

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Boating and Ocean Recreation
Honolulu, Hawaii 96819

January 13, 2017

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Statewide

Request Approval to Initiate Rule-Making Proceeding, Including Public Hearing, to Amend Title 13, Hawaii Administrative Rules (HAR) Sections 13-230-4 Penalties and prosecution, 13-230-8 Definitions, 13-230-25 Particular categories, 13-231-3 Use permits; issuance, 13-231-6 Revocation of use permit, 13-231-13 Joint and several liability; non-transferability of use permits, 13-231-15 Boat owner required to report change of ownership, address, and other changes, 13-231-26 Use of a vessel as a place of principal habitation, 13-231-28 Staying aboard vessels moored at Ala Wai or Keehi small boat harbor, 13-231-29 Vessel used as a vacation site, 13-231-45 Marine inspections, 13-231-56 Definitions, gross receipts, 13-231-70 Water taxi operations, 13-232-8 Marine toilets - restrictions, 13-232-10 Backflow prevention device required on connections to water line - use of water operated de-watering device prohibited, 13-232-30 Fire signal for vessels in small boat harbors, 13-232-57 Dogs, cats or other domestic pets, 13-232-58 Sleeping or camping prohibited, 13-232-60 Serving, sale, and consumption of liquor in state boat harbors and boat launching facilities, 13-233-13 Operation, parking, or storage of bicycles or play vehicles, 13-233-29 Eligibility for parking permits; fee per vehicle, 13-235-5 Owners required to report change in ownership, address and other changes, 13-235-9 Restrictions on anchoring or mooring outside of a designated offshore mooring area, 13-242-1 Duty to render aid and give information, 13-242-3 Immediate notice of accident; when required, 13-242-4 Written boating accident report; when required, 13-243-4 Mufflers, 13-244-15.5 Operation of power driven vessels, 13-244-19 Authorization required to hold regatta, marine parade, boat race or exhibition, 13-244-29 Makapuu ocean waters, 13-244-37 Zone A, Zone B, Ingress/Egress Zones, and Ingress/Egress Corridors, 13-245-9 Diver's flag, 13-251-57 Waikiki ocean waters, 13-253-1.3 Gross receipts, 13-255-1 Purpose and scope, 13-255-6 Waikiki beach uses and activities; restrictions, 13-256-3 Commercial use permit or catamaran registration certificate requirements, 13-256-5 Commercial use permits; public auction, 13-256-7 Business transfer fee, 13-256-8 Owner required to report change in ownership, address and other changes, 13-256-12 Gross receipts, 13-256-16 Thrill craft operations: general provisions, 13-256-17 Recreational thrill craft operations, 13-256-21 Ultralight float equipped aircraft, 13-256-22 Tow-in surfing, 13-256-56 Wailua River restricted area, 13-256-63 Sharks Cove, Three Tables and Waimea Bay ocean waters, 13-256-73.5 Large snorkel tour permit restrictions, 13-256-74 Kailua Ocean Waters Restricted

Zones, 13-256-88 Maunalua Bay waters, 13-256-91 Waikiki Ocean Waters Restricted Zones, 13-256-112 Maui Humpback whale protected waters, 13-256-128 Baldwin Park-Paia Bay Restricted Area, 13-256-162 Makaiwa Bay Swimming Zones; and to amend Title 13, HAR to add new Sections 13-232-57.1 Feeding of wildlife or feral animals prohibited, 13-232-57.2 Animal abandonment and creating or contributing to colonies prohibited; and to repeal HAR Sections 13-230-21 Definitions, 13-240-5 Definitions, 13-243-5 Recognition of marine examination decals, 13-245-2 Definitions, 13-250-5 Definitions, 13-254-1 Definitions, 13-255-5 Definitions, 13-256-35 Owner required to report change in ownership, address and other changes.

The rules can be reviewed online at: <http://ltgov.hawaii.gov/the-office/administrative-rules/> or <http://dlnr.hawaii.gov/dobor/draft-rules/> or can be reviewed in person at any small boat harbor from 8:00 am to 3:30 pm, Monday through Friday, except holidays. Location and contact information for DOBOR offices is available online at: <http://dlnr.hawaii.gov/dobor/contact/>

PURPOSE:

The purpose of these amendments is to allow the Division of Boating and Ocean Recreation (DOBOR) to better manage and facilitate boating and ocean recreation related activities within State small boat harbors and nearshore waters and to reorganize the Hawaii Administrative Rules (HAR) relating to DOBOR for clarity and general efficacy.

