

State of Hawai'i
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Aquatic Resources
Honolulu, Hawai'i 96813

May 26, 2023

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

NON-ACTION ITEM:
INFORMATIONAL BRIEFING ON PROPOSAL TO ADOPT A NEW CHAPTER UNDER
HAWAII ADMINISTRATIVE RULES (HAR) AS TITLE 13, CHAPTER 13-78,
"OCEAN STEWARDSHIP USER FEE"

Submitted for your information and review is an overview of the Department of Land and Natural Resources' (DLNR) proposal to adopt Hawaii Administrative Rules (HAR) Title 13, Chapter 78 to implement the Ocean Stewardship User Fee pursuant to section 187A-52, Hawaii Revised Statutes (HRS).

HISTORY

In 2021, the Hawai'i State Legislature introduced [House Bill 1019](#) as part of DLNR's Administration Bill Package. In the bill, the Legislature recognized the ecological, economic, and cultural value of Hawai'i's ocean waters and marine resources to the State. It also noted that the increasing popularity of marine ecotourism requires greater measures to ensure the continued health of marine ecosystems and that DLNR may need a more consistent and reliable funding source to manage, protect, and restore marine resources throughout the State. To address this need, House Bill 1019 proposed to establish an Ocean Stewardship Special Fund and to authorize DLNR to adopt rules pursuant to the Chapter 91 rulemaking process to establish non-resident user fees for the use and enjoyment of the State's ocean resources.

Through the Legislative hearing process, the Legislature amended the bill to:

1. Statutorily establish the Ocean Stewardship User Fee to apply to residents as well as non-residents, instead of authorizing DLNR to establish non-resident user fees through administrative rulemaking;¹
2. Initially set the Ocean Stewardship User Fee at \$1 per passenger or customer and require that the user fee be adjusted every five years to match changes in the Consumer Price

¹ See House Standing Committee Report No. 540 (2021):
https://www.capitol.hawaii.gov/sessions/session2021/CommReports/HB1019_HD1_HSCR540_.htm

Index in the Honolulu area, as reported by the United States Bureau of Labor Statistics; provided that the fee cannot be adjusted more than ten percent every five years;²

3. Delay the collection of the Ocean Stewardship User Fee until January 1, 2024;³
4. Establish a five-year sunset date of January 1, 2029 for the Ocean Stewardship Special Fund⁴ and require that any Ocean Stewardship User Fees collected after the sunset date, be deposited into the general fund;⁵ and
5. Clarify that twenty percent of certain gross revenues (including user fees) collected and deposited into the Ocean Stewardship Special Fund shall be payable to the Office of Hawaiian Affairs as ceded lands revenues.⁶

On June 8, 2021, then Governor David Ige signed the measure into law as [Act 46 \(SLH 2021\)](#). More information about House Bill 1019, including all versions of the measure, committee reports, and public testimony, is available on the Hawai'i State Legislature website at https://www.capitol.hawaii.gov/session/archives/measure_indiv_Archives.aspx?billtype=HB&billnumber=1019&year=2021.

LEGAL AUTHORITY FOR THE PROPOSED RULES:

The Division of Aquatic Resources (DAR) is proposing to adopt a new chapter as HAR Chapter 13-78, "Ocean Stewardship User Fee." The purpose of this rulemaking action is to implement the Ocean Stewardship User Fee as required by HRS §187A-52, which provides:

§187A-52 Ocean stewardship user fee. (a) All operators of commercial vessels, water craft, or water sports equipment that are required to have a commercial operator permit pursuant to section 13-256-3(a), Hawaii Administrative Rules, shall collect an ocean stewardship user fee from each passenger carried or customer served.

(b) The ocean stewardship user fee shall be \$1 per passenger or customer and shall be adjusted every five years to match changes in the Consumer Price Index in the Honolulu area as reported by the United States Bureau of Labor Statistics; provided that the fee shall not be adjusted more than ten per cent every five years. Fees collected pursuant to this section shall not be counted toward gross revenues for purposes of section 200-10(c)(5).

² Id.

³ Id.

⁴ See House Standing Committee Report No. 862 (2021):

https://www.capitol.hawaii.gov/sessions/session2021/CommReports/HB1019_HD2_HSCR862_.htm and Conference Committee Report No. 111 (2021):

https://www.capitol.hawaii.gov/sessions/session2021/CommReports/HB1019_CD1_CCR111_.htm

⁵ See Senate Standing Committee Report No. 1660 (2021):

https://www.capitol.hawaii.gov/sessions/session2021/CommReports/HB1019_SD2_SSCR1660_.htm

⁶ Id.

