

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

"§13-245-9 Diver's flag. (a) A "diver's flag" as defined by rule and measuring not less than twelve inches by twelve inches shall be required to be displayed on the surface of the water by any person or group of persons engaged in free diving or SCUBA diving.

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

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

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

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

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

- (1) Vessels approaching a displayed diver's flag to conduct SCUBA, snorkeling, or free diving activities

within the one hundred foot or fifty foot restricted area shall be allowed to do so provided that the vessel approaches at a speed of slow-no-wake.

- (2) Vessels approaching a displayed diver's flag navigating through marked navigation channels are exempt from the distance restriction described in subsection (f) but shall proceed at a speed of slow-no-wake through the navigation channel when a diver's flag is displayed adjacent to the navigation channel.
- (3) Authorized representatives of the department and life saving personnel are exempt from the distance restrictions of subsection (f) when performing functions related to their duties.

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

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

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

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

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

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

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

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

DOBOR recommended changes to §13-245-9

14, 200-14.5, 200-24, 200-25) (Imp: HRS §§200-2, 200-3, 200-4,
200-10, 200-14, 200-14.5, 200-24, 200-2)