

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

November 10, 2022

Chairperson and Members  
Board of Land and Natural Resources  
State of Hawai'i  
Honolulu, Hawai'i

Land Board Members:

**SUBJECT:** Request approval and adoption of amendments to Hawaii Administrative Rules (HAR) Section 13-256-152, Kahaluu Bay ocean waters, regarding commercial surfing instruction, including a map exhibit and technical amendments.

The proposed rule amendment can be reviewed in person at the Division of Boating and Ocean Recreation (DOBOR) District Offices, including the Hawai'i District Office from 8:00 am to 3:30 pm, Monday through Friday, except state holidays: Honokōhau 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:**

DOBOR received the following regulatory approvals regarding these amendments:

- June 17, 2021: The Small Business Regulatory Review Board (SBRRB) voted to recommend that the proposed amendments proceed to public hearing. DOBOR informed SBRRB that there would be an impact to small business because Kahalu'u Bay surf school operators would be affected.
- July 9, 2021: The Board of Land and Natural Resources (Board) approved DOBOR's request to begin the rulemaking process for HAR Section 13-256-152, pursuant to Hawaii Revised Statutes (HRS) Chapter 91.
- July 12, 2021: DOBOR received approval from the Governor to hold a public hearing.

- August 12, 2022: The Board approved DOBOR's request to hold a second public hearing to include the map exhibit that was inadvertently left out of the rule package.
- August 22, 2022: SBRRB voted to recommend that the proposed amendments proceed to the second public hearing.
- August 25, 2022: DOBOR received approval from the Governor to hold the second public hearing.

#### PURPOSE:

The purpose of the rulemaking is to make clarifying amendments to HAR § 13-256-152 regarding commercial activity regulations relating to surfing instruction permit holders at Kahalu'u Bay on Hawai'i Island, to include a map exhibit that was inadvertently left out, and to make amendments for organization and clarity.

#### REMARKS:

The proposed amendments to HAR § 13-256-152 will only affect Kahalu'u Bay on the Island of Hawai'i. The significant proposed change is to remove the requirement that a permit applicant be authorized by the County of Hawai'i to operate commercially on Kahalu'u Bay. A revised version of the map exhibit includes a technical revision to remove an incorrect reference to Kamo'a Point. No substantive changes to the map boundaries or the previously approved rule language are being made.

Kahalu'u Bay rules were last amended in May 2016, where County of Hawai'i Administration and the Department agreed to implement a limit of four permits authorizing surfing instruction. The County of Hawai'i selected a non-profit organization that would solicit bids from surfing instruction operators in order to select the four entities that would receive a commercial permit. This system would have allowed the County of Hawai'i to take the lead in choosing permittees through a fair and neutral process. However, the non-profit organization retained by the County of Hawai'i failed to make any selections.

After the Department discussed the issue of commercial surfing instruction in Kahalu'u Bay with the County of Hawai'i, both agreed that DOBOR would take the lead in selecting permittees, which led to removal of the requirement that an applicant have approval from the County of Hawai'i as a prerequisite to obtain a commercial use permit for Kahalu'u Bay from DOBOR. Other instructor requirements will otherwise remain in place.

For Kahalu'u Bay ocean waters zone A surf instruction site, in the event of health, safety, or welfare concerns, the Department also is adding a provision stating that the designated site of instruction may be temporarily changed.

As explained below, DOBOR recommends one change based on public hearing testimony: Remove the requirement for permit shifts and keep existing rule language which authorizes issuance of four (4) permits that would allow commercial surf instruction on a full-day basis.

### PUBLIC HEARING ASSESSMENT

Because the proposed amendments would only affect Kahalu'u Bay on Hawai'i, legal ads were only placed in the Hawaii Tribune Herald and West Hawaii Today newspapers, in accordance with HRS Section 91-3, to notify the public of the public hearing on the proposed amendments. Print copies of the proposed amendments were made available for viewing at the DOBOR Hawai'i District Office. The assessment of the public hearing is as follows:

#### **10/14/2022 PUBLIC HEARING ASSESSMENT:**

##### **ATTENDANCE:**

Approximately twenty-one (21) individuals attended the public hearing.

##### **VERBAL TESTIMONY:**

Ten (10) individuals provided verbal testimony at the public hearing: All ten individuals opposed establishment of permit shifts.

##### **WRITTEN TESTIMONY:**

No individuals submitted written testimony at the public hearing.

##### **MAILED TESTIMONY (POSTMARKED BY 10/21/2022):**

No testimony was received by mail.

##### **EMAILED TESTIMONY (RECEIVED BY 10/21/2022 11:59PM):**

DOBOR received email testimony from thirteen (13) individuals: one (1) individual supported the proposal; ten (10) individuals opposed; and two (2) individuals provided comments.

##### **SUMMARY**

Testifiers who opposed were all commercial operators who focused their opposition on commercial operation shifts. To address the concerns about commercial operation shifts, DOBOR is recommending that the Board remove the proposal to create eight (8) permits with shifts and instead maintain the existing rule language which implements four (4) commercial surf instruction permits without shifts. DOBOR's recommended revisions to the rule package are included in **EXHIBIT A**.

Testimony providing comments also mentioned that there are issues with surf school conduct, such as natural resource violations (coral damage and sea life injuries),

parking issues, user conflicts, and overcrowding. Many of the comments also brought up issues with lack of enforcement at Kahalu‘u Bay.

RECOMMENDATION:

That the Board approve adoption of amendments to HAR Section 13-256-152 with one revision: remove amendments that would create permit shifts and keep existing rule language authorizing issuance of four (4) full-day commercial surf instruction permits.

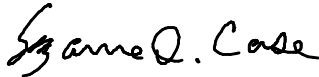
Respectfully Submitted,



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

APPROVED FOR SUBMITTAL:



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

Attachment:

- A. Revised 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

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 four 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 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;
- (4) Each surf instructor shall, at a minimum, possess a current advanced life saving certificate; and
- (5) 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 Kalaa 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)



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 AS TO FORM:

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Deputy Attorney General