

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

October 27, 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 public hearings, to amend Hawaii Administrative Rules (HAR) Chapter 13-230, General Provisions, re: Section 13-230-8, Definitions, and HAR Chapter 13-256, Ocean Recreation Management Rules and Areas, to add a new Sections 13-256-26, Manta Ray Viewing, and 13-256-165, Makako Bay Manta Ray Viewing Zone, 13-256-166, Kaukalaelae Point Manta Ray Viewing Zone, as regulations for Manta Ray viewing activities.

The proposed rule amendment can be reviewed in person at 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 Kealahou 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://ltgov.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>.

PURPOSE:

The purpose of this proposal is to add new regulations to HAR chapter 13-256 regarding manta ray viewing activities; add new designated manta ray viewing sites in the West Hawaii Ocean Recreation Management Area (ORMA) administrative rules; and to add or revise relevant definitions to HAR section 13-230-8. Proposed amendments are attached as **EXHIBIT A**.

LEGAL AUTHORITY: Hawaii Revised Statutes (HRS) sections 200-2, 200-3, 200-4.
REMARKS:

Manta ray viewing regulations would be the first of their kind in the State. Currently, no laws or administrative rules regulate manta ray diving activities in Hawai'i ocean waters. Due to overcrowding and the resulting safety and user conflict concerns, the Legislature asked DOBOR to adopt administrative rules to manage manta ray viewing sites by House Concurrent Resolution 170, House Draft 1 (2014). After lengthy discussions with commercial manta ray viewing activity operators and the Division of Aquatic Resources, DOBOR developed proposed administrative rules to regulate manta ray viewing activities. DOBOR also worked with the Division of Conservation and Resources Enforcement to ensure that the proposed regulations would be effectively enforced.

The proposed new HAR section 13-256-26 contains generally applicable manta ray viewing restrictions that would apply to any manta ray viewing zone that becomes designated within state ocean waters via administrative rule. At this time, DOBOR is only proposing to designate manta ray viewing zones at Makako Bay (also known as Garden Eel Cove) and Kaukalaelae Point (also known as Keauhou Bay) in West Hawai'i by GPS coordinates and accompanying maps. DOBOR is only designating these sites in West Hawai'i because: (1) There are no other sites in the State that are as well-established as the West Hawai'i sites; and (2) the designated sites in West Hawai'i will serve as "pilot" sites in order to give DOBOR the opportunity to refine future regulations for designated manta ray viewing sites.

Significant proposed changes in this rule package include:

- Revise various definitions and add definitions relating to manta ray viewing activities in HAR section 13-230-8. Notable changes include:
 - Revising the definition of "canoe" to accommodate vessels operating in the designated manta ray viewing zones.
 - Revising the definition of "commercial activity" and "compensation" to track the statutory definition found at HRS section 200-4(a)(9).
 - Defining "commercial manta ray viewing operation", "live boating", "manta ray", "manta ray viewing zone campfire", and "rafting."
 - Defining "manta ray viewing hours" as beginning at 4:00 p.m. until 4:00 a.m. of the following day.
- Add a new HAR section 13-256-26, Manta ray viewing, to implement specific rules to regulate manta ray viewing in state ocean waters. Notable changes include:
 - Creating a specific type of permit to allow commercial manta ray viewing operations with a fixed monthly fee of \$300.00. Manta ray specific commercial permits will be in addition to any other permits issued by DOBOR, including commercial use permits. Proposed rules include eligibility requirements for applying for a manta ray specific permit.
 - Limiting commercial manta ray viewing operation permits to 24 at each designated zone and requiring carrying no more than 60 passengers for hire within a 24-hour period for the purpose of engaging in commercial manta ray viewing operations.
 - Implementing 2-hour commercial shifts for each designated zone.

- Implementing a guide-to-customer ratio of 8 to 1.
- Requiring all participants to gather at a central viewing point (known as a "campfire") for safety.
- Safety requirements including specific vessel lighting and a propeller guard unless a crew member is designated as a safety lookout at all times; and restricting certain commercial SCUBA operations.
- Requiring any vessels engaged in commercial manta ray viewing operations to display a capital "M" on both sides of the vessel, similar to bottomfishing vessel identification requirements.
- Prohibiting live boating, rafting/daisy-chaining, and fishing during manta ray viewing hours, as defined by HAR section 13-230-8.
- Implementing strict penalties for violations by commercial operators within manta ray viewing zones to ensure compliance and safety.
- Create two designated manta ray viewing zones (new HAR sections 13-256-65 and 13-256-66) in West Hawai'i, respectively:
 - Makako Bay (Garden Eel Cove)
 - Kaukalaelae Point (Keauhou Bay)

RECOMMENDATION:

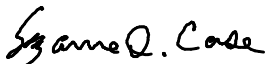
That the Board grant DOBOR approval to initiate HRS chapter 91 rulemaking proceedings by public hearings, for the administrative rule package referenced above and consistent with the purposes described herein.

Respectfully submitted,



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

APPROVED FOR SUBMITTAL:



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

Attachment (Exhibit A):

- A. Proposed amendments to HAR section 13-230-8 and addition of new HAR sections 13-256-26, 13-256-165, and 13-256-166

DEPARTMENT OF LAND AND NATURAL RESOURCES

Amendments to Chapters 13-230 and 13-256,
Hawaii Administrative Rules

[Date of adoption by agency]

1. Section 13-230-8, Hawaii Administrative Rules, is amended to read as follows:

"§13-230-8 Definitions. When used in these rules promulgated pursuant to chapter 200, Hawaii Revised Statutes, unless otherwise specifically provided or the context clearly indicates otherwise:

"Abandon" when applied to animals, means to leave an animal at any location, whether intentionally, recklessly, or negligently, without the owner intending to return for the animal and without the permission of the public or private property owner.

"Adult" means a person who has reached majority.

"Agreement" means the agreement between the boat owner and the State as required by section 13-231-2.

"Anchoring device" means a device made of metal or similar material, attached by rope or chain to a vessel, which can be deployed to submerged land to secure the vessel in a particular place.