(c) All fees collected pursuant to this section shall be transferred to the department on a monthly basis and shall be deposited into the ocean stewardship special fund; provided that any fees collected on or after January 1, 2029, shall be deposited into the general fund.

(d) The department shall adopt rules pursuant to chapter 91 to implement this part.

HAR § 13-256-3 is an administrative rule promulgated by the Division of Boating and Ocean Recreation (DOBOR), which provides, in relevant part, that “all operators of commercial vessels, water craft or water sports equipment or activities conducting commercial tours or instruction on State ocean waters must obtain a commercial use permit, or where applicable a catamaran registration certificate to be issued by the department, except for those operating out of a state commercial harbor.” This permit requirement applies to a broad range of commercial activities such as snorkel and SCUBA diving tours, whale watching tours, surf lessons, guided kayak tours, and fishing charters.

OVERVIEW OF THE PROPOSED RULES

The proposed rules would implement the Ocean Stewardship User Fee requirement established by Act 46. Section 1 establishes definitions for the terms “commercial operator”, “commercial operator permit”, “customer”, “department”, “passenger”, “person”, “State”, and “vessel”. These definitions provide clarity on who the user fee requirements apply to.

Section 2, subsections (a) through (d), essentially restate the relevant Ocean Stewardship User Fee requirements set forth in HRS §187A-52. Subsection 2(d) establishes a deadline to transfer collected user fees to DLNR by the last day of the month following the month in which the fees were collected. Subsection 2(e) establishes a monthly reporting requirement for commercial operators to report the total number of passengers carried or customers served during the month covered by the report. This information is necessary to calculate the amount of collected user fees that must be transferred to DLNR. The report will also collect information about the general location of the operator’s commercial activity, as well as the nature or type of commercial activity. This information can assist DLNR in deciding how user fee revenues should be allocated. Subsection 2(f) requires commercial operators to maintain records of the daily number of passengers carried or customers served for at least twenty-four months and to make them available for inspection by DLNR upon request. This provides a mechanism for DLNR to conduct audits to ensure compliance with user fee requirements.

Section 3 describes the statutorily authorized penalties that will apply for violations of this chapter, including administrative and criminal fines and revocation or denial of DOBOR commercial use permits.

Section 4 is a severability clause, which is a standard inclusion when new administrative rules are proposed.

The proposed amendment and compilation of HAR Chapter 13-78 drafted in Ramseyer format is attached as **Exhibit 1**.

ANTICIPATED REVENUES AND EXPENDITURES

The purpose of the Ocean Stewardship User Fee is to generate revenues for the conservation, restoration, enhancement, and management of Hawai'i's marine resources. According to a [December 2020 study to explore the feasibility of establishing an Ocean Stewardship Fee](#), the program is expected to generate a Net Present Value (NPV) of \$30.3 million over a 15-year time horizon. Estimated annual net revenues range from \$600,000 in Year 1 to over \$5 million in Year 15.

Pursuant to [HRS §187A-51](#), subsection (b), all Ocean Stewardship User Fees must be deposited into the Ocean Stewardship Special Fund (OSSF).⁷ Subsection (d) requires that twenty percent of all user fee revenues shall be payable to the Office of Hawaiian Affairs as ceded lands revenues. Subsection (c) provides the authorized uses of the OSSF:

- (1) Develop and carry out marine resource conservation, restoration, enhancement, research, regulatory measures, enforcement actions, educational activities, or any other management measure intended to conserve, restore, and enhance marine resources under the jurisdiction of the State;
- (2) Develop and carry out restoration and compensatory mitigation measures for impacts to the marine environment, including impacts to the marine environment from federal or state permitted actions, or violations of subtitle 5 of title 12 or any rule adopted thereunder; and
- (3) Install, maintain, and replace day use mooring buoys and other infrastructure to reduce impacts to the marine ecosystem.

