42% risk of overfishing
- What more information is needed?
- Waiting for next update
- What happens to the SAR in 3 years?
- What happens to the SAR in 5 years?
- Trying to be conservative
- Hilo boat ramp problems due to Pohoiki ramp closure

What is the Stock Assessment (SA)

- The SA has several parts: the data (evaluates whether the data are good enough for management use), the model (the “engine” of the assessment that calculates the stock status, model checking (tests if the model is operating as expected), future catch projections (predicts the overfishing limit for each of the years through 2022), and estimates risk for exceeding the overfishing limit to guide decision makers on possible ACL determinations
- SA essentially provides information on how much fish can be sustainably taken each year
- Data sources: biological, fishery –dependent, fishery-independent
 - Biological data includes growth curves, life span, age at maturity, mortality rates, productivity estimates, and fecundity
 - Fishery-dependent data includes annual catch information as reported by commercial fishers from 1949 to 2016 (4.8 million records over 68 years)
 - Unreported catch estimated slightly larger than reported commercial catch
 - Fishery-independent data includes visual surveys by remote camera and research fishing using stratified random sampling to verify visual survey data
- Assessment model
 - Bayesian state-space production model

- Comparison with single species modeling
- Results include: stock status, catch projections, model checks to determine if the model is operating as expected (retrospective analysis and sensitivity analysis)

What the SA represents

- The 2018 SA represents the most complete and exhaustive review of the Hawaii bottomfish fishery to date and is the best scientific information available
- The PIFSC is a federal agency that provides unbiased scientific information to policy and decision makers; it has no decision making authority on how the information is used
- The SA has undergone independent expert review and found to be credible
- The SA is supported by the bottomfish fishers, the Council, and the NMFS and will be used by the Council and NMFS to inform their management of this fishery into the future
- The Board should also accept the SA as the primary tool to jointly manage this fishery; working from the same information should result in the same conclusions that will support complementary management decisions

High Overfishing Risk

- Maximum allowed under federal law is 50%
- Council has chosen to use a more conservative risk estimate of 40% (the lower the number, the more conservative)
- This 40% risk estimate is the probability of exceeding the overfishing limit during any year
- This risk estimate takes into account and includes scientific and management uncertainties
- The overfishing limit is the point at which the catch begins to negatively impact the sustainability of the stock; the higher the overfishing (in pounds), the sooner the stock reaches an overfished condition
- The overfishing limit is a “yellow light” warning that you need to slow down fishing while the overfished condition is the “red light” to stop fishing
- The annual catch limit (ACL) is set at the 40% risk of the overfishing limit because the goal is to maximize the catch while minimizing the risk of fishing too much. The ACL is the maximum catch limit set for any fishing year but the actual catch has not exceeded the ACL in the last 5 years
- In 2018, the catch was 284,000 pounds; this catch posed a 15% risk of overfishing based on the new ACL of 490,000 pounds (see Table 15, page 72, Stock Assessment report)
- Should an ACL be exceeded in any year, the ACL for the following year will be reduced by the overage
- The risk seems high because the goal is to maximize the catch but this risk is lower than it appears due to the conservative nature of the SA; the management agencies desire to balance the catch against the risk; in reality, the actual annual catch has been low risk, much lower than the 40% risk of overfishing would indicate

- The total pounds in the stock is estimated at more than 15,000,000 pounds; the ACL at 500,000 pounds is less than 3% of the stock biomass; current scientific thinking is that less than 20% take of the stock is sustainable

Board Wants to be Conservative

- The SA is a conservative assessment of the bottomfish stock status
- It takes into account the uncertainties of the commercial catch reports, the unreported commercial catch, the unreported non-commercial catch, and the estimates in the assessment model; it's conservative because of these uncertainties
- The SA includes tests (retrospective, sensitivity, and independent reviews) that evaluate the validity of its calculations
- The Council and NMFS set additional conservative reference points and procedures (ACL, overfishing limits, risk, accountability measures)
- The Board can have confidence that the SA is accurate and represents the best scientific information available on this fishery
- There would be no measurable difference between opening four instead of all BRFA
- The SA essentially treats the BRFA as if they don't exist and are already open

Future Stock Assessment Review Clarification

- NMFS normally schedules periodic updates of its assessments; for example, at 3 years the SA is updated (in 2021) with 3 years of new annual catch data (2018-2020) that will likely inform the future catch projections for the next 5 years (2018-2022) but not change the SA model
- At 5 years after a benchmark, the SA is reviewed to see if any new model information exists that would change the model; if there is no new information, the model remains unchanged
- Every year, the catch is monitored to ensure that the ACL is not exceeded; annual monitoring of the catch will not change the SA
- Opening up BRFA will not change the SA; the BRFA do not exist to the SA
- The Board opened four BRFA and wanted a report back after 3 years; it possibly assumes that there will be an update of the SA at 3 years to monitor the opened BRFA impacts on the stock status; the SA will not be monitoring the BRFA openings
- There is no causal relationship between BRFA and the catch; should the catch increase after the BRFA openings, it should not be assumed the BRFAs *caused* the increase; many factors can affect catch and the extent that BRFA may contribute to a change in catch is unknown
- In my opinion, the 3-year update will not be of much interest to the Board; it is unclear what the Board expects the SA will say in 3 years

- Since the annual catch will be monitored relative to the ACL, a report back to the Board after the end of each fishing year (October/November) would be more helpful than waiting three years for an SA update