"Approved" means that a fitting, appliance, apparatus, or item of equipment to be fitted or carried in a vessel, or by any particular arrangement, is sanctioned by the commandant of the Coast Guard, unless otherwise stated by the department.

"Approved backflow prevention device" means a backflow prevention device that meets the requirements contained in standard 1001, American Society of Sanitary Engineers or ~~[the Uniform Plumbing Code adopted by]~~ the Uniform Plumbing Code adopted by the International Association of Plumbing and Mechanical Officials (IAPMO).

"Approved marine surveyor" means a person who has been approved by the chairperson to inspect a vessel for an owner seeking a permit to moor a vessel in a

small boat harbor in accordance with sections 13-231-45(h) and (i).

"Approved vessel inspector" means an employee of the department who has been designated by the chairperson to inspect a vessel for compliance with criteria necessary to obtain a mooring permit.

"Assigned berth" means a berth that is assigned to a permittee by a valid regular mooring permit.

"Background" means that portion of the hull or superstructure, or a specially provided backing plate, upon which the numbers are placed, but shall not include any border, trim, outlining or shading of the numerals or letters.

"Barge" means a non-self-propelled vessel.

"Berth" means any place where a vessel is anchored, moored, or made fast or laid alongside a dock, quay, catwalk, or pier.

"Bicycle" means every device propelled by human power upon which any person may ride, having two tandem wheels which are sixteen inches in diameter or greater, and including any device generally recognized as a bicycle though equipped with two front or two rear wheels.

"Boat" means a small vessel propelled by oars or paddles or by sail or power.

"Boat dealer" means a person engaged wholly or partly, for gain or compensation, in the business of selling vessels or offering vessels for sale, buying or taking in vessels for the purpose of resale, or exchanging vessels.

"Boat livery" means a person or entity who is engaged in the business of renting, leasing, or chartering vessels.

"Boat manufacturer" means a person engaged in:

- (1) The manufacture, construction, or assembly of boats or associated equipment;
- (2) The manufacture or construction of components for boats and associated equipment to be sold for subsequent assembly; or

- (3) The importation into the United States for sale of boats, associated equipment, or components thereof.

"Boat owner" means the legal owner of a vessel where there is no security interest held by anyone on the vessel, a buyer under a purchase money security interest, a debtor under any security interest, a demise charterer of a vessel, or a lessee or charterer of a vessel under lease or charter which provides the lessee or charterer with exclusive right to possession of the vessel to the exclusion of the lessor or the person from whom the vessel is chartered. The documentation of ownership must meet the requirements of section 13-241-5(c).

"Recreational boating accident":

- (1) Means a collision, accident, or other casualty involving:
 - (A) A person's death;
 - (B) Complete loss of a vessel;
 - (C) Damage to a vessel amounting to \$2,000 or more;
 - (D) The disappearance of a person from a vessel under circumstances indicating death or injury to that person; or
 - (E) The injury to a person requiring medical treatment beyond first aid.
- (2) Includes damage to a vessel or its equipment, loss of life, or injury to any person or object:
 - (A) Caused by a moving vessel's wake, wash, or waves, or by a vessel's capsizing, or collision with another vessel or object;
 - (B) Caused by flooding, fire, or explosion;
 - (C) Caused when a person falls overboard; or
 - (D) On board a vessel.

"Bona fide fishing tournament" means a fishing tournament sponsored by a boat club, fishing club or yacht club, or a business or non-profit organization formed for the primary purpose of sponsoring a fishing

tournament where participation is invited from the general public.

"Buoy" means any floating aids to navigation moored to the seabed and used to convey a message.

"Business" means any and all activities engaged in or caused to be engaged in by any person or legal entity, including, but not limited to, solicitations and advertisements, with the object of making a profit or obtaining an economic benefit either directly or indirectly.

"C.F.R." means the Code of Federal Regulations.

"Camping" means the use and occupation of any portion of a state small boat harbor, boat launching facility, or any other property managed by the department as a temporary or permanent dwelling place or sleeping place (including the laying down of bedding for the purpose of sleeping). Camping includes being in possession of a backpack, tents, blankets, tarpaulins, or other obvious camping paraphernalia, or storing personal belongings, or making any fire, or using any tents or shelter or other structure or vehicle for sleeping or doing any digging or earth breaking or carrying on cooking activities. The above-listed activities constitute camping when it reasonably appears, in light of the circumstances, that the participants, in conducting these activities, are in fact using the area as a living accommodation regardless of the intent of the participants or the nature of any other activities in which they may also be engaging.

"Canoe" means ~~[outrigger canoe.]~~ a narrow, open-top, manually propelled watercraft without rudders, fins, keels, or any other type of protrusions extending downward from the vessel's hull, which is steered and propelled solely by use of single-bladed paddles, and in which participants sit on bench-type seats in an elevated position from the bottom of the hull.

"Carrying passengers for hire" means the carriage of any person or persons by a vessel for compensation flowing, whether directly or indirectly, to the owner,

charterer, operator, agent, or any other person interested in the vessel.

"Catamaran" means a multi-hulled vessel with a broad, flat deck that is affixed on top of closed cylinders which are used for buoyancy, the basic design of which is usually implemented with two rows of floats as a catamaran or with three rows of floats as a trimaran.

"Certificate" means a certificate of number issued by the department for an undocumented vessel.

"Chairperson" means the chairperson of the board of land and natural resources of the State of Hawaii or the chairperson's duly authorized representative or subordinate.

"Civil union" means a union between two individuals established pursuant to chapter 572B, Hawaii Revised Statutes.

"Civil union partner" means an individual who is a party to a civil union established pursuant to chapter 572B, Hawaii Revised Statutes.

"Coast Guard" means the United States Coast Guard, or its successor agency.

"Colony" means a collective of free-roaming, abandoned, stray, or feral cats.

