

DEPARTMENT OF LAND AND NATURAL RESOURCES

Adoption of Chapter 13-76  
Hawaii Administrative Rules

August 10, 2007

SUMMARY

Chapter 13-76, Hawaii Administrative Rules,  
entitled "Non-Indigenous Aquatic Species", is adopted.

HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 4

FISHERIES

PART IV FISHERIES RESOURCE MANAGEMENT

CHAPTER 76

NON-INDIGENOUS AQUATIC SPECIES

Subchapter 1 General Provisions

§13-76-1	Purpose
§13-76-2	Definitions
§13-76-3	General permit conditions
§13-76-4	Penalties
§13-76-5	Severability
§§13-76-6 to 13-76-10	(Reserved)

Subchapter 2 Ballast Water Management

§13-76-11	Purpose
§13-76-12	Definitions
§13-76-13	Prohibited activities
§13-76-14	Applicability
§13-76-15	Permits
§13-76-16	Ballast water management plan requirements
§13-76-17	Ballast water exchange requirements
§13-76-18	Ballast water discharge requirements
§13-76-19	Ballast water reporting requirements
§13-76-20	Evaluation and compliance

SUBCHAPTER 1

GENERAL PROVISIONS

§13-76-1 Purpose. This chapter governs rules aimed at preventing, to the extent practical, the introduction and spread of non-indigenous aquatic species into State waters. Such non-indigenous aquatic species are potentially harmful to the environment and economy of Hawaii because they may replace or destroy native species and alter their habitats. [Eff **OCT 12 2007** ] (Auth: HRS §187A-32) (Imp: HRS §187A-32)

§13-76-2 Definitions. As used in this chapter unless otherwise provided:

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

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

"Master" means the person authorized by the vessel operator to be the captain of the vessel.

"Non-indigenous aquatic species" means any marine, brackish water, or freshwater species or other viable biological material, including, but not limited to, eggs, spores, or seeds, that enters or exists in an ecosystem where it was not known to have existed before, is outside its natural or historic range, or may have come to Hawaii by human introduction.

"Person" means any individual, corporation, partnership, trust, association, or other private entity, or any officer, employee, agent, department, or instrumentality of the federal government, of any state or political subdivision thereof, or of any foreign government.

"State" means the State of Hawaii.

"State marine waters" means all waters of the State, including the water column and the water surface, extending from the upper reaches of the wash of the waves on shore seaward to the limit of the

State's police power and management authority, including the United States territorial sea, notwithstanding any law to the contrary.

"USCG" means the United States Coast Guard.

"Vessel operator" means a company that owns, operates or has chartered a vessel. [Eff OCT 12 2007 ]  
(Auth: HRS §187A-32) (Imp: HRS §187A-32)

§13-76-3 General permit conditions. (a) The general permit provisions of this section shall be in addition to the more specific provisions of section 13-76-15, and as otherwise provided in this chapter.

(b) The department may require persons to submit an application for a permit issued pursuant to this chapter.

(c) The submission of an application to the department shall not obligate the department to issue a permit or constitute a right or interest on the part of the applicant to have a permit issued.

(d) A permit shall have a limited duration subject to the provisions of this chapter, but such duration shall not exceed one year from the date of issuance. The issuance of a permit shall not constitute a vested right or property interest to receive future or additional permits.

(e) Permits are non-transferable, so that whenever a permittee parts with possession or transfers, in whole or in part, the title to or interest in the vessel identified in the permit to another person by any arrangement, the permit shall immediately expire. The permittee must notify the department prior to and immediately after such transfer has occurred.

(f) The department may impose terms and conditions it deems necessary to carry out the purposes of this chapter, including requiring a report or reports of any activity conducted that may potentially introduce a non-indigenous species to state marine waters by the applicant or permit holder within the state.

(g) It is unlawful for any person to violate any provision of any permit issued pursuant to this chapter. Failure to comply with any provision of this chapter, or any provision of any permit issued hereunder, shall be cause for termination of said permit.

