

State of Hawaii  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Division of Conservation and Resource Enforcement  
Honolulu, Hawaii

June 23, 2017

**To:** Board of Land and Natural Resources  
State of Hawaii  
Honolulu, HI

**Subject:** Administrative Enforcement Action for Violation of Hawaii Administrative Rules, Sections: 13-221-35; 13-221-46; 13-256-3; 13-256-4, Against Mr. Samuel Perez Hults for Engaging in Illegal Commercial Activity on State Lands and in State Waters Adjacent to Kailua Beach Park, Requested Cumulative Fines in the Amount of \$11,000 pursuant to HAR § 13-221-3 and HRS § 200-14.5.

**Against:** Mr. Samuel "Sammy" Perez Hults dba "Sammy's Watersports"  
1293 Onioni Street  
Kailua, HI 96734

**Violation:** This submittal requests that the Board find Mr. Samuel Perez Hults in violation of Hawaii Administrative Rules (HAR):

- **HAR § 13-221-35** (Commercial Activities)
- **HAR § 13-221-46** (Business Operations)
- **HAR § 13-256-3** (Commercial use permit or catamaran registration requirements)
- **HAR § 13-256-4** (Commercial vessel and water sports equipment registration requirements)

**Date of Incident(s):** January 5, 2017 to January 29, 2017.

**Location of Incident(s):** Kailua Beach Park; shoreline and ocean waters fronting Kailua Beach Park, Oahu

## I. INTRODUCTION

During January 2017, conservation officers from DOCARE's Oahu Branch were assigned to investigate complaints of illegal commercial activity occurring at Kailua Beach Park and in the adjacent shoreline and ocean waters under DLNR jurisdiction. During that time period, DOCARE officers observed Samuel "Sammy" Perez Hults engaged in activities consistent with for-hire instruction in the use of kitesurfing equipment. These activities originated in Kailua Beach Park, before making use of the sandy beach and ocean waters adjacent to Kailua Beach Park. DOCARE officers were able to obtain credible witness statements and other evidence that corroborated the reasonable suspicion that Mr. Perez Hults was engaged in commercial activity in violation of numerous HAR promulgated by Land Division and the Division of Boating and Ocean Recreation.

## II. FACTUAL BACKGROUND

1. Mr. Samuel "Sammy" Perez Hults (hereinafter "Hults") is a resident of Hawaii domiciled at 1293 Onioni Street, Kailua, Hawaii 96734.
2. In January 2017, plainclothes DOCARE officers conducted surveillance at Kailua Beach Park in response to complaints about illegal commercial activity being conducted at Kailua Beach Park, on the adjacent shoreline, and in the state waters fronting the park.
3. During their surveillance activities, DOCARE officers observed HULTS engaging in activity consistent with commercial kiteboard instruction. DOCARE officers were able to identify HULTS as a person of interest based on a registration check of the plates on the truck HULTS drove to and from Kailua Beach Park.
4. An internet search for HULTS' name led DOCARE officers to [www.sammyshawaii.com](http://www.sammyshawaii.com), which lists "Samuel Perez Hults" as "owner and founder" of "Sammy's Aloha Watersports."<sup>1</sup>
5. A State of Hawaii General Excise Tax License search lists "1293 Onioni Street, Kailua, Hawaii 96734" as the registered address for "Sammy's Aloha Watersports, LLC" doing business under General Excise License number "GE-144-184-3200-01."<sup>2</sup>
6. Neither Hults nor any other entity associated with "Sammy's Aloha Watersports" possess a Commercial Use Permit issued by DOBOR under HAR § 13-256-3, or as required by

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<sup>1</sup> SAMMY'S ALOHA WATERSPORTS, [www.sammyshawaii.com/about-us](http://www.sammyshawaii.com/about-us) (last accessed March 6, 2017).

<sup>2</sup> Appendix E-1.