"Commercial activity" means to engage in any action or attempt to engage in any action ~~[designed for profit, which includes, but is not limited to, the exchange or buying and selling of commodities, the providing of services relating to or connected with trade, traffic, or commerce in general; any activity performed by the commercial operator or its employees or agents in connection with the delivery of such commodities or services; and the soliciting of business, including the display or distribution of notices, business cards, or advertisements for commercial promotional purposes.]~~ for compensation in any form. The action or actions may include providing or attempting to provide guide services, charters, tours, and transportation to and from the location or locations for which such services are provided.

"Commercial fishing motorboat" means a motorboat used for taking fish for profit or gain or as a means of livelihood.

"Commercial high speed boating" means the use of an open ocean racing boat to provide high speed rides to passengers who pay compensation for the rides.

"Commercial high speed boating" does not include:

- (1) The use of an open ocean racing boat during an official racing competition; or
- (2) The use of an open ocean racing boat while practicing for a racing competition; provided that no passenger pays compensation for riding the boat during the practice.

"Commercial manta ray viewing operation" means an activity where an operator for hire carries passengers or brings participants into the water, or both, to engage in manta ray viewing at areas where illumination is used for the purpose of attracting plankton.

"Commercial motorboat" means any motorboat used for hire, profit or gain.

"Commercial ocean recreation activities" means any ocean recreation activity offered for a fee.

"Commercial purposes" includes the staging, loading and discharge of passengers or supplies at a state boating facility for further transport to a vessel's offshore location by means of a water taxi or any other vessel, or provisioning a vessel before or after a voyage involving the carriage of passengers for hire.

"Commercial vessel" means a vessel engaged in any trade, business, or commercial activity, including, but not limited to, carrying passengers for hire, charter fishing, bare boat (demise) or any type of charter maintenance, harvesting coral or similar resources, construction, towing, tow-boating, or other trade or business wherein the vessel is used in any manner to promote the venture, or is registered with the State or documented by the United States Coast Guard for commercial use.

"Compensation" means any valuable ~~[consideration.]~~ consideration, including money,

barter, trade, credit, and other instruments of value, goods, and other forms of payment.

"Contrivance" means any man-made object or artificial arrangement not used or intended to be used for transportation which may be floated upon or suspended within or on the water.

"Department" means the department of land and natural resources of the State of Hawaii.

"Dinghy" means a small open boat under thirteen feet in length, which may be propelled by oars, sails or an outboard motor and carried on or towed by a larger boat or yacht.

"Display area" means the area on a sign or buoy used for display of a waterway marker symbol.

"Diver's flag" means a red flag with a white diagonal running from the masthead to lower outside corner.

"Division" means the department of land and natural resources division of boating and ocean recreation.

"Documented vessel" means any vessel which has a valid marine document issued by the Coast Guard, in accordance with the Code of Federal Regulations, Subchapter G, Part 67, Documentation of Vessels.

"Dormant vessel" means a vessel or contrivance, other than a houseboat, that has not been navigated from or has not vacated an assigned mooring or facility within or offshore of a state small boat harbor at least once within a ninety-day period, or cannot be made seaworthy upon thirty days' notice to the owner.

"Enforcement officer" means a police officer and any other state or county officer charged with the enforcement of state laws.

"Excessive topside lighting" means any point source of illumination from a vessel shining into the water that emits more than one thousand lumens.

"Federal laws and requirements" means all statutes, regulations, and other laws of the United States, which may be applicable to these rules.

"Feral" means having escaped or been released from domestication and reverted to a wild state and any offspring resulting therefrom.

"Firm" includes a business organization such as a sole proprietorship, partnership, or corporation which is licensed to engage in or conduct business in the State.

"Fishing" means the same as defined in section 187A-1, Hawaii Revised Statutes.

"Foreign built vessel" means any vessel whose hull was constructed in a country other than the United States.

"Forward half of the vessel" means any portion of the vessel in front of a point equidistant from the stem and stern of the vessel.

"Free diver" means a person who is using a mask and snorkel, other than for SCUBA diving, who submerges under water or breaks the surface of the water.

"Global Positioning System" (GPS) means the method of terrestrial navigation using a GPS electronic instrument, receiving data from a network of orbiting satellites to locate one's position by latitude and longitude.

"Gross receipts" means all moneys paid or payable to the account of the commercial use permittee or catamaran registration certificate holder, for services rendered, or resulting from trade, business, commerce, or sales by the vessel or water sports equipment owner when the services, trade, business, commerce, or sales have a direct relationship to the vessel or permitted activity.

"Guardian" means a person invested by a court of law with the power, and charged with the duty, of taking care of a person and of managing the property of that person.

"Hanai" means a child who is taken permanently to be reared, educated, and loved by someone other than natural parents -- traditionally a grandparent or other relative. The child is given outright; natural parents renounce all claims to the child. Usually the child is given at infancy.

"Handboard" means any type of surf riding board that is:

- (1) With or without skegs;
- (2) Worn on one or both of the operator's hands;
- (3) Is less than sixteen inches in overall length, and
- (4) Is used for the sport of wave riding.

"Harbor resident" means the owner, co-owner, or their spouse and their legal dependents authorized by the department to reside on board a vessel used as the principal habitation of the owner.

"Hearing officer" means a person appointed by the chairperson to hear appeals.

"High seas" means all parts of the sea that are not included in the exclusive economic zone, in the territorial sea, or in the internal waters of the United States.

"Highway" means "street" as defined in this section.

"Houseboat" means any vessel which is fitted for use as a permanent or temporary place of habitation, and is either stationary or capable of being moved by oars, sweeps, or towing.

"Hull" means the shell, frame, or body of a vessel, exclusive of masts, yards, sails, riggings, machinery, and equipment.

"Immediate family" means any person and his or her spouse and dependent children under twenty-one years of age.

"Inland waters" mean the waters shoreward of the territorial sea baseline.

"Interest" includes any claim of right, title, ownership of stock, shares, profit, benefit or gain in a corporation, partnership, joint venture or any other business entity that has a use permit.

"Kayak" means a manually propelled watercraft that has an open or covered top ~~[and is]~~ designed to hold one or more ~~[participants and]~~ participants, which is generally propelled by use of a [single-or] double-bladed paddle, and in which the participant(s) sit with legs extended forward.

