

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

September 27, 2024

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

Land Board Members:

SUBJECT: Request approval to adopt a new chapter under Hawaii Administrative Rules as Chapter 13-232.1, "SMALL BOAT HARBOR AND BOATING FACILITY HOURS OF OPERATION", through emergency rulemaking procedures, pursuant to section 91-3(b), Hawaii Revised Statutes, to address increased gun violence throughout the State, including at small boat harbors and boating facilities.

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

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 District Offices is available online at: <https://dlnr.hawaii.gov/dobor/contact>.

REMARKS:

Most state small boat harbors and boating facilities (such as boat launch ramps, piers, wharves, and docks) are under the jurisdiction of the Division of Boating and Ocean Recreation (DOBOR). There are currently no statutes or administrative rules authorizing hours of operation for DOBOR small boat harbors and boating facilities; as such, these facilities are open to the public 24 hours a day, 7 days a week. While DOBOR has modified operating hours of its harbor offices due to staff shortages, these modified hours only apply to the availability of services being provided and not to the hours that the public is allowed to access facilities.

As some of the only public spaces open during night hours, small boat harbors and boating facilities sometimes attract criminal activity. In the beginning of August 2024, there was a deadly shooting at the Wai'anae Small Boat Harbor. In late September 2023,

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there was a shooting at the Wai'anae Small Boat Harbor that resulted in two deaths that occurred around 1:00 a.m. Additionally, there has been a recent increase in gun violence state-wide. DOBOR believes that there is an imminent peril to the public health, safety, or morals, due to the increase in gun violence. DOBOR believes setting reasonable hours of operation at small boat harbors and boating facilities will prevent public safety hazards from occurring therein during night hours and will make the facilities safer places for lawful users.

The proposed emergency rules (attached as **Exhibit A**) still allow for persons with legitimate business at the small boat harbor or boating facility to access such facilities at all hours. This includes persons with a valid mooring permit, principal habitation or stay aboard permit, persons entering for the purpose of launching or recovering a trailered vessel, persons with written approval from the department to enter, and law enforcement and emergency personnel.

AUTHORITY:

Pursuant to Section 200-3, Hawaii Revised Statutes (HRS), the Department of Land and Natural Resources (Department) has authority over planning, developing, operating, administering, and maintaining small boat harbors, launching ramps, and other boating facilities and associated aids to navigation throughout the State.¹ Pursuant to Section 200-4, HRS, the Department has authority to adopt rules for the safety of small boat harbors, launching ramps, and other boating facilities, and the vessels anchored or moored therein; and to regulate the conduct of the public using small boat harbors, launching ramps, and other boating facilities owned or controlled by the State.²

Administrative rules must be adopted, amended, or repealed in accordance with Chapter 91, HRS, which provides the general procedures for agencies to adopt administrative rules within their respective statutory authority. In most situations, prior to the adoption of any rule authorized by law, an agency must give at least thirty days' notice for a public hearing and afford all interested persons an opportunity to submit data, views or arguments, orally or in writing.³

However, if an agency finds an imminent peril to the public health, safety, or morals requires adoption, amendment, or repeal of a rule upon less than thirty days' notice of hearing, and states in writing its reasons for such a finding, the agency may proceed without prior notice or hearing or upon such abbreviated notice and hearing, including posting the abbreviated notice and hearing on the internet as provided in Section 91-2.6, HRS, as it finds practicable to adopt an emergency rule to be effective for a period of not longer than one hundred twenty days without renewal.⁴

¹ HRS Section 200-3(2)

² HRS Section 200-4(a)(3)&(4)

³ HRS Section 91-3(a)

⁴ HRS Section 91-3(b)

RECOMMENDATIONS:

That the Board of Land and Natural Resources:

1. Find that an increase in gun violence throughout the state, including at small boat harbors and boating facilities, constitutes an imminent peril to the public health, safety, and morals, and requires immediate adoption of rules that reasonably restrict access to small boat harbors and boating facilities by establishing hours of operation and closures, upon less than thirty days' notice of hearing, pursuant to section 91-3(b), Hawaii Revised Statutes; and
2. Approve the adoption of Hawaii Administrative Rule Chapter 13-232.1, "SMALL BOAT HARBOR AND BOATING FACILITY HOURS OF OPERATION".