HAR § 13-251-35 to legally engage in commercial activities on unencumbered public lands or in state waters.<sup>3</sup>

7. DOCARE officers positively identified Hults through his social security number and Hawaii driver's license. Hults' identity was corroborated through photographic evidence;<sup>4</sup> the Sammy's Aloha Watersports website;<sup>5</sup> and witness identification.
8. On **Saturday, January 21, 2017**, DOCARE officers observed Hults arriving at Kailua Beach Park and offloading kiteboard equipment from the Nissan Frontier bearing plates RSA 295, which is registered to HULTS.<sup>6</sup> Shortly thereafter, HULTS and another individual (hereinafter "Witness 1") engaged in activity that, from their training and experience, DOCARE officers recognized as consistent with professional instruction in kiteboarding. Hults was observed providing instruction to Witness 1 for roughly two hours, during which time their activity moved from Kailua Beach Park to the shoreline, both above and below the high water mark.<sup>7</sup>
9. On **Sunday, January 22, 2017**, DOCARE officers once again observed HULTS providing instruction to Witness 1 for approximately two hours. Once again, the activity originated at Kailua Beach Park, and moved to the shoreline, both above and below the high water mark. On this particular date, HULTS was observed communicating via handheld radio as Witness 1 (also equipped with a handheld radio) attempted to operate a kiteboard and sail in state waters, as well as providing critique to Witness 1 when he came ashore (E-2). This activity occurred from roughly 0830 hours to 1030 hours.<sup>8</sup>
10. At or around 1400 hours on **January 22, 2017**, HULTS was again observed at and in the vicinity of Kailua Beach Park engaged in activity consistent with professional kiteboard instruction. This time, HULTS met with a different individual (hereinafter "Witness 2"). HULTS assisted Witness 2 with launching from the shoreline into state waters and communicated via handheld radio while Witness 2 (also equipped with a handheld radio) was in state waters. This activity continued for roughly two hours.<sup>9</sup>
11. Using license plate numbers from the vehicles that Witness 1 and Witness 2 drove to and away from Kailua Beach Park, DOCARE officers were able to make contact with Witness 1 and Witness 2. Witness 1 declined to be a witness in this case.
12. Witness 2 was positively identified as Avery SHERIDAN (hereinafter "SHERIDAN"), and agreed to serve as a witness.
13. On Friday, February 3, 2017, DOCARE officers interviewed SHERIDAN, who was able to positively identify HULTS as the person who provided him instruction.

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<sup>3</sup> Appendix A-5

<sup>4</sup> Appendix C-2

<sup>5</sup> Appendix H-1

<sup>6</sup> Appendix E-2

<sup>7</sup> Appendix A-4

<sup>8</sup> Appendix A-4,

<sup>9</sup> Appendix A-4

14. SHERIDAN freely and voluntarily provided DOCARE with a statement in which he detailed his negotiations with HULTS dba Sammy's Aloha Watersports. Aside from an initial lesson with another instructor from Sammy's Aloha Watersports, SHERIDAN testified that he had three lessons with HULTS from November 2016 through December 2016. Additionally, HULTS testified that his fourth lesson with HULTS occurred on January 22, the date DOCARE officers observed HULTS instructing SHERIDAN.<sup>10</sup>
15. SHERIDAN testified that all of these lessons were "booked" or paid for through Sammy's Aloha Watersports.<sup>11</sup> SHERIDAN testified that all of the instructions took place at Kailua Beach Park.<sup>12</sup> SHERIDAN also testified that he paid Sammy's Aloha Watersports approximately \$3000.<sup>13</sup> Of this amount, SHERIDAN testified that roughly \$1250 was compensation for professional instruction provided by HULTS, with the remaining balance of \$1750 going towards the purchase of kiteboarding equipment from Sammy's Aloha Watersports.<sup>14</sup>
16. SHERIDAN provided DOCARE with a credit card statement showing payments to Sammy's Aloha Watersports on November 13 (\$261.78); November 15 (\$209.42), and November 17 (\$575.92), 2016.<sup>15</sup> An annotation by SHERIDAN on the credit card statement indicates that all of these payments were for lessons only.<sup>16</sup>
17. SHERIDAN also provided DOCARE with a copy of a cashed check made out to "Sammy's Aloha Watersports" dated January 23, 2017 in the amount of \$2,250.<sup>17</sup> The check notes that payment is for "kite, board, 9hr lesson."<sup>18</sup>

### III. LEGAL AUTHORITY

#### A. Land Division Violations

##### 1. Commercial Activities (HAR § 13-221-35)

Hawaii Administrative Rule § 13-221-35 reads as follows: "No person shall engage in commercial activities of any kind without a written permit from the board or its authorized representative."<sup>19</sup>

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<sup>10</sup> Appendix M-1 and M-2.

<sup>11</sup> Appendix M-1.

