

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

June 9, 2023

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

REQUEST FOR APPROVAL TO HOLD PUBLIC HEARINGS ON PROPOSED ADOPTION
OF A NEW CHAPTER UNDER HAWAII ADMINISTRATIVE RULES (HAR) AS
TITLE 13, CHAPTER 13-78, “OCEAN STEWARDSHIP USER FEE” TO ESTABLISH
PROVISIONS FOR THE OCEAN STEWARDSHIP USER FEE PURSUANT TO SECTION
187A-52, HAWAII REVISED STATUTES, INCLUDING A DUE DATE FOR THE FEES TO
BE SUBMITTED TO THE DEPARTMENT, REPORTING REQUIREMENTS FOR
COMMERCIAL OPERATORS, RECORD KEEPING REQUIREMENTS FOR
COMMERCIAL OPERATORS, AND APPLICABLE PENALTIES FOR VIOLATIONS OF
THE CHAPTER

At the May 26, 2023 Board of Land and Natural Resources (Board) Meeting, the Division of Aquatic Resources (DAR) briefed the Board on this proposal. Based on discussions with the Department of the Attorney General, a few minor changes have been made to the proposal since the briefing, which will be explained below. DAR now requests approval from the Board to hold public hearings on the proposed adoption of Hawaii Administrative Rules (HAR) Title 13, Chapter 78 to implement the Ocean Stewardship User Fee pursuant to section 187A-52, Hawaii Revised Statutes (HRS).

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).

(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

As a reminder, the purpose of this rulemaking is to 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”. Since the briefing, based on discussions with the Department of the Attorney General, DAR has modified the definition of “commercial operator” to make it consistent with the statutory language; clarified the definitions of “commercial operator permit” and “customer”, and added a definition for “commercial vessel” to mirror the definition of “commercial vessel” in DOBOR’s rules. 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. This section has been amended, based on discussions with the Department of the Attorney General, to remove criminal penalties for violations of this chapter. DAR believes that administrative penalties, including fines and revocation or denial of DOBOR commercial use permits, are sufficient to deter willful violations of the Ocean Stewardship User Fee requirements.

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

A redline draft of the updated proposed HAR Chapter 13-78 drafted in Ramseyer format is attached as **Exhibit 1**. This draft shows the changes made to the proposal since the briefing, based on discussions with the Department of the Attorney General. A clean version of the proposed rules drafted in Ramseyer format is attached as **Exhibit 2**.

RECOMMENDATIONS:

- 1) “That the Board approve the proposed adoption of HAR Chapter 13-78, “Ocean Stewardship User Fee,” for statewide public hearings;” and
- 2) “That the Board delegate to the Chairperson the authority to appoint hearings officers to conduct the aforementioned public hearings.”

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 – Redline Draft Proposed HAR chapter 13-78 (Ramseyer format)
- Exhibit 2 – Clean Draft Proposed HAR chapter 13-78 (Ramseyer format)

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 S stewardship U user F fee
§13-78-3	Penalties, generally
§13-78-4	Severability

§13-78-1 Definitions. ~~As used in~~For purposes of this chapter only, 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 now known~~ as a "commercial use permit".

"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.

"Customer" means an individual using the services of a commercial ~~operator use permit holder~~.

"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 ~~S~~stewardship ~~U~~user ~~F~~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-last~~ day of the month following the 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 use permit as provided by section 13-256-10; and~~
- (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~~7~~) (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

DRAFT

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:

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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. For purposes of this chapter only:

"Commercial operator" means a person that 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, now known as a "commercial use permit".

"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.

"Customer" means an individual using the services of a commercial use permit holder.

"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 last day of the month following the 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) Revocation of a commercial use permit as provided by section 13-256-10; and
- (3) Denied reissuance of commercial use permit as provided by section 13-231-61.

(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-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)

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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:

/s/ Colin Lau
Deputy Attorney General