Drazen report of BRFA effectiveness

- The Division of Aquatic Resources contracted Dr. Chris Kelley, University of Hawaii at Manoa, Oceanography Department to, among other things, identify bottom habitat types that may be important to bottomfish; Dr. Jeff Drazen continued that work on bottom habitat mapping after Dr. Kelley left the project.
- Drs. Kelley and Drazen are physical oceanographers, chosen primarily for their expertise in habitat mapping; the 2007 revised locations of the BRFA would be based on this mapping data; the bottom camera (botcam) technology was to verify the presence of bottomfish in areas that were identified as potentially important to bottomfish
- While the mapping project provided detailed information on habitat statewide, the botcam studies were limited to four of the twelve BRFA due to limited funding
- Dr. Drazen's studies provided inconclusive results in that some BRFA saw increases in some bottomfish densities while other BRFA did not; it is still unclear why these differences occurred

Hilo boat ramp congestion

- This is an access issue and not a resource issue
- It appears that the Hilo fishers are experiencing crowded conditions due to the Pohoiki boat ramp closure
- The concerns are that should the Lelewi BRFA be opened, there will be a rush to the Hilo ramp to fish the BRFA and add to an already crowded situation
- Opening all BRFA might reduce the rush to the Hilo ramp as the Hamakua BRFA K would be open and the Kona fishers would launch from the Mahukona ramp (on the West side) instead

What more information is needed?

- While perfect data are desirable, such data are rarely, if ever, available
- However, decisions need to be made using the best information available at the time
- The SA represents the best information at this point in time and it indicates the fishery is sustainable, even if the annual catch were much larger than it currently is
- If the Board wants to make a decision on opening the BRFA, all the information it needs is already available now
- Provided the ACL is not exceeded, how many BRFA are opened or closed is irrelevant to the SA

- The main question seems to be - Will the BRFA openings jeopardize the stock sustainability? Answer – No, provided the annual catch does not exceed the ACL, (regardless of how many BRFA are opened)
- What is the likelihood of exceeding the ACL if all BRFA are opened? Because the BRFA are not included in the SA, it doesn't matter if none or all of the BRFA are opened. The important trigger is the annual catch, not how many BRFA are opened.
- Factors limiting an extraordinary increase in annual catch; the last time the fishery had catch in excess of 500,000 pounds was over 20 years ago; the professional bottom fishers are gone from the fishery; the Northwestern Hawaiian islands bottomfish fishery is closed due to the Papahānaumokuākea Marine National Monument; the demand for bottomfish is seasonally limited and not expected to change in the foreseeable future; the number of participants in the fishery is declining over time; the fisher expertise to increase the catch is declining
- The fishery is currently operating under a “green” light; should the ACL be exceeded, the light might change to “yellow”; there would still be time to slow down

RECEIVED

By JetaimeA at 8:55 am, May 02, 2019

HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 4 FISHERIES

PART V PROTECTED MARINE FISHERIES RESOURCES

CHAPTER 94

BOTTOMFISH MANAGEMENT

- §13-94-1 Purpose
- §13-94-2 Definitions
- §13-94-3 Penalty
- §13-94-4 Severability
- §13-94-5 Bottomfish species
- §13-94-6 Restricted bottomfish fishing gears
- §13-94-7 Recreational bag limits
- §13-94-8 Bottomfish restricted fishing areas
- §13-94-9 Bottomfish fishing vessel identification number
- §13-94-10 Control date
- §13-94-11 Bottomfish fishing seasons, other restrictions
- §§13-94-12 to 13-94-13 (Reserved)
- §13-94-14 Exceptions

§13-94-1 Purpose. It is the intention of the department to establish these rules for the conservation and management of bottomfish resources in the main Hawaiian Islands. Scientific studies indicate that certain bottomfish species should be managed and certain areas strictly regulated to conserve existing stocks.

§13-94-2 Definitions. As used only in this chapter:

"Board" means the board of land and natural resources.

"Bottomfish" means those fish species listed in section 13-94-5 of this chapter.

"Bottomfish limited entry program" means a method of fishery management that limits or controls participation in a fishery, access to a fishery, or generally fishing, for a bottomfish species or a number of bottomfish species. Measures to limit or control participation, access, or fishing could include, but are not limited to, reducing or setting a maximum number of fishers, reducing or setting a maximum number of fishing vessels, restricting fishing gear types, restricting fishing areas, or restricting maximum amount of catch.

"Bottomfish longline" means a type of fishing gear or fishing method used to take bottomfish consisting of a weighted mainline, with attached shorter branchlines with fishing hook or hooks, that is either laid on the ocean bottom or suspended horizontally near the ocean bottom with floats.

"Clearly visible" means to be able to be seen in its entirety from a distance at least 100 feet away, free of any obstacle that may block the field of view from at least 45 degrees above, fore, and aft of the vessel.

"Commercial purposes" means the taking of marine life for profit or gain or as a means of livelihood where the marine life is taken in or outside of the State, or where the marine life is sold, offered for sale, bartered, landed, or transported for sale anywhere in the State.

"Kona crab net" means a type of fishing gear consisting of a metal frame over which is stretched netting material, and that is deployed on the bottom with the kona crab, as defined in section 13-95-1, being captured by entanglement on the netting material.

"Main Hawaiian islands commercial bottomfish fishery" means the fishing of bottomfish for commercial purpose in the waters of the main Hawaiian islands surrounding, between, and including the islands of Niihau and Kaula to the northwest and the island of Hawaii to the southeast.

"Net" means any of various fishing devices of mesh material made into various shapes, such as but not limited to, a bag, sack, pouch, or curtain, used to entangle, surround, or concentrate aquatic life.

"Non-commercial purposes" means any purpose other than commercial purposes.