DAR plans to use Ocean Stewardship User Fee revenues for a number of projects and programs including, but not limited to:

- Habitat restoration, including coral reefs and estuaries;
- Invasive species prevention and removal;
- Water quality research and monitoring;
- Marine debris removal;
- Enhanced monitoring of marine habitat and resources;
- Establishing a statewide program to install, inspect, maintain, and replace Day-Use Mooring Buoys; and
- Development of materials and trainings to educate visitors on the cultural, historical, and ecological importance of the various marine resources they interact with, as well as best practices to minimize their impacts.

⁷ Also required to be deposited in the Ocean Stewardship Special Fund pursuant to HRS §187A-51(b) are lease revenues; fines, bail forfeitures, attorney's fees, and administrative costs for aquatic resource violations; moneys collected for compensatory mitigation; grants, awards, donations, gifts, transfers, or moneys derived from private or public services for the purposes of subtitle 5 of title 12; and moneys derived from interest, dividend, or other income from the above sources.

PRELIMINARY STAKEHOLDER ENGAGEMENT

On April 13, 2023 DAR sent letters to all known Commercial Use Permit holders to invite them to participate in an online stakeholder scoping meeting via Zoom to learn about the proposed Ocean Stewardship User Fee rules. Approximately 544 letters were sent by email and 80 by mail to addresses on file with the Department. DAR staff received five emails with comments, one written letter, and spoke with two individuals who called by phone.

On April 27, 2023 DAR held the stakeholder scoping meeting, with approximately xx people in attendance. DAR staff provided a PowerPoint presentation describing the requirements of Act 46 (SLH 2021) and the details of the proposed Ocean Stewardship User Fee rules. DAR then solicited feedback and answered questions regarding the proposal. **Exhibit 2** is a summary of the comments, questions, and responses from the April 27 stakeholder scoping meeting.

On May 4, 2023, DAR held an in-person meeting with Honokohau fishing charter operators to discuss several upcoming proposed rules, including the Ocean Stewardship User Fee. Similar questions and comments were raised and responses were provided. There were suggestions that DAR consider alternative funding mechanisms in lieu of the Ocean Stewardship User Fee, but it was explained that these alternatives would not align with statutory requirements.

NEXT STEPS

DAR is in the process of soliciting bids to develop the Ocean Stewardship User Fee online reporting and payment system. DAR plans to seek approval from the Board to hold public rulemaking hearings at a future Board meeting.

Respectfully submitted,



BRIAN J. NEILSON, Administrator
Division of Aquatic Resources

APPROVED FOR SUBMITTAL



DAWN N. S. CHANG, Chairperson
Board of Land and Natural Resources

Attachments:

Exhibit 1 – Draft Proposed HAR chapter 13-78 (Ramseyer format)

Exhibit 2 – 4/27/23 Ocean Stewardship User Fee Public Scoping Meeting Summary

DEPARTMENT OF LAND AND NATURAL RESOURCES

Adoption of Chapter 13-78
Hawaii Administrative Rules

(Date of adoption)

1. Chapter 13-78, Hawaii Administrative Rules, entitled "Ocean Stewardship User Fee", is adopted to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 4 FISHERIES

PART IV FISHERIES RESOURCE MANAGEMENT

CHAPTER 78

OCEAN STEWARDSHIP USER FEE

§13-78-1	Definitions
§13-78-2	Ocean Stewardship User Fee
§13-78-3	Penalties, generally
§13-78-4	Severability

§13-78-1 Definitions. As used in this chapter, unless otherwise provided:

"Commercial operator" means a person that has, or is required to have, a commercial operator permit or commercial use permit pursuant to section 13-256-3.

"Commercial operator permit" means a permit described in section 13-256-3, which may also be referred to as a "commercial use permit".

"Customer" means an individual using the services of a commercial operator.

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

"Passenger" means an individual onboard a vessel other than the master, members of the crew, or other persons employed in the business of the vessel.

"Person" means an individual, partnership, firm, company, corporation, association, or other entity.

"State" means the State of Hawaii.

"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.
[Eff] (Auth: HRS §187A-52) (Imp: HRS §187A-52)

§13-78-2 Ocean Stewardship User Fee. (a) All operators of commercial vessels, watercraft, or water sports equipment that are required to have a commercial operator permit or commercial use permit pursuant to section 13-256-3 shall collect an ocean stewardship user fee from each passenger carried or customer served.

(b) The ocean stewardship user fee shall be \$1 per passenger or customer.

(c) Fees collected pursuant to this section shall not be counted toward gross revenues for purposes of section 200-10(c)(5), HRS.

