

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

August 12, 2022

Chairperson and Members  
Board of Land and Natural Resources  
State of Hawaii  
Honolulu, HI

Land Board Members:

SUBJECT: Request approval to initiate rulemaking proceedings, including a public hearing, to amend Hawaii Administrative Rules (HAR) Section 13-256-152, Kahaluu Bay ocean waters.

The proposed rule amendment can be reviewed in person at the Division of Boating and Ocean Recreation (DOBOR) District Offices, including the Hawaii District Office from 8:00 am to 3:30 pm, Monday through Friday, except state holidays: Honokohau Small Boat Harbor, 74-380 Kealakehe Parkway, Kailua-Kona, HI 96740.

The proposed rules, including a statement on the topic of the proposed rule amendment, can be reviewed online at: <https://itgov.hawaii.gov/the-office/administrative-rules/proposed-changes/>. The proposed rules can also be viewed online at: <https://dlnr.hawaii.gov/dobor/draft-rules>. Location and contact information for DOBOR offices is available online at: <https://dlnr.hawaii.gov/dobor/contact>.

**BACKGROUND:**

At the regularly scheduled October 22, 2021 meeting as Agenda Item J-2, the Board of Land and Natural Resources (Board) approved the adoption of substantive changes to HAR Chapter 13-256 regarding commercial surfing instruction at Kahalu'u Bay, Hawaii Island, as well as technical clarifying amendments. However, the map exhibit for the section was inadvertently left out of the rule draft due to a procedural error.

**PURPOSE:**

Since the October 22, 2021 approval, DOBOR has been engaged in discussions with the Department of the Attorney General and has been advised that in order to include the map exhibit that was left out, DOBOR must conduct an additional public hearing. Therefore, the purpose of this rulemaking is to include the map exhibit for HAR Section 13-256-152 which was inadvertently left out of the rule package that the Board

previously approved on October 22, 2021. A revised version of the map exhibit includes a technical revision to remove an incorrect reference to Kamoia Point. No substantive changes to the map boundaries or the previously approved rule language are being made. The Department of the Attorney General has approved the attached rule draft for public hearings.

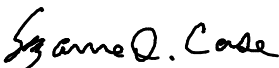
RECOMMENDATION:

That the Board grant DOBOR approval to initiate rulemaking proceedings, including public hearings, for the administrative rule package referenced and consistent with the purposes described herein.

Respectfully submitted,

  
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EDWARD R. UNDERWOOD, Administrator  
Division of Boating and Ocean Recreation

APPROVED FOR SUBMITTAL:

  
\_\_\_\_\_  
SUZANNE D. CASE, Chairperson  
Board of Land and Natural Resources

Attachment:

- A. Proposed amendments to HAR Section 13-256-152

DEPARTMENT OF LAND AND NATURAL RESOURCES

Amendments to Section 13-256-152  
Hawaii Administrative Rules

[Date of adoption by agency]

1. Section 13-256-152, Hawaii Administrative Rules, is amended to read as follows:

**"§13-256-152 Kahaluu Bay ocean waters.** (a) Kahaluu Bay ocean waters means the area confined by the boundaries shown on Exhibit [~~"H-5", dated November 20, 2014,~~] ~~H-5, titled "Kahaluu Bay Ocean Waters, Ocean Recreation Management Area", dated August 1, 2022, located at the end of this [subchapter and incorporated herein.]subchapter.~~ The boundaries are as follows:~~[-Beginning at the low water mark of Kalaau o Kalakani Point at 19°34'37.81"N, 155°58'10.50"W; then to a point on the low water mark on the northern side of the Kahaluu Bay at Kamo Point at 19°35'09.24"N, 155°58'15.91"W; then along the shoreline in a southerly direction to the point of beginning.]~~

Beginning at the low water mark of Kalaau o Kalakani Point at 19°34'37.81"N, 155°58'10.50"W; then to a point on the low water mark on the northern side of Kahaluu Bay at 19°35'09.24"N, 155°58'15.91"W; then along the shoreline in a southerly direction to the point of beginning.  
~~[(1) Restrictions. Kahaluu Bay ocean waters is designated as a swimming, surf boarding, and diving zone.~~  
~~(2) No commercial water sports instruction or Commercial tours may be conducted in Kahaluu Bay ocean waters without a permit from the department]~~

Kahaluu Bay ocean waters is designated as a swimming, surfing, and diving zone. No commercial water sports instruction or commercial tours shall be

**Exhibit A**

conducted in Kahaluu Bay ocean waters without a permit from the department.