"Scoop net" means a type of fishing net consisting of a bag of mesh material kept open with a rigid frame and manipulated by a rigid handle that is designed to be used by a single person unaided by any mechanical device.

"Take" means to fish for, catch, or harvest, or to attempt to fish for, catch, or harvest, aquatic life. The use of any gear, equipment, tool, or any means to fish for, catch, capture, or harvest, or to attempt to fish for, catch, capture, or harvest, aquatic life by any person who is in the water, or in a vessel on the water, or on or about the shore where aquatic life can be fished for, caught, or harvested, shall be construed as fishing.

"Trap" means any of various fishing devices of mesh, perforated, or solid material made into the shape of a box, container, or enclosure, with one or more openings that allow aquatic life to enter into the interior of the box, container, or enclosure, but restrict exit out, thereby capturing the aquatic life within.

"Trawl" means a type of fishing net, usually in the form of an elongated bag, with the mouth kept open by various means that captures aquatic life while being towed or dragged through the water by a vessel.
[Eff 6/1/1998; am 10/18/2010] (Auth: HRS §187A-5)
(Imp: HRS §187A-5)

§13-94-3 Penalty. A person violating this chapter, or the terms and conditions of any license or permit issued as provided by this chapter, shall be punished as provided by law. [Eff 6/1/1998] (Auth: HRS §§187A-5, 187A-13, 188-53, 188-70, 189-4) (Imp: HRS §§187A-5, 187A-13, 188-53, 188-70, 189-4)

§13-94-4 Severability. If any provision of this chapter, or the application thereof to any person or circumstance is held invalid, the invalidity does not

affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable. [Eff 6/1/1998] (Auth: HRS §§187A-5, 1-23) (Imp: HRS §§187A-5, 1-23)

§13-94-5 Bottomfish species. For the purposes of this chapter, the following species are bottomfish:

- (1) `Ula`ula koa`e, ruby or longtail snapper, or onaga (*Etelis coruscans*);
- (2) `Ula`ula or ehu (*Etelis carbunculus*);
- (3) Kalekale (*Pristipomoides sieboldii*);
- (4) `Opakapaka (*Pristipomoides filamentosus*);
- (5) `Ukikiki or gindai (*Pristipomoides zonatus*);
- (6) Hapu`u, hapu`upu`u, or Hawaiian grouper (*Epinephelus quernus*); and
- (7) Lehi or rusty jobfish (*Aphareus rutilans*).
[Eff: 6/1/1998; am 10/18/2010] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-94-6 Restricted bottomfish fishing gears.

(a) Certain fishing gears shall be prohibited to restrict their use in the taking of bottomfish. Except as may be otherwise authorized by law, it is unlawful for any person to take bottomfish with any trap, trawl, bottomfish longline or net; provided that scoop nets may be used to bring on board a vessel any bottomfish that has already been caught by authorized fishing gear.

(b) Except as may be otherwise authorized by law, it is unlawful for any person, while on board a vessel, to possess both bottomfish and any trap, trawl, bottomfish longline, or net other than scoop net or Kona crab net. [Eff 6/1/1998; 10/18/2010] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-94-7 Non-commercial bag limits. (a) A limit on the number of bottomfish that may be taken for non-commercial purposes shall be established to conserve bottomfish resources.

(b) Unless otherwise authorized by law, it is unlawful for any person, to take or possess more than a combined total of five bottomfish per day. [Eff

6/1/1998; am 10/18/2010] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-94-8 Bottomfish restricted fishing areas.

(a) The department will restrict fishing in certain areas to conserve the spawning populations of bottomfish.

(b) To aid enforcement of this section, the department intends to restrict all fishing for and possession of bottomfish within the restricted fishing areas. It is unlawful for any person to take or possess bottomfish while in a vessel that is drifting or anchoring within any bottomfish restricted fishing area, except in times of emergency or as may be otherwise authorized by law.

(c) The department will gather and consider the following information when selecting the bottomfish restricted fishing areas:

- (1) Identify the fishing areas where spawning onaga and ehu are caught;
- (2) Restrict fishing in about twenty percent of the known fishing areas where spawning onaga and ehu are caught;
- (3) Distribute the bottomfish restricted fishing areas in the most effective manner to consider the potential benefits and limit negative impacts on bottomfish fishing opportunities;
- (4) Suggestions from bottomfish fishers statewide; and
- (5) Any other relevant information.

(d) Due to the critical need of some bottomfish species for conservation measures, the department may need to respond quickly to establish or modify bottomfish restricted fishing areas. The bottomfish restricted fishing areas shall be established or amended by formal board action at a publicly noticed meeting. The bottomfish restricted fishing areas are attached at the end of this chapter as Exhibit A, entitled the "Bottomfish Restricted Fishing Areas (BRFA) 12/8/06," or as may be amended by subsequent board action and a copy of the amended Exhibit A shall be filed with the Office of the Lieutenant Governor. [Eff 6/1/1998; am 10/18/2010] (Auth: HRS §§187A-5,

188-53) (Imp: HRS §§187A-5, 188-53)

§13-94-9 Bottomfish fishing vessel identification number. (a) The department may register, and assign a bottomfish fishing vessel identification number to, any vessel used to fish for bottomfish. The purpose of the number is to enable identification of vessels used to fish for bottomfish from a distance while on the open ocean. The bottomfish fishing vessel identification number shall be valid for a one year period from the date registered, and must be annually renewed. It is unlawful for the vessel owner to take bottomfish from a vessel with a vessel identification number that does not have current registration.

(b) It is unlawful for any person to take or possess bottomfish while on a vessel on the water without a bottomfish fishing vessel identification number assigned or approved by the department.