"Launch" means a small motorboat that is open or that has the forepart of the hull covered.

"Legal dependent" or "dependent" means those persons who are defined as dependents by law, e.g., a spouse or minor child, or who are defined as dependents under Internal Revenue Service regulations or by the Armed Forces of the United States, or any of the following persons who are dependent upon a permittee for all or a substantial portion of the person's living expenses:

- (1) Spouse;
- (2) A son or daughter who is
 - (A) Unmarried and under eighteen years;
 - (B) Unmarried and under twenty years if a full-time student at a high school, business school, or technical school;
 - (C) Unmarried and under twenty-two years if a full-time undergraduate student at a college; or
 - (D) Unmarried and physically handicapped so as to be incapable of self-support;
- (3) A parent or grandparent if physically handicapped so as to be incapable of self-support;
- (4) A grandchild, brother, or sister under eighteen years of age.

"Legal owner" includes a person who holds unencumbered title to a vessel or is a secured party under a security interest for the vessel.

"Length" when applied to vessels covered by these rules, means the measurement of a vessel from end to end over the deck. It is a straight-line measurement of the overall length from the foremost part of the vessel measured parallel to the centerline. Bowsprits, boomkins, rudders, motor brackets, and similar fittings or attachments or sheer are not to be included in the measurement. In case of a vessel of an open type or with a cockpit, the measurement is taken between the foremost and aftermost extremities of the hull exclusive of sheer.

In vessels having more than one deck, it is the length measured from the foremost part of the bow to the aftermost part at the stern exclusive of sheer.

"Lienholder" means a person holding a recorded security interest in a vessel.

"Lifeboat" means a boat carried aboard a vessel and used solely for lifesaving purposes, but not including dinghies, tenders, speedboats, or other types of craft carried aboard a vessel and used for other than lifesaving purposes.

"Liquor" or "intoxicating liquor" shall mean the same as defined in section 281-1, Hawaii Revised Statutes.

"Litter" means any and all types of debris and substances, whether liquid or solid, and materials such as garbage, refuse, rubbish, glass, cans, bottles, paper, wrappings, fish or animal carcasses, or any other nauseating or offensive matter or any machinery, appliance, or automobile, or parts thereof, or any other substances which render small boat harbor lands or facilities unsightly, noxious, or otherwise unwholesome to the detriment of the public health and welfare or the enjoyment of the small boat harbor for recreational purposes.

"Live boating" means navigating a mobile motorboat in support of watersport activities, including, but not limited to, swimming, free diving, snorkeling, and SCUBA diving. The term includes using a vessel's motors to maintain the vessel's position in the water without the use of a mooring or anchor.

"Livery boat" means a vessel which is rented, leased, or chartered by a person who is engaged in the business of renting, leasing, or chartering vessels.

"Living aboard" means the substantial use of a vessel as a place of abode, dwelling, living quarters, or residence, including, but not limited to, the regular use for such purposes during weekends.

"Machinery" means all internal combustion engines located within the vessel and all motor or mechanical devices capable of propelling vessels.

"Majority" means the age specified under section 577-1, Hawaii Revised Statutes.

"Manta ray" means any elasmobranch fish in the genus *Manta* or *Mobula*.

"Manta ray viewing hours" means the time period beginning at 1600 hours (4:00 p.m.) and ending at 0400 hours (4:00 a.m.) of the following day.

"Manta ray viewing zone campfire" means the intended gathering point for in-water participants to view manta rays.

"Manta ray viewing zone" means an area where manta rays are intended to be viewed, whether commercially or non-commercially.

"Marine life" means the same as defined in section 187A-1, Hawaii Revised Statutes.

"Minor" means a person who has not reached the age of majority.

"Moor" means to secure a boat by making it fast with cables, lines or anchors.

"Mooring" means a buoy attached by rope or chain to a permanently placed weight or structure situated within a submerged land area and to which a vessel can be made permanently or temporarily secured.

"Motorboat" means any vessel which is equipped with propulsion machinery, including steam. This term includes, but is not limited to, wet bikes, motorized surfboards, and any other vessel temporarily or permanently equipped with a motor.

"Navigable streams" means the waters of estuaries and tributaries of the streams of each island of the State, where boating and water related activities, recreational or commercial, may be carried on, whether the mouths of said streams are physically opened or not to ocean waters for intra or interstate commerce or navigation.

"Nonresident" means a person who is not a resident of the State of Hawaii.

"Ocean recreation management area" (ORMA) means ocean waters of the State that have been designated for specific activities as described in chapter 13-256, Ocean Recreation Management Rules and Areas.

"Ocean waters" means all waters seaward of the shoreline within the jurisdiction of the State.

"Open ocean racing boat" means a motorized vessel which:

- (1) Is designed, modified, or restored for the primary purpose of high speed board racing; and
- (2) Has the capacity to carry not more than the operator and five passengers.

"Operate" means to navigate or otherwise use a vessel on or in the waters of the State.

"Operator" means a person who operates, or who has charge of the navigation or use of, a vessel.

"Operator permit" means the permit issued by the department which authorizes either the direct operation or the offering for a fee of surfboards and sailboards or any vessel, watercraft or water sports equipment on the ocean waters and navigable streams of the State.

"Outrigger canoe" means a canoe having the inclusion of a rig known as an outrigger which acts as a counterpoise or balance, rigged out from the side of the canoe. A number of spars (iako), usually two but up to as many as ten depending on the canoe's origin and purpose, are lashed across and to the canoe gunwales, extending outwards for a given distance and truncating with the attachment of a flotation device (ama).

"Owner" shall be synonymous with the word "boat owner" as defined in this section.

"Paddleboard" means any type of board that is:

- (1) Without skegs;
- (2) Does not exceed four feet in length; and
- (3) Is used for the sport of surfriding.

"Paipo board" shall be synonymous with the word "paddleboard" as defined in this section.

"Parasailing" means the activity in which an individual is transported or carried aloft by a parachute, sail, or other material attached to a towline, which is towed by a vessel.