(d) All fees collected pursuant to this section shall be transferred to the department on or before the tenth day of the following month in which the fees were collected.

(e) Commercial operators shall submit a monthly report to the department with information about commercial operations during the month covered by the report including total number of passengers carried or customers served, location of commercial activity, and

nature or type of commercial activity. The report shall be rendered to the department as a true and correct statement of the information contained therein. Reports shall be submitted on or before the last day of the month following the month covered by the report.

(f) Commercial operators shall maintain records of the daily number of passengers carried or customers served for at least twenty-four months after the carriage or service date. Records shall be made available for inspection by the department upon request. [Eff] (Auth: HRS §187A-52) (Imp: HRS §187A-52)

§13-78-3 Penalties, generally. (a) Any person violating any provision of this chapter shall be subject to:

- (1) Administrative penalties as provided by section 187A-12.5, HRS;
- (2) Criminal penalties as provided by sections 187A-12.4 and 187A-13, HRS;
- (3) Revocation of a commercial operator permit as provided by section 13-256-10;
- (4) Denied reissuance of commercial use permit as provided by section 13-231-61; and
- (5) Any other penalty as provided by law.

(b) Unless otherwise expressly provided, the remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws of the State. [Eff] (Auth: HRS §§187A-52,) (Imp: HRS §§187A-12.4, 187A-12.5, 187A-13, 187A-52, 200-2, 200-3, 200-4)

§13-78-4 Severability. If any provision of this chapter, or the application thereof, to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this

chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable." [Eff] (Auth: HRS §187A-52 (Imp: HRS §§1-23, 187A-52)

2. The adoption of chapter 13-78, 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 _____, and filed with the Office of the Lieutenant Governor.

DAWN N.S. CHANG
Chairperson
Board of Land and Natural
Resources

APPROVED FOR PUBLIC HEARING:

Deputy Attorney General

Ocean Stewardship User Fee Public Scoping

Summary Notes

April 27, 2023 || 5:00 PM HST via Zoom

PURPOSE OF MEETING

To provide a public scoping regarding the implementation of the Ocean Stewardship Fund, which establishes a user fee of \$1 per person to be collected by commercial ocean operators providing vessel-based activities to passengers or vessel-free services to customers. The user fee will be in effect starting January 1, 2024.

COMMENTS

- It has been an ongoing issue that DLNR's enforcement agency (DOCARE) is not doing its due diligence to make sure that all operating businesses are within regulations and have proper permits, safety is being ensured in the waters, and proper citations are given to those that do not follow the rules. Why is it that the folks that have been compliant and following the rules since the beginning will be the ones that will carry the burden of this new \$1 fee? What can DAR/DLNR do to assure those that have been following regulations that they will be protected and not punished for those that do not follow the rules?
- There seems to be new fees added every year for commercial ocean operators
- If this system doesn't work, then the sunset clause should either end the program or divert the money into a similar program and not entered into the General Funds
- "I find it dishonest that the DLNR didn't use this email blasts to solicit input before the legislation was introduced."
- Regarding the online payment platform for the Ocean Stewardship User Fee (OSUF), consider having an open limit for payments (DLNR currently has a limit for \$10,000 for online payments through the website)
- Regarding the online payment platform for the OSUF, consider setting up a system where the user does not have to pay an extra credit/debit card transaction fee (ex. Charge bank directly with user's bank account and routing #)
- There should be more enforcement towards illegitimate operators. Some users on the call, based on their past experiences with DOCARE, said that increased enforcement may result in more harassment towards legitimate users rather than those who are not following regulations.
- There is support from many folks in the call for more investments towards mooring infrastructure and are critical to many boating operators to avoid anchoring issues and to protect the reef

- Educational programs shouldn't be charging the fee for taking out groups doing programs in the water.
- There should be efforts to sync up the process with DAR, DOBOR and DOCARE regarding payment, information collection, enforcement, etc.
- Provide ample time and notice for operators when meetings are scheduled and testimonies are requested.

QUESTIONS

How can DAR/DLNR assure commercial ocean operators who have been compliant with regulations and fees that businesses who have been operating illegally will be held accountable and be subject to the same fees?

DAR acknowledges there are challenges with enforcement. The Ocean Stewardship User Fee (OSUF) is specific to manage the aquatic resources in the ocean to enhance user experience— it can be used towards things like broader education and outreach, better enforcement, or improving regulations. This may also include tracking down illegally run businesses and make sure they are compliant to the existing regulations and requirements to run an ocean-based business.