(c) The bottomfish fishing vessel identification number shall consist of the following vessel identification, in front of the letters "BF" added as a suffix:

- (1) A valid Division of Boating and Ocean Recreation vessel registration number issued and displayed pursuant to chapter 13-241;
- (2) A valid National Marine Fisheries Service permit number issued and displayed under the provisions set forth in Fishery Management Plans of the Western Pacific Regional Fishery Management Council pursuant to CFR Part 660 Subparts B through E;
- (3) A valid United States Coast Guard vessel documentation number issued pursuant to 46 CFR 67; or
- (4) Any other such identification approved by the department.

(d) If the vessel identification, listed in subsection (c) above is not required to be displayed, then the vessel identification and the capital letters "BF", shall be displayed and clearly visible on both sides of the vessel, either near the top of the gunwales or on the superstructure. Unless other specified, all characters in the bottomfish vessel

identification number shall be no less than six (6) inches high and three (3) inches wide in black or a contrasting solid color to the background. [Eff 6/1/1998; am 10/18/2010] (Auth: §187A-5) (Imp: §187A-5)

§13-94-10 Control date. (a) There is established a control date to give prior notice of intent to possibly limit participation in the Main Hawaiian Islands commercial bottomfish fishery. Persons who begin fishing in the Main Hawaiian Islands commercial bottomfish fishery on or after the control date will not be assured continued participation if the department establishes a bottomfish limited entry program in the future. The control date will be the original effective date of this chapter.

(b) Nothing in this chapter shall commit the department to establish a bottomfish limited entry program in the future nor does it prevent the department from establishing another control date. [Eff: 6/1/1998] (Auth: HRS §187A-5) (Imp: HRS §187A-5)

§13-94-11 Bottomfish fishing seasons, other restrictions. (a) There is established an annual bottomfish fishing season for the taking of bottomfish in the main Hawaiian islands to prevent overfishing in this fishery.

(b) The board shall approve a closure of the fishing season for bottomfish in the state marine waters when closure is needed in order to match a federal closed season, or is dictated when a catch limit is reached either by a total fishing quota or by individual quotas, as determined and announced by the National Marine Fisheries Service.

(c) While a bottomfish fishing season is closed, it is unlawful for any person to fish for, possess, or sell bottomfish, or for any dealer to sell bottomfish, except as provided in section 13-94-14.

(d) When a bottomfish fishing season is open, any person may take, possess, and sell bottomfish, subject to the provisions of this chapter, and as may be otherwise provided by law. [Eff 10/18/2010] Auth: HRS §§187A-5, 187A-5.5, 187A-6, 189-6) (Imp: HRS

§§187A-5, 187A-5.5, 187A-6, 189-6)

§13-94-14 Exceptions. (a) Notwithstanding the provisions of subsection 13-94-11(d), while a bottomfish closed fishing season is in effect, a person with a valid federal bottomfish fishing permit for the Northwestern Hawaiian Islands federal waters, and a valid commercial marine license, may take and possess bottomfish from the above-described area.

(b) Notwithstanding the provisions of subsection 13-94-11(d), while a bottomfish closed fishing season is in effect, a person may sell bottomfish, with:

- (1) A valid federal bottomfish fishing permit for the Northwestern Hawaiian Islands federal waters, and a valid commercial marine license, provided that the bottomfish were caught from the waters of the above-described area;
- (2) A valid special marine product license under section 13-74-42 and proper receipts as required under section 189-11, HRS, provided that the bottomfish were caught from the waters of the above-described areas or lawfully imported into the State; or
- (3) A valid aquaculture license under section 13-74-43 or valid license to sell reared species under section 13-74-44.

(c) Persons issued a special activity permit pursuant to section 187A-6, HRS, or other exemptions provided by law, may be exempted from the provisions of this chapter. [Eff 10/18/2010] (Auth: HRS §§187A-6, 189-6) (Imp: HRS §§187A-6, 189-6)

Exhibit A						
Bottomfish Restricted Fishing Areas (BRFA) 12/8/06						
Coordinates (endpoints)						
BRFA	Northwest (1)			Northeast (2)		
A	21° 44'	N Lat, 160° 39'	W Long	21° 44'	N Lat, 160° 30'	W Long
B	21° 50' 25"	N Lat, 160° 07' 30"	W Long	21° 51' 22"	N Lat, 160° 04' 30"	W Long
C	21° 52' 30"	N Lat, 159° 32'	W Long	21° 52' 30"	N Lat, 159° 23'	W Long
D	21° 39'	N Lat, 158° 24'	W Long	21° 39'	N Lat, 158° 15'	W Long
E	21° 25'	N Lat, 157° 41'	W Long	21° 25'	N Lat, 157° 32'	W Long
F	21° 02'	N Lat, 157° 34'	W Long	21° 02'	N Lat, 157° 22'	W Long
G	21° 14'	N Lat, 156° 58'	W Long	21° 14'	N Lat, 156° 52'	W Long
H	21° 07'	N Lat, 156° 42'	W Long	21° 07'	N Lat, 156° 38'	W Long
J	20° 55'	N Lat, 156° 08'	W Long	20° 55'	N Lat, 155° 59'	W Long
K	20° 21'	N Lat, 155° 53'	W Long	20° 21'	N Lat, 155° 25'	W Long
L	19° 44'	N Lat, 154° 59' 50"	W Long	19° 44'	N Lat, 154° 54'	W Long
M	18° 54' 13"	N Lat, 155° 41'	W Long	18° 57'	N Lat, 155° 37'	W Long
BRFA	Southeast (3)			Southwest (4)		
A	21° 41'	N Lat, 160° 30'	W Long	21° 41'	N Lat, 160° 39'	W Long
B	21° 46' 30"	N Lat, 160° 04' 30"	W Long	21° 46' 30"	N Lat, 160° 07' 30"	W Long
C	21° 50' 30"	N Lat, 159° 23'	W Long	21° 50' 30"	N Lat, 159° 32'	W Long
D	21° 36' 18"	N Lat, 158° 15'	W Long	21° 36'	N Lat, 158° 17' 10"	W Long
E	21° 17'	N Lat, 157° 32'	W Long	21° 17'	N Lat, 157° 37' 47"	W Long
F	20° 55'	N Lat, 157° 22'	W Long	20° 55'	N Lat, 157° 34'	W Long
G	21° 10'	N Lat, 156° 52'	W Long	21° 13' 08"	N Lat, 156° 58'	W Long
H	21° 03'	N Lat, 156° 38'	W Long	21° 03'	N Lat, 156° 42'	W Long
J	20° 47'	N Lat, 155° 59'	W Long	20° 52' 03"	N Lat, 156° 08'	W Long
K	20° 05' 30"	N Lat, 155° 25'	W Long	20° 16' 03"	N Lat, 155° 53'	W Long
L	19° 35'	N Lat, 154° 54'	W Long	19° 35'	N Lat, 154° 55' 02"	W Long
M	18° 51'	N Lat, 155° 37'	W Long	18° 51'	N Lat, 155° 41'	W Long
Additional (5)						
D	21° 36'	N Lat, 158° 24'	W Long			
E	21° 23' 38"	N Lat, 157° 41'	W Long			