REMARKS:

This proposed rules package is an effort by DOBOR to make its administrative rules more accessible to the public, streamline future rule changes and minimize unnecessary or redundant provisions in the HAR which can cause difficulties in enforcement of the rules for enforcement officials and staff as well as in interpretation of the rules by the general public.

The proposed rules package has been sent to all DOBOR staff, Division of Conservation and Resources Enforcement, Division of Aquatic Resources as well as to the Hawaii Ocean Tourism Coalition and other private stakeholders for informal comment and feedback. The Division of the Attorney General, Land and Transportation Division has reviewed the draft rules and approved them to proceed to public hearing pending approval from the Board of Land and Natural Resource (“Board”) and the Office of the Governor pursuant to Hawaii Revised Statutes, Chapter 91.

The proposed rules package contains the following amendments:

1. Consolidates all definitions sections in Title 13, Subtitle 11, Hawaii Administrative Rules into HAR §13-230-8. In the current DOBOR rules, there are multiple definition sections as well as definitions within other non-definition sections. Definitions are being consolidated to provide one convenient section containing all

definitions generally applicable in DOBOR administrative rules. Certain sections will continue to have dedicated definitions when such definitions are particularly applicable within the context of that section. With this amendment, those searching for generally applicable definitions will not need to search through multiple sections. Consolidation also helps to avoid conflicting definitions for identical terms in separate sections. Finally, consolidation also assists in any future amendment of the rules. The proposed rule package:

- a. Consolidates all general definitions into HAR §13-230-8 from the following HAR sections: §13-230-21, §13-231-3, §13-231-25, §13-231-45, §13-231-56, §13-231-70, §13-232-8, §13-232-10, §13-232-30, §13-232-57, §13-235-5, §13-240-5, §13-243-4, §13-244-19, §13-245-2, §13-245-9, §13-250-5, §13-253-1.3, §13-254-1, §13-255-5, §13-256-8, §13-256-12.
 - b. Removes terms & definitions that were moved from the above HAR sections and consolidated in HAR §13-230-8.
 - c. Adds “abandon” and its definition to DOBOR rules. The definition specifically applies in the context of animals.
 - d. Adds “camping” and its definition to DOBOR rules.
 - e. Adds “colony” and its definition to DOBOR rules. The definition specifically applies to cat colonies.
 - f. Adds “feral” and its definition to DOBOR rules.
 - g. Adds “wildlife” and its definition to DOBOR rules.
2. Updates definitions to conform to State statutory language and legal precedent as well as Federal requirements. Conforming to State statutory language and legal precedent helps to avoid conflicting language if DOBOR attempts to enforce its rules in court. Conforming to Federal requirements allows for more effective enforcement and coverage by adapting already-established US Coast Guard regulations. The proposed rule package:
- a. Removes term, definition, and references to “personal partner” in DOBOR rules. Amends language throughout DOBOR rules to replace “personal partner” with the appropriate legal term, “reciprocal beneficiary.”
 - b. Removes term, definition, and references to “motor vessel” in DOBOR rules. Amends language throughout DOBOR rules to replace “motor vessel” with “motorboat.”
 - c. Clarifies definition of “shoreline” to conform to State legal precedent.
 - d. Removes term, definition, and references to “humpback whale cow/calf area.”
 - e. Increases the damage cost threshold in HAR §13-242-4 where a report is required after a recreational boating accident from \$200 to \$2,000 to conform to US Coast Guard regulations per 33 C.F.R. § 173.55.
3. Amends permitting language in HAR §13-231-3 to clarify the minimum documents required to apply for a commercial use permit and/or a catamaran registration certificate. This includes the requirement that applicants provide the division with documentation of ownership structure for any entity that would own or control a mooring permit. This amendment is to ensure that DOBOR will be able to track all owners or parties with an interest in a permit.