(h) If the department determines that the protection and conservation of aquatic life in the area requires the cessation of all or certain activities allowed under the permits, upon notification to the permit holders of this determination by any reasonable means, the permits shall automatically expire on a date provided in the notification.

(i) There is no right to a renewal or re-issuance of a permit. When reviewing an application for a permit, the department shall consider whether the applicant has previously violated or not complied with any term or condition of a permit and may deny the application on this basis.

(j) The permittee shall have the permit on board the vessel and be able to show the permit upon the demand of any employee, agent, or officer authorized to enforce this chapter. Failure or refusal to show the permit shall be a violation of this chapter and sufficient cause to immediately but temporarily suspend the permit until such time that the board may take action to revoke the permit.

(k) The board may revoke any permit for any violation of the terms and conditions of the permit and a person whose permit was revoked shall not be eligible to apply for another permit until one year from the date of revocation. [Eff OCT 12 2007 ]  
(Auth: HRS §§187A-5, 187A-32) (Imp: HRS §§187A-5, 187A-32)

§13-76-4 Penalties. A person violating the provisions of this chapter shall be guilty of a petty misdemeanor, as provided under section 187A-13, HRS, subject to administrative penalties as provided under

section 187A-12.5, HRS, and punished as provided by law. [Eff OCT 12 2007 ] (Auth: HRS §§187A-12.5, 187A-13, 187A-32) (Imp: HRS §§187A-12.5, 187A-13)

§13-76-5 Severability. The provisions of these rules are declared to be severable, and if any portion or the application thereof to any person or property is held invalid for any reason, the validity or application of the remainder of these rules to other persons or property shall not be affected. [Eff OCT 12 2007 ] (Auth: HRS §§187A-12.5, 187A-13, 187A-32) (Imp: HRS §§187A-12.5, 187A-13)

## SUBCHAPTER 2

### BALLAST WATER MANAGEMENT

§13-76-11 Purpose. (a) This subchapter addresses the management and disposition of vessel ballast water as a medium or means for the introduction of aquatic invasive species into state marine waters, such as but not limited to any ocean, estuary, bay, harbor, beach, or coastal area. These rules are intended to act in coordination with federal regulations on ballast water management by 1) establishing state laws that will correspond to and complement federal regulations on ballast water to ensure consistency, 2) providing best practices guidelines to improve vessel ballast water management prior to entering state marine waters, 3) adopting a ballast water management program, including a ballast water exchange reporting system, and 4) monitoring compliance with program requirements.

(b) This subchapter identifies: 1) prohibited activities; 2) vessels exempted from ballast water management plan requirements, ballast water reporting requirements, ballast water exchange requirements, and ballast water discharge requirements; 3) which permits are available to qualifying vessels; 4) requirements

that incoming vessels are subject to regarding ballast water; and 5) State verification of compliance with this subchapter. [Eff **OCT 12 2007** ] (Auth: HRS §§187A-5, 187A-32) (Imp: HRS §§187A-5, 187A-32)

§13-76-12 Definitions. As used in this subchapter, unless otherwise provided:

"Aquatic invasive species" means a non-indigenous aquatic species, which, if introduced into an ecosystem, may cause harm to Hawaii's economy, environment, human health, or public safety and welfare.

"Ballast operations" means the transfer, uptake, and/or discharge of ballast water.

"Ballast tank" means any tank, hold, or part of a vessel used to carry ballast water, whether or not the tank or hold was designed for that purpose.

"Ballast water" means any water, associated sediments, and suspended matter taken on board a vessel to manipulate, control, or maintain trim, draft, stability, or stresses of the vessel, without regard to the manner in which it is carried.

"BWM" means ballast water management as required by federal law 33 CFR Part 151 Subpart D, Mandatory Ballast Water Management Program for U.S. Waters, dated July 28, 2004.

"Coastwise trade" includes the transportation of passengers or merchandise between points embraced within the coastwise laws of the United States.

"Discharge" means to drain or remove part or all of the ballast water off the vessel.