Exhibit A: Bottomfish Restricted Fishing Areas (BRFAs) 4-8-2010

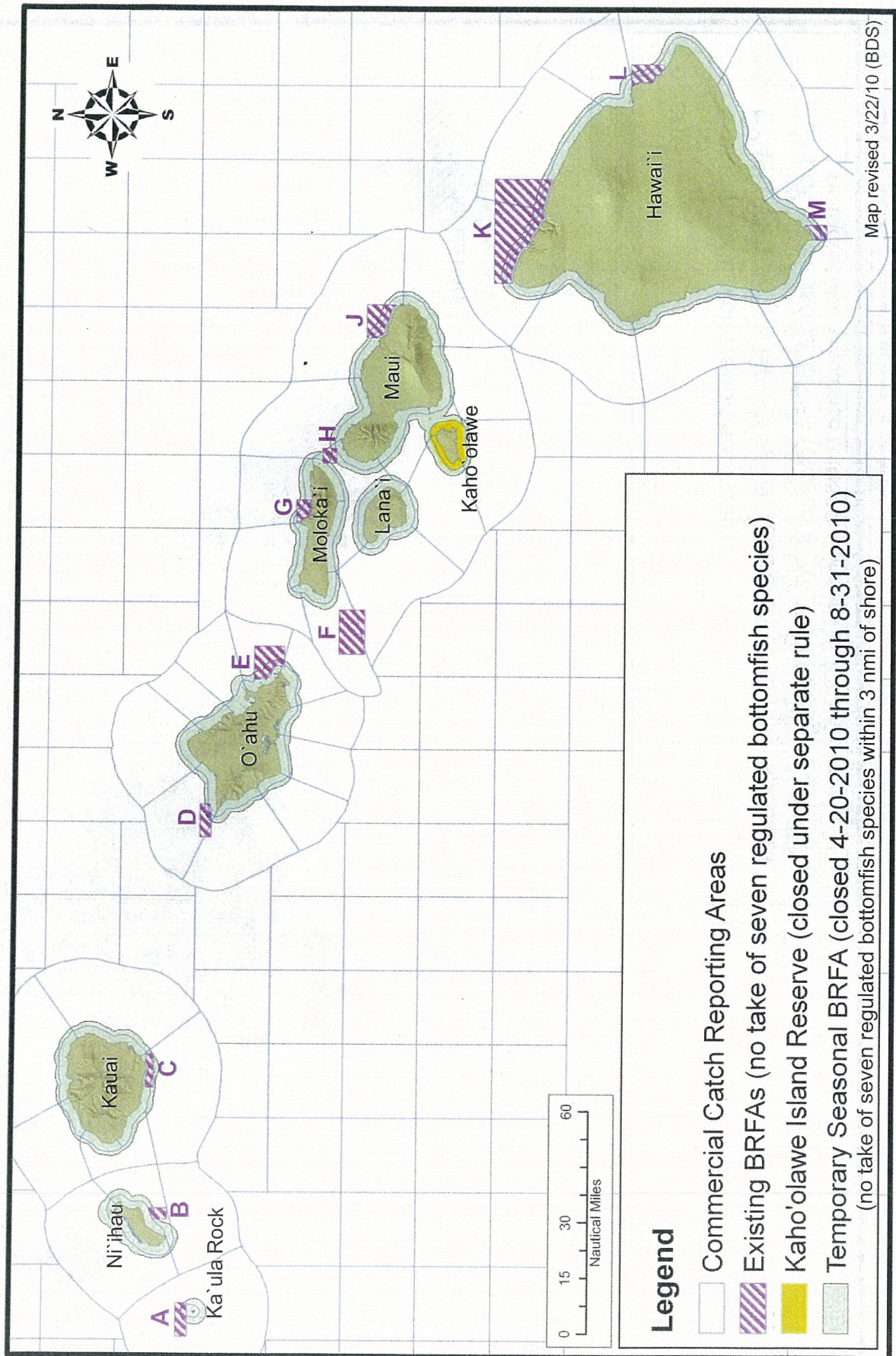
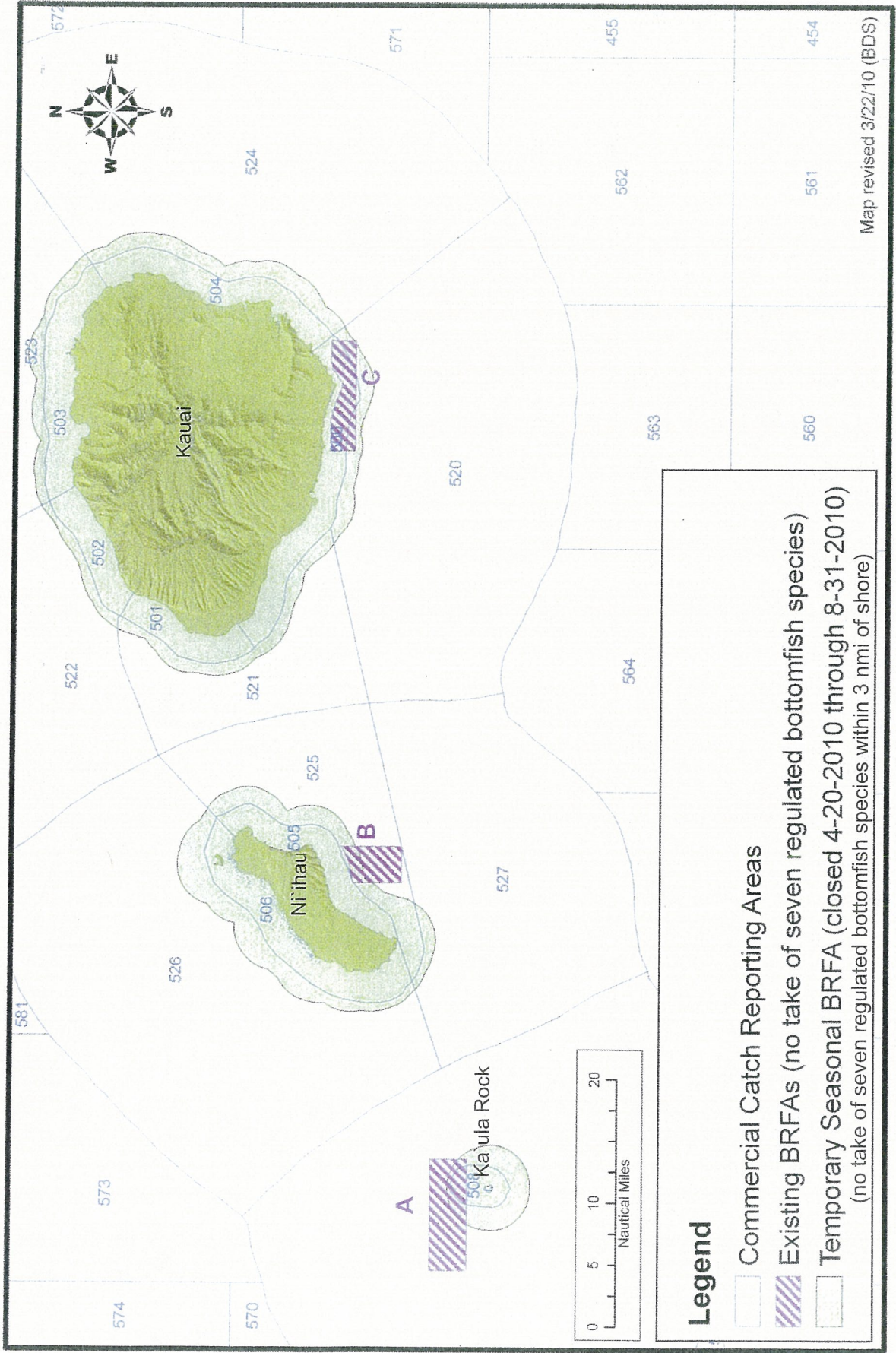