<sup>12</sup> Appendix M-2.

<sup>13</sup> Appendix M-1.

<sup>14</sup> Appendix M-1.

<sup>15</sup> Appendix N-1.

<sup>16</sup> Appendix N-1.

<sup>17</sup> Appendix N-3.

<sup>18</sup> Appendix N-3.

The rule defines “Commercial Activity” as “the use of or activity on state land for which compensation is received by any person for goods or services or both rendered to customers or participants in that use or activity.”<sup>20</sup> Likewise, “commercial activities include activities whose base of operations are outside the boundaries of the unencumbered state lands[.]”<sup>21</sup>

## 2. Business Operations (HAR § 13-221-46)

Hawaii Administrative Rule § 13-221-46 provides that “no person shall solicit any business except in accordance with a permit, contract, license, lease, concession, or other written agreement with the board or its authorized representative.”<sup>22</sup>

## 3. Jurisdiction and Legislative Authority

Both HAR § 13-221-35 and 13-221-46 fall within Title 13, Chapter 221, titled “Unencumbered Public Lands.” HAR § 13-221-2 clearly states that “unencumbered public lands include, but are not limited to, beach and coastal areas[.]”<sup>23</sup>

The Hawaii State Legislature delegated the authority to DLNR to create these rules and to set appropriate penalties with the passage of Hawaii Revised Statute § 171, titled “Public Lands, Management and Disposition of[.]”<sup>24</sup> HRS § 171-6(4) provides DLNR with authority to “adopt rules which, upon compliance with Chapter 91, shall have the force and effect of law.”<sup>25</sup> HRS § 171-6(15) authorizes DLNR to “set, charge, and collect reasonable fines for violation of this chapter or any rule adopted thereunder.”<sup>26</sup>

## 4. Applicable Penalties

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<sup>19</sup> Haw. Admin. Rule § 13-221-35 (2002), available at: <http://dlnr.hawaii.gov/ld/files/2013/07/Ch13-221-3-200211151.pdf> (last accessed March 6, 2017).

<sup>20</sup> Id.

<sup>21</sup> Id.

<sup>22</sup> Haw. Admin. Rule § 13-221-46 (1988), available at: <http://dlnr.hawaii.gov/ld/files/2013/07/Ch13-2211.pdf> (last accessed March 6, 2017).

<sup>23</sup> Id.

<sup>24</sup> Haw. Rev. Stat. § 171, available at: [http://www.capitol.hawaii.gov/hrscurrent/Vol03\\_Ch0121-0200D/HRS0171/HRS\\_0171-.htm](http://www.capitol.hawaii.gov/hrscurrent/Vol03_Ch0121-0200D/HRS0171/HRS_0171-.htm) (last accessed March 6, 2017).

<sup>25</sup> Haw. Rev. Stat. § 171-6(4) (2011), available at: [http://www.capitol.hawaii.gov/hrscurrent/Vol03\\_Ch0121-0200D/HRS0171/HRS\\_0171-0006.htm](http://www.capitol.hawaii.gov/hrscurrent/Vol03_Ch0121-0200D/HRS0171/HRS_0171-0006.htm) (last accessed March 6, 2017).

<sup>26</sup> Id.

Hawaii Administrative Rule § 13-221-3 states that “any person violating this chapter for which a penalty is not otherwise provided shall be fined not more than \$500 per day and shall be liable for administrative costs and damages incurred by the department.”<sup>27</sup>

## B. Division of Boating and Ocean Recreation Violations

### 1. Commercial Use Permit or Catamaran Registration Requirements (HAR § 13-256-3)

Hawaii Administrative Rule § 13-256-3(a) requires “all operators of commercial vessels, water craft or water sports equipment” to “apply for a commercial use permit or where applicable a catamaran registration certificate to be issued by the department[.]”<sup>28</sup>

### 2. Commercial Vessel and Water Sports Equipment Registration Requirements(HAR § 13-256-4)

Hawaii Administrative Rule § 13-256-4(a) requires that “all commercial vessels, water craft or water sports equipment shall be registered with the department for commercial use[.]”<sup>29</sup>