"EEZ" means the United States exclusive economic zone established by Presidential Proclamation No. 5030, dated March 10, 1983, which extends from the baseline of the territorial sea of the United States seaward 200 nautical miles, substantially as defined in federal law 33 CFR 151.2025, dated July 1, 2005.

"Empty/refill exchange" means to pump the ballast tank or tanks out, until empty or as close to empty as the master determines is safe to do so, then refilling

the tank with mid-ocean waters.

"Exchange" means to replace water in ballast tanks by using flow through exchange, empty/refill exchange, or other exchange methodology recommended or required by the United States Coast Guard.

"Flow through exchange" means to flush out ballast tanks by pumping in mid-ocean water at the bottom of the tank and continuously overflowing the tank from the top until three full volumes of the ballast water tank capacity have been changed.

"MHI EEZ" means the main Hawaiian islands exclusive economic zone identified as those waters of the EEZ surrounding the main Hawaiian islands east of 161° West longitude.

"Mid-ocean waters" means waters at least 200 nautical miles from any coast.

"Permanent ballast" means a weight or heavy material added to a vessel to enhance the vessel's stability that is always left on the vessel and not normally removed either between or during voyages.

"Transfer" means the on-board movement of ballast water from one part of the vessel to another.

"Qualifying vessels" means all vessels, United States or foreign flagged, carrying ballast water into state marine waters after operating outside the EEZ.

"Sediments" means any material that settles out of ballast water within a vessel.

"Uptake" means to fill part or all of the vessel's ballast tanks with water from outside the vessel.

"Vessel in innocent passage" means a ship engaged in continuous and expeditious surface passage through the territorial sea and archipelagic waters of foreign coastal states in a manner not prejudicial to its peace, good order, or security. Passage includes stopping and anchoring, but only if incidental to ordinary navigation or necessary by rough weather or distress, or for the purpose of rendering assistance to persons, ships, or aircraft in danger or distress.

"Voyage" means any transit by a vessel that originates from a port or place outside of the EEZ



surrounding the State of Hawaii and destined for a port or place in Hawaii. [Eff **OCT 12 2007** ] (Auth: HRS §187A-32) (Imp: HRS §187A-32)

§13-76-13 Prohibited activities. (a) Unless exempted under the provisions of section 13-76-14, by permit issued pursuant to section 13-76-15, or as may be otherwise provided by law, it is unlawful for the master of a qualifying vessel:

- (1) To fail to have or fail to follow a ballast water management plan, as required under section 13-76-16;
- (2) To exchange ballast water contrary to the provisions of section 13-76-17;
- (3) To discharge, or allow the discharge of, ballast water in state marine waters in violation of section 13-76-18;
- (4) To fail to submit a ballast water report form, as required in section 13-76-19; and
- (5) To violate any provision in this subchapter.

(b) It is unlawful for the master to prevent, hinder, or otherwise interfere with the department's or USCG's evaluation of the vessel's compliance with the provisions of this subchapter. The evaluation may be conducted in accordance with section 13-76-20 and as may be otherwise provided in this subchapter. [Eff **OCT 12 2007** ] (Auth: HRS §§187A-5, 187A-32) (Imp: HRS §§187A-5, 187A-32)

§13-76-14 Applicability. (a) The ballast water management plan requirements of section 13-76-16 shall apply to qualifying vessels.

(b) The ballast water reporting requirements of section 13-76-19 shall apply to qualifying vessels, except for the following:

- (1) Crude oil tankers engaged in coastwise trade. This exemption applies only to vessels carrying unrefined crude oil product from one U.S. place to another, including

Hawaii;

- (2) Any vessel of the United States Department of Defense or USCG, subject to the requirements of Section 1103 of the National Invasive Species Act of 1996, or any vessel of the armed forces, as defined in Section 1322(a)(14) of Title 33 of the United States Code that is subject to the "Uniform National Discharge Standards for Vessels of the Armed Forces" pursuant to Section 1322(n) of Title 33 of the United States Code;
- (3) Any vessel that operates exclusively within the MHI EEZ;
- (4) Any vessel that operates outside of the EEZ, but conducts all ballast operations exclusively in the MHI EEZ, regardless of the number of voyages the vessel makes; and
- (5) Any vessel in innocent passage or having entered state marine waters due to circumstances beyond its control; provided that the vessel does not discharge ballast water into state marine waters, or into waters that may impact state marine waters, unless the vessel meets the requirements of section 13-76-18;