"Parent" includes legal guardian and legal adoptive parent, except where the guardianship or adoption was acquired primarily to obtain resident status for the ward or adopted child. It shall also

include a person who can legally claim an unmarried minor as a dependent for federal income tax purposes, but only when such person has been in loco parentis to the minor for the twelve-month period immediately preceding the residence determination date.

"Park" or "parking" means the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading merchandise or passengers.

"Passenger" means every person carried on board a vessel other than:

- (1) The owner or the owner's representative;
- (2) The operator;
- (3) Bona fide members of the crew engaged in the business of the vessel who have contributed no consideration for their carriage and are paid for their services; or
- (4) Any guest on board a vessel which is being used exclusively for pleasure purposes who has not contributed any consideration, directly or indirectly, for the guest's carriage.

"Person" means any individual, firm, partnership, corporation, trust, association, joint venture, organization, institution, or any other legal entity.

"Personal flotation device" is a technical term for a life preserver that has been approved and certified by the United States Coast Guard and capable of providing at least ninety per cent of factory-rated flotation capacity.

"Pet owner" means any person owning, harboring or keeping a dog, cat, or other domestic pet, or having custody thereof.

"Power driven catamaran" means a catamaran propelled by machinery whether under sail or not.

"Power-driven vessel" means any vessel propelled by machinery.

"Pram" means a small lightweight nearly flat-bottomed boat with a broad transom and usually square-bow often used as a dinghy.

"Principal owner" means a person whose name appears on a certificate of number as the primary owner or who is named as managing owner of a Coast Guard documented vessel.

"Principally used" means a measurement of the time when a vessel is on the waters of the United States, a state, territory, province, or country and includes the time when the vessel is not in motion, as for instance when the vessel is moored or at anchor, as well as the time when the vessel is being navigated.

"Propeller guard" means a physical barrier such as a cage, screen, vane guard, shroud, ring, deflector, or similar to protect against injury to persons or marine life and damage to a vessel's propeller.

"Rafting" means tying up or otherwise attaching one vessel to another vessel that is already attached to a mooring or similar device, or to another vessel that is already anchored.

"Reciprocal beneficiary" means an adult who is a party to a valid reciprocal beneficiary relationship and meets the requisites for a valid reciprocal beneficiary relationship as set forth in chapter 572C, Hawaii Revised Statutes.

"Recreation" means activities in which there is direct and intimate contact with water including, but not limited to, fishing, swimming, surfing, boating, water skiing, and viewing or enjoying historical, archeological, scenic, or scientific sites.

"Recreational vessel" means any vessel that is being used for pleasure and not for conducting commercial activity.

"Regatta" or "marine parade" means an organized water event of limited duration which is conducted according to a prearranged schedule.

"Registration sticker" means a pair of stickers, plates, tabs, or other devices issued by the department with certificates of number and renewals thereof to be affixed to the vessel to indicate that the vessel's certificate of number is current and valid.

"Regular permittee" means a person holding a valid regular mooring permit.

"Regulatory marker" means a waterway marker which indicates the existence of regulatory areas, speed zones or restricted areas and which has no equivalent in the United States Coast Guard system of navigational aids.

"Residence" or "residence status" means a combination of physical presence in a place and the intent to make such place one's permanent home.

"Residency determination date" means:

- (1) The date a person applies for a use permit or for application renewal;
- (2) The date of issuance or renewal of a use permit;
- (3) The date the department makes a residency status determination following the receipt of a completed questionnaire submitted by a person classified as a nonresident pursuant to the provisions of section 13-230-27; or
- (4) The date of a hearing officer's decision on a petition submitted to the department as prescribed in section 13-230-28.

"Roadway" means that portion of a street or highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder. In the event a highway includes two or more separate roadways, the term "roadway" shall refer to each roadway separately but not to all such roadways collectively.

"Rules" means the rules governing small boat harbors, facilities under the jurisdiction of the division, and State ocean waters as set forth in Title 13, Subtitle 11 - Ocean Recreation and Coastal Areas.

"Rules of the road" means the federal statutory and regulatory rules governing navigation of vessels. These rules are published by the Coast Guard in pamphlet form and known as Navigation Rules - International - Inland COMDTINST M16672.2B.

"Sailboard" means any type of board that exceeds four feet in length and is propelled by a detachable sail apparatus.

"Sailing vessel" means any vessel propelled by sail only. Every power-driven vessel which is under sail and not under power is to be considered a sailing vessel, and every vessel under power, whether under sail or not, is to be considered a power-driven vessel.

"SCUBA" means self-contained underwater breathing apparatus and includes all forms of self-contained underwater breathing apparatuses, e.g., re-breathers, open-circuit, semi-closed or closed circuit or surface-supplied breathing apparatuses.

"Security interest" means an interest in a vessel reserved or created by agreement and which secures payment or performance of an obligation. The term includes the interest of a lessor under a lease intended for security. A security interest is "perfected" when it is valid against third parties generally, subject only to specific statutory exceptions contained in article 9, chapter 490 and section 490:1-201, Hawaii Revised Statutes.

"Sheer" means the longitudinal upward curve of the deck, gunwales, and lines of a vessel, when viewed from the side.

"Shore waters" or "shores" means any shores or waters between the three nautical mile limit and the shoreline of the islands of the State of Hawaii.

"Shoreline" means the upper reaches of the wash of the waves, other than storm and seismic waves, at high tide during the season of the year in which the highest wash of the waves occurs, usually evidenced by the edge of vegetation growth, or the upper limit of debris left by the wash of the waves.

"Sign" means any device for carrying a message which is attached to another object such as a piling, buoy, structure or land itself.

"Skeg" means any fin-like projection.

"Sleeping place" means a place used by a person for the purpose of sleeping, where the person is or may be asleep inside a tent, sleeping bag, or some form of temporary shelter or is or may be asleep atop of or covered by materials such as a cot, mat,

bedroll, bedding, sheet, blanket, pillow, bag, cardboard, or newspapers.

"Slow-no-wake" means as slow as possible without losing steerage way and so as to make the least possible wake. This would almost always mean speeds of less than five miles an hour.