Why do we have to pay the Ocean Stewardship User Fee when we already pay for our Commercial User Permit?

The funds collected from the Commercial User Permit is specifically allocated to the Division of Boating and Ocean Recreation (DOBOR) for small boat harbors, long-term facilities, and the management and administration associated with these projects— none of that comes to DAR.

As a commercial operator, we already report number of passengers to. Does that mean a separate invoice from DAR will come on top of paying 3% of what our revenue was to DOBOR? Or will they be coming as one invoice?

There will be a separate online system for the Ocean Stewardship Fund. DOBOR's operating system is primarily paper-based and is not efficient to gather the information requested for the user fees. The goal is to make this process completely online and user-friendly.

The 3% is generally going to general fund and not to our harbors. How will commercial operators be taxed for the collected fees for the Ocean Stewardship Fund? Do they need to pay the GE or will there be an exemption on the fees collected on behalf of the state?

A response will be provided after consulting with the legal team. Response: Commercial operators are advised to obtain their own tax advice. The text of Act 46 does not address the subject of general excise tax.

Where did the Ocean Stewardship Fund come about and how will the fee be implemented?

DAR proposed the legislation and went through the legislative process. The Legislature adopted Act 46 and was signed by the Governor in 2021. DAR was given 2.5 years to implement the user fee collection through commercial operators, with the intent that the users will be paying the fee. The user fee will be in effect starting January 1, 2024.

What are the state's plans on collateral marketing and getting this information into the hands of travelers and guests beforehand, so that operators don't have to deal with the complaints?

Not addressed. Response: DAR is working on a plan to develop a marketing strategy to inform the public of the implementation of the OSUF program.

For those working with hotels, how will businesses handle disputes with customers who want a reimbursement, which also includes the \$1 Ocean Stewardship user fee? Will the business be using their funds to cover that cost instead?

It is up to the business to create a policy on whether or not to refund the user fee, or if the business will cover the cost.

In the case that a commercial operator requires three permits for a single experience with a passenger/customer, will the permit holder be only charged once or will they be charged for each permit?

DAR will follow up with DOBOR who handles the Commercial User Permits on unique situations like this one. Updated response: A single commercial operator that transports passengers on multiple vessels during one trip (for example a submarine company that uses a tender vessel to transport passengers to and from shore) will only need to collect the fee one time per passenger.

How much in fees is expected to be collected through the Ocean Stewardship Fund?

Approximately \$3 million a year, assuming full compliance.

How will the user fees be allocated with the sunset law?

For the first 5 years, the Ocean Stewardship Special Fund goes directly to DAR to manage the aquatic resources in the ocean to enhance user experience— it can be used towards things like broader education and outreach, better enforcement, or improving regulations. Starting January 1, 2029, The user fee will still be collected but will be deposited to the State General Fund. Although it was not originally proposed by DAR to include a sunset date, it may be possible to repeal the sunset provision if we can show that the system DAR created to manage the funds is successful. Another alternative is to share the need for those funds to be allocated to DAR from the General Fund.

For non-profit organizations that utilize grants to put passengers on educational vessels, will each passenger still be subjected to the \$1 fee, which will ultimately cutting out the number of resources they can share? Is there any way to be subsidized for situations in which non-profit orgnaizations are promoting educational resources?

As non-paying passengers can have the same impact as paying customers, there may be possibilities for subsidies under unique circumstances, which are yet to be discussed.

Are cruise ship passengers subject to pay the \$1 fee?

DAR will need to confirm with DOBOR, but most cruise ships operate out of commercial harbors and are not required to have a commercial use permit from DOBOR, so the fee would not apply to them.

FROM DOBOR: Cruise ships pay a separate fee per passenger in DOBOR HAR's.

Updated response: Cruse ships that operate out of commercial harbors are not required to have a CUP from DOBOR, so the OSUF would not apply to them

Is it possible for commercial operators who have been consistently compliant and follow the rules to receive credit for ensuring that the passengers/customers are educated and mindful about their environment during their experiences with the ocean?

Although it is great that some operators inform their passengers/customers to be environmentally conscious, there are no exceptions in the statute to credit passengers for removing marine debris. However, DAR has received some suggestions to provide operators with educational materials to distribute for passengers/customers to interact with marine resources in a responsible way so that operators do not have to put their own money to develop materials to educate their clients.

