

Frequently Asked Questions on Proposed Changes to DMB Administrative Rules

DMB Program Generally

What are Day Mooring Buoys (DMBs)?

Day Mooring Buoys (DMBs) are used around the world as a system to reduce damage to coral reefs from anchor damage. DMBs provide boaters a safe way to secure their boats and eliminate the need to drop an anchor and risk damaging coral. Most DMBs in Hawaii are located at popular dive/snorkel spots, usually on the leeward or southern coastline of each island.

DMBs are comprised of three main components: pins, float, and tackle. Two pins are embedded in the sea floor to anchor the entire structure. Subsurface floats lie 20-30 feet below the surface. When vessels arrive to tie up to the DMB, a free diver is sent to tie the vessel to the subsurface float. Tackle connects the pins to the float. The design of DMBs allows for a single vessel to tie up without needing to drop an anchor.

Priority for use of each DMB is on a first come, first served basis, and each DMB can be used continuously by a single vessel for up to 2.5 hours.

What is the history of the DMB program?

The Malama Kai Foundation (MKF) has worked tirelessly to seek funding for equipment and coordinate volunteers around the State to install, inspect, and maintain DMBs. MKF has written an installation guide, multiple guidebooks, and a strategic plan. Today, approximately 200 buoys exist in nearshore waters around our islands, largely through the efforts of MKF.

What is the current governance of day mooring buoys (permitting & enforcement)?

Installation of a DMB requires a permit from the US Army Corps of Engineers (USACE), and DOBOR holds the USACE permits for all of the approximately 200 DMBs installed in State waters.

Hawaii Administrative Rules (HAR) Chapter 13-257, adopted in 1995, establishes a DMB program within DOBOR. Current administrative rules only cover the original 30 DMBs in Molokini and 46 DMBs along the Kona Coast. Because Division of Conservation and Recreation Enforcement (DOCARE) officers can only enforce violations specified in HAR provisions, a rule amendment is necessary to implement an enforcement mechanism for the additional permitted DMBs DOBOR plans to install.

Currently, boat operators do not need a permit to moor at a DMB.

What is the current governance of day mooring buoys (liability)?

While the Malama Kai Foundation (MKF) and other entities have maintained most of the permitted DMBs (and absorbing the costs out-of-pocket in the process), DOBOR is the USACE permit holder and is therefore ultimately responsible for DMBs

To mitigate liability related to the installation, maintenance, and use of DMBs, DOBOR is currently preparing a comprehensive DMB management program compliant with all State and Federal laws.

What is the current governance of day mooring buoys (funding)?

Frequently Asked Questions on Proposed Changes to DMB Administrative Rules

Changes to administration of the DMB program are necessary because the DMB program as currently implemented has no designated funding source. The DMB program has been maintained through the tireless efforts of the Malama Kai Foundation (MKF) and a few dedicated commercial users. Full, self-sustaining implementation of the DMB program requires a significant commitment of time and funds. It is not realistic to continuously rely on MKF and other volunteer organizations and individuals to fund a network of DMBs across our islands. A sustainable DMB program led by DOBOR would include a sustainable fee structure.

What would be major features of the proposed DMB Program?

- DMB Coordinator
- DMB permit fee to pay for the program
- Scheduled maintenance/repair and ad-hoc repairs using contractor(s)
- Scheduled installation via contractor(s)
- Plan to address unsanctioned DMBs
- DMB locations will be listed on the DOBOR website using GPS coordinates and maps
- Prohibit DMB users from “rafting”/“daisy-chaining” [additional boats tying off to a boat using a DMB]
- Site selection for new DMBs will require consultation with stakeholders and approval by the Board of Land and Natural Resources
- Administrative rules will clearly state that vessel operators are responsible for remaining aboard while a vessel makes use of DMB and are liable in the event of an accident
- Additional DOCARE enforcement and new methods to track use

As technology improves, DOBOR’s DMB program may introduce a smartphone application for a reservations and/or a means to submit maintenance requests electronically.

What would the DMB coordinator do?

The DMB Coordinator, housed at DOBOR, would oversee the DMB program. The DMB Coordinator’s tasks would include: issuing maintenance/repair contract(s), obtaining permits for new DMBs, issuing installation contract(s), hosting public meetings, and conducting outreach to share the importance of DMBs, associated rules, and proper use.

What would be the estimated annual budget for a State-run DMB program?