"Small boat harbor" means those harbors or portions of harbors, and any interest in property, whether real, personal, or mixed connected therewith under the care and control of the department, which are used as described in section 200-9, Hawaii Revised Statutes.

"Snorkeler" shall be synonymous with the word "free diver" as used in this section.

"Spouse" means a marriage partner, reciprocal beneficiary, or civil union partner of an individual.

"Stand" or "standing" means the halting of a vehicle whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in receiving or discharging passengers.

"State" means the State of Hawaii.

"State aid to navigation" means a waterway marker which is the equivalent of a United States Coast Guard aid to navigation.

"Stay aboard" or "staying aboard" means a person or persons aboard any vessel with prior notice to the department or a stay aboard permit between the hours of 12:00 midnight and 6:00 A.M., while the vessel is moored in a state small boat harbor or offshore mooring area.

"Stop" or "stopping", when prohibited, means any halting, even momentarily, of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic control sign or signal.

"Stray" means any dog, cat, or other animal without a microchip or other registered owner-identifier or is living or roaming off its owner's property without permission to be on other public or private property. Strays may also be feral or abandoned.

"Street" means the entire width between boundary lines of every way publicly maintained in any small boat harbor when any part thereof is open to the public for purposes of vehicular traffic.

"Subsurface vessel lighting" means any source of illumination affixed, whether temporarily or permanently, to the submerged part of a vessel's hull.

"Surfboard" means any type of board that exceeds four feet in length and is used for the sport of surf riding.

"Symbols" means geometric figures such as a diamond, circle, or rectangle, used to convey a basic message.

"Tahiti moor" means the mooring of a vessel where one end of the vessel is moored by a rope or chain attached to a buoy that is attached to a pile or device that includes, but is not limited to, an anchor, concrete block or similar device placed or dropped on submerged land. The other end of the vessel is moored to the facility that includes, but is not limited to, breakwaters, catwalk, piers, and docks where direct access can be made from the facility to the vessel either by gangway, plank, or stepping onto the vessel.

"Temporarily assigned berth" means a berth that is allocated to a permittee by a valid temporary mooring permit for interim use of the facility.

"Temporary mooring" means mooring pursuant to a temporary use permit. Calculation of the allowable period for temporary mooring shall include cumulative days moored with and without a permit.

"Temporary permittee" means a person holding a valid temporary mooring permit for the interim use of a berth or offshore mooring.

"Tender" means a dinghy or a larger launch used to carry persons and supplies to and from large vessels.

"Territorial sea baseline" means the line from which the territorial sea is measured, which is generally the low water line along the coasts including the coasts of islands and special closing lines drawn tangent to the headlands across the mouths

of rivers, bays, inlets, and other similar indentations.

"Thrill craft" means any motorized vessel that falls into the category of personal watercraft, which:

- (1) Is generally less than thirteen feet in length as manufactured;
- (2) Is generally capable of exceeding a speed of twenty miles per hour;
- (3) Can be operated by a single operator, but may have the capacity to carry passengers while in operation; or
- (4) Is designed to provide similar operating performance as a personal watercraft through a combination of small size, power plant, and hull design.

The term includes, but is not limited to, a jet ski, waverunner, wet bike, surf jet, miniature speed boat, hovercraft, and every description of vessel which uses an internal combustion engine powering a water jet pump as its primary source of motive propulsion, and is designed to be operated by a person or persons sitting, standing, or kneeling on, or being towed behind the vessel.

"Tow-in surfing" means utilizing a surfboard, often equipped with foot straps, to surf waves with the assistance of a thrill craft that is equipped with a rescue sled, bow tow-line, and a tow-in-rope.

"Transient vessel" means any vessel visiting the State for a period of less than ninety days.

"Ultralight or experimental float equipped aircraft" means an aircraft of light weight construction and limited range, generally carrying not more than two individuals, able to land on water surfaces using floats.

"Unassigned berth" means a berth that is not assigned to a permittee by a regular mooring permit.

"Underway" means the vessel is not at anchor, aground, or made fast to shore.

"Undocumented vessel" means any vessel which does not have a valid marine document issued by the Coast Guard, in accordance with the Code of Federal

Regulations, Subchapter G, Part 67, Documentation of Vessels.

"Use permit" as used in these rules, means the authorization by the department to utilize State boating facilities, offshore mooring areas, offshore moorings, State ocean waters, and navigable streams, as evidenced by the fully executed "agreement" described in section 13-231-2.

"Vacation" means a period spent away from home or business in travel or recreation.

"Vehicle" means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, but excludes mopeds, devices moved by human power, or devices used exclusively upon stationary rails or tracks.

"Vessel" means all description of watercraft, used or capable of being used as a means of transportation on or in the water, except a seaplane.

"Vessel carrying passengers for hire" means any vessel which carries any person or persons for a valuable consideration that goes directly or indirectly to the owner, charterer, operator, agent, or any person who has an interest in the vessel.

"Vessel engaged in fishing" means any vessel fishing with nets, lines, trawls, or other fishing apparatus which restrict maneuverability, but does not include a vessel fishing with trolling lines or other fishing apparatus which do not restrict maneuverability.

"Vessel length" means the end-to-end measurement of a vessel, taken over the deck, parallel to the waterline from the foremost part of the bow to the aftermost part of the stern; provided, that hull platings, plankings, and extensions aside from the hull proper, such as a bowsprit, are not to be included in the measurement; provided further, that an open-type vessel or one with a cockpit shall be measured as if a complete deck existed at the upper level of the hull.

"Vessel length overall" means the distance between the fore-and-aft extremities of a vessel including hull platings, plankings and any extensions

beyond the hull proper, such as bowsprit, boomkin, steering device, or other extensions.

"Vessel used as a place of principal habitation" means a vessel on which any person remains overnight ninety times or more in a calendar year while the vessel is moored in a State small boat harbor.

"Visiting vessel" means a vessel temporarily moored in a state small boat harbor while having a use permit applicable to a different state small boat harbor or other boating facility under the jurisdiction of the division.

"Water sledding" means the activity in which an individual is transported or carried over the surface of the water on an apparatus attached to a towline and towed by a vessel.