### 3. Jurisdiction and Legislative Authority

Both HAR § 13-256-3 and HAR § 13-256-4 fall within Title 13, Chapter 256, titled “Ocean Recreation Management Rules and Areas.”<sup>30</sup> The stated purpose of Chapter 256, as set forth in HAR § 13-256-1(a) is “to reduce conflicts among ocean water users, especially in areas of high activity.”<sup>31</sup> Additionally, HAR § 13-256-2(b) requires that the rules in Chapter 256 “be construed liberally, consistent with the purpose stated in section 13-256-1.”<sup>32</sup>

Chapter 200 of the Hawaii Revised Statutes constitutes an express grant of authority from the Hawaii State Legislature to DLNR with the intent that – among other duties – the Department

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<sup>27</sup> Haw. Admin. Rule § 13-221-3 (1988), available at: <http://dlnr.hawaii.gov/ld/files/2013/07/Ch13-2211.pdf> (last accessed March 6, 2017).

<sup>28</sup> Haw. Admin. Rule § 13-256-3(a) (2014), available at: <http://files.hawaii.gov/dlnr/dobor/rules/amend/Amend-13-256-3-4.pdf> (last accessed March 6, 2017).

<sup>29</sup> Id.

<sup>30</sup> Haw. Admin. Rules § 13-256, available at: <http://files.hawaii.gov/dlnr/dobor/rules/compiled/HAR256-Compiled.pdf> (last accessed March 6, 2017).

<sup>31</sup> Id.

<sup>32</sup> Id.

and the board will manage and administer ocean-based recreational and coastal areas programs as well as regulate “the commercial use of state waters”<sup>33</sup>

#### 4. Applicable Penalties

Hawaii Revised Statutes § 200-14.5 also provides clear intent on the part of the legislature to allow the board to impose administrative penalties upon violators of rules adopted under the grant of authority found in HRS § 200. The administrative penalty provision found at HRS § 200-14.5 reads as follows:

##### **HRS § 200-14.5 General administrative penalties**

“(a) Except as otherwise provided by law, the board is authorized to set, charge, and collect administrative fines and to recover administrative fees and costs, including attorney’s fees and costs, or bring legal action to recover administrative fines and fees and costs, including attorney’s fees and costs, or payment for damages or for the cost to correct damages resulting from a violation of subtitle 8 of title 12 or any rule adopted thereunder. Each day or instance of violation shall constitute a separate offense.”<sup>34</sup>

“(c) For all other violations [not involving water pollution] the administrative fine shall be as follows:

- (1) For a first violation or a violation beyond five years of a previous violation, a fine of not more than \$5,000;
- (2) For a second violation within five years of a previous violation, by a fine of not more than \$10,000; and
- (3) For a third or subsequent violation within five years of the last violation, by a fine of not more than \$15,000.”<sup>35</sup>

#### IV. APPLICATION OF LAW

##### **1. Mr. Hults’ actions constitute proscribed conduct under Hawaii Administrative Rules promulgated by DLNR and are therefore subject to administrative action**

Based on the observations of DOCARE officers conducting surveillance, evidence gathered during the subsequent investigation, and the testimony and supporting documents proffered by Mr. Sheridan, HULTS was clearly engaged in commercial activity without a permit on the shoreline and in the ocean waters fronting Kailua Beach Park. By offering professional instruction for compensation in these two areas, HULTS violated HAR § 13-221-35 which

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<sup>33</sup> Hawaii Rev. Stat. § 200-3 (2012), available at [http://www.capitol.hawaii.gov/hrscurrent/Vol03\\_Ch0121-0200D/HRS0200/HRS\\_0200-0003.htm](http://www.capitol.hawaii.gov/hrscurrent/Vol03_Ch0121-0200D/HRS0200/HRS_0200-0003.htm) (last accessed March 5, 2017).

<sup>34</sup> Haw. Rev. Stat. § 200-14.5(a) (1999), available at: [http://www.capitol.hawaii.gov/hrscurrent/Vol03\\_Ch0121-0200D/HRS0200/HRS\\_0200-0014\\_0005.htm](http://www.capitol.hawaii.gov/hrscurrent/Vol03_Ch0121-0200D/HRS0200/HRS_0200-0014_0005.htm) (last accessed March 6, 2017).

<sup>35</sup> Haw. Rev. Stat. § 200-14.5(c) (1999), available at: [http://www.capitol.hawaii.gov/hrscurrent/Vol03\\_Ch0121-0200D/HRS0200/HRS\\_0200-0014\\_0005.htm](http://www.capitol.hawaii.gov/hrscurrent/Vol03_Ch0121-0200D/HRS0200/HRS_0200-0014_0005.htm) (last accessed March 6, 2017).

regulates commercial activity on unencumbered state lands, as well as HAR § 13-256-3, which regulates for-profit ocean recreational activity in state waters.