(c) The ballast water exchange requirements of section 13-76-17 shall apply to qualifying vessels that conduct ballast water exchanges; except for vessels exempted under subsection 13-76-14(b)

(1), (2), (3), (5) and the following:

- (1) Any vessel equipped with a functioning treatment system designed to kill all living aquatic organisms in the ballast water; provided that USCG or other approving authority has determined that the system is designed to be at least as effective as ballast water exchange at reducing the risk of transfer of aquatic invasive species in ballast water and the treatment system is properly functioning as designed; and

(2) Any vessel, to the extent that it is equipped with permanent, freshwater, or treated ballast, as specified in section 13-76-14 (c) (1) above or will not discharge ballast water in state marine waters.

(d) The ballast water discharge requirements of section 13-76-18 shall apply to qualifying vessels that either will discharge or have discharged ballast water into state marine waters; except for vessels exempted under subsections 13-76-14(b) (2) and (3), and 13-76-14(c) (1) and (2).

(e) The master, or vessel operator when there is no master, shall be responsible for complying with the provisions of this subchapter, unless otherwise provided. Nothing in this subchapter shall relieve the master of the responsibility to ensure the safety and stability of the vessel or the safety of the crew and passengers, or any other responsibility. [Eff

**OCT 12 2007** ] (Auth: HRS §187A-32) (Imp: HRS §187A-32)

§13-76-15 Permits. (a) The department may issue permits to vessel operators, exempting qualifying vessels from the provisions of this subchapter, subject to the provisions of section 13-76-3 and the following conditions:

- (1) Receipt of a completed application, on a form provided by the department, and any other information the department may require; and
- (2) Approval by the department, after an assessment of the appropriateness of the application based on:
  - (A) Safety of the crew or its passengers, USCG approved ballast water treatment system, protection of property, vessel integrity or other factors the department considers relevant to the intent and purpose of this subchapter; and

(B) All applicable state and federal law.

(b) The permit exemptions are limited to the provisions of this subchapter and do not exempt the master from other state laws or any federal laws.

[Eff **OCT 12 2007** ] (Auth: HRS §§187A-5, 187A-32)  
(Imp: HRS §§187A-5, 187A-32)

§13-76-16 Ballast water management plan requirements. Vessels in compliance with BWM requirements for a ballast water management plan, shall be deemed to also be in compliance with this section. It is unlawful for any master to violate BWM requirements for a ballast water management plan.  
[Eff **OCT 12 2007** ] (Auth: HRS §187A-32) (Imp: HRS §187A-32)

§13-76-17 Ballast water exchange requirements.

(a) Qualifying vessels that require ballast water exchanges shall conduct such exchanges in mid-ocean waters. Unless exempted by section 13-76-14(c), or as may be otherwise provided by law, it is unlawful for a master to conduct a ballast water exchange within state marine waters while holding ballast water obtained from an area less than 200 nautical miles from any coast.

(b) All such exchanges shall be by flow through exchange, empty/refill exchange, or other exchange methodology recommended or required by the USCG or other approving authority.

(c) The master is responsible for the safety of the vessel, its crew, and its passengers and is not required to conduct a ballast water management practice, including exchange, if the master determines that the practice would threaten the safety of the vessel, its crew, or its passengers because of adverse weather, vessel design limitations, equipment failure, or any other extraordinary conditions. Should the master make such a determination, the master shall

take all feasible measures, based on the best available technologies economically achievable, that do not compromise the safety of the vessel, its crew, and its passengers, to minimize the discharge of ballast water containing non-indigenous aquatic species into state marine waters or waters that may impact state marine waters. Such discharge shall be subject to the provisions of section 13-76-18.