"Water sports equipment" means any equipment, contrivance, frame or other device that one or more persons may wear, lie, sit, or stand upon or in, and which is primarily for use in or on the water for pleasure, recreation, or sports, and not necessarily for transportation.

"Waters of the State" means any waters within the jurisdiction of the State, the marginal seas adjacent to the State, and the high seas when navigated as part of a journey or ride to or from the shores of the State.

"Water taxi operations" means the shuttling of persons or cargo to or from the small boat harbor facility or a shoreside location authorized for such use under chapter 13-256 to a destination or vessel located outside the small boat harbor boundary.

"Waterway marker" means any device designed to be placed in, or near, the water to convey an official message to a boat operator on matters which may affect health, safety, or well-being, except that such devices of the United States or an agency of the United States are excluded from the meaning of the definition.

"Wildlife" means any member of any non-domesticated species of the animal kingdom, and game mammals and game birds living in a wild and non-domesticated state, whether reared in captivity or

not, including any mammal, fish, bird, amphibian, reptile, mollusk, crustacean, arthropod, or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or parts thereof." [Eff 2/24/94; am 4/27/02; am 6/16/03; am and comp 12/7/13; am 12/31/18; am] (Auth: HRS §§200-4, 200-24) (Imp: HRS §§200-2, 200-4, 200-9, 200-10, 200-22, 200-24)

2. Chapter 13-256, Hawaii Administrative Rules, is amended by adding a new section 13-256-26 to read as follows:

"§13-256-26 Manta ray viewing. (a) All persons and vessels within any manta ray viewing zone designated by the department shall be subject to the provisions contained in this section. Unless otherwise required, no permit shall be required to engage in non-commercial manta ray viewing.

(b) Conducting commercial manta ray viewing operations within manta ray viewing zones designated by the department shall be prohibited without a commercial manta ray viewing operation permit and a commercial use permit issued by the department. Beginning one month after the effective date of this section, no type of permit other than a commercial manta ray viewing operation permit may authorize commercial manta ray viewing operations in any manta ray viewing zone designated by the department.

(1) The total number of commercial manta ray viewing operation permits shall not exceed twenty-four for any one manta ray viewing zone. Beginning on the anniversary of the effective date of this section, the department shall not issue any additional commercial manta ray viewing operation permits for a particular manta ray viewing zone unless the number of valid permits for that zone decreases to less than twenty-four. If the number of commercial manta ray viewing operation permits for a manta ray viewing zone has reached the limit set by this subsection, all subsequent permit applications shall be issued in accordance with the requirements of sections 13-231-60 and 13-234-23.

(2) Each commercial manta ray viewing operation permit shall only authorize operations in one manta ray viewing zone and shall not authorize operations in any other areas. Commercial manta ray viewing operations

shall only be conducted during manta ray viewing hours and shall be subject to two-hour shifts as determined and assigned by the department. No commercial manta ray viewing operator may operate within any manta ray viewing zone outside of their assigned shift.

- (3) Commercial manta ray viewing operation permit fees shall be \$300 per month. This fee shall be in addition to any other fees required by these rules. A commercial manta ray viewing operation permit shall be in addition to any other permits issued by the department.
- (4) Each commercial manta ray viewing operation permit shall be valid for up to one year from the date of issuance, with a continuing option to renew, subject to compliance with the requirements of this section, the terms and conditions of the permit, and all applicable laws and rules of the department. A commercial manta ray viewing operation permit may be renewed no more than ninety calendar days before the date of expiration. A permittee interested in renewing their commercial manta ray viewing operation permit shall notify the department of their intent to renew in writing at least sixty calendar days before expiration. Failure to notify the department of an intent to renew may constitute grounds for denying renewal of a permit.
- (5) Each commercial manta ray viewing operation permit shall authorize the carrying of no more than sixty passengers per twenty-four-hour period. Operators shall maintain a ratio of at least one guide per eight participants at any given time, regardless of how many of a vessel's participants are in the water. No more than one commercial manta ray viewing operation permit shall be issued per person or business entity.

- (6) All commercial manta ray viewing operation permit holders shall display on the permitted vessel the capital letter "M", so as to be clearly visible on both sides of the vessel, near the top of the gunwales or on the superstructure. If the vessel has a valid identification number issued by the department and displayed pursuant to chapter 13-241, the letter "M" shall be displayed as a suffix to the identification number. Unless otherwise required, the letter "M" shall be no less than six inches high by three inches wide in black or a contrasting solid color to the background.
- (7) Commercial manta ray viewing operation permit eligibility shall be subject to the following:
- (i) On the effective date of this section, an applicant must hold a valid commercial use permit with the division that authorizes commercial manta ray viewing operations.
 - (ii) At the time application for a commercial manta ray viewing operation permit is made, the applicant must have been engaged in commercial manta ray viewing operations for at least four consecutive years, as evidenced by submission of records.
 - (iii) A commercial manta ray viewing operation permit may be suspended for up to thirty business days for a first violation of any of the provisions of this section or any condition of a commercial manta ray viewing operation permit by a permit holder or any of the permit holder's employees or agents, and shall be suspended for up to sixty business days for any subsequent violations of any of the provisions of this section or any condition of a commercial manta ray viewing operation

permit by a permit holder or any of the permit holder's employees or agents within one year of the previous violation.

(iv) A commercial manta ray viewing operation permit may be revoked for a third and any subsequent violations of any of the provisions of this section or any condition of a commercial manta ray viewing operation permit by a permit holder or any of the permit holder's employees or agents within one year of the previous violation.

(v) For any violation of this section alleged by the department, the board may suspend any and all of the alleged offender's commercial permits with the division pending the outcome of any criminal, administrative, or investigative proceedings.

(c) All persons and vessels within any manta ray viewing zones designated by the department shall be subject to the following:

(1) Commercial manta ray viewing operations shall be allowed only within manta ray viewing zones designated by the department or at least seven nautical miles from any designated manta ray viewing zone boundary. Vessels in support of commercial manta ray viewing operations shall not leave a manta ray viewing zone boundary while participants or guides, or both, of that vessel are in the water.