The estimated annual budget for the DMB program in the first two years are projected to be higher than in subsequent years to pay for a substantial number of new buoy installations. The estimated costs are projected to decrease starting in year three with regular maintenance and a reduced installation schedule for new buoys. In the proposed funding plan below, DOBOR will attempt to reduce the financial burden on DMB permit holders in years one and two by seeking funding from the State Legislature to meet the increased cost or by delaying new buoy installations as required. Amounts below reflect the estimated cost to operate the DMB program from the third year and on, after new buoy installations and other transitioning tasks have been completed.

Frequently Asked Questions on Proposed Changes to DMB Administrative Rules

Average Annual Expense	Qt.	Unit Price	Total
Installation & 5 Quarterly Assessments	4	\$13,000	\$50,000
Buoy Maintenance & Repair	300	\$850	\$230,000
Outreach & Enforcement			\$50,000
Salary			\$45,000
Other (admin, permits, supplies)			\$40,000
TOTAL:			\$415,000

Estimated Revenue from Permit Fees					
Option	Fee	Admin 10%	Payments Annually	Estimated Users	TOTAL
Commercial	\$150.00	\$15.00	12	200	\$396,000
Recreational	\$25.00	\$2.50	1	500	\$13,750
TOTAL:					\$409,750

What would be the estimated cost for a commercial DMB permit? Recreational DMB permit?

Given the estimated budget, DOBOR initially projects that commercial operators would be charged approximately \$150 per month per boat to use DMBs. Final DMB fees are subject to the funding DOBOR is able to obtain and the needs of the DMB program. If actual costs to implement the program change significantly, DOBOR will revise the estimated fee amounts. As currently envisioned, recreational users would pay \$25 annually to use DMBs. Fees would be reevaluated after the first four years of the new DMB rules going into effect, and fees would be used only for DMB program costs.

Operators would pay DMB fees in addition to existing commercial fees used to maintain State small boat harbors. Under DOBOR's administrative rules, fee collections from small boat harbors cannot be used for DMBs because DMBs are located outside outside of small boat harbors.

Who would be required to obtain a DMB permit?

Only users who intend to use a DMB will be required to obtain a permit. This requirement will apply to both recreational and commercial users, regardless of the number of uses annually.

A DMB permit alone would not cover use of DMBs in special zones, such as manta sites. Such special zones would require an additional permit (tied to a separate fee structure to cover the additional costs of those programs). Refer to the "Manta Specific Questions" section for more information.

What would be involved in the maintenance/repair contract?

Frequently Asked Questions on Proposed Changes to DMB Administrative Rules

The most fundamental change under the new DMB program will be DOBOR's assumption of responsibility for DMB maintenance. Using funds from DMB permit fee collections, contracts will be awarded on an island-by-island basis for DMB repair and maintenance in two-year intervals.

In the first year of the new DMB program, contracts for Hawaii Island and Kauai will be issued. In the second year, contracts will be issued for Oahu and Maui. In the third year, the rotation will repeat with Hawaii Island and Kauai. Any person may report repair and maintenance issues at any time, regardless of the year, and such issues will be addressed in a timely manner. The DMB team is currently determining what would be considered a reasonable time to expect buoy repairs; at this point, the team estimates that between fourteen and thirty days will be considered reasonable.

Repair and maintenance contract(s) would have two components: (1) ad hoc and (2) routine. Ad hoc repair and maintenance would occur based on reports from operators. Routine repair and maintenance would be scheduled at regular intervals. Market research would be conducted prior to program implementation to determine the frequency of routine maintenance/repair and the response time of ad hoc maintenance/repair.

What would be the process and timeframe for installing a new mooring?

New and grandfathered moorings must comply with State and Federal regulations, particularly with respect to minimizing potential impacts to corals.

The process for installing new and grandfathering moorings would encompass:

- 1) site selection (which would involve public petition and review),
- 2) a site specific environmental assessment,
- 3) USACE and Hawaii Department of Health permit applications by DOBOR,
- 4) installation contract solicitation and award,
- 5) installation & assessment by selected contractor.

Discussions of new and grandfathered installation sites would begin in 2018, with a permit application in 2019. Because the regulatory process to obtain permits for installing a mooring is very lengthy (often taking multiple years), the State would develop a five-year statewide DMB plan and request a USACE permit about every five years.

How would the DMB rules be enforced?

Criminal penalties: DMB violations would be prosecuted criminally through Hawaii's Environmental Court. DLNR's Division of Conservation and Resources Enforcement (DOCARE) would conduct regular patrols to monitor for violations. Members of the public will also be able to submit reports of violations through the [DLNRTip app](#), and DOCARE officers would follow up with an investigation.

Civil penalties: In addition to criminal prosecution, DOBOR can also bring a civil enforcement action before the Board of Land and Natural Resources (BLNR). BLNR can impose fines additional to any criminal penalties imposed by the Environmental Court when convincing evidence of a violation is presented.