(d) Nothing in this subchapter relieves the master of the responsibility for ensuring the safety and stability of the vessel or the safety of the crew and passengers, or any other responsibility. [Eff  
OCT 12 2007 ] (Auth: HRS §187A-32) (Imp: HRS §187A-32)

§13-76-18 Ballast water discharge requirements.

(a) To the extent practical, the master of any qualifying vessel that has not conducted a mid-ocean waters ballast water exchange, and is subject to the provisions of subsection 13-76-14(d), shall not discharge ballast water into state marine waters.

(b) The master shall report to the department, pursuant to section 13-76-19, when a mid-ocean waters ballast water exchange was not done and a ballast water discharge into state marine waters is necessary.

(c) Unless exempted by subsections 13-76-14(c) or 13-76-14(e) of this section, prior to any ballast water discharge into the EEZ or state marine waters, the master shall obtain approval from the department to discharge ballast water. Upon approval, the master shall then implement all feasible measures to minimize the discharge of ballast water.

(d) This subchapter does not authorize the discharge of oil, noxious liquid substances, or any other pollutant in a manner prohibited by state, federal or international laws or regulations. Ballast water carried in any tank containing a residue of oil, noxious liquid substances, or any other pollutant shall be discharged in accordance with the applicable requirements.

(e) The master shall be exempted from the provisions of subsections 13-76-18(a) and 13-76-18(c), if the master determines that such ballast water discharge is necessary to ensure the safety and stability of the vessel or the safety of the crew and passengers, because of adverse weather, vessel design limitations, equipment failure, or any other extraordinary conditions. [Eff **OCT 12 2007** ]  
 (Auth: HRS §187A-32) (Imp: HRS §187A-32)

§13-76-19 Ballast water reporting requirements.

(a) Unless exempted in subsection 13-76-14(b), for all qualifying vessels, the master shall:

- (1) Fully and accurately fill out the USCG ballast water report form;
- (2) Submit the form by fax, electronic mail, or as otherwise provided to the department no later than twenty-four (24) hours prior to vessel arrival into state marine waters;
- (3) Submit an amended form to the department before the vessel departs state marine waters, should there be a change in any of the information submitted in accordance with this section; and
- (4) Maintain on board the vessel records that include all of the information provided on the form for at least two years.

(b) Submission of this form or an amended form to the department does not relieve the master of the responsibility to report to the USCG, if the USCG requires such report or amended form. [Eff **OCT 12 2007** ] (Auth: HRS §187A-32) (Imp: HRS §187A-32)

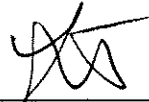
§13-76-20 Evaluation and compliance. (a) In order to evaluate the compliance rate of qualifying vessels with the provisions of this subchapter, the department, in coordination with the USCG, may:

- (1) Take samples of ballast water and sediment, examine documents, and make other appropriate inquiries;
  - (2) Compile the information obtained from submitted reports and use the information in conjunction with existing information relating to the number of vessel arrivals; and
  - (3) Take other actions necessary for the purposes of this subchapter.
- (b) The master shall make available to the department, upon the department's request, the records required by section 13-76-19 and other relevant information. [Eff **OCT 12 2007** ] (Auth: HRS §187A-32) (Imp: HRS §187A-32)

DEPARTMENT OF LAND AND NATURAL RESOURCES

Chapter 13-76, Hawaii Administrative Rules, on the Summary Page dated August 10, 2007, was adopted on August 10, 2007, following a public hearing held on June 28, 2007, after public notice was given in the Honolulu Star-Bulletin on May 20, 2007.

The adoption of chapter 13-76 shall take effect ten days after filing with the Office of the Lieutenant Governor.



---

Laura H. Thielen  
Interim Chairperson  
Board of Land and Natural  
Resources

APPROVED:



---

Linda Lingle  
Governor  
State of Hawaii

Dated: OCT -1 2007

APPROVED AS TO FORM:



---

Deputy Attorney General

---

Filed