Respectfully submitted,



MEGHAN L. STATTS, Administrator
Division of Boating and Ocean Recreation

APPROVED FOR SUBMITTAL:



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

Attachment:

- A. Proposed emergency rules creating new HAR Chapter 13-232.1

DEPARTMENT OF LAND AND NATURAL RESOURCES

Adoption of Chapter 13-232.1
Hawaii Administrative Rules

[Date of adoption by agency]

1. Chapter 13-232.1, Hawaii Administrative Rules, entitled "SMALL BOAT HARBOR AND BOATING FACILITY HOURS OF OPERATION", is adopted to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 11

OCEAN RECREATION AND COASTAL AREAS

CHAPTER 232.1

SMALL BOAT HARBOR AND BOATING FACILITY HOURS OF
OPERATION

- §13-232.1-1** Findings
- §13-232.1-2** Small boat harbor and boating facility hours of operation; restrictions on access

§13-232.1-1 Findings. The department finds there has been an increase in gun violence state-wide. The department further finds that small boat harbors and boating facilities, and adjacent areas thereto, attract members of the public at all hours due to a lack of posted hours of operation. The department

Exhibit A

finds that keeping small boat harbors and boating facilities, and adjacent areas thereto, open to the public at all hours without reasonable access restriction thereto constitutes an imminent peril to public health, safety, and morals. [Eff
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§13-232.1-2 Small boat harbor and boating facility hours of operation; restrictions on access.

(a) The administrator of the division, with the approval of the chairperson, may establish a reasonable schedule of hours of operation for all or a portion of any and all state small boat harbors, state boating facilities, and adjacent areas thereto including, but not limited to parking areas, boat washdown stations, and boat storage areas, and may close or restrict public use to all or any portion thereof, when necessary for the protection of the small boat harbor or boating facility or for the health, safety, or welfare of persons or property, by the posting of appropriate signs at the small boat harbor or boating facility and on the department's website and when applicable, indicating the extent and scope of closure.

(b) No person may enter or remain within a small boat harbor or boating facility outside of posted hours of operation, except for:

- (1) Persons who hold a valid mooring permit issued by the department applicable to the small boat harbor or boating facility they are attempting to access;
- (2) Persons who hold a valid principal habitation or stay aboard permit issued by the department applicable to the small boat harbor or boating facility they are attempting to access, and any guests when in the company of the permit holder;
- (3) Persons who are entering the small boat harbor or boating facility for the purpose of launching or recovering a trailered vessel, who possess a valid launch ramp

decal for state launch ramps and a valid vessel registration or documentation certificate;

- (4) Persons who have written approval for access from the administrator of the division, or their designee;
- (5) Law enforcement officers and emergency personnel performing official duties; and
- (6) Authorized employees of the department performing official duties.

(c) Any vehicles left unattended in a small boat harbor or boating facility outside of hours of operation, except for those with a valid parking permit issued by the department or written approval from the department, may be removed pursuant to chapter 13-233.

(d) Entry into a small boat harbor or boating facility outside of posted hours of operation or during a closure is prohibited.

(e) Any person who enters or remains at a small boat harbor or boating facility outside of posted hours of operation or during a closure, without authorization pursuant to subsection (b), and who remains after a request to leave is made by a law enforcement officer shall be guilty of criminal trespass onto state lands and subject to penalties in accordance with section 708-814.7, Hawaii Revised Statutes." [Eff] (Auth: HRS §§200-2, 200-3, 200-4, 708-814.7) (Imp: HRS §§200-2, 200-3, 200-4, 708-814.7)

2. The department finds that increase in gun violence throughout the state, including at small boat harbors and boating facilities, constitutes an imminent peril to the public health, safety, and morals, and requires immediate adoption of these emergency rules pursuant to section 91-3(b), Hawaii Revised Statutes.

3. The adoption of chapter 13-232.1, Hawaii Administrative Rules, shall take effect upon filing with the Office of the Lieutenant Governor, and shall be effective for no more than 120 days after such filing without renewal.

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, pursuant to emergency rulemaking authority in chapter 91, Hawaii Revised Statutes, and filed with the Office of the Lieutenant Governor.

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

APPROVED AS TO FORM:



Deputy Attorney General