Additionally, HULTS clearly appears to have solicited business without “a permit, contract, license, lease, concession, or other written agreement” with DLNR, while on the shoreline, placing him in violation of HAR § 13-221-46. Finally, because HULTS provided his clientele with water sports equipment (kite boarding equipment in this case), and because he did so in the context of offering professional instruction without a permit, his conduct places him in violation of HAR § 13-256-4(a), which requires such equipment to be “registered with the department for commercial use.”<sup>36</sup>

## **2. Aggravating factors surrounding Hults’ violations support the imposition of maximum penalties allowed under applicable law**

Based upon witness statements obtained by DOCARE, as well as information from the State of Hawaii’s GET tax database, as well as from HULTS’ website “www.sammyshawaii.com” it appears that HULTS has been providing commercial kite board instruction in violation of DLNR rules for several years. Using Sheridan’s testimony and supporting documents, as well as the “book now” function on HULTS’ website, it appears that HULTS offers commercial kiteboard instruction for roughly \$50/hr.<sup>37</sup> Additionally, it appears that HULTS offers commercial instruction in surfing, stand-up paddling, and windsurfing in addition to kiteboarding.<sup>38</sup> Furthermore, GET records indicate that HULTS has been offering these services since at least 2011.<sup>39</sup>

## **V. RECOMMENDATIONS**

Based on its evaluation of the evidence and factual circumstances surrounding HULTS’ conduct, DOCARE respectfully requests that the Board:

1. Find that HULTS committed an administrative violation of HAR § 13-221-35, by conducting unpermitted commercial activity on unencumbered state land on January 22, 2017.
2. Issue a five hundred dollar (\$500.00) fine, in accordance with HAR § 13-221-3, to HULTS for violating HAR § 13-221-35 on January 22, 2017.

<sup>36</sup> Haw. Admin. Rule § 13-256-4(a) (2014), available at: <http://files.hawaii.gov/dlnr/dobor/rules/amend/Amend-13-256-3-4.pdf> (last accessed March 6, 2017).

<sup>37</sup> Appendix \_\_\_\_, accessed and saved on March 6, 2017 from <http://sammyshawaii.com/tour/kiteboarding/>.

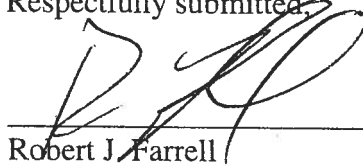
<sup>38</sup> Appendix \_\_\_\_, accessed and saved on March 6, 2017 from <http://sammyshawaii.com/>

<sup>39</sup> Appendix \_\_\_\_, accessed and saved on March 6, 2017 from <https://hitax.hawaii.gov/> /#1



3. Find that HULTS committed an administrative violation of HAR § 13-221-46, by soliciting business on unencumbered state land on January 22, 2017 without a permit, contract, license, lease, concession or other written agreement with the Board or its authorized representative.
4. Issue a five hundred dollar (\$500.00) fine, in accordance with HAR § 13-221-3, to HULTS for violating HAR § 13-221-46 on January 22, 2017.
5. Find that HULTS committed an administrative violation of HAR § 13-256-3, by conducting unpermitted commercial activity in state waters on January 22, 2017.
6. Issue a five thousand dollar (\$5000.00) fine, in accordance with HRS § 200-14.5(c), to HULTS for violating HAR § 13-256-3 on January 22, 2017.
7. Find that HULTS committed an administrative violation of HAR § 13-256-4, by deploying unregistered water sports equipment for commercial use in state waters on January 22, 2017.
8. Issue a five thousand dollar (\$5000.00) fine, in accordance with HRS § 200-14.5(c), to HULTS for violating HAR § 13-256-4 on January 22, 2017.

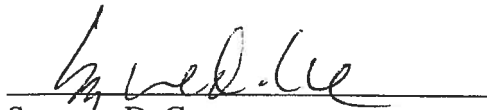
Respectfully submitted,



Robert J. Farrell  
Administrator

Division of Conservation and Resource Enforcement

APPROVED FOR SUBMITTAL



Suzanne D. Case

Chairperson

Board of Land and Natural Resources