4. Amends HAR §13-232-57, regarding pets at State harbors. This amendment is to address issues with domestic pets at State small boat harbors and facilities. The proposed amendment removes language in HAR §13-232-57, which inadvertently causes that the section to only be applicable in Ala Wai and Keehi boat harbors.
5. Adds a new section, HAR §13-232-57.1, prohibiting feeding of wildlife or feral animals at any property under the jurisdiction of the department. This new section is being added to DOBOR rules in response to people feeding feral animals and consequently creating potentially unsafe and unsanitary conditions at State boat harbors and facilities. Currently, there are issues with feral animals such as cats being fed in harbors as well as dumping fishing bycatch and fish parts into the water at small boat harbors which causes water pollution as well as potentially attracts sharks.
6. Adds a new section, HAR §13-232-57.2, prohibiting abandoning animals and creating or contributing to colonies at any property under the jurisdiction of the department. This new section is being added to address the issue of people abandoning and dumping animals on department property. Abandonment and creation/contribution to colonies create potentially unsanitary conditions and add to the existing problem of controlling stray and feral animal populations.
7. Amends sleeping & camping prohibitions in HAR §13-232-58. This amendment is intended to clarify the definitions of sleeping and camping to assist in citation and prosecution for unauthorized use of department property and to address the issue of people camping or sleeping at State boat harbors and facilities when not on board a vessel.
8. Amends alcohol serving, sale, and consumption rules in HAR §13-232-60 to conform to the county definition for open container rules, which assists with citation for unlawful possession and consumption of alcohol on department property.
9. Removes language in HAR §13-233-13, "Operation, Parking, or Storage of Bicycles or Play Vehicles," which inadvertently states that the section is only applicable in Ala Wai and Keehi boat harbors.
10. Amends language in HAR §13-235-9 to prohibit mooring in an Ocean Recreation Management Area (ORMA) or a non-designated area for a cumulative period of time exceeding seventy-two hours within any fourteen-day period. This amendment is intended to address the issue of people attempting to circumvent the previous time limit language by temporarily moving their vessels to another location then returning.
11. Repeals HAR §13-243-5, which prohibits enforcement personnel from stopping and boarding any vessel properly displaying a valid United States Coast Guard Auxiliary Courtesy Marine Examination decal except upon reasonable belief that the vessel is being operated in violation of HAR provisions or other regulations or laws. USCG Marine Examination decals are no longer in use, rendering this provision unnecessary.

12. Updates rules regarding diver's flags under HAR §13-245-9.
 - a. Clarifies applicability to snorkelers, free divers, and SCUBA divers who are not accompanied by a host vessel, who surface more than one hundred feet from their host vessel, or who are engaged in snorkeling or diving activities more than one hundred feet from their host vessel. The amendment will require groups of 2 or more snorkelers/free divers/SCUBA divers to tow a dive flag and will require any member of the group to remain within 100 feet of a dive flag.
 - b. Clarifies rules on illuminating a diver's flag during certain times of the day.
13. Amends HAR §13-255-6 to clarify the boundaries that define "Waikiki Beach."
14. Repeals the requirement for establishment of a Recreation Advisory Committee (RAC) pursuant to administrative rule under HAR §13-256-3. RACs are a valuable tool for collecting community feedback on DOBOR rules and DOBOR intends to continue forming committees statewide. However, the existence of an administrative rule makes the creation of a RAC unduly burdensome to the department by making these informal advisory committees subject to Sunshine Law. DOBOR has management authority to form informational and advisory committees without administrative rulemaking and intends to do so.
15. Updates HAR §§13-256-16 & 13-256-17, regarding thrill craft.
 - a. Amends HAR §13-256-17 to allow exemptions from thrill craft restrictions in HAR §13-256-17. These exemptions are for the purpose of allowing activities such as clean up of marine debris using thrill craft as well as the use of thrill crafts as escort vessels for various marine regattas and other special events. This amendment is in response to a legislative mandate to DOBOR to write administrative rules allowing the use of thrill craft for marine debris clean-up as well as community feedback.
16. Repeals HAR §13-256-35, regarding reporting requirements for address or vessel possession changes. The provisions of HAR §13-256-35 will be incorporated into other sections through this amendment package to eliminate duplicate provisions.

RECOMMENDATION:

That the Board of Land and Natural Resources grant to DOBOR approval for the initiation of rule-making proceedings, including public hearing for the administrative rules package referenced and described herein.

Respectfully submitted,



Edward R. Underwood
Administrator

APPROVED FOR SUBMITTAL



Suzanne D. Case
Chairperson