Will infants, who ride for free, be subject to the \$1 fee as well?

The way the statute reads, if infants are reported as passengers, they will still be subjected to the \$1 fee. DAR acknowledges that different types of activities will have different levels of impact, but the statute is not based on the type of activity, but rather if there are ocean-related activities taking place under a commercial operator.

What materials will the State provide to inform passengers/customers about the new \$1 fee?

DAR can provide that information or material to operators to provide to the customers explaining the purpose of the OSUF once the funds start coming in. Act 46 authorizes that. It will take some time to ramp up, but DAR fully intends to provide those kind of education to operators and conduct broader public outreach to HTA or visitors about how they're contributing to ocean stewardship through this fee.

Some of the larger boat operators are already paying \$1 per passenger on their gross receipt form. Will this new user fee go away and be converted into this new system?

The Ocean Stewardship User Fee does not take away the gross receipts that are due to DOBOR, as all those other fees go to DOBOR management, and not DAR. The new user fee will be going on top of whatever you pay to DOBOR, but specifically allocated to DAR to be used towards marine resource management.

There are currently some proposed rules where manta operators will have to pay an additional \$300/month for mooring upkeep. Considering that the gross receipts are supposedly going to mooring upkeep, and that the fees from the Ocean Stewardship Fund may also be used towards mooring upkeep, does this mean manta operators will be paying three different fees for mooring upkeep?

DAR is unfamiliar with the proposed rules for manta operators and needs to follow up with DOBOR to confirm this, but CUP fees from operators cannot be used towards mooring upkeep and can only be used for costs for things like boat ramps and boating infrastructure. The user fees from the Ocean Stewardship Fund may be used for supporting installation, maintenance, and inspection of network of moorings statewide, as the state is responsible for the upkeep but there is currently no funding coming in for that. Updated response: DOBOR is proposing new fees specifically for use of manta site moorings to help pay for the costs associated with the upkeep of these moorings. The extra fee is justified by the more intensive use of the moorings (and therefore higher maintenance costs) by nighttime manta tour activities.

Will DAR be monitoring across the islands in-person to see compliance of operators with the OSUF?

There are no plans for DAR staff to regularly check compliance from commercial operators in-person. The intent of the online system is for a simple, accessible way for operators to provide requested information and payment for the OSUF. This includes geographical information, types of services provided, etc. Other than identification information and passenger manifests to determine how much OSUF are collected, providing other information is voluntary. The information will help better inform DAR in where and how much to allocate funds across the state and will be transparent across the process.

Are staff and crew members of a commercial operation also subject to the \$1 OSUF?

No. The definition of passenger doesn't include the captain or crew members or employees.

If I take my boat out to do holoholo on my day off, will I be subject to the \$1 OSUF?

No. Personal trips are not under commercial trips, so there is no requirement to be subjected to the \$1 fee.

How can we address the increasing number of bare boat rentals across the islands that do not consider themselves as commercial operators? Will this exclude them from the OSUF requirement?

Need to confirm with DOBOR if these vessels are required to have a CUP – if they are not, they will not be subject to the user fee. Updated response: bare boat rental companies are required to have a CUP from DOBOR, so they are subject to the OSUF.

When does DAR anticipate starting allocating funds after the collection starts coming in?

That would depend on what projects have been identified and ready to go once the funds start coming in. Some potential projects that may get allocated funds include a pilot day-use mooring inspection and maintenance program, statewide inventory of existing moorings and maintenance status. More allocation to other projects will take place over time.

When DAR says some of the OSUF funds will go towards enforcement, does this refer to increasing DOCARE capacity or creating a new enforcement branch?

This refers to supporting DOCARE, DLNR's enforcement agency as well as administrative enforcement through DAR. This could look like civil citations (issued by both DOCARE/DAR), build capacity on the administrative and enforcement side within DAR, coordination DOBOR to monitor compliance, etc. Enforcement towards illegal operators primarily fall under DOCARE.

Are self-guided operators required to get a CUP and are they subjected to the OSUF?

Rentals of watersports equipment are required to have CUPs. DAR will confirm with DOBOR. Updated response: Companies who rent out vessels are required to have a CUP, so they are also subject to the OSUF. However, companies who rent out other water sports equipment (kayaks, surf boards, snorkel gear) are not required to have a CUP and therefore would not be subject to the OSUF.