(2) Only the department or its authorized designee may install and maintain day use mooring buoys at manta ray viewing zones. The department may remove unauthorized moorings at any time.

(i) At each manta ray viewing zone, one mooring shall be permanently reserved for non-commercial use, available on a first-come, first-served basis.

- (ii) Commercial vessels shall only moor at department-approved moorings and shall not moor at non-commercial moorings. Non-commercial operators may moor at any mooring, subject to availability.
 - (iii) For all mooring buoys, the mooring time limit during manta ray viewing hours shall be the same as the day use mooring buoy time limit specified in chapter 13-257, subchapter 1. Calculation of the time limit begins when a vessel attaches to a mooring. A vessel that has reached the mooring time limit must detach from its mooring and leave the boundaries of the manta ray viewing zone for at least thirty minutes before returning.
- (d) The following prohibitions shall apply within all designated manta ray viewing zones:
 - (1) At all times, no person shall:
 - (i) Operate a vessel at a speed in excess of slow-no-wake.
 - (ii) Anchor any vessel.
 - (iii) Raft any vessel; provided that only kayaks, canoes, and paddleboards may raft.
 - (2) During manta ray viewing hours, no person shall:
 - (i) Navigate any motorboat; provided that navigating a motorboat for the purpose of securing the vessel to a mooring shall be allowed; provided further that navigating a vessel within one hundred feet of any manta ray viewing zone campfire shall be allowed only for ingress and egress purposes or in emergency situations, if a campfire is available.
 - (ii) Engage in live boating, except for ingress and egress purposes, or in life-threatening and vessel-related emergency situations.

- (iii) Use a pole, net, spear, or any variation thereof to engage in fishing. This shall not prohibit gathering marine life by hand without using such equipment.
- (iv) Use subsurface vessel lighting or excessive topside lighting if a campfire is available.
- (v) Use any point source of illumination for the purpose of attracting plankton or manta rays more than one hundred feet from any manta ray viewing zone campfire, if a campfire is available.
- (vi) Engage in commercial SCUBA diving operations, except that commercial SCUBA diving operations shall be allowed only in the Makako Bay manta ray viewing zone.
- (vii) Navigate a vessel equipped with one or more inboard or outboard motors, except a thrill craft, without a propeller guard installed; provided that a propeller guard shall not be required if a crew member, other than the person operating the vessel, is designated as a lookout to ensure safety at all times.
- (viii) Operate any non-motorized vessel without displaying a white light, visible three hundred sixty degrees from a distance of at least two hundred feet away, to indicate the presence of the vessel.

(e) In addition to the exceptions cited in section 13-256-14, the restrictions cited in this section shall not apply to employees and vessels of the department performing official duties. The department shall also have the discretion to authorize an exemption from the restrictions cited in this section for research activity purposes, provided that:

- (1) "Research activity" shall only include basic data collection, experimental management, or

resource evaluation, or any combination thereof, that does not result in a serious or major disturbance to an environmental resource; and

- (2) The department receives a written request for a research activity exemption not less than thirty calendar days and not more than ninety calendar days before the intended date of the research activity."

[Eff _____] (Auth: HRS §§200-4, 200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-8, 200-14, 200-14.5, 200-24)

3. Chapter 13-256, Hawaii Administrative Rules, is amended by adding a new section 13-256-165 to read as follows:

"§13-256-165 Makako Bay manta ray viewing zone.

"Makako Bay manta ray viewing zone" means the area within the boundaries shown on "Exhibit FFF1. Makako Bay Manta Ray Viewing Zone", dated September 12, 2022, incorporated herein, and located at the end of this subchapter. The boundaries are as follows:

Beginning at 19°44'26.5956"N, 156°3'15.6168"W; then in a clockwise direction along a path five feet seaward of the shoreline to 19°43'53.7456"N, 156°3'31.9176"W; then in a straight line to the point of beginning. The Makako Bay Manta Ray Viewing Zone Campfire, shown on "Exhibit FFF1. Makako Bay Manta Ray Viewing Zone", dated September 12, 2022, shall be located at 19°44'10.86"N, 156°3'14.0394"W."

[Eff _____] (Auth: HRS §200-4)
(Imp: HRS §§200-2, 200-3, 200-4)

4. Chapter 13-256, Hawaii Administrative Rules, is amended by adding a new section 13-256-166 to read as follows:

"§13-256-166 Kaukalaelae Point manta ray viewing zone. "Kaukalaelae Point manta ray viewing zone" means the area confined by the boundaries shown on exhibit "Exhibit FFF2. Kaukalaelae Point Manta Ray Viewing Zone", dated September 12, 2022, incorporated herein, and located at the end of this subchapter. The boundaries are as follows:

Beginning at 19°33'40.5864"N, 155°57'57.7944"W;
then in a clockwise direction along a path five
feet seaward of the shoreline to 19°33'22.2912"N,
155°57'58.446"W; then in a straight line in a
clockwise direction to 19°33'22.3848"N,
155°58'12.1944"W; then in a straight line in a
clockwise direction to 19°33'40.0932"N,
155°58'10.9236"W; then in a straight line to the
point of beginning. The Kaukalaelae Point Manta
Ray Viewing Zone Campfire, shown on "Exhibit
FFF2. Kaukalaelae Point Manta Ray Viewing Zone",
dated September 12, 2022, shall be located at
19°33'35.82"N, 155°58'2.0382"W."

[Eff _____] (Auth: HRS §200-4) (Imp:
HRS §§200-2, 200-3, 200-4)

Exhibit FFF1. Makako Bay Manta Ray Viewing Zone
Dated September 12, 2022



Exhibit FFF2. Kaukalaelae Point Manta Ray Viewing Zone
Dated September 12, 2022



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

6. Additions to update source notes to reflect these amendments are not underscored.

7. The amendments to chapters 13-230 and 13-256, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on _____ by the Board of Land and Natural Resources.

SUZANNE D. CASE
Chairperson
Board of Land and Natural Resources

APPROVED FOR PUBLIC HEARING:



Deputy Attorney General