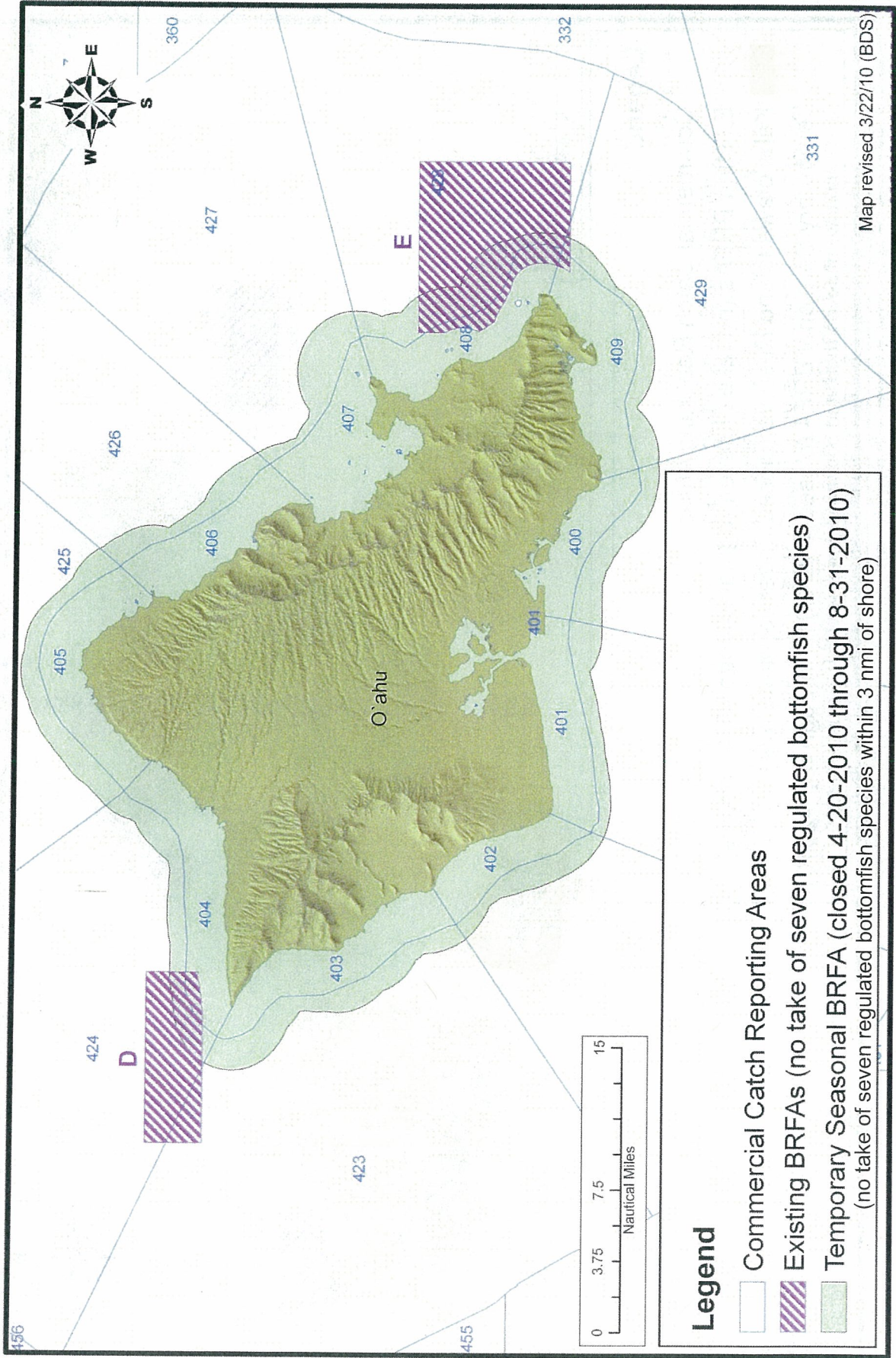
Exhibit A2: Kauai County BRFAs 4-8-2010



Legend

- Commercial Catch Reporting Areas
- Existing BRFAs (no take of seven regulated bottomfish species)
- Temporary Seasonal BRFA (closed 4-20-2010 through 8-31-2010)
(no take of seven regulated bottomfish species within 3 nmi of shore)

Exhibit A3: Honolulu City & County BRFAs 4-8-2010



Legend

- Commercial Catch Reporting Areas
- Existing BRFAs (no take of seven regulated bottomfish species)
- Temporary Seasonal BRFA (closed 4-20-2010 through 8-31-2010)
(no take of seven regulated bottomfish species within 3 nmi of shore)

Map revised 3/22/10 (BDS)