(b) Kahaluu Bay [~~Zone~~]ocean waters zone A is described as follows:

~~[Beginning at a point on the low water mark on the northern side of the shoreline at 19°34'59.48"N, 155°58'06.11"W (hand rail); then south-easterly along the shoreline to the north lifeguard tower at 19°34'48.67"N, 155°57'58.88"W; then seawards northwesterly to Pyramid Rock at 19°34'50.21"N, 155°58'07.98"W; then seawards north-easterly ending at the point of beginning.]~~

Beginning at a point on the low water mark on the northern side of the shoreline at 19°34'59.48"N, 155°58'06.11"W (hand rail); then southeasterly along the shoreline to the north lifeguard tower at 19°34'48.67"N, 155°57'58.88"W; then seawards northwesterly to Pyramid Rock at 19°34'50.21"N, 155°58'07.98"W; then seawards northeasterly ending at the point of beginning.

- ~~(1) Restrictions. Zone A is designated as a surfing zone.~~
- ~~(2) The department may issue a total of up to four permits for commercial surf school instruction within Zone A. Each permit shall authorize surf school instructors to conduct surfing instruction only within Zone A.~~
- ~~(3) Each instructor shall have no more than four students in the water at a given time, with a maximum of eight students per surf school permit in the water at any given time. The maximum of one to four instructor to student ratio must be maintained at all times while in the water.~~
- ~~(4) The instructor shall, at a minimum, possess a current advanced life saving certificate, and be authorized by the County of Hawaii to conduct surf instruction on County property at Kahaluu Bay.~~
- ~~(5) The department may designate the site of~~

~~instruction with Kahaluu Bay Zone A and hours of operation for each permittee, and may change the site whenever such changes are found by the department to be necessary.]~~

Kahaluu Bay ocean waters zone A is designated as a surfing zone. At all times, no person shall operate or moor any motorized vessel in this zone.

All commercial activities of any type shall be prohibited in this zone, except that the department may issue commercial use permits to authorize commercial surfing instruction within this zone; provided that:

- (1) The total number of permits authorizing commercial surfing instruction issued under this subsection shall not exceed eight at any one time for Kahaluu Bay ocean waters zone A;
- (2) Each permit issued by the department pursuant to this subsection shall only authorize surfing instruction within Kahaluu Bay ocean waters zone A;
- (3) No more than four permits shall authorize commercial surfing instruction from 0800 hours (8:00 a.m.) to 1200 hours (noon 12:00 p.m.), and no more than four permits shall authorize commercial surfing instruction from 1300 hours (1:00 p.m.) to 1700 hours (5:00 p.m.);
- (4) No permittee may allow more than four students in the water at any one time per surfing instruction permit, regardless of the number of surf instructors of that permittee in the water;
- (5) Each surf instructor shall, at a minimum, possess a current advanced life saving certificate; and
- (6) The department may designate the site of surf instruction within Kahaluu Bay ocean waters zone A and hours of operation for each permittee. The department may change a designated site of operation

within Kahaluu Bay ocean waters zone A  
whenever such changes are found by the  
department to be necessary for reasons  
of public health, safety, or welfare.

(c) Kahaluu Bay ~~[Zone]~~ ocean waters zone B is described as follows:

Beginning at Kalaau O Kalakani Point at 19°34'37.81"N, 155°58'10.50"W; then northeasterly along the shoreline to the north lifeguard tower at 19°34'48.67"N, 155°57'58.88"W; then seawards ~~[north-westerly]~~ northwesterly to Pyramid Rock at 19°34'50.21"N, 155°58'07.98"W; then seawards in a southerly direction ending at Kalaau O Kalakani Point at the point of beginning.

~~[(1) Restrictions. Zone B is designated as a swim zone.~~

~~[(2) No person shall operate or moor any vessel within this zone, including but not limited to boats, motorboats, surfboards, paddleboards, sailboards, kayaks, and canoes.]~~

Kahaluu Bay ocean waters zone B is designated as a swimming and diving zone. No person shall operate or moor any vessel within this zone, including, but not limited to, boats, motorboats, surfboards, paddleboards, sailboards, kayaks, and canoes."

[Eff 2/24/94; am 4/22/16; am ] (Auth: HRS §§200-4, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-22, 200-24)



**Exhibit H-5  
Kahaluu Bay Ocean Waters,  
Ocean Recreation Management Area**



Map date: August 1, 2022

**Kahaluu Bay  
Ocean Waters**

**Hand  
Rail**

**Zone A**

**Pyramid  
Rock**

**Life Guard  
Station**

**Zone B**

**Kala'au O  
Kalakani Point**

**Legend**



**Boundary Reference  
Points**



**Ocean Waters  
Boundary**



**Zone A - Surfing**



**Zone B - Swimming**



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

2. Material, except source notes and other notes, to be repealed is bracketed and stricken. New material is underscored.

3. The amendments to section 13-256-152, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing is a copy of the rule, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which, if adopted by the Board of Land and Natural Resources, will be filed with the Office of the Lieutenant Governor.

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SUZANNE D. CASE  
Chairperson  
Board of Land and Natural Resources

APPROVED FOR PUBLIC HEARING:

/s/ Colin J. Lau  
Deputy Attorney General