Installation & grandfathering

Frequently Asked Questions on Proposed Changes to DMB Administrative Rules

What is a “grandfathered” DMB?

DOBOR will evaluate whether or not to bring existing unsanctioned DMBs into conformance with updated DMB program specifications and procedures. If approved, these “grandfathered” DMBs will be included on future permit applications as potential sanctioned DMBs.

How would I petition for new or grandfathered buoys?

New and grandfathered DMB requests would be submitted to DOBOR using the DMB website, which is currently under construction. In the future, a DMB request could potentially be made via smartphone application.

Would surface buoys be installed?

At this time, DOBOR plans not to install surface DMBs to reduce: strain from wave action, potential aesthetic conflict, and hazards to navigation. Additionally, surface DMBs incur extra permitting complexity with the US Army Corps of Engineers and/or the US Coast Guard, which could cause delays in approval and installation.

What types of pins would be used in construction?

At the moment, only the Halal and manta anchor systems are approved by the US Army Corps of Engineers.

DOBOR recognizes that a few older moorings were installed using an eyebolt fixed in a large block of concrete. Although this method may be suitable for some areas, it can present two issues: (1) once the eyebolt fails, then the block is useless and a second block needs to be placed, and (2) large vessels backing down on a pin will simply pull the pin, but a large cement block will move if enough force is applied, potentially crushing marine life and habitats in the process and endangering individuals nearby.

Unsanctioned Moorings

Would there be a penalty for installing private own moorings?

Given the extensive State and Federal permitting and monitoring requirements for every authorized DMB, individuals installing unsanctioned (i.e., pirate/illegal/unpermitted) moorings would be assessed a fine, and such unsanctioned moorings would be removed by a DOBOR-approved process as marine debris.

Initially, after the Statewide DMB program begins, unsanctioned moorings could be reported for inclusion on future permits to legitimize them (grandfathering). After that grace period has passed, DOCARE would cite anyone installing or using unsanctioned moorings and would remove the buoys when found.

Would existing unsanctioned moorings be converted/grandfathered to sanctioned moorings to keep up with demand?

Frequently Asked Questions on Proposed Changes to DMB Administrative Rules

DOBOR plans to consider upgrading and adopting existing unsanctioned moorings under the Statewide DMB program. These moorings would need to be vetted for site suitability through a public process, be permitted by the US Army Corps of Engineering and Department of Health, and comply with all permit requirements before they could be ready for inclusion.

Enforcement

How would DOBOR educate users on the importance of using moorings?

A DMB educational program would be a multi-tiered outreach endeavor, the particulars of which have not yet been fully worked out at this preliminary stage. Components could include:

- Proper mooring techniques, which would be included in the Hawai'i Safe Boater certification program.
- Pamphlets and signs posted at DOBOR offices and harbors.
- An initial emphasis on educating violators rather than imposing harsh penalties.

What are the existing rules for coral damage and how is it enforced?

Coral is protected in the State of Hawaii from unlawful take, breakage, and damage. DOCARE strictly enforces coral damage violations and will cite violators.

<http://dlnr.hawaii.gov/dar/habitat/coral-reefs/coral-and-live-rock-laws-of-hawaii>.

What could I do if I observe an operator dropping anchor on a reef or using a DMB without paying the fee?

Individuals will be able to report violations via the DLNRTip app or directly to DOCARE or DOBOR via phone and email. Video (or, if unavailable, photographic) evidence can help DLNR to enforce these rules. Identification and verification should include identifying features of a perpetrator and undeniable proof that a violation occurred. Individuals who observe violations should not confront suspects.

Fees

What if I cannot afford to pay for a DMB permit?

DOBOR plans to base commercial fees on the LESSER of 3% of gross receipts or \$150/month. Nobody needs to go out of business over their buoys, but DMBs do need to be permitted, monitored, installed, maintained, their rules enforced, and an educational program implemented, all of which will create costs for DOBOR.

Commercial operators already pay a 3% commercial fee. Could this fee be used for the DMB program? What is DOBOR doing with it?

The 3% gross receipt commercial fee assessed by DOBOR is one of the lowest in the nation. Collections from the 3% commercial fee currently go toward harbor repair, maintenance, utilities, and salaries. Collections from 3% commercial fees cannot be used for the DMB program, because DMBs are not a facility in a small boat harbor.

Frequently Asked Questions on Proposed Changes to DMB Administrative Rules

Fee collections do not necessarily go towards the same project or area for which they were collected. Recent projects using these funds include Keehi repaving and new Honokohau trash collection receptacles.