Exhibit A4: Maui County BRFAs 4-8-2010

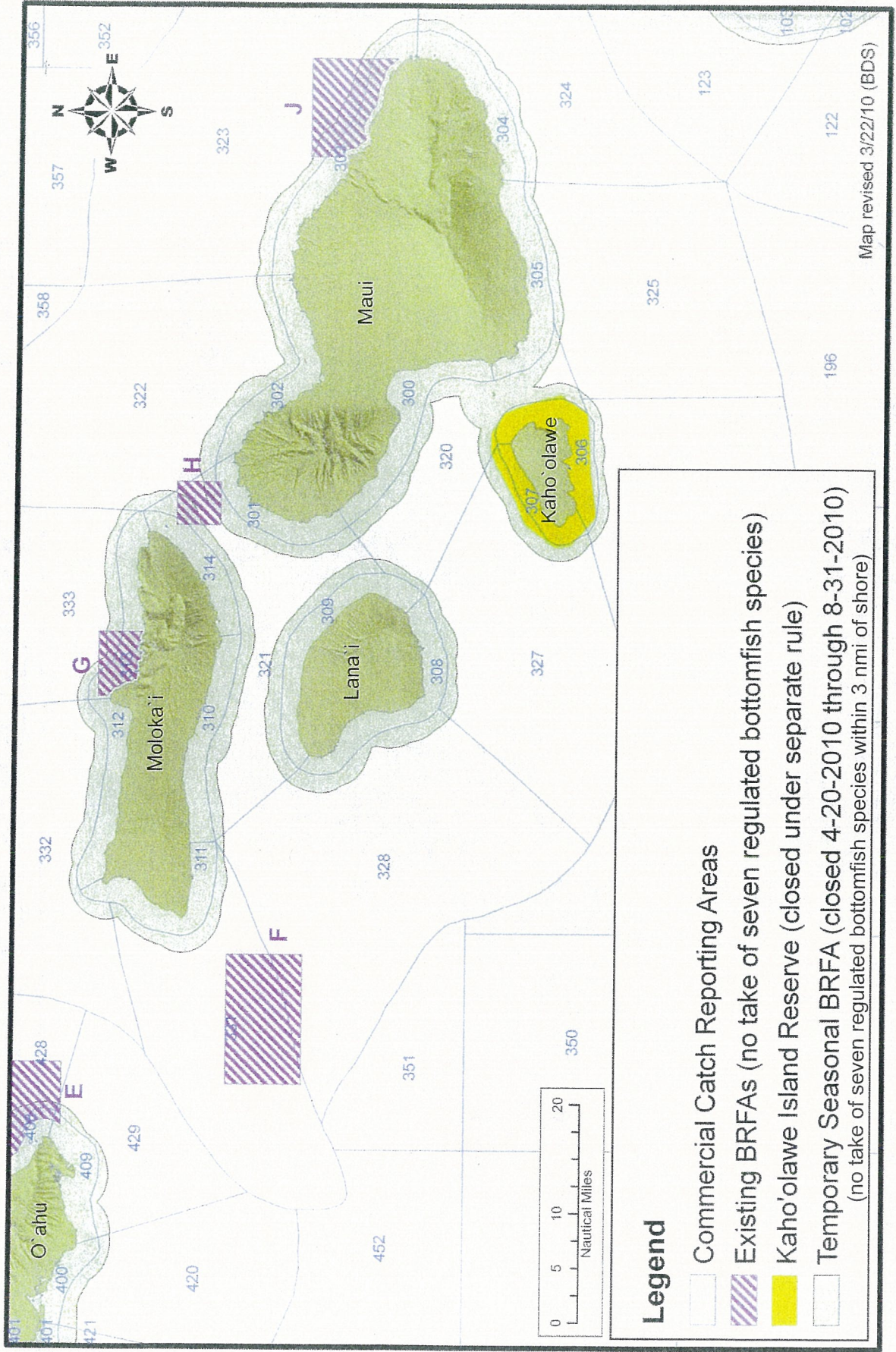
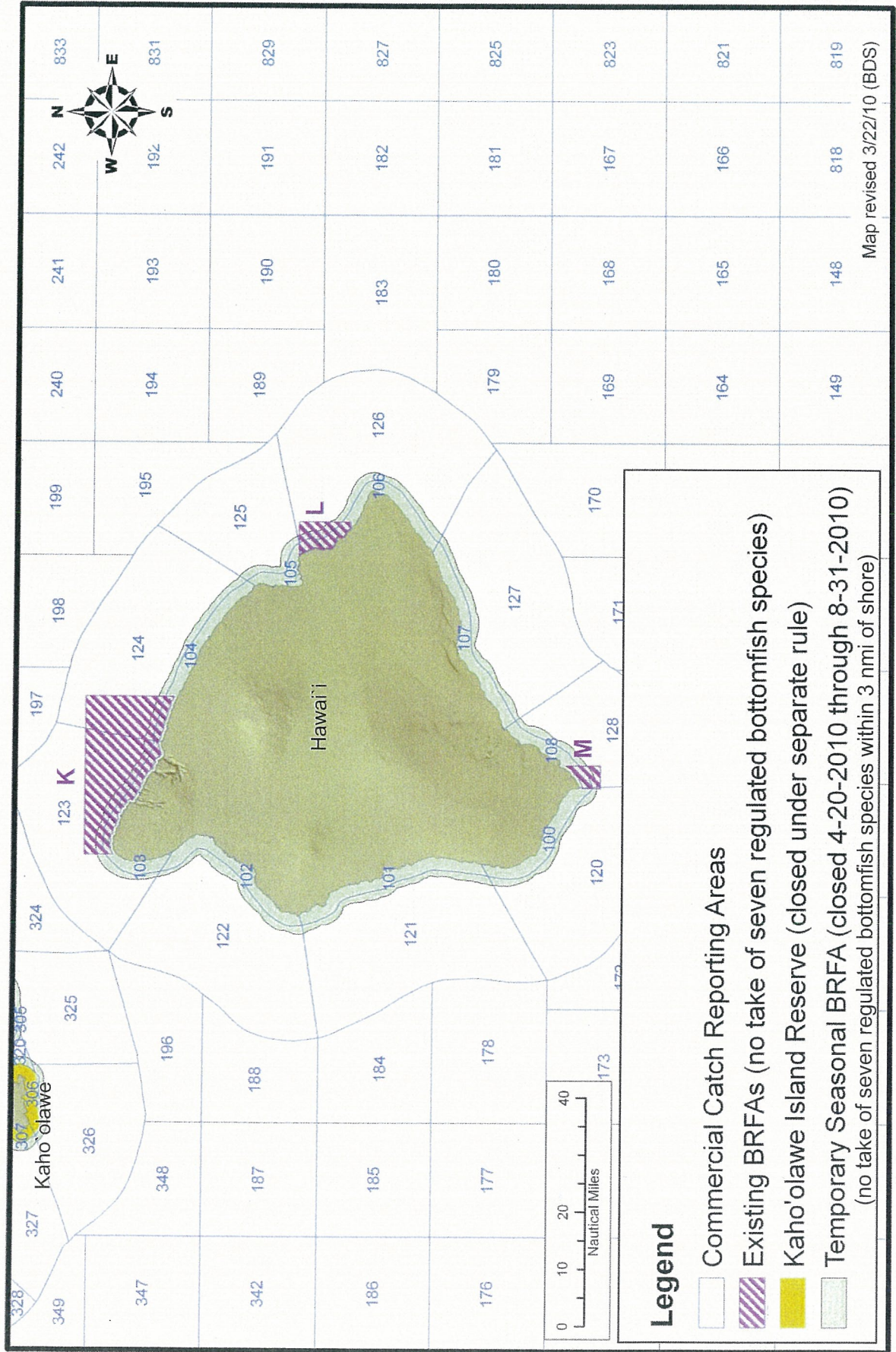


Exhibit A5: Hawai'i County BRFAs 4-8-2010



VII. 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 (HRS), as follows:

- 1. Proposed Appropriations Request for the 2020 Legislative Session**
- 2. Launch of Board's New Website**
- 3. Meetings with Board Members and State Department Directors**