Is the system mentioned to collect fees already developed?

No. DAR is putting out an RFP for proposals to design, develop and implement the system. Feedback from this meeting will help inform that process.

Will the slides from today's presentation be available to us?

Yes. Slides will either be posted online or emailed out to everyone in the meeting.

As ocean users we are at the mercy of the weather. If the trip is refunded due to weather, are commercial operators still responsible for the fee even if the tour didn't go out?

Yes, those passengers will still be subjected to the OSUF because those customers were still reported in your passenger manifesto. It is up to the business to create a policy on whether or not to refund the user fee, or if the business will cover the cost. DAR will work on providing educational materials for customers to understand where the fee will go towards.

I concur with the other operators- especially the surf schools- that DLNR has 100% failed to provide any enforcement. I'm 15 years that I've been doing lessons, I've never heard of a single citation. Illegal schools operate next to me daily in Waikiki, with no repercussions. Further, in November 2022, the DLNR renounced the responsibility of licensing surf instructors. To everyone's point- I have no idea what our payments go to now. Why would I have input on the use of new funds?

DAR is committed to be transparent with what comes in as user fees and how it is spent.

What about things like snorkel gear rentals? Those users are some of the most damaging!

DAR will confirm with DOBOR, but if it is a beach based activity, they are required to have a CUP, but if it's like a storefront like snorkel Bob's they may not be subject to that. Updated response: rental of snorkel gear and other water sports equipment is not subject to the CUP requirement and therefore not subject to the Ocean Stewardship User Fee.

Does the state have this information based on the CUP fee that we already pay? This could allow you to plan and forecast before recollecting the information.

DOBOR may have that information and DAR can ask them for information on how those fees are allocated. But those fees can't be spent on DAR management. Under statute those are required to be for DOBOR facilities.

I want to learn and read more about the legislation and where it is written. Where can we get that?

Hawaii Revised Statutes, Chapter 187-151

https://www.capitol.hawaii.gov/hrscurrent/Vol03_Ch0121-0200D/HRS0187A/HRS_0187A-0052.htm

Hawaii Revised Statutes, Chapter 187-152

https://www.capitol.hawaii.gov/hrscurrent/Vol03_Ch0121-0200D/HRS0187A/HRS_0187A-0051.htm

Is it the intent for the information collected from operators be used to limit access to areas in the future?

No. The information about where and how much activity is taking place is for geographical purposes to help DAR allocate funds appropriately. The information collected could be used to help DLNR know where and how the fees should be spent to benefit operators and customers/passengers. This could look like enhanced enforcement, more education outreach, mooring maintenance, etc.

Can some of the funds go towards maintenance of boating facilities?

No. Fees collected from the commercial use permit fee through DOBOR are funds allocated towards projects like maintenance of boating facilities. However, as a sister agency DAR can help communicate that need to DOBOR.

What are the penalties for companies who do not pay the Ocean Stewardship user fees?

There is a statutory maximum administrative penalty of \$1,000 per violation. There is criminal minimum penalty of \$250. Revocation of the CUP is also possible.

How will DAR ensure that the information operators submit is accurate?

DAR can match the numbers submitted with DOBOR's records. Alternatively, it is stated in the proposed rule that commercial operators are required to maintain records of the daily number of passengers carried or customers served for at least 24 months after the service date and shall be made available for inspection by the DLNR upon request. The intent is to do spot checks randomly to check for compliance, in hopes to promote honest reporting.

How will the fees collected contribute towards fisheries and actual fishermen who will be taxed \$20/person per day, \$40/person per week, \$70/person per 12 months?

The \$20, \$40, \$70 fees mentioned refer to a separate non-resident recreational marine fishing license that DAR is also implementing, but they will also be subject to the Ocean Stewardship user fee. The funds from the non-resident fishing license will go into the sport fish special fund to fund sport fish projects. The funds from the Ocean Stewardship user fee will go towards projects like habitat enhancement which also benefit fisheries.

What are the next steps from this meeting?

This was just a public scoping meeting. Next steps will include having the Attorney General's Office review the proposed rules and get approval from BLNR to go out and hold formal public hearings. People in this call will be notified when they are scheduled, and the public will have the opportunity to provide comments on the draft rules.