Money collected from fees is only a fraction of what pays for harbor repairs; larger capital improvement projects (CIP), such as dock repairs and major repaving projects are funded by the State legislature. However, due to budget constraints DOBOR is not always able to obtain full funding for its CIP projects.

Some islands have fewer companies from which to draw. Wouldn't these islands bear an unfair burden of the costs?

DOBOR plans to combine all DMB fee collections and use the funds to fix DMBs Statewide. This is to ensure that all DMBs are properly maintained and repaired, as well as ensure that a sustainable DMB program can be run for each island.

Other DMB User Questions

Does the Department of Land and Natural Resources need legislative approval to implement the DMB Program?

No. Legislative approval is not necessary to amend administrative rules, but support of the BLNR and the Governor are essential. DOBOR follows the rulemaking process outlined in HRS Chapter 91, which includes conducting public hearings and obtaining final approval from the Board of Land and Natural Resources, the Department of the Attorney General, the Small Business Regulatory Review Board, and the Governor before any proposed rules go into effect. You may find more information at: <http://dlnr.hawaii.gov/rules>.

Would there be separate recreational moorings?

DOBOR proposes that recreational users pay an annual fee to access most of the Hawai'i state DMB network. DMB users still would not be able to moor at special DMB zones, such as Hawaii Island manta sites. Except for the special DMB zones, recreational users could access the same buoys available to commercial users.

For special DMB zones, such as the manta ray diving sites, DOBOR would designate recreation-only mooring(s) that commercial operators cannot use except in emergencies. Like commercial operators, recreational users would need to purchase an additional permit to use DMBs in special zones.

Could DMBs be used overnight?

Generally, DMBs can be used for a maximum of 2.5 hours within a 24-hour period. For DMBs located within special use zones, administrative rule provisions may override the standard 2.5-hour time limit.

What if more than one vessel wants to use a DMB?

DMBs will be limited to one vessel per buoy at any one time. Additionally, rafting/daisy-chaining (where one or more vessels ties up to the vessel using the mooring) will be prohibited. The US Army Corps of Engineers design specifications for DMBs require that rafting/daisy-chaining be prohibited because the

Frequently Asked Questions on Proposed Changes to DMB Administrative Rules

moorings are not designed to withstand the load of multiple vessels. Anchoring will be prohibited within 100 yards of any DMB unless otherwise noted. Vessels violating the rules should be reported via the DOCARE tip app.

Would there be a vessel size restriction for using the moorings?

Yes, DOBOR is evaluating mooring sizes and appropriate vessel size limits. Maximum vessel specifications will be included in the amended rules.

How would DMB locations be documented and published? What about moorings near shipwrecks?

Mooring locations would be published on the DOBOR website, and an online map of GPS locations will also be provided. Wreck moorings are not included in the DMB program.

How many sanctioned and unsanctioned moorings exist?

There are approximately 200 permitted DMBs installed in State waters. The number of unsanctioned DMBs is unknown but is estimated to be two to three times the number of permitted DMBs.

How would DMB users request repair or maintenance?

DOBOR proposes creating an online reporting system and/or smartphone app to report repair or maintenance work needed, which would generate a work order that would be then passed along to the contractor by the DMB Coordinator.

Manta Specific Questions

If I pay for a DMB permit, can I use the special DMB zones, like the proposed manta night dive site?

No, a separate permit will be required for use of special DMB zones. Operators applying for special DMB zone permits will be required to meet certain qualifications.

Other

How can I get involved in the DMB rule revision process?

DOBOR is currently gathering informal comments concerning DMB administrative rule amendments. DOBOR plans to hold outreach meetings to collaborate with stakeholders and develop a fair and effective regulatory scheme. The dates for these outreach meetings will be announced on the DOBOR website, and those who have signed up to receive notifications will be notified by email of such meetings. **To request notifications of future meetings, please send an email to dlnr.bd.dmb@hawaii.gov specifying that you wish to be added to the DMB notification list. Please also send any DMB comments to this email.**

DOBOR is increasing its efforts in the informal portion of rulemaking so that it can gather all relevant information before the formal process begins. After gathering informal public feedback, DOBOR will

Frequently Asked Questions on Proposed Changes to DMB Administrative Rules

develop draft administrative rules in response to the feedback, then follow the formal process for amending administrative rules.

Please sign up for notifications through dlr.bd.dmb@hawaii.gov or visit your local DOBOR District Office for announcements. Formal public hearings are projected to take place in Fall 2018 or later. After public hearings are held, the public can generally expect to see rules go into effect about four to six months later.

** Last